



**Asia-Pacific  
Economic Cooperation**

# **APEC TRAINING COURSE ON CORPORATE GOVERNANCE**

*2-3 July 2009, Ha Noi Viet Nam*

**APEC Economic Committee**

**July 2009**

EC 01/2009A

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APEC#209-EC-04.1

**AGENDA**  
**APEC TRAINING COURSE ON CORPORATE GOVERNANCE**  
*Sofitel Plaza Hotel, 2-3 July 2009, Ha Noi*

<b>2 July 2009</b>		
8.30 – 9.00	Registration	
9.00 – 9.15	Welcoming remarks	H.E Nguyen Cam Tu, Vice Minister of Industry and Trade of Viet Nam
<b>9.15 – 12.00</b>	<b>Session 1: Brief introduction to corporate governance</b>	<u>Moderator:</u> Prof Brian Gibson, University of New England, Australia
9.15 – 10.00	<i>Introduction on Corporate Governance</i>	Mr. Henry Schiffman, US Advisor and consultant to WB, IMF and ADB
10.00 – 10.40	<i>A brief introduction to Corporate Governance in APEC</i>	Dr. Chris Hall, CEO Comnami, Australia
10.40 – 11.10	Coffee break	
11.00 – 12.00	Discussion	
12.00 – 13.30	Lunch break	At Sofitel Plaza
<b>13.30 – 17.15</b>	<b>Session 2: Characteristics of corporate governance systems in APEC member economies</b>	<u>Moderator:</u> Dr. Pham Duy Nghia, Law Department, Hanoi National University, Viet Nam
13.30 – 14.10	<i>Characteristics of corporate</i>	Mr. Henry Schiffman, US

	<i>governance systems in APEC member economies</i>	Advisor and consultant to WB, IMF and ADB
14.10 – 14.50	<i>Corporate Governance in Vietnam</i>	Dr. Dang Dzung, Vice Chairman of Hanoi Young Business Association
14.50 – 15.20	Coffee break	
15.20 – 16.00	<i>Corporate governance in Latin America</i>	Mr. Hector Lehuede, Advisor to the Minister, Ministry of Finance, Chile
16.00 – 16.40	<i>Corporate Governance in China</i>	Dr. Qu Fengje, Senior Fellow, Vice Director, Institute for International Economics Research, National Development and Reform Commission, China
16.40 – 17.00	<i>Corporate Governance in Russia</i>	Igor Pavlov, Leading Specialist -Adviser of International Economic Organisation Section, Ministry of Economic Development, Russia
17.00 – 17.30	Panel discussion and Q&A	
<b>End of Day 1</b>		
<b>3 July</b>		
<b>9.00 – 12.30</b>	<b>Session 3: Corporate Governance for SMEs and listed companies</b>	<u>Moderator:</u> Dr. Chris Hall
9.00 – 9.45	<i>Corporate Governance in SMEs</i>	Prof Brian Gibson, University of New England, Australia
9.45 – 10.30	<i>Some aspectson Corporate Governance in SMEs</i>	Dr. Chris Hall, CEO Comnami, Australia

10.30 – 11.00	Coffee break	
11.00 – 11.45	<i>Corporate Governance for listed companies in Vietnam</i>	Mr. Nguyen The Tho, State Security Commission, Vietnam
11.45 – 12.30	Discussion	
12.30 – 14.00	Lunch break	At Sofitel Plaza
<b>14.00 – 17.10</b>	<b>Session 4: Corporate Governance built on best practices of international institutions</b>  <i>(experiences sharing among APEC member economies on how they have undergone the corporate governance ROSC<sup>1</sup> and how it helped their economies to identify areas for improvement)</i>	<u>Moderator:</u> Mr. Henry Schiffman, US Advisor and consultant to WB, IMF and ADB
14.00 – 14.40	<i>Cooperation with the World Bank to strengthen work on Corporate Governance</i>	Mr. Paolo Vergano, Fratini Vergano, European Lawyer  Mr. Charles Travis Canfield, Senior Corporate Governance, IFC East Asia and Pacific Corporate Governance Unit
14.40 – 15.20	<i>Corporate Governance in Viet Nam: from the investor's perspective</i>	Dr. Pham Duy Nghia, Law Department, Hanoi National University, Viet Nam
15.20 – 15.40	Coffee break	

<sup>1</sup> ROSC: The World Bank Report on the Observance of Standards and Codes. These economies include: Chile, Hong Kong China, Indonesia, Korea, Malaysia, Mexico, the Philippines, Peru, Thailand and Viet Nam.

15.40 – 16.20	<i>Corporate Governance in the Philippines</i>	Mr. Jonathan Juan DC Moreno, Vice President, Head, Corporate Governance Office and Chief Risk Officer, the Philippine Stock Exchange
16.20 – 17.10	Panel Discussion	<ol style="list-style-type: none"> <li>1. Mr. Paolo Vergano</li> <li>2. Dr. Pham Duy Nghia</li> <li>3. Mr. Jonathan Juan DC</li> <li>4. Mr. Charles Travis Canfield</li> </ol>
17.00 – 17.10	Closing remarks	High-ranking official of the Ministry of Industry and Trade of Vietnam
<b>End of the Event</b>		

### **Summary Report**

# APEC Training Course on Corporate Governance Introduction



Photo: Douglas Lucius

Henry N. Schiffman

APEC TATF

Hanoi, Viet Nam

July 2-3, 2009



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# Topics

- Introduction
- Basic issues
  - Rights of shareholders
  - Composition and responsibilities of boards of directors
  - Transparency of companies' operations and performance
- Challenges for developing economies

# Introduction

*The first pillar of any development strategy is to create a proper investment climate*

*N. Stern, World Bank Chief Economist  
(2000-2003)*

# Introduction (cont.)

- Benefits of companies financed by collective investments
  - Larger investments
  - Less dependence upon debt finance
    - Less vulnerable to financial crises
- Greater contribution to the economy

# Introduction (cont.)

- Incentives for investors: prerequisites:
  - The governance of the company will be competent and fair to investors;
  - The operations of the company will be efficient and profitable; and
  - Issuance of and trading in the company's securities will be transparent and fair.

# Introduction (cont.)

- The role of shareholders--theory vs. reality
- Control by management vs. shareholders

# Introduction (cont.)

- Origins of the corporate governance revolution since 1998
  - Asian financial crisis
  - OECD Principles
  - Accounting irregularities in U.S. and Europe

# Introduction (cont.)

- Reaction by
  - Legislatures-e.g., Sarbanes-Oxley
  - Securities regulatory authorities—e.g., SSC
  - Company bylaws
  - Stock exchanges
  - Trade associations-codes
  - International organizations-FSAPs/ROSCs

# Basic issues:

## Rights of shareholders

- Shareholders' participation in annual general meeting
  - Agenda items
  - Election of directors
  - Questions to directors

# Basic issues:

## Rights of shareholders (cont.)

- Market economy-influence based on financial interest
- Rights of minority shareholders-super voting
  - Sale or merger of company
    - Fairness opinion
  - Sale of substantial percentage of assets
  - Change in bylaws
  - Sale of new shares-pre-emptive rights
- Rights of minority shareholders-consent
  - Change in rights of shares; new class of shares

# Basic issues:

## Rights of shareholders (cont.)

- No selective disclosure of material information
- No trading by insiders on nonpublic information
  - Reporting by insiders of trades in company shares

# Composition and responsibilities of boards of directors

- Independent and non-executive directors majority – single most important reform
- Independent
  - Not related to principal shareholders or management by family or business relationships
- Skills
  - Production, marketing, management, finance

# Composition and responsibilities of boards of directors (cont.)

- Separation: roles of chairman of board and CEO
  - Conflict: governance vs. management
- Lead director
  - Presides at meeting of board without chairperson
  - Decides which information board receives from management – quality and quantity

# Composition and responsibilities of boards of directors (cont.)

- Committees of the board
  - Audit
    - Scope
    - Internal audit strategy and budget
  - Governance
    - Annual review
    - Selecting board candidates
  - Compensation
    - Criteria
- Incentives consistent with shareholders' interests

# Composition and responsibilities of boards of directors (cont.)

- Fiduciary duty
  - Place interest of company before personal interest
- Business judgement rule: if
  - Inform self of relevant considerations - due care
  - Decide matter in good faith-loyalty
  - Then: no personal liability for loss from decisions

# Transparency of companies' operations and performance

- Disclosure of risk factors in securities issues
- Disclosure of executive compensation – all forms
- IFRS accounting
- IAS auditing by independent auditors
- Disclosure of related party transactions

# Transparency of companies' operations and performance (cont.)

- Disclosure of extraordinary events
  - The company's acquisition or disposition of a significant amount of assets
  - The company's bankruptcy or material default on a debt obligation
  - A change in the company's external auditor
  - Departure from the company of a CEO, CFO, COO
  - The resignation of a company director

# Transparency of companies' operations and performance (cont.)

- Disclosure of extraordinary events
  - Events triggering a financial obligation that is material to the company, including any default in an obligation
  - Material write-offs and restructuring charges
  - Any material impairment of a company's assets
  - A change in a credit rating or issuance of a credit watch by a rating agency

# Challenges for developing economies

- Nature of ownership
  - Concentrated- family ownership
  - Complex leveraged ownership structures
    - Interlocking directors-fiduciary duty difficult
  - Informal stakeholder relations
    - Family ties; shadow directors
  - Institutional investors—pension, investment funds

# Challenges for developing economies (cont.)

- Related party transactions
  - Disclosure
  - Prohibitions (e.g., loans to directors)
  - Approval (disinterested directors)

# Challenges for developing economies (cont.)

- Related parties:
  - Any administrator of the company
  - Any principal shareholder of the company
  - Any natural person who is related to such administrator or principal shareholder by marriage, consanguinity (second degree) or business interest
  - Any partnership or company in which any administrator or principal shareholder has a significant interest
  - Any person that has a significant interest in a juridical person in which the company has a significant interest

# Challenges for developing economies (cont.)

- "Administrator" means any person who is the general manager, chief financial officer, member of the board of directors, or head of a department of a company
- "Principal shareholder" means a person that owns directly or indirectly ten percent or more of any class of shares with voting rights of a company
- "Significant interest" means a direct or indirect ownership of an interest in a juridical person or undertaking that represents twenty percent or more of the equity or of any class of shares with voting rights, or that makes it possible to exercise a significant influence over the management or policies of that juridical person or undertaking

# Challenges for developing economies (cont.)

- Raising awareness – good corporate governance
  - Self discipline; market discipline
- Supportive company and securities laws
- Enforcement
  - Governmental authority vs. private initiative
  - State enforcement against state-owned companies
- Difficulty of shareholder vigilance
  - Cost, analysts, rating agencies

# Challenges for developing economies (cont.)

- Lack of exit opportunities – capital markets
- Difficulty of establishing strong capital market regulatory regime
- Weakness of courts

**Workshop on *APEC Training course on Corporate Governance***  
**(July 2 3, 2009, Hanoi)**

## **Session 1: A Brief Introduction to Corporate Governance in APEC**

**Dr Chris Hall**

CEO, Comnami, PECC SME Network Leader

**Chris.Hall@comnami.com**



PACIFIC ECONOMIC COOPERATION COUNCIL

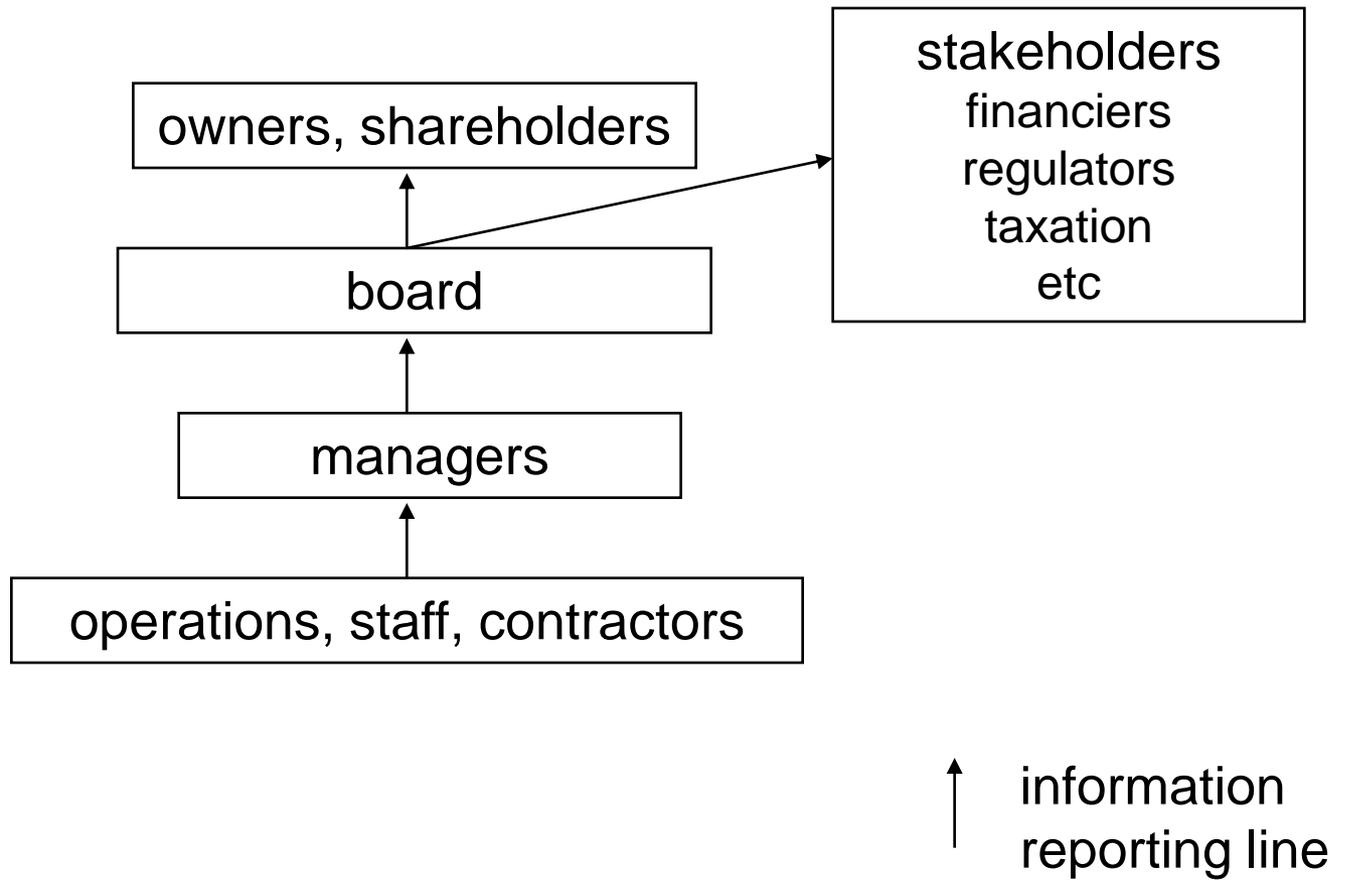
# Outline

1. What is meant by good Corporate Governance? guidelines from OECD and World Bank
2. How much of the current 2008 Financial Crisis can be attributed to failures in Corporate Governance? (and the 2001 Tech Wreck, the 1996 Asian Crisis, the 1990 Japanese Bubble etc)
3. The structure and dynamics of corporations in APEC; the contribution to the level and growth of GDP, employment, trade & investment, resilience and renewal
4. The role of government in APEC - APEC principles
5. Room for improvement; Comparison of Indicator Measures of Corporate Governance in APEC
6. Why Improve Corporate Governance in APEC economies and corporations?
7. How to improve Corporate Governance: The relevance for different types of corporation
8. Corporate Governance Issues: Markets and management of corporations in APEC economies, and across APEC
9. How to improve CG: regulation vs education
10. Recommendations on Corporate Governance in APEC and options for implementation

# **1. What is meant by good Corporate Governance? guidelines from OECD and World Bank**

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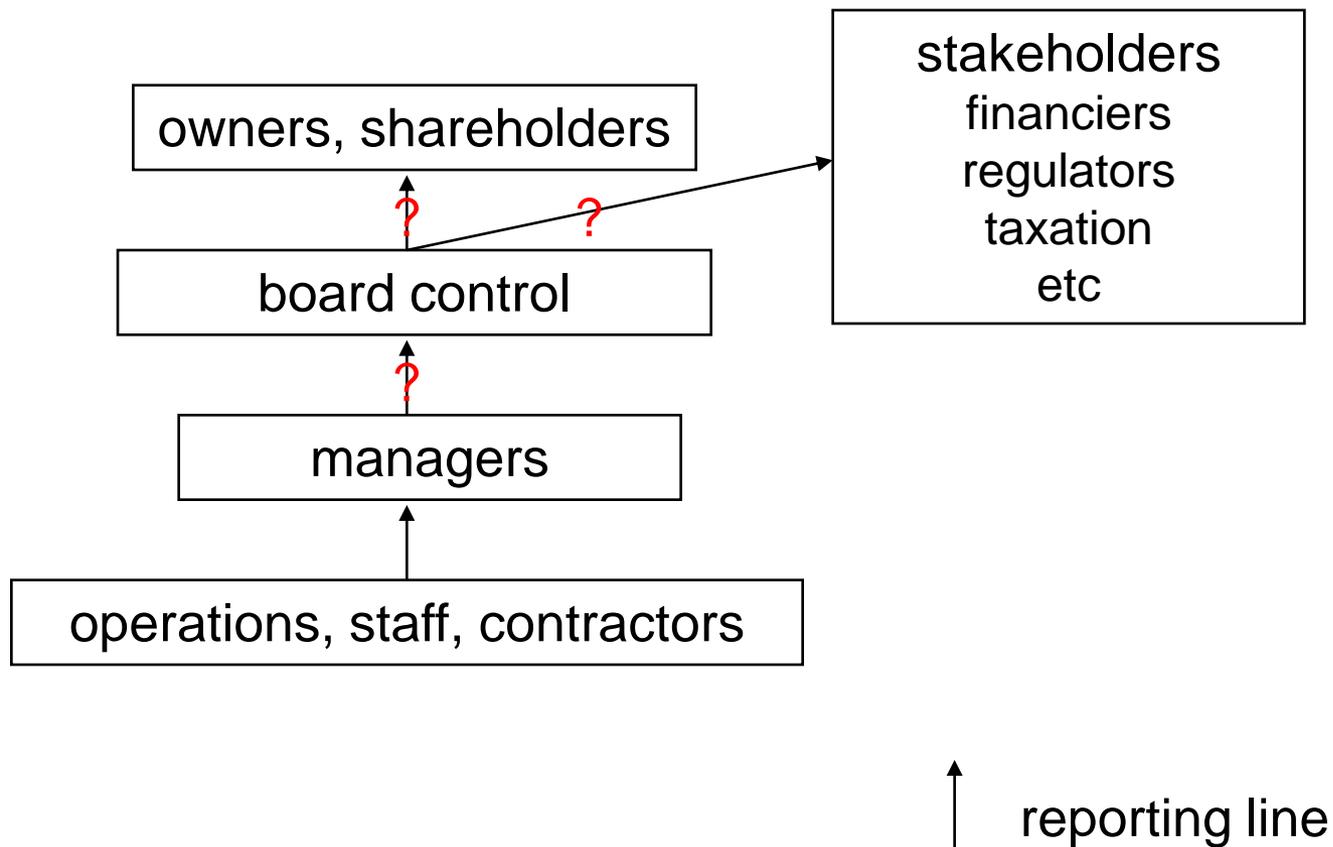
Good corporate governance presumes timely, reliable reporting and disclosure...



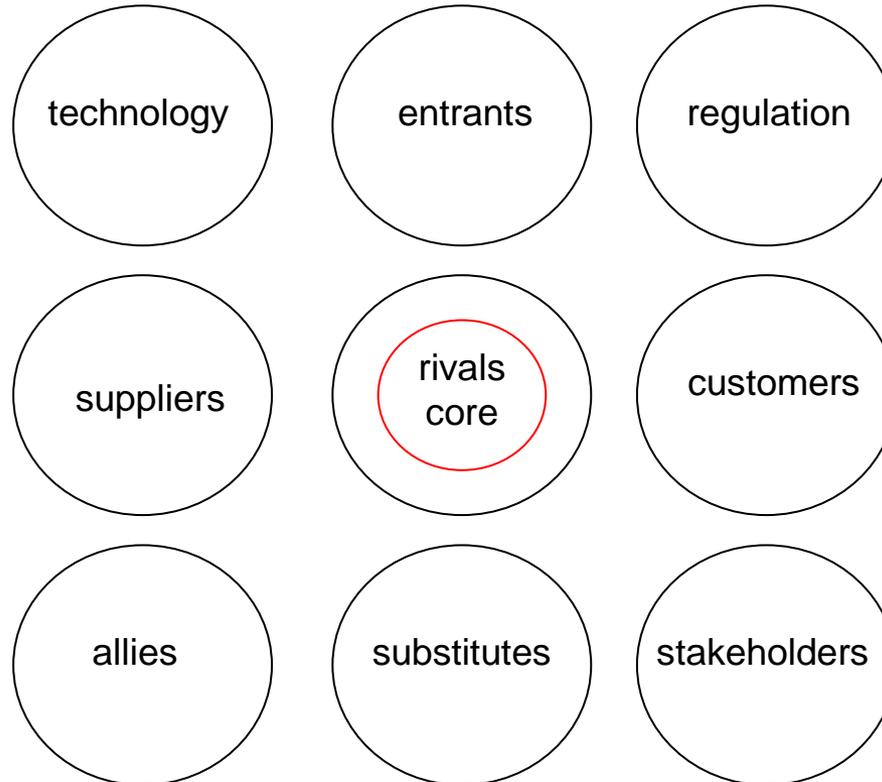
Good CG  
presumes  
timely, reliable  
reporting and  
disclosure.

The need for  
CG arises from  
separation of  
ownership and  
control

Without good  
CG, managers  
and boards will  
be able to  
cheat owners  
and  
stakeholders

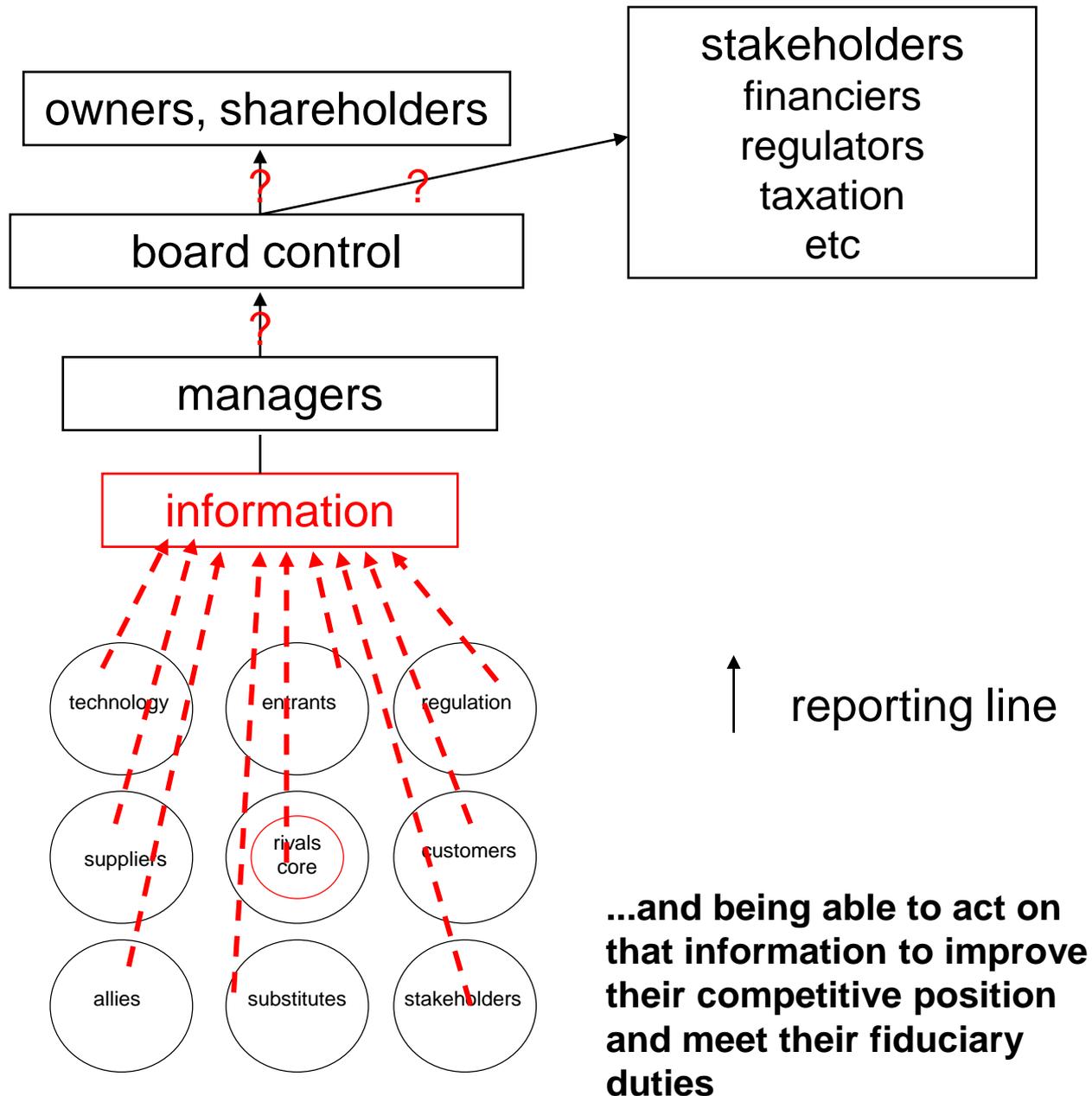


Firms exist in a context of market and non market influences on their competitive position and performance.....



Good Corporate Governance is based on...

...Boards, Owners, Stakeholders and Managers having timely reliable knowledge of matters that affect the firms competitive position and advantage....



## OECD (2004) Good Corporate Governance principles

1. A framework which promotes transparent and efficient markets consistent with rule of law, and with clear responsibilities for supervisory, regulatory and enforcement authorities;
2. Protection and facilitation of the exercise of shareholders rights;
3. Treatment of all shareholders equitably, including minority and foreign shareholders, and allowing effective redress for violation of rights;
4. Recognising the rights of stakeholders and encouraging active cooperation between corporations in creating wealth and jobs and the sustainability of financially sound corporations;
5. *Ensuring timely and accurate disclosure on material matters regarding the corporation, including the financial, performance, ownership and governance matters; and*
6. Ensuring the strategic guidance of the corporation and the effective monitoring of its managers by the board, and ensuring the accountability of the board to the company and to the shareholders.

## World Bank Four Pillars (RAFT) of Corporate Governance

Responsibility,

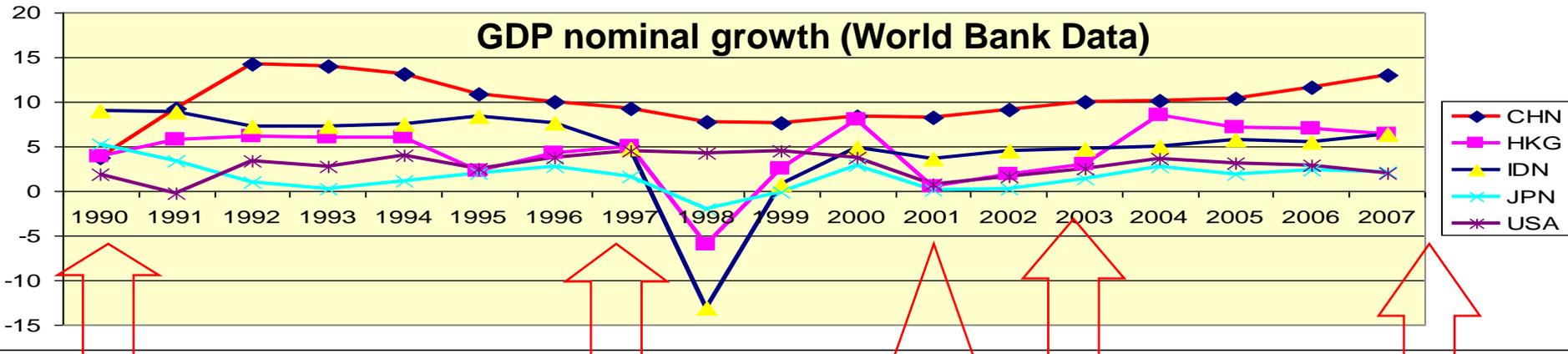
Accountability,

Fairness; and

Transparency.

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## Previous economic crises and corporate governance



### The 1990 Japan crisis

bubble economy collapsed in Japan, rising Yen. Major issues of lack of good CG.

### The 1997 Asian crisis

Construction bubble in Thailand, supported by cheap US bank loans collapses as Hedge Funds force devaluation of Baht, and contagion spreads. Issues of CG, crony capitalism etc especially in SE Asian firms, and family run firms

### 2003 SARS

Main impact on HKG and SIN, limited by good governance and public management

### The 2001 Tech Wreck

The .com bubble collapses in USA, major issues with lack of CG in investment firms, investees

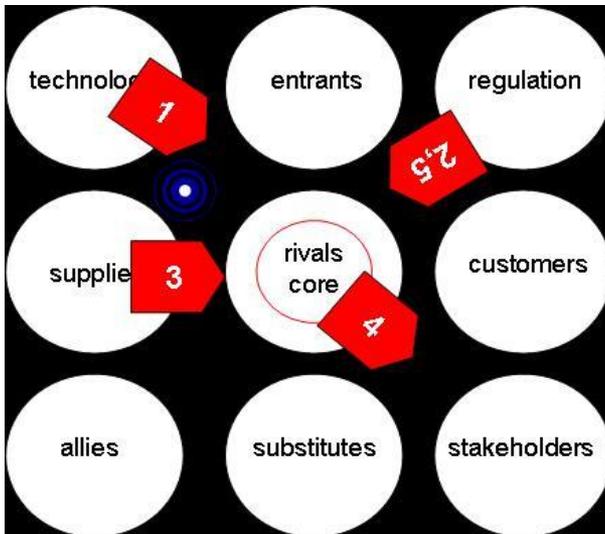
### 2008 financial Tsunami

Collapse of US housing bubble, and collapse of banks and non banks as SIV collapsed

## Many corporations involved had doubtful corporate governance..

Source: [http://comnami.com/eg\\_8\\_financial\\_tsunami\\_of\\_2008](http://comnami.com/eg_8_financial_tsunami_of_2008)

1. technology allowed complex products to be created (eg securitised), traded, and leveraged



2. "deregulation" moves of 1999 to repeal the Glass-Steagall act allowed banks (such as Citi, and Lehmans) to ride the wave of asset inflation.

3. By 2007 this wave was shaped by a wave of SIV (Structured Investment Vehicles) write downs and Sub Prime defaults, and some bank runs from depositors (eg Northern Rock). By end 2007, the wave then came from the finance suppliers, mostly banks, who ceased to trust each other, so the interbank rates (eg LIBOR) rose steeply

4. This then led to the sharp fall in the share prices of Banks (by August 2008 Citi had fallen 58%, RBS 15.2%, Merrill 62%). This wave led to collapse and/or restructuring of many banks or near banks (Wachovia, Merrill Lynch, UBS, Indy Mac, Washington Mutual), Investment banks (Bear Stearns, Lehmans) Insurance providers (AIG), Mortgage Providers (Freddie Mac and Fannie Mae), and private equity providers (Allco, Babcock and Brown).

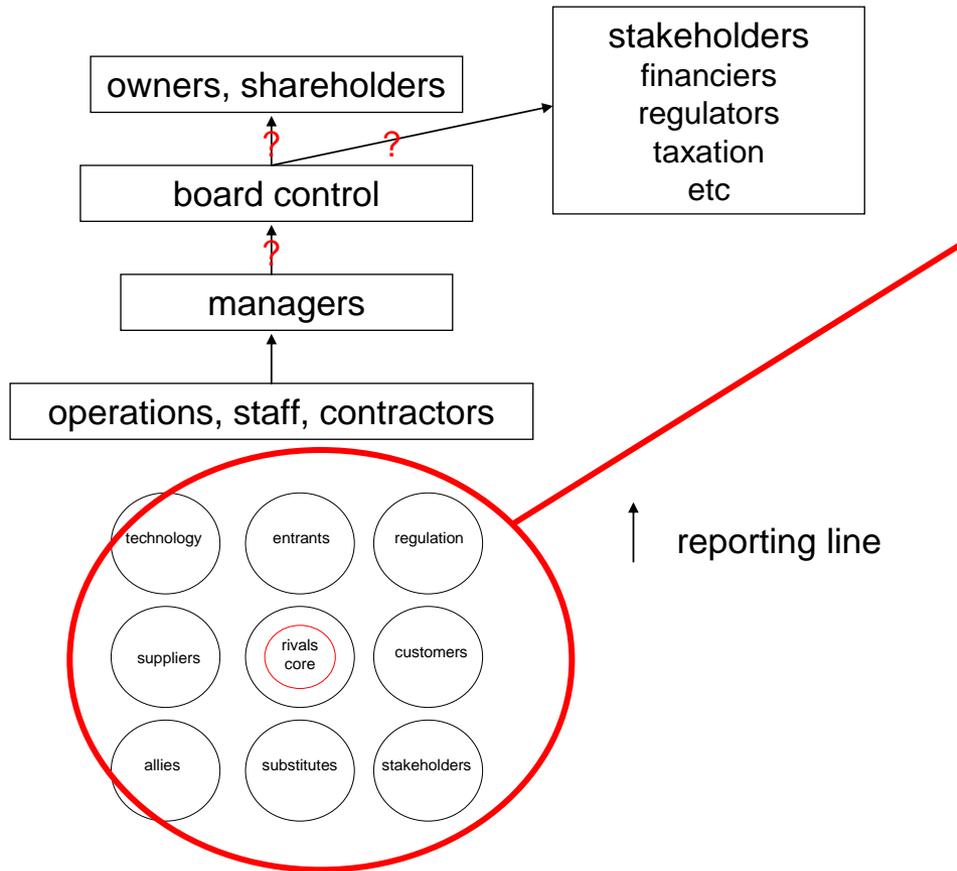
5. Regulators and central banks scrambled to inject liquidity to the markets, partly by taking a stake in the banks. This has changed the whole pattern of competition.

but even good corporate governance does not help in some cases....

Good CG presumes timely, reliable reporting and disclosure.

The need for CG arises from separation of ownership and control

Without good CG, managers and boards will be able to cheat owners and stakeholders



If managers do not have timely reliable information about their **competitive position** then good corporate governance will have no benefits, because the managers themselves are no better off than tossing a coin.

because most boards and managers do not have the information..

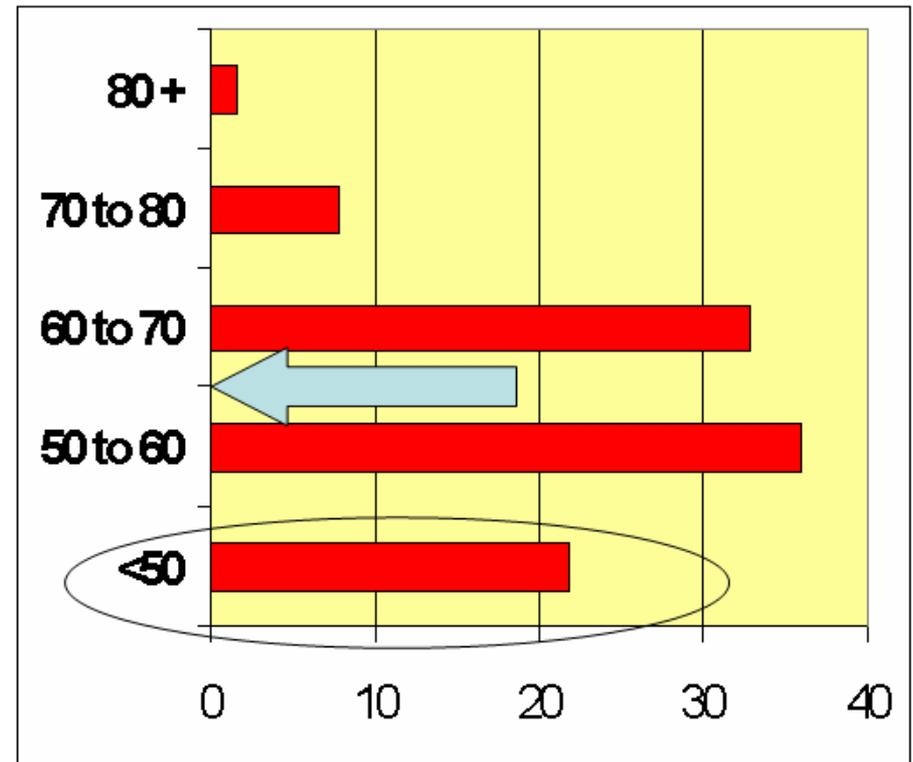
Good CG depends on

**timely and accurate disclosure on material matters regarding the corporation,**

*but in fact the average manager only has timely reliable information to support strategic and tactical decisions about 55%, and*

*less than 10% of managers have it more than 70% of the time!!*

Percentage of time strategic and tactical decisions are based on timely, accurate information - % of firms



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## The main focus of Good Corporate Governance....

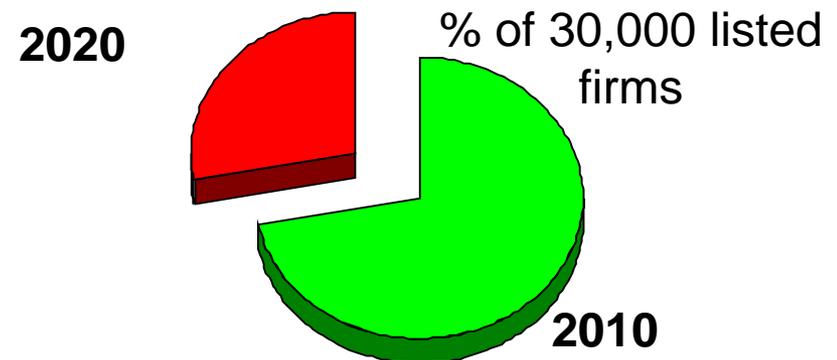
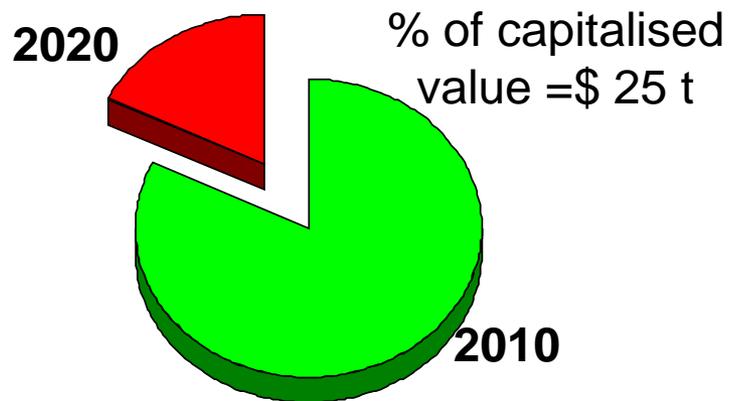
Large Listed Public corporation

Large State Owned corporations, and sovereigns

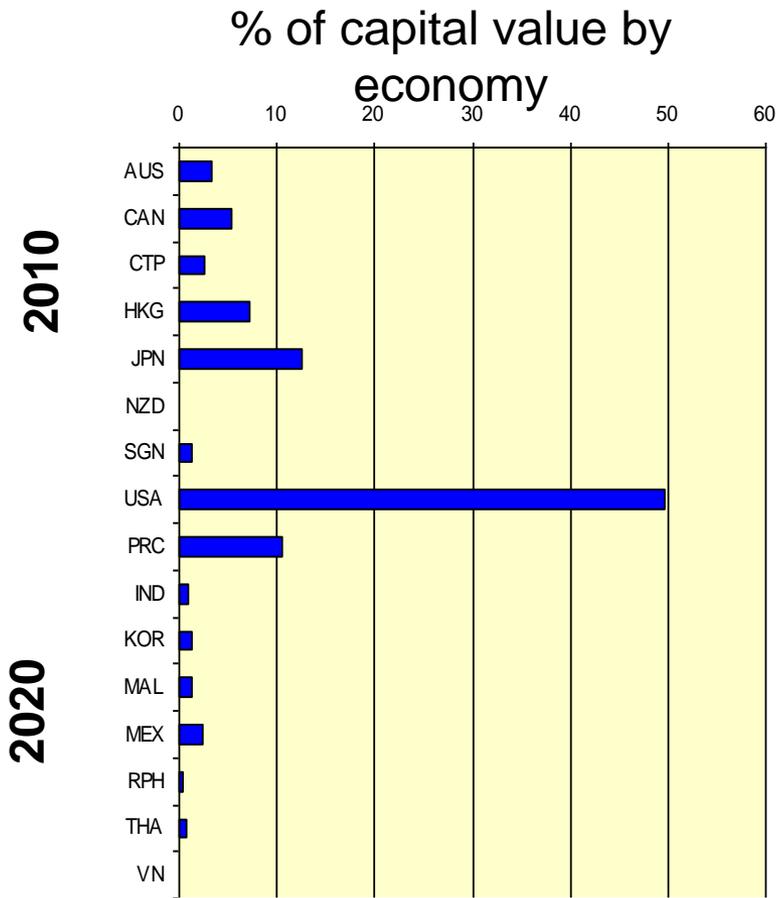
Large Privately held firms

In APEC in 2007 - 2008 there were about  
30,000 listed firms, and  
their capitalised value was about USD \$25 trillion,  
or a bit over USD \$1 billion each

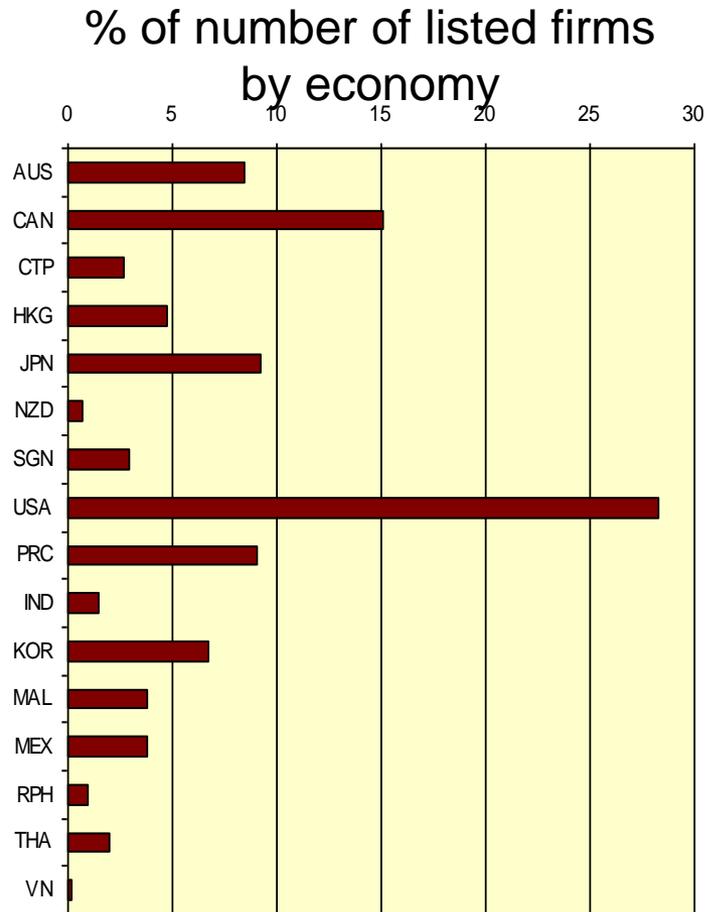
About 82% of the listed value and 70% of the firms  
were in developed (2010) APEC economies



most of the listed firms are in USA, JPN and PRC

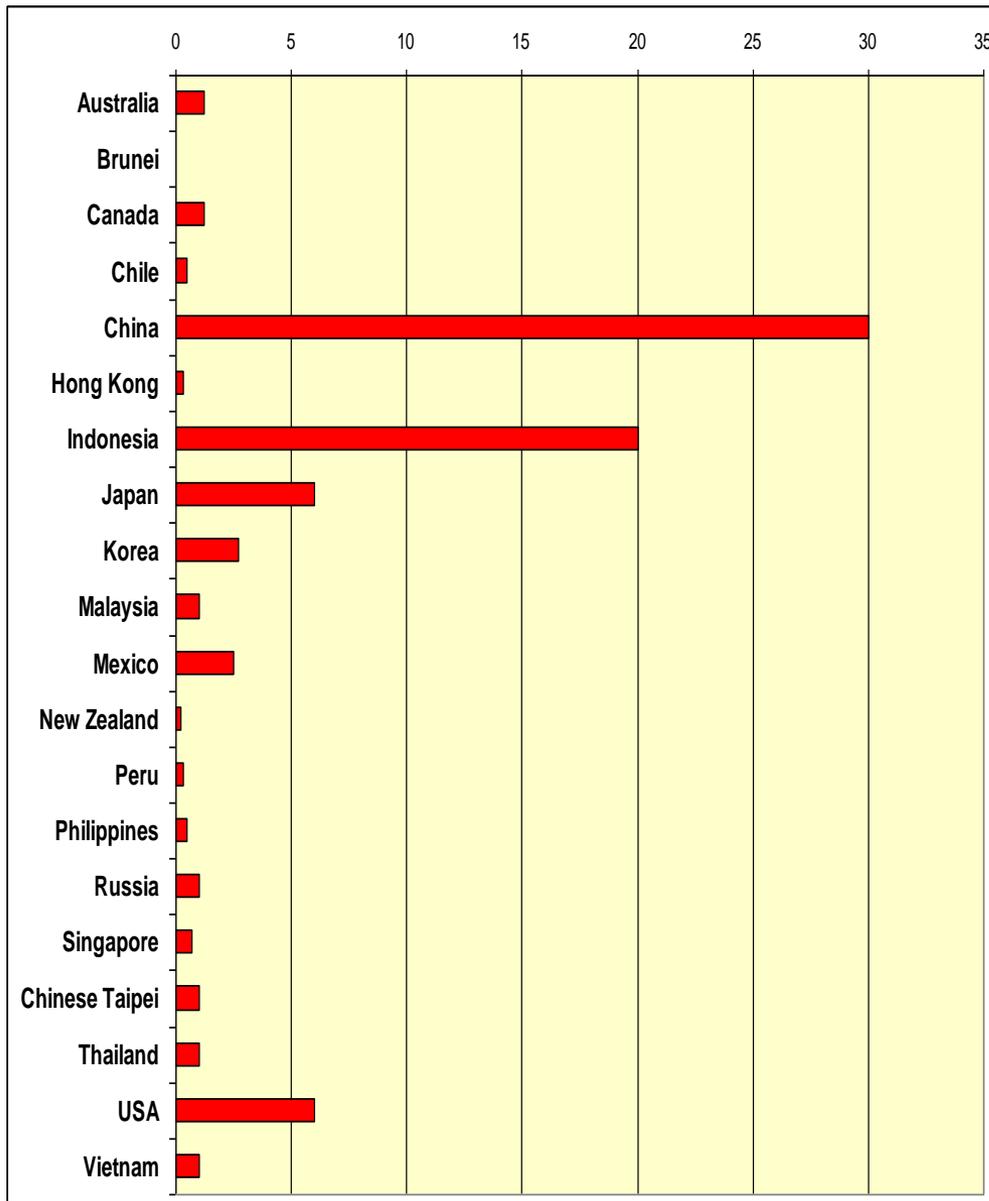


total value about  
USD 25 trillion



total number listed  
firms about 30,000

## SMEs make up the vast bulk of corporations



*There are now about 77 million SMEs in APEC, about 30 million of them in China, ...*

*but there **should be about 100 million in APEC, about 60 million in China***

*so listed large firms make up only 0.03% of all firms in APEC*

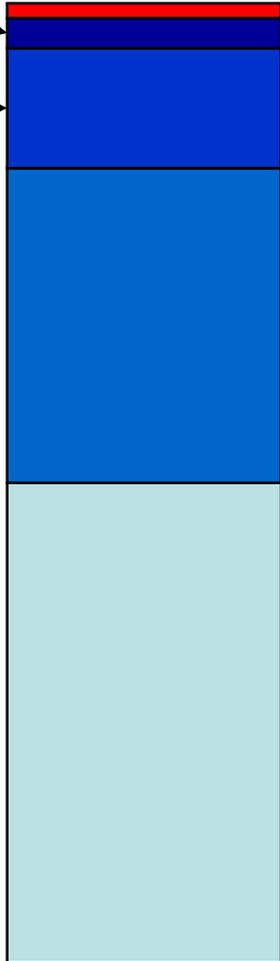
*(30,000 out of 100 million)*

but in a typical APEC economy over 99% of firms are SMEs

Medium 19 to  
500 or so

Small  
5 to 19  
employees

Micro less  
than 5  
employees



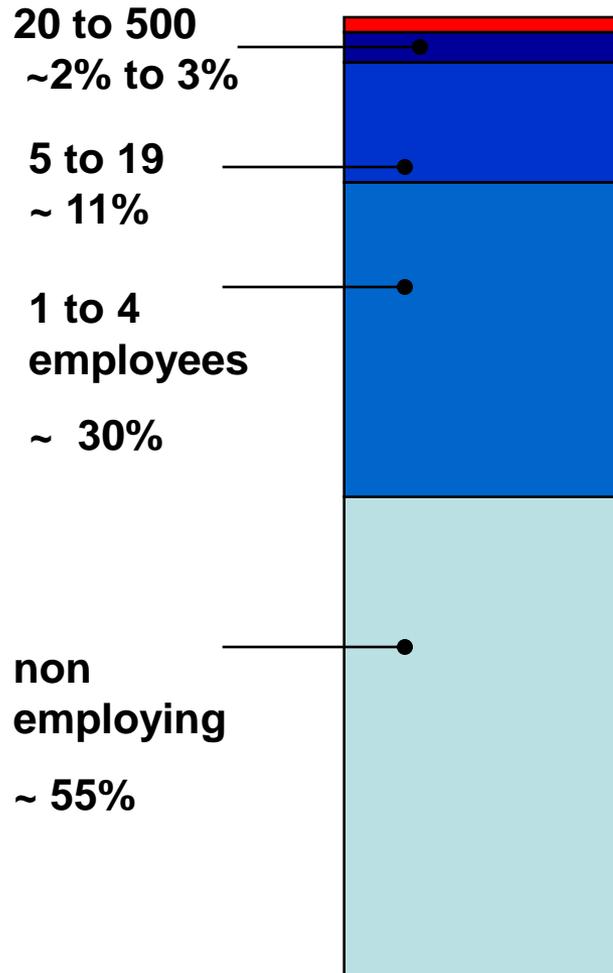
large firms make up less than 0.1% of businesses, contribute between 40% and 60% of employment, and about 50% of GDP.

Large firms usually destroy jobs, ie are net job destroyers

SMEs contribute about half of GDP, and about half of all jobs. About 20% of jobs are from medium, 20% from small and 20% from micro

*But SMEs, especially new micro and small enterprises create most of the job growth.*

**..but the traditional focus on good CG is only on 1% of firms..**



**large firms make up less than 0.1% of businesses but this is where most CG attention focuses**

**99.9% of all businesses are SMEs, employing less than 500 people,  
98% employ less than 100,  
80% employ less than 5 people**

**but this does not mean that better CG cannot benefit SMEs that provide most of the job growth, most of the resilience and innovation**

## SMEs are important to growth and resilience

about 1%  
of firms

Large firms employ about half the workforce,  
but add relatively few net jobs

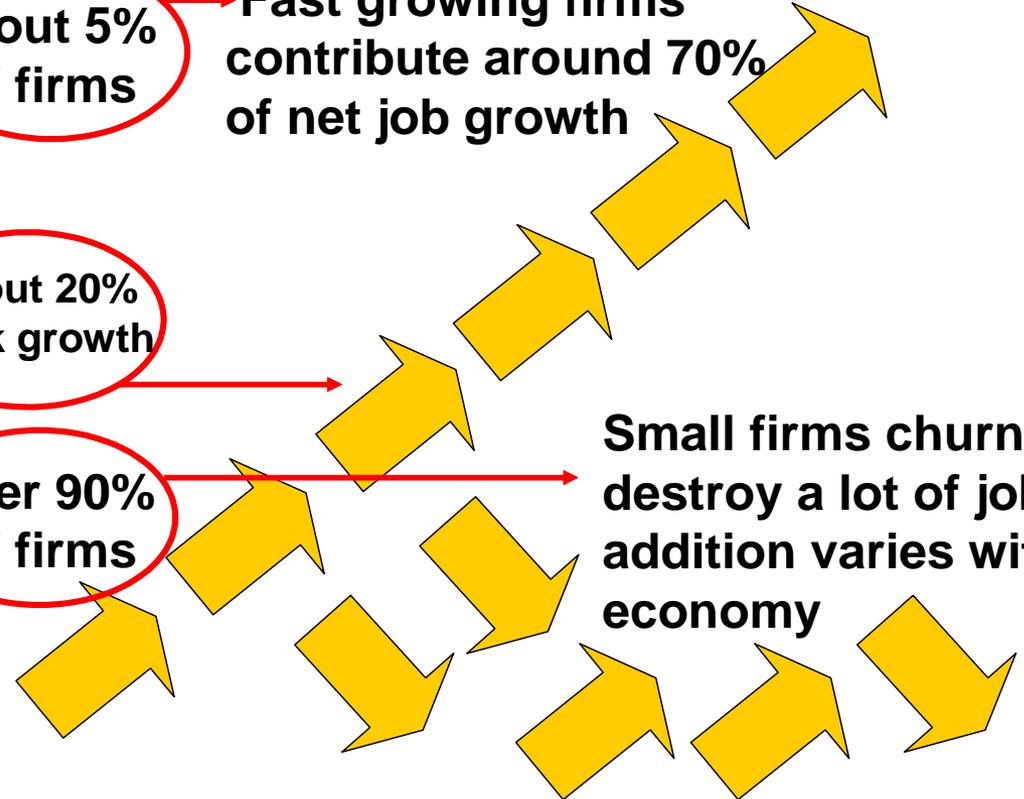
about 5%  
of firms

Fast growing firms  
contribute around 70%  
of net job growth

about 20%  
seek growth

over 90%  
of firms

Small firms churn, add and  
destroy a lot of jobs, - net  
addition varies with cycle and  
economy



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## APEC Leaders goals 1994

to find cooperative solutions to the challenges of our rapidly changing regional and global economy:

to support an expanding world economy and an open multilateral trading system;

to continue to reduce barriers to trade and investment to enable goods, services and capital to flow freely among our economies;

to ensure that our people share the benefits of economic growth, improve education and training, link our economies through advances in telecommunications and transportation, and use our resources sustainably.

## APEC Osaka Action Agenda Principles

Action Agenda to achieve the long-term goal of free and open trade and investment no later than the year 2010 in the case of industrialized economies and the year 2020 in the case of developing economies.

1. COMPREHENSIVENESS
2. WTO-CONSISTENCY
3. COMPARABILITY
4. NON-DISCRIMINATION
5. TRANSPARENCY
6. STANDSTILL - refrain from using protection measures
7. SIMULTANEOUS START, CONTINUOUS PROCESS,  
DIFFERENTIATED TIMETABLES
8. FLEXIBILITY
9. COOPERATION

## PECC APEC Competition Policy Principles

### 1. Comprehensiveness

applies to all areas, both state and non state, and recognition that competitive markets require a good overall legal framework, clear property rights, and non discriminatory, efficient and effective enforcement

### 2. Transparency

in policies and rules, and their implementation

### 3. Accountability

Clear responsibility within domestic administrations for the implementation of the competition and efficiency dimension in the development of policies and rules, and their administration.

### 4. Non Discriminatory

does not discriminate between or among economic entities in like circumstances, whether these entities are foreign or domestic.

## What APEC can and cannot do

### **APEC cannot:**

**make or enforce binding regulations/laws on members**

### **APEC can:**

**develop consensual guidelines and policies**

**provide support for infrastructure and training programs**

**assist in member economy action plan development/implementation**

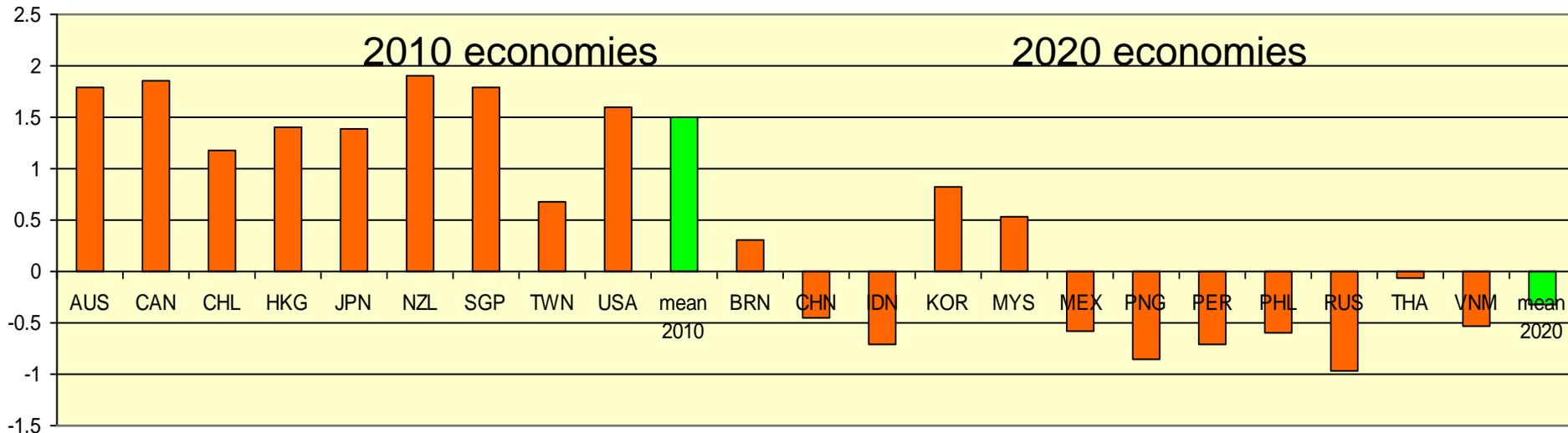
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## Room for improvement, especially in 2020 economies

The Rule of Law index is comprised of indicators that measure perceptions of the incidence of crime, judicial quality and honesty, and the enforceability of contracts.

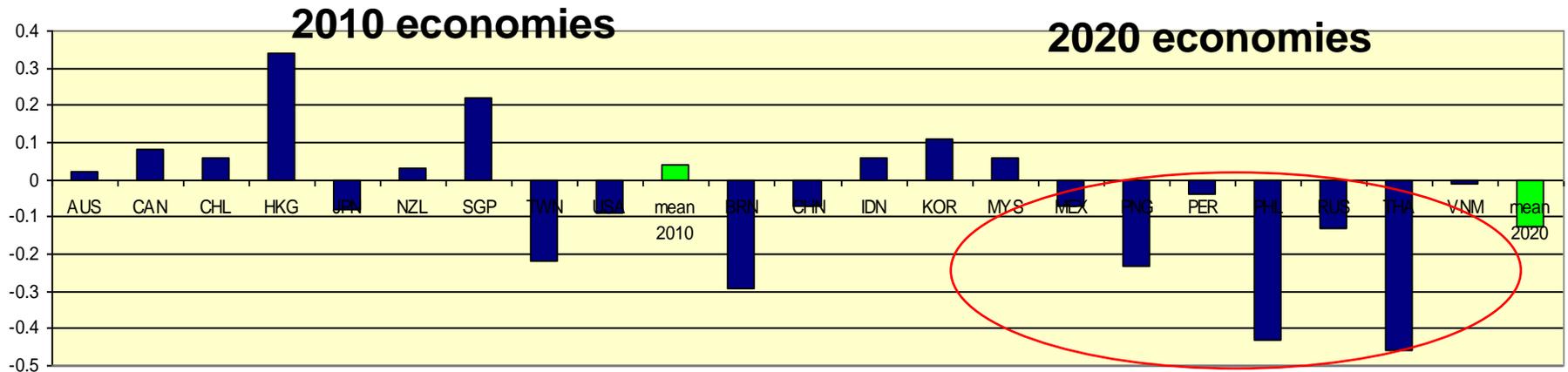
best score possible =  
**+2.5**

World Bank Rule of Law index 2007 APEC Economies



worst score possible =  
**-2.5**

## Changes in rule of law index 1998 to 2007



On average, most 2020 economies have worse rule of law results over the last decade. Corporate Governance rule of law has deteriorated since the Asian Crisis in many APEC economies.

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## Good corporate governance means...

### **general infrastructure framework**

rule of law (low crime, trusted judicial system, enforceable contracts and property rights etc)

efficient well informed markets

good bankruptcy and liquidation procedures

no discrimination or preferential treatment by state

clear competition laws and regulations

clear transparent supervision of markets, including financial markets (debt and equity)

accountability of authorities/supervisory bodies

### **specific corporate framework**

well educated, informed directors

clear responsibility of directors, independent and executive directors

protection of shareholders/stakeholders rights

transparent disclosure to shareholders (remuneration, insider trading etc)

accountability of board to shareholders/stakeholders

## what public gains are available from improved corporate governance?

**Improved corporate governance should lead to...**

Willingness to trade or contract with other corporations (because of better information, less risk of default)

Willingness to invest in new or existing companies (because of lower risks, greater trust and transparency)

Better informed managers and boards, more efficient allocation of resources (better informed markets)

Lower risk margins for finance (both debt or equity) so cheaper costs of finance

**...meeting APEC goals, within and between economies:**

Increased trade  
Increased investment, FDI  
increased innovation growth and resilience

**So the public benefits are potentially large, but like all trade benefits, they will be at the expense of those less able to compete and take advantage of the opportunities**

improved CG also creates *private* gains for large firms *and* SMEs...

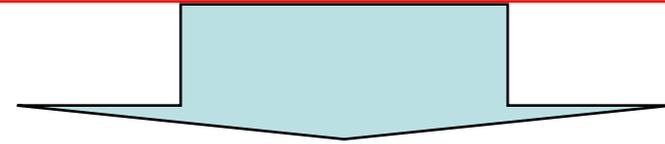
Improved corporate governance should lead to...

Willingness to trade or contract with other corporations (because of better information, less risk of default)

Willingness to invest in new or existing companies (because of lower risks, greater trust and transparency)

Better informed managers and boards, more efficient allocation of resources (better informed markets)

Lower risk margins for finance (both debt or equity) so cheaper costs of finance



more opportunities for growth

better valuations, easier succession

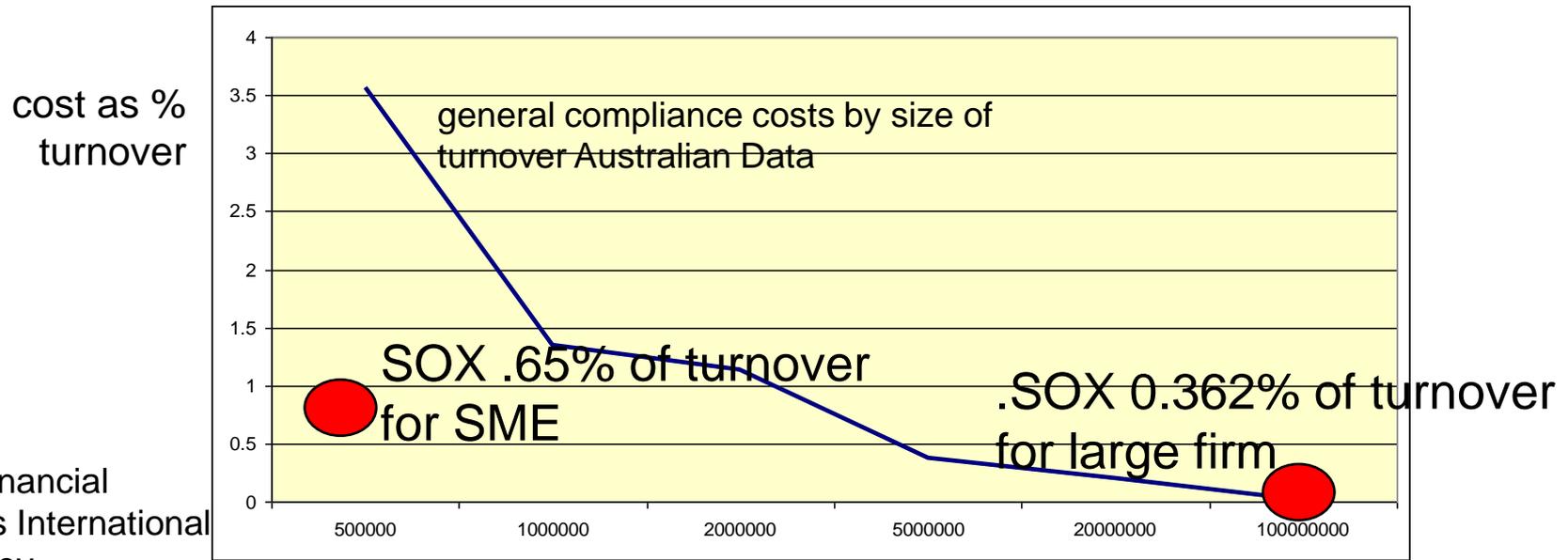
less risk of failure

more competitive success

more finance, lower risk margins on costs of finance

but the costs of better CG tend to fall more heavily on SMEs

cost of compliance for (Sarbanes Oxley) SOX by size of turnover



Source: Financial Executives International (FEI) Survey

**estimated 1000 SMEs with tover \$500,000**  
**total SOX compliance = \$3,228,000**

**single large tover \$100m**  
**SOX compliance = \$36,000**

10% profit margin, compliance reduces return by 6.5% for SME, 0.36% large

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## Improved corporate governance comes from....

*investing in.....*

### improved **general** infrastructure framework

rule of law (low crime, trusted judicial system, enforceable contracts and property rights etc)

efficient well informed markets

good bankruptcy and liquidation procedures

no discrimination or preferential treatment by state

clear competition laws and regulations

clear transparent supervision of markets, including financial markets (debt and equity)

accountability of authorities/supervisory bodies

*general*

### improved **specific** corporate framework

well educated, informed directors

clear responsibility of directors, independent and executive directors

protection of shareholders/stakeholders rights

transparent disclosure to shareholders (remuneration, insider trading etc)

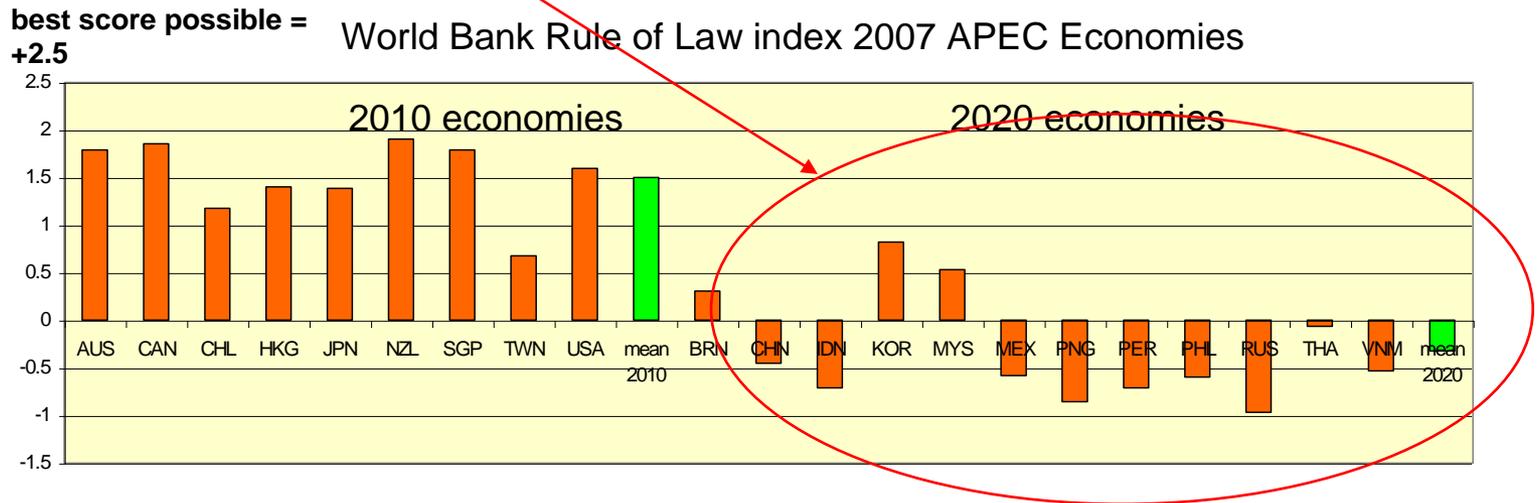
accountability of board to shareholders/stakeholders

*specific*

***There are public and private costs and benefits, which are likely to be different in developing and developed economies, and for SMEs vs listed large corporations..***

eg benefits in 2020 economies are more likely to come from...

...improving general infrastructure rule of law as it relates to corporate governance...



and particularly as it relates to SMEs

because,

a) general infrastructure improvements can be achieved quickly and cheaply

b) there are usually many SMEs, but relatively few listed large firms in 2020 ecos

c) the SMEs can create growth and trade benefits quickly

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## issues to be resolved in improving corporate governance

accountability  
reporting  
auditing  
voting rights of shareholders  
listing - main and other boards  
raising public equity, prospectus requirements  
insider trading  
M&A, takeovers, LBOs, MBOs etc  
minority rights  
national (or provincial, local) vs corporate interests  
appointment, responsibility of directors  
treatment of property rights (tangible and intangible)  
dispute resolution  
enforcement of contracts (expense of legal system)  
interlocking ownership directorates, poison pills etc  
payments and rewards for managers and directors  
codes and treatment of corruption, fraud, ethics (eg CI)  
CSR (corporate social responsibility)  
due diligence and probity procedures for key managers  
etc

***Most of these issues cannot be resolved by one size fits all, APEC wide approach. The solution requires a political balance appropriate to circumstances, but the costs of political decisions should be made transparently***

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**regulation compliance has to be accompanied by education ...**

**Regulation and self regulation eg**

Compliance (eg Sarbanes Oxley)  
Listing requirements  
Capital raising (prospectus) requirements  
etc

**Education eg**

Programs on:  
Directors Duties,  
Fiduciary duties,  
Risk management  
Meetings, Subcommittees etc

**APEC cannot regulate or legislate, but it can develop  
best practice guidelines, action plans, and it can support  
capacity building via training and education**

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## what should APEC do about corporate governance?

APEC does not currently have an action plan or recommendations on corporate governance for the years leading to 2020 Bogor targets

Should it have?

and, what should this workshop feed back to the APEC process?

# ***conclusion...***

- 1. Much of the current and past financial and economic crises can be attributed to inadequate corporate governance, especially of boards and shareholders not having timely reliable information to base decisions on.**
- 2. Improved corporate governance is central to APEC achieving its 2020 goals of trade and investment gains for the region**
- 3. Most of the focus on improvements in corporate governance tend to be on large listed firms, but SMEs also gain from improved CG**
- 4. Compliance costs on SMEs can be disproportionately higher than on large firms, so a more education oriented strategy is called for**
- 5. The developing 2020 APEC economies have a lot of opportunities to improve the general infrastructure of rule of law as a means of improving corporate governance, especially in SMEs.**
- 6. APEC can also contribute by encouraging adoption of broad best practice guidelines and regulations**

# APEC Training Course on Corporate Governance Characteristics of Corporate Governance Systems in APEC Member Economies



Photo: Douglas Ludus  
Henry N. Schiffman

APEC TATF  
Hanoi, Viet Nam  
July 2-3, 2009



# Introduction

- Corporate governance in APEC economies is often characterized by:
  - Appropriate laws, regulations and many practices
  - Needs for implementation of many rules by companies and their directors
  - Needs for enforcement of rules by regulators and courts

# Elements of presentation

- Generally recommended reforms
- Recommendation on adopting reforms expeditiously and in sustainable manner

# Rights and treatment of shareholders

- Minority shareholder rights\*
- Cumulative voting for directors\*
- Facilitate voting by foreign investors\*
- Electronic proxies and voting\*

# Disclosure and transparency

- Disclose related party transactions\*
  - Minutes of board meetings on this issue
- Improve accounting (IFRS)\*
- Improve auditing (IAS)\*
- Disclose executive compensation\*

# Disclosure and transparency (cont.)

- Management statement on policy for and adequacy of internal controls\*
- External audit of adequacy of internal audit and controls\*
- Disclosure of shareholdings by directors and holding companies\*
- Disclosure of interlocking shareholdings

# Board composition and responsibilities

- Require independent directors\*
- Boards must improve their participation in strategic planning\*
- Allow directors access to all company information\*

# Board composition and responsibilities (cont.)

- Committees of the board:
  - Establish, improve audit committee\*
  - Establish governance committee\*
  - Establish compensation committee \*

# Board composition and responsibilities (cont.)

- Establish fiduciary duty of directors\*
- Establish code of conduct for directors\*
- Limit liability of directors\*
- Mandatory director training for public companies\*

# Role of stakeholders

- Class action lawsuits\*
- Derivative lawsuits\*

# Regulatory enforcement

- Introduce civil vs. criminal penalties for violations of securities laws

# The Standard Company

- New legal form of business entity
- Standard corporate charter
- Best practice rules for corp. governance
- Enforcement by contract (ADR)

# Vietnam – the making of corporate governance

Delivered to the APEC TRAINING COURSE ON CORPORATE GOVERNANCE  
Hanoi 2009

Dr. Dang Dzung, CEO HungViet Co.  
Vice Chairman – Hanoi Young Business Association  
Chair of BEST Consortium

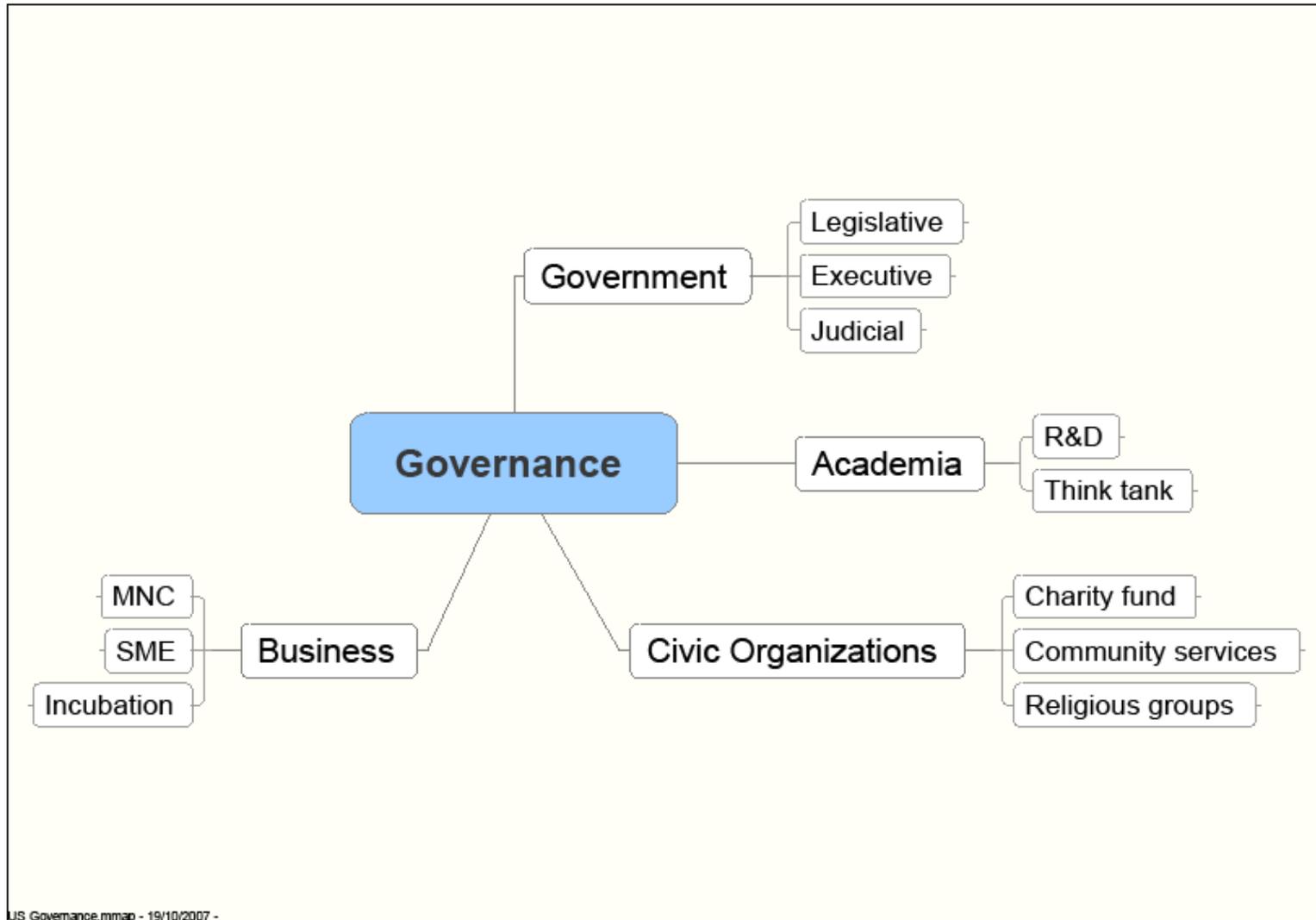
# Agenda

- A transition from commanding economy to a market economy
- Legal framework
- Shortcomings and challenges
- Practical issues
- Future of CG in Viet Nam

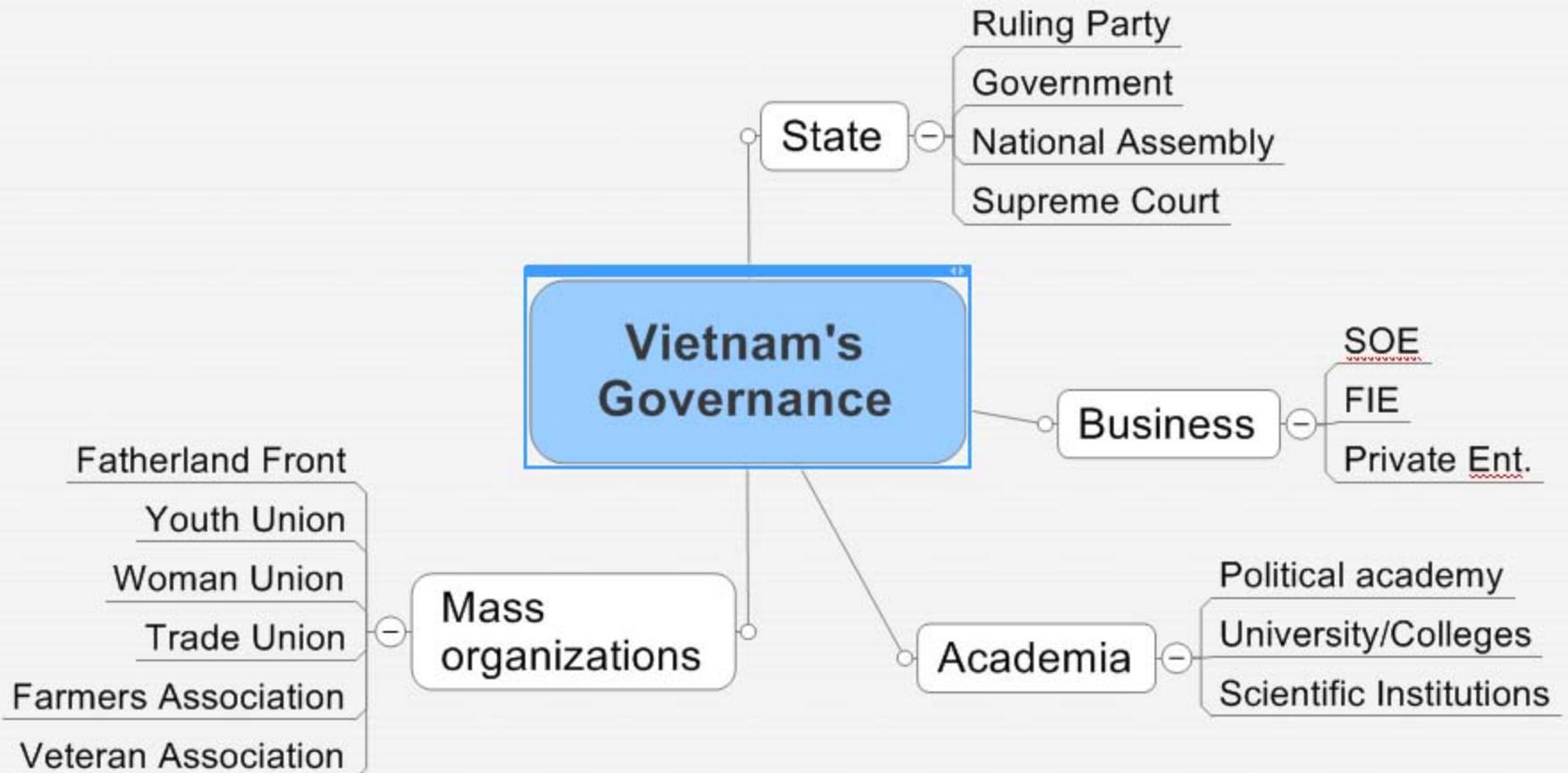
# Transition from command to market economy

- More than 60 years of independence, more than 20 years of renovation
- Socio-political stability helps keep high pace of economic growth
- National Assembly becomes more democratic forum that watch the Government performance
- Large number of legislations introduced paving way for global integration
- Rampant corruption might affect Government credibility and thus external aide
- WTO admission has made impact in widening trade deficit; plus global economic recession has hampered future development

# Comparative model in the APEC region: US's governance



# Vietnam's governance



# Relationship and evolution

- State: administrative reform, judicial reform
- Business: building corporate governance
- Mass organization: grass root democracy
- Academia: education reform

*Corporate Governance: the system by which business corporations are directed and controlled*

# Growth impediment

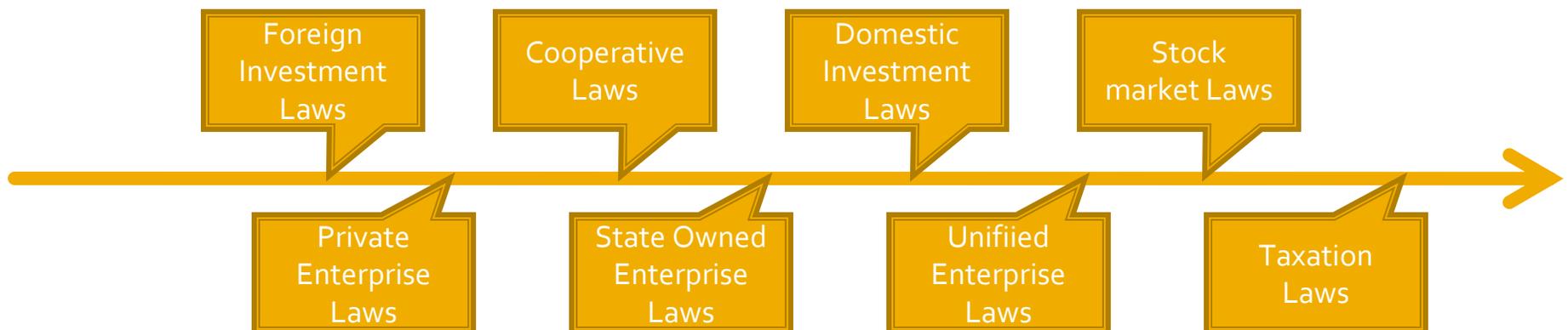
- Corporate Governance is an issue at the heart of economic reform in Viet Nam
- It is a key driver for
  - State-owned enterprise reform
  - Private sector development
  - Financial market development

# Vietnam economic laws

- Foreign Investment Law (1987, amended in 1990, 1992, 1996, 2000).
- State Owned Enterprises Law (1995, amended in 2003)
- Private Enterprise Law (1999)
- Cooperative Law(1996, amended in 2003)
- Domestic Investment Encouragement Law (1994, amended in 1998)

# A chronograph of 20 years of change

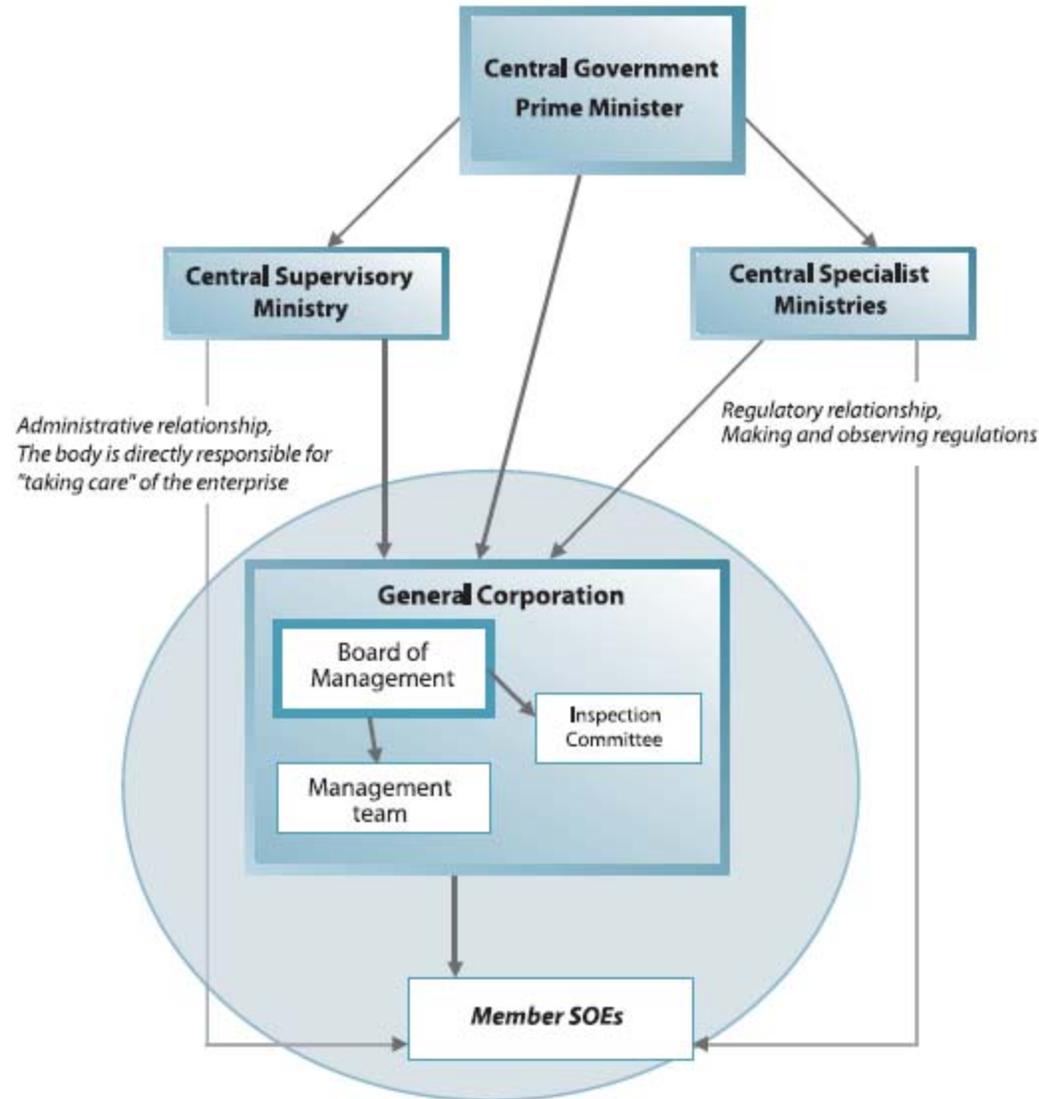
- Convergence of enterprise laws and investment laws
- Foreign investment attraction and domestic investment encouragement
- State owned enterprises: pillar of stability, equitization, conglomerates
- Stock market laws



# State-owned enterprise

- State Corporations: essentially large scale SOEs, so called 90 and 91 types
- Utility SOEs: State mandated monopolies over public services (power, telecom, airlines)
- Commercial SOEs: firms directly engaged in commercial enterprises

# Complex governance of SOE



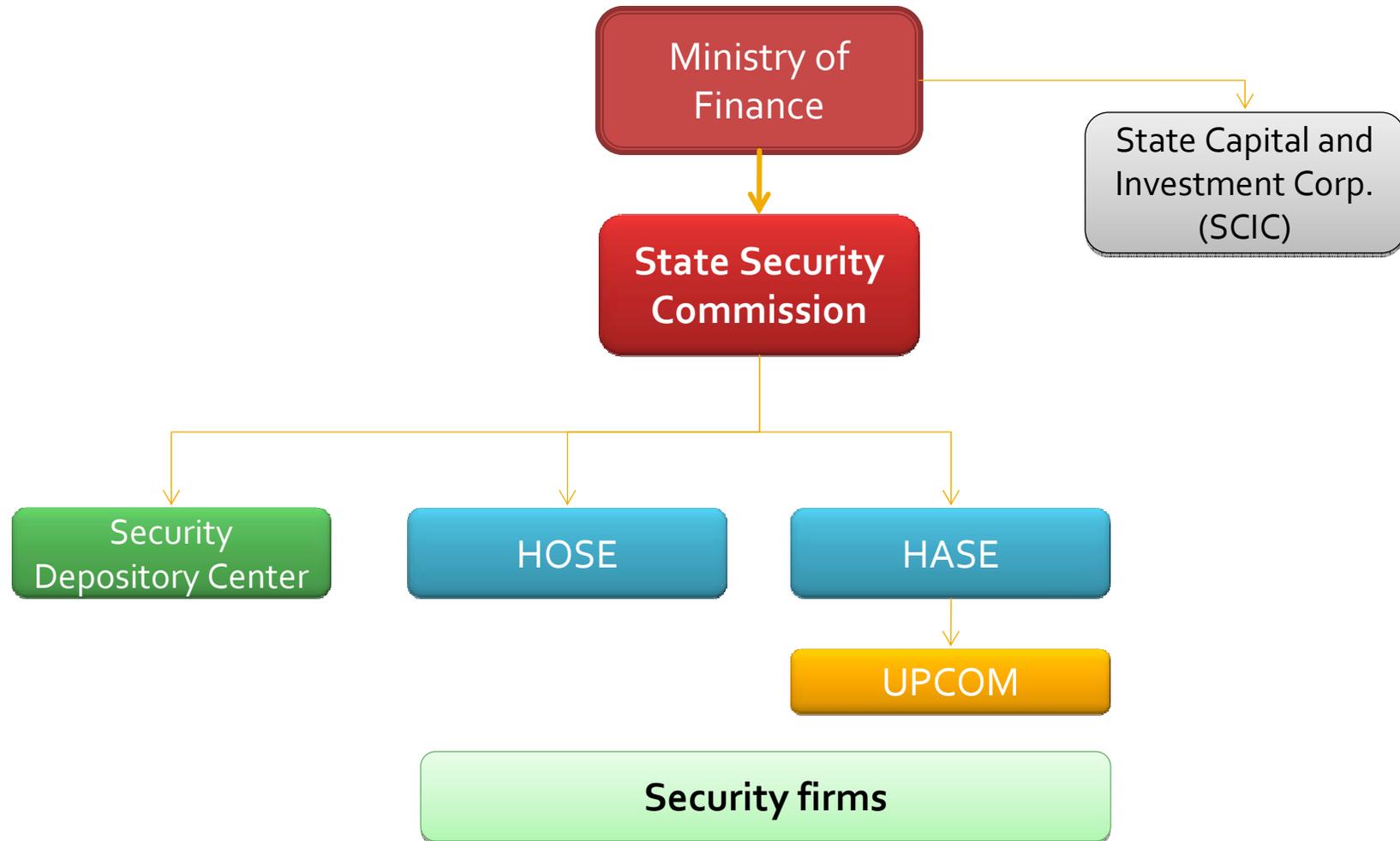
# SOE: Principle-Agent problems

- *Supervisory Rights distribution*
- *Information Distortions*
- *Risk incentive*
- *Reform agenda:*
  1. Ownership Entities: Holding companies of enterprises in competing markets in which the entity selects a board of managers.
  2. Network Industries: Line organizations maintain entity control. However, there is development of specialized departments to act as shareholders.
  3. Ministry of Finance as Holding company: Similar to the structure in Singapore

# Private enterprise laws

- Limited liability corporations (LLC)
- Shareholding or joint-stock company (JSC)
- Partnership company
- Private company (proprietorship)

# Vietnam security market structure



# Security market

- Charter
- Board of management
- Reporting: Disclosure and transparency
- Rights of small shareholder
- Market supervision
- Corporate control: M&A

# Successful CG tactic: People's war

- Comprehensive approach of combining strengths in economic, marketing, media, technology, international cooperation
- Organization is structured like an army: regiment, brigade, platoon..., frontier vs. logistics
- Media, propaganda, public relation
- Modern HR policy and continued training

# Case studies where corporate governance impacts

## SOE

- Electricity (diversification)
- Telecom (deregulation pays)
- Petroleum (overseas investment)
- Shipbuilding (strategic choice)

## Private sector

- Steel (fragmented)

## Foreign investment sector

- Banking and Finance (trust and customer service)

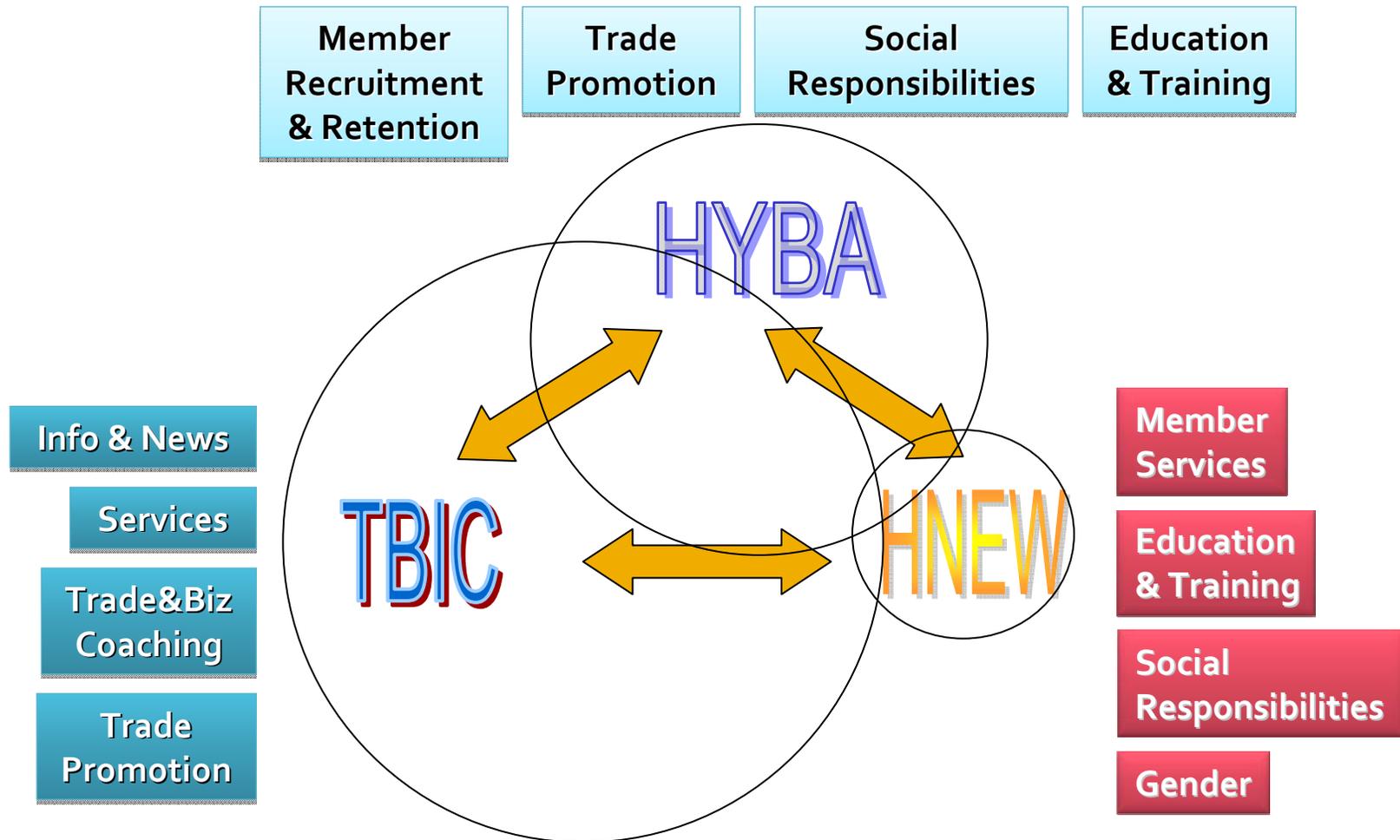
# The role of business association

- Corporate governance driven by private business associations is a far more reliable and incentive-based approach.
- As most of the legal framework outlined above uses minimum standards for corporate practices, business associations can create more stringent terms for membership

# What can be learnt

- There are examples of other countries where professional associations use self-governing standards that are well beyond the minimum requirements of the law: law, accounting, auditing, community colleges...
- Like the American Bar Association accredits Law schools, Vietnamese business associations can create professional clusters that accredit domestic enterprises as practitioners of good corporate governance

# Inter-HYBA linkage



# External factors

- WB/IFC has done a variety of business studies
- APEC: US, Canada, Japan, Australia
- Vietnam Business Forum (VBF) where private sector can voice through dialog with Government and donors
- FIEs provide models
- Stock market increasingly requires firm dynamism, accountability and transparency

# CG in Vietnam and its future

- The government has tried to impose a top-down approach which is necessary to create the basic business environment
- In fact an incentive-based system using business association as the vanguard is probably the cheapest, most effective means of building a real institutional framework for corporate governance in Viet Nam



# Corporate governance in Latin America

**Héctor J. Lehuedé**  
**Chilean Ministry of Finance**  
APEC Training Course  
Hanoi, July 2009



## Disclaimer

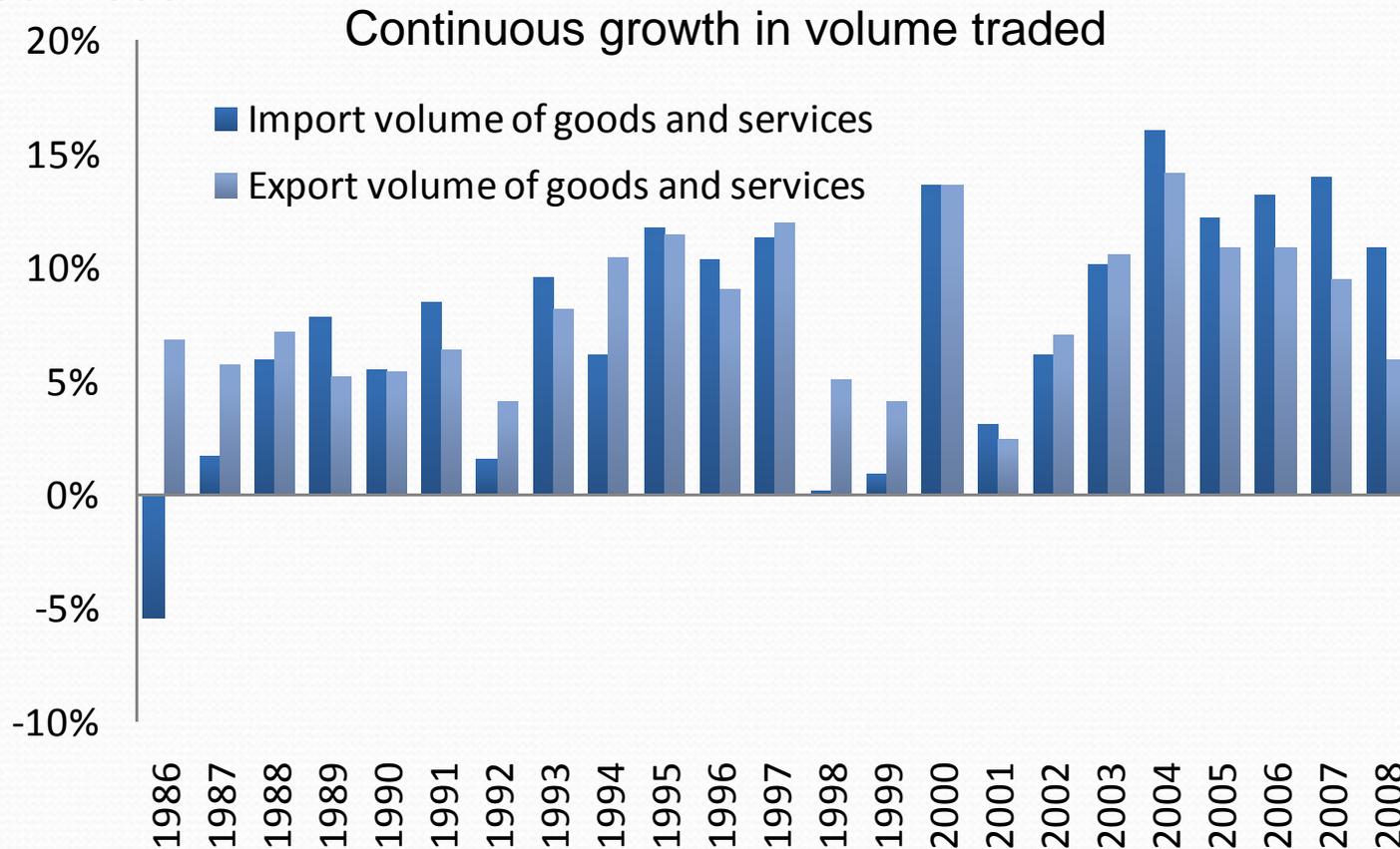
This presentation expresses my own views only and does not necessarily reflect the views of the Ministry, the Minister, or of other members of the Staff.



# Trade in developing economies: the first stage in financial integration

# Emerging economies

- Emerging markets account for almost 70% of world trade.
- The promotion of tariffs' reduction and other trade barriers in emerging markets increased dramatically exports of goods and services.

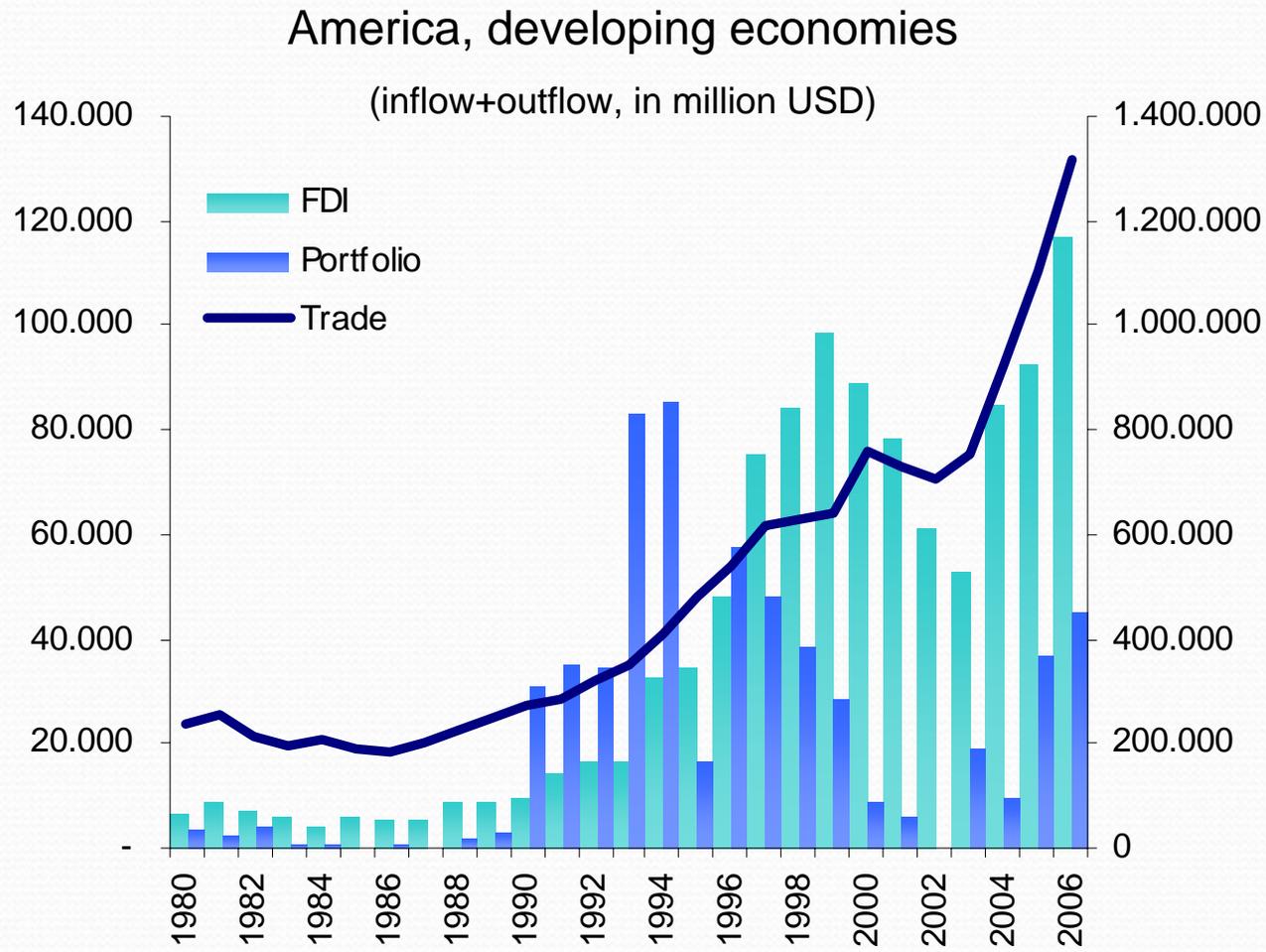


# Trade integration

- As trade increases, trust, networks and alliances are build among players of those markets.
- A reliable and efficient supplier may become a joint venture partner or a potential takeover project.
- It may become convenient to grant credit to a trustworthy buyer, increasing market share in a foreign economy.
- As proposed, trade is the first stage of integration among markets; financial integration may follow suit.

# Trade integration

- Investments flows follow trade.



World Bank, IFS



# The search for funding: the next challenge

# The search for funding

- Trade integration poses an extraordinary challenge for domestic enterprises with exporting capabilities.
- But it also imposes high competitive standards.
- As increasing competitiveness becomes crucial, efficiency and innovation strategies demand investment and quick responses.
- Access to that equity or debt financing, at the lowest possible cost and in a timely fashion, makes the difference between success and failure.

# The search for funding

- Capital markets allocate financing from domestic and foreign savings, to enterprises seeking means to produce of better, cheaper, goods and services. The most efficient capital markets clear better, financing the most competitive enterprises.
- But those markets compete for financing supply and demand as much as enterprises fight for market share.
- Literature is clear on the key role of investor protection through sound corporate governance, as unique path to enhance the attractiveness of the capital market.
- In competing for funding high corporate governance standards work as enhancer.

# Governance and investment

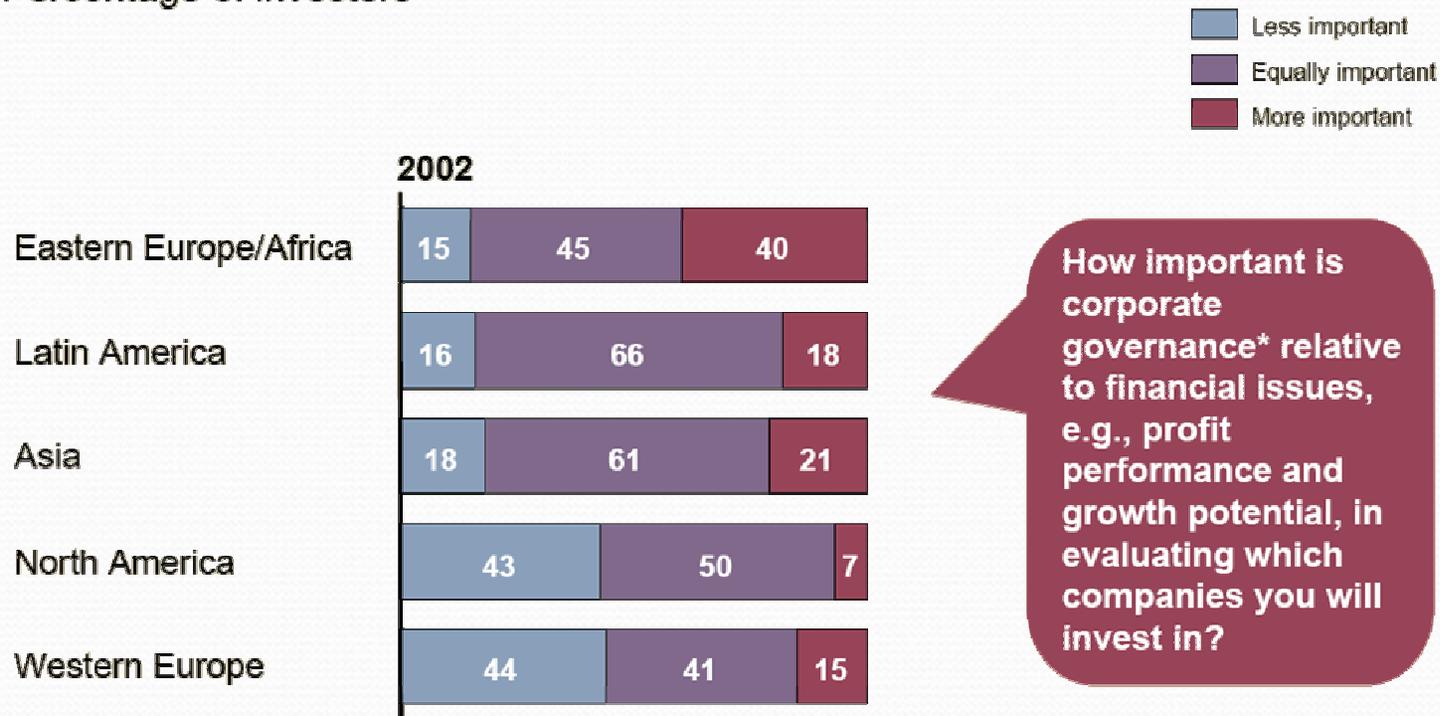
As reported a few years ago by McKinsey & Company's Global Investor Opinion Survey, corporate governance is at the heart of investment decisions:

- Investors put corporate governance on a par with financial indicators.
- Majority of investors are prepared to pay a premium for high governance standards.
- More than 60% of investors say they avoid companies and some avoid entire countries with poor governance.

# Governance and investment

## Governance remains important compared to financials, particularly in emerging markets

Percentage of investors



How important is corporate governance\* relative to financial issues, e.g., profit performance and growth potential, in evaluating which companies you will invest in?

\* Defined as effective boards of directors; broad disclosure, and strong rights and equal treatment for shareholders  
Source: McKinsey Global Investor Opinion Survey on Corporate Governance, 2002



# From trade to financial integration

# From trade to financial integration

- Corporate governance appears also as one of the main factors behind investments decisions.
- Data suggest that as economies improve their corporate governance standards, the portfolio investments and direct investments also increase.
- Funding follows better governance.

# From trade to financial integration

- There is evidence that stock prices move together more in low-income economies than in high-income ones, which are explained by highly correlated fundamentals.
- However, the degree to which a country protects private property rights affects both the extent to which information is capitalized into stock prices and the sort of information that is capitalized (Morck et al 1997).
- Then, portfolio investments it is expected to increase more relative to direct investment when corporate governance standard are improved.

# From trade to financial integration

- Summarizing, an increasing trade raises the number of exporters who turn to the capital market to finance innovations and efficiency, in an attempt to produce competitive products or to associate with trade partners.
- Capital markets compete for being the chosen platform for financing. By adopting better corporate governance practices, they attract both domestic and foreign investors, FDI and portfolio investment.
- As a result, consumers are rewarded with better, cheaper, goods and services; while investors obtain safer returns.



# Corporate governance in Latin America

# Latam countries' framework

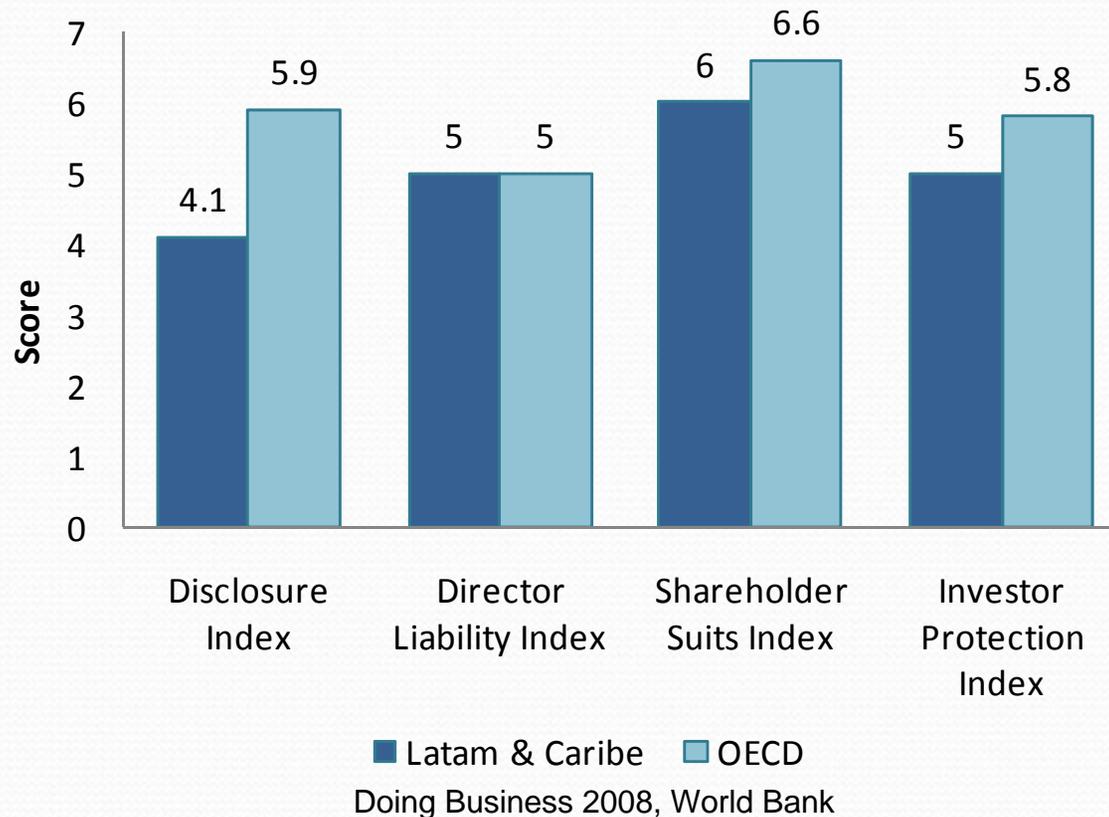
- The economic recovery started in Latin America in the early 1990s the removal of trade barriers, the inflow of foreign capital, and massive privatizations of SOEs.
- Latin America has shown positive GDP growth, but the trajectory has been rough.
- Latam countries stand out for their recurrent macroeconomic uncertainty and political instability.
- In terms of corporate governance they share high ownership concentration; small and illiquid stock markets and limited options for corporate financing.

# Latam countries' framework

- As in many Asian economies, the controlling shareholders appears in Latam as the favorite instrument to prevent agency problems.
- The controlling shareholder reduces the cost of investors to coordinate and monitor the administration of the enterprise.
- But those controlling shareholders pose a threat of minority shareholder expropriation that also needs to be handled carefully.
- Particularly when minority shareholders increase their bearing.

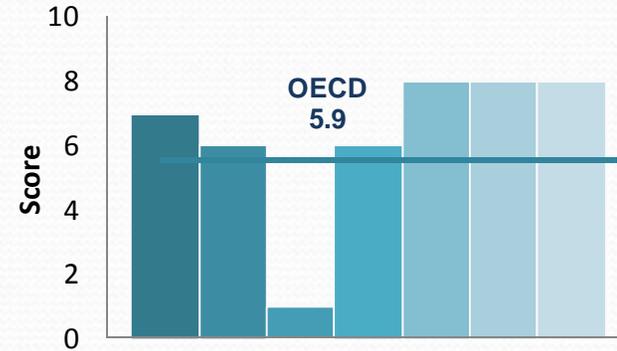
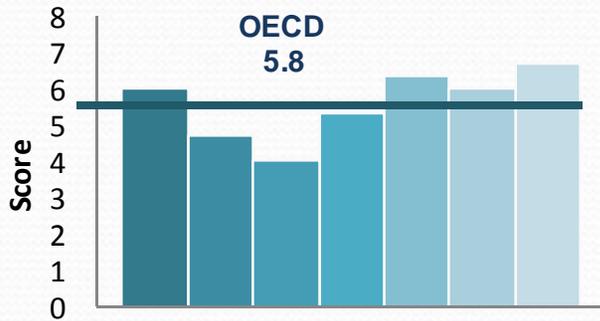
# Latam countries' framework

- Corporate governance is highly monitored. Latam & the Caribbean average score still under OECD countries score according to the 2008 World Bank Doing Business Study...However in some areas Latam is improving.



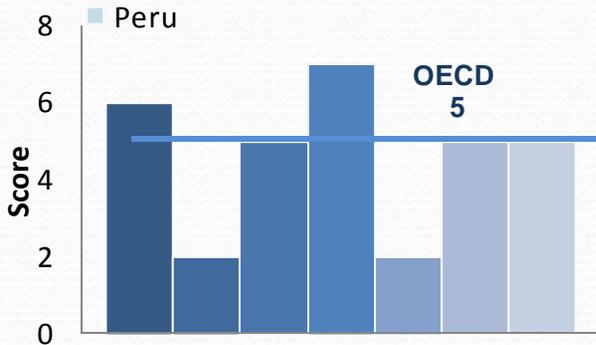
# Doing Business 2008: protecting investors

- Latam countries have strong differences, and some are making good progress protecting investors.



Investor Protection Index

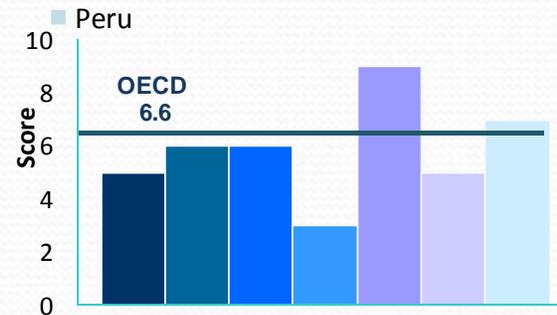
Chile Argentina Bolivia  
Brazil Colombia Mexico



Director Liability Index

Chile Argentina Bolivia  
Brazil Colombia Mexico  
Peru

Chile Argentina Bolivia  
Brazil Colombia Mexico

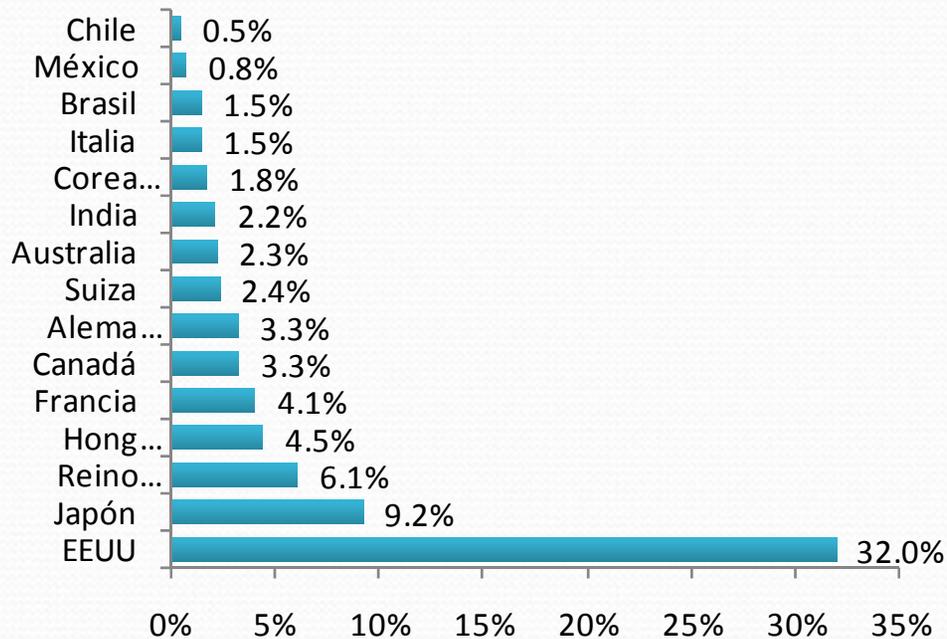


Shareholder Suits Index

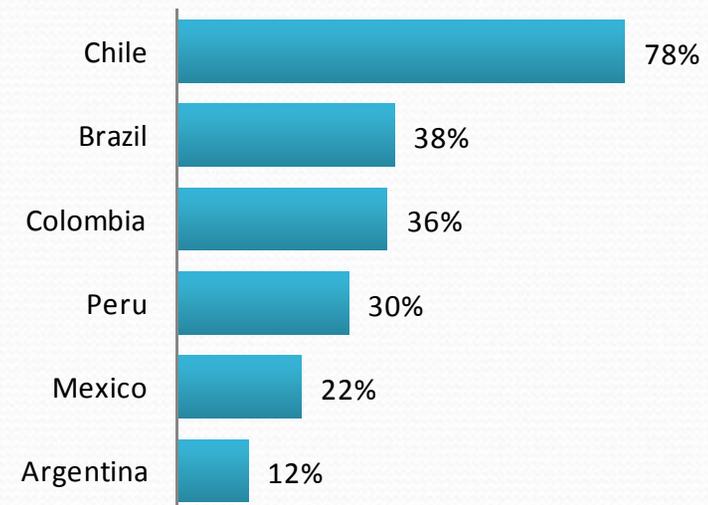
Chile Argentina Bolivia  
Brazil Colombia Mexico  
Peru

# Market capitalization

(as % of the World's market capitalization, Apr. 2009)

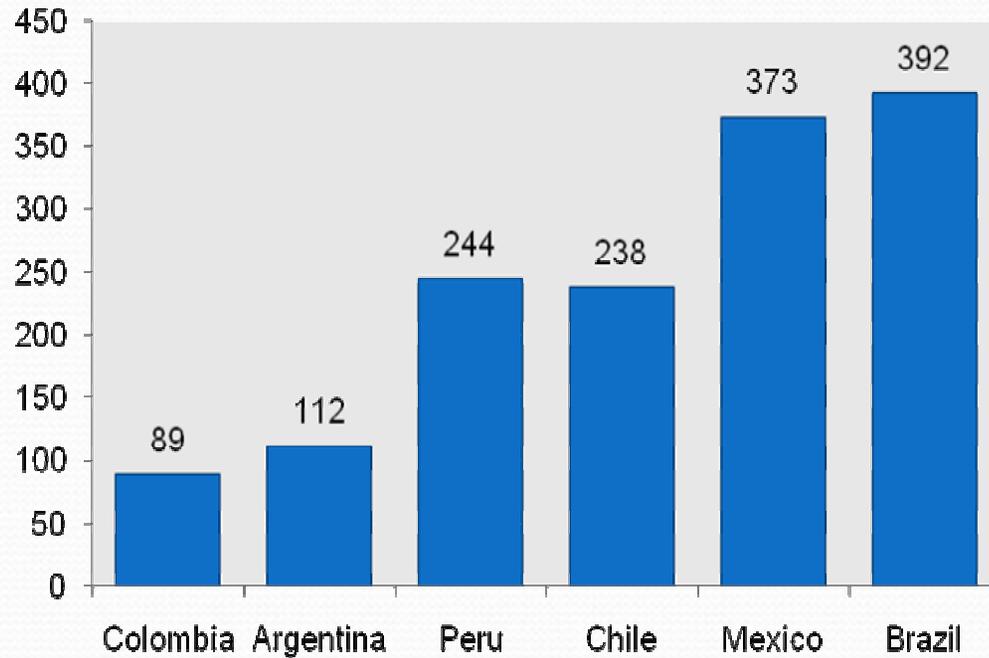


(as % of GDP, Dec. 2008)

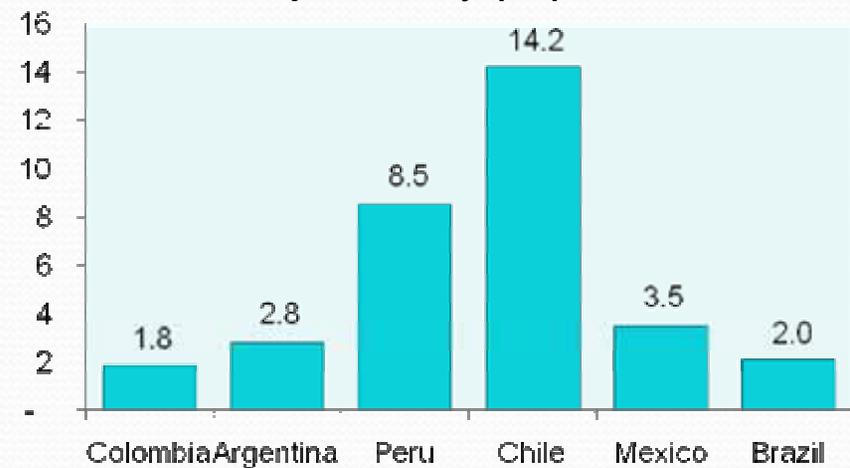


- Latin America still represents a little share of the total World market capitalization (World market cap. US\$31,618 billion)

# Listed Companies

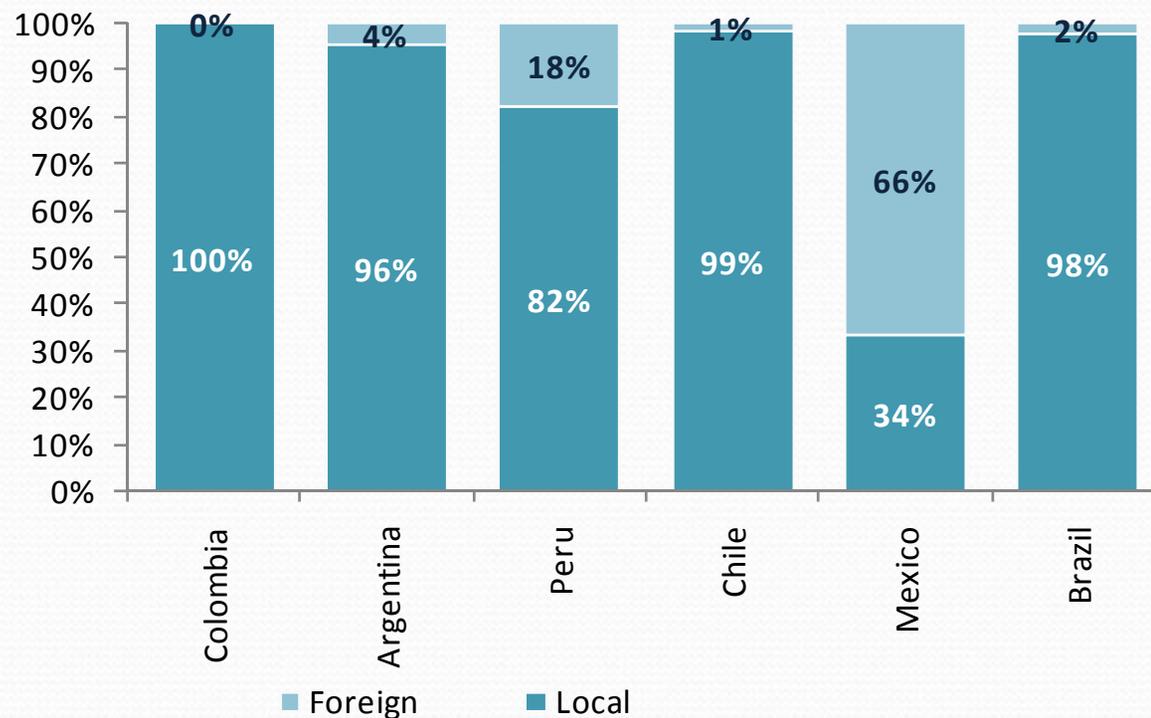


Adjusted by population



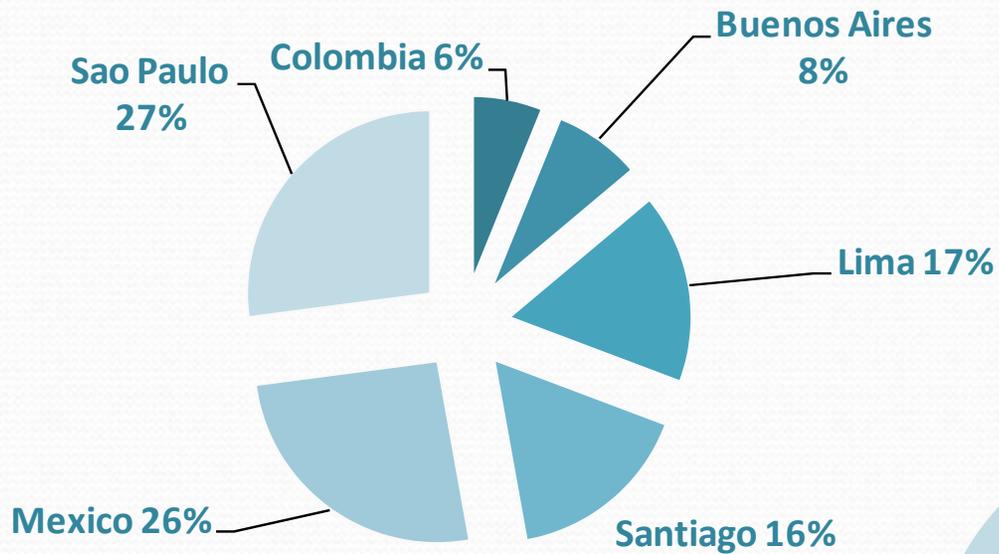
# Domestic or foreign listed companies

- Listed companies are mainly local companies, Mexico is only one Latin American market where there are more foreign listed companies.

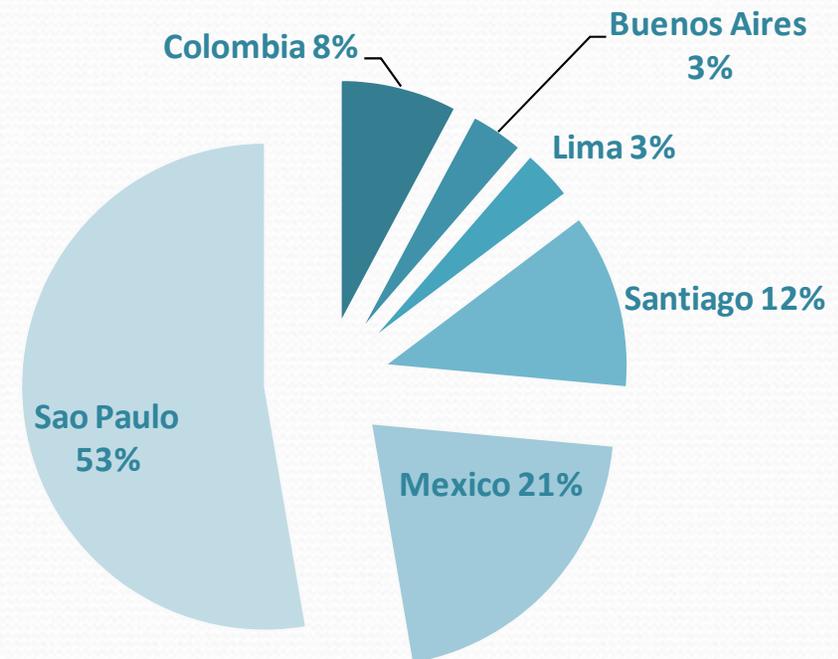


# Market size in 2008

% of total regional listed companies



% of total regional market capitalization



# Liquidity in 2008

- Latin American markets lack of liquidity (one explanation is high ownership concentration). Brazil improved liquidity in the local market by increasing corporate governance standards.

Turnover: measure as total volume traded in USD over Mkt. Cap.



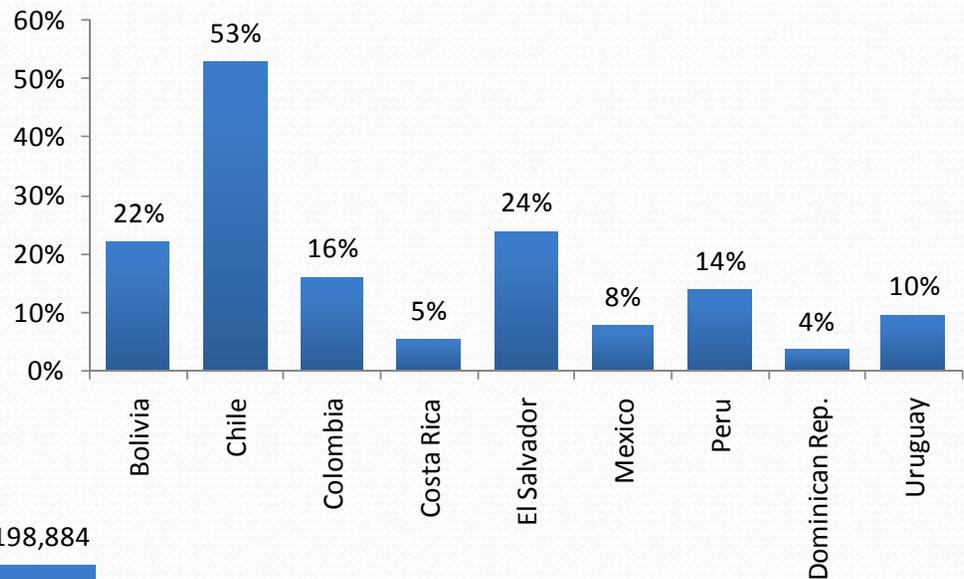
# The role of institutional investors

- A difference between Latin American and Asian countries is the role of institutional investors, mainly private pension funds.
- Pension funds in most of Latam countries changed from a pay-as-you-go pension scheme to an individual capitalization account system managed by private managers.
- Latam pension funds' are showing outstanding growth in terms of assets under management (AUM), mainly because most of the population has turn into the new system, and also because of exceptional returns.

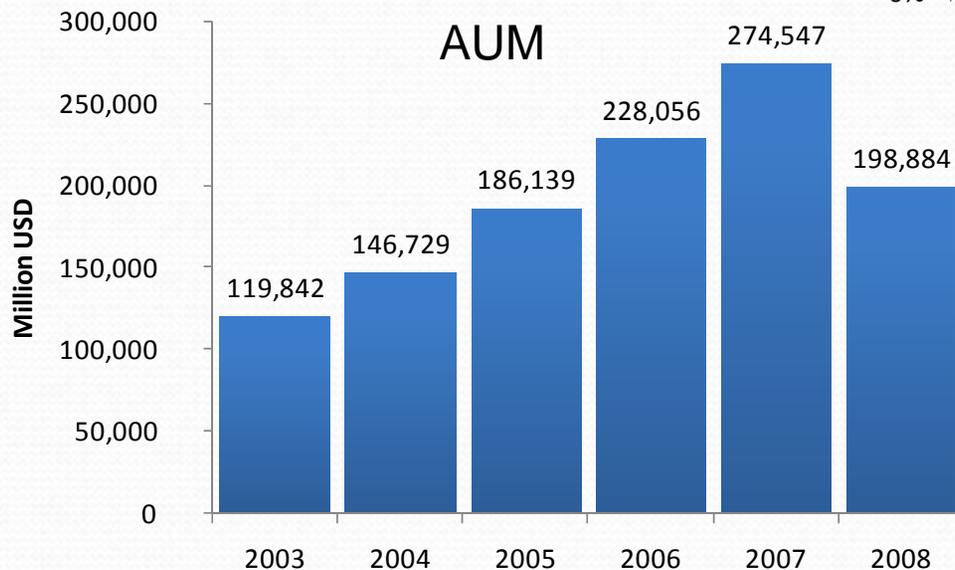
# The role of institutional investors

- Assets under pension funds management represent 14% of the Latam GDP.

AUM as % of GDP



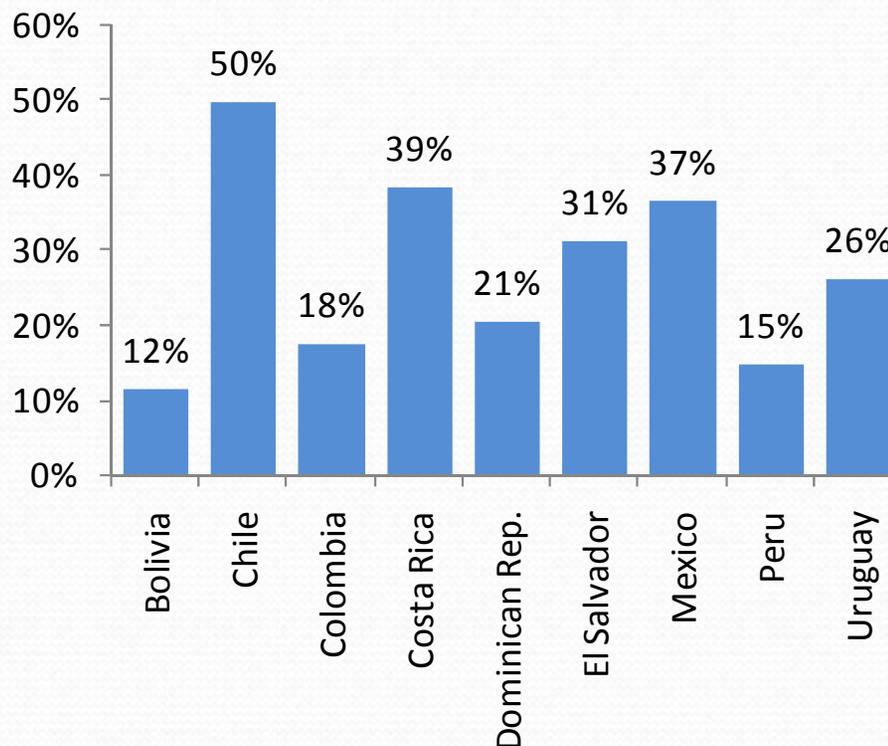
AUM



- Thus pension funds are becoming a progressively more relevant player in the capital market.

# The role of institutional investors

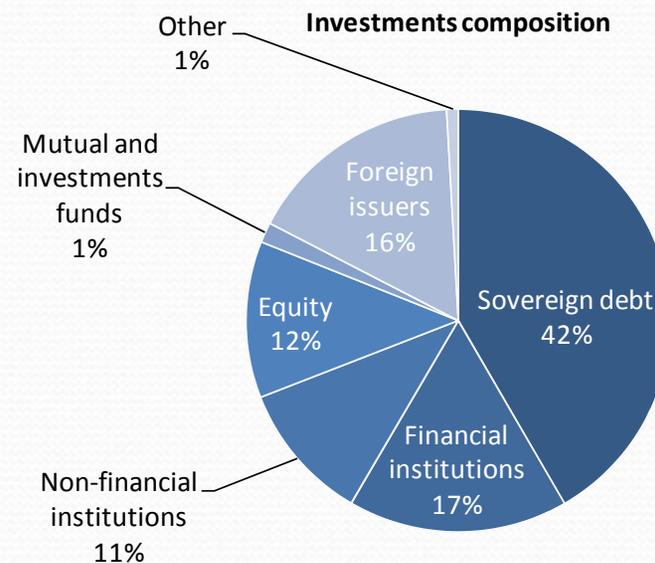
- 30% of the Latam population participate in the private system scheme.
- It is expected that AUM will growth further in those countries where the system is relative new.



% of the population in the system

# A public policy issue

- Pension funds are important assets holder in local markets, and also are responsible for a huge share of the volume traded.
- Those funds need protection when invested in their domestic capital market, but also when invested abroad.
- Agreement on standards and best practices, compliance with corporate governance principles and monitoring across the region, become essential.



Almost 60% is invested in non-government assets.



A good example of corporate  
governance value: Novo Mercado  
(Brazil)

# Bovespa before Novo Mercado: framework

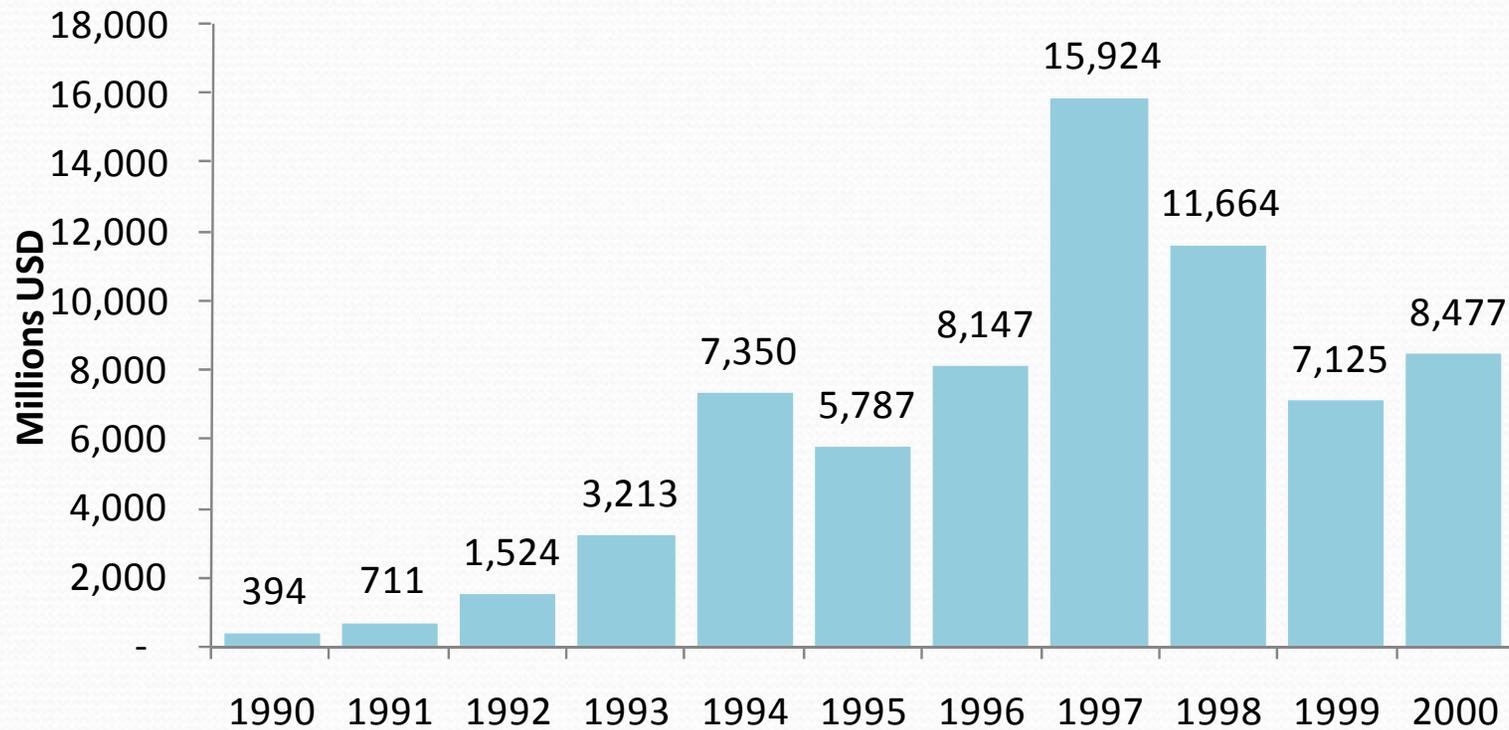
- By the end of the 90s, Brazil's capital market was less developed and representative of the country's economy.
- Companies were using internal resources and cheap loans from the Brazilian Development Bank (BNDES) as financing sources. Thus bond and stock issuances were rare and its volume low.
- SOEs' privatization and their subsequent listing attracted foreign capital flows to Brazil. However, during the crisis at the end of the 90's those flows were not sustainable.
- Bovespa's listed companies began to trade increasingly via ADRs.
- Because of the low liquidity (which implied low prices) offered by the market, companies cancelled their registration.

# Bovespa before Novo Mercado: problems

- Non equitable shareholder treatment:
  - The existence of preferred stocks.
  - Control structure took the form of pyramids.
- The lack of a mandatory tender offer law:
  - Minority where facing a high risk of expropriation.
  - The law allowed the controller to buy an outstanding amount of shares, reducing liquidity and free-float.
- The market did not have enough credibility and liquidity because of its soft rules
- Companies were looking for alternative markets.

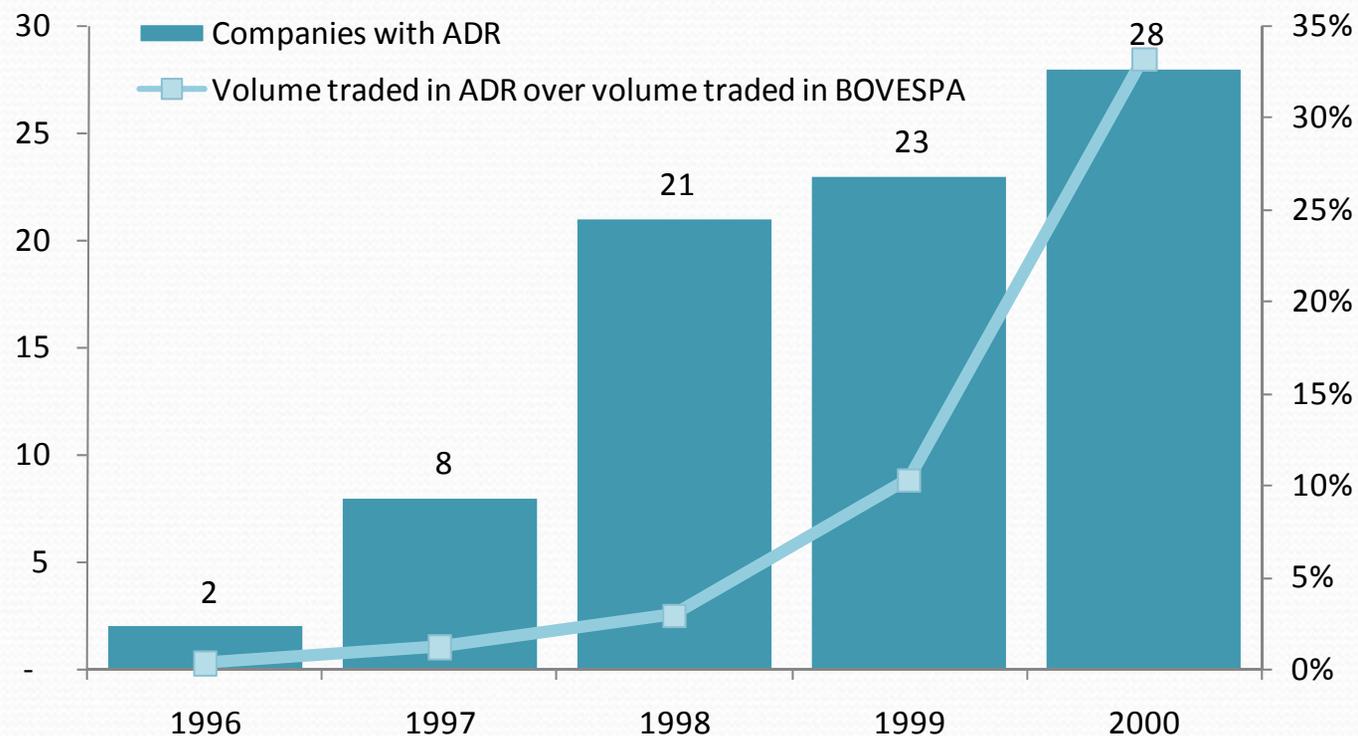
# Bovespa before Novo Mercado

Volume traded (in US\$) dropped 46% between 1997 and 2000.



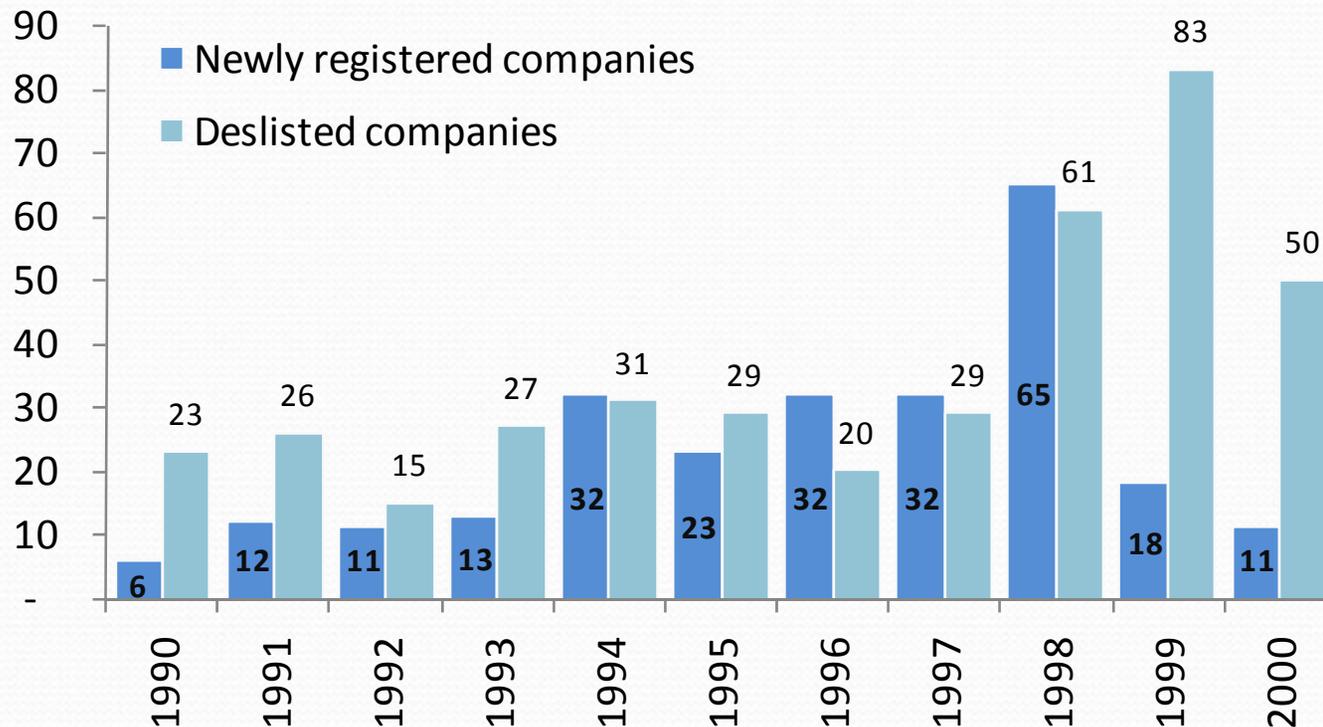
# Bovespa before Novo Mercado

Volume traded in ADR was growing increasingly, reaching one third of the total volume traded in Bovespa.



# Bovespa before Novo Mercado

Between 1990 and 2000 the number of companies de-listed was 139 (net of listings).



# Bovespa launched Novo Mercado in 2000

- Novo Mercado was launched as a special segment of Bovespa. Listing in this segment subjects a company to a set of corporate rules. Main requirements for companies listed in Novo Mercado:
- Transparency: (i) publish the quarterly financial statements reviewed by an independent auditor, (ii) present annual financial statements in an internationally recognized standard (IFRS), (iii) disclose on a monthly basis information about the company's securities and its derivatives traded by the insiders and the controlling group, and (iv) inform related party transactions for amounts over R\$200,000 or 1% of company's net worth.

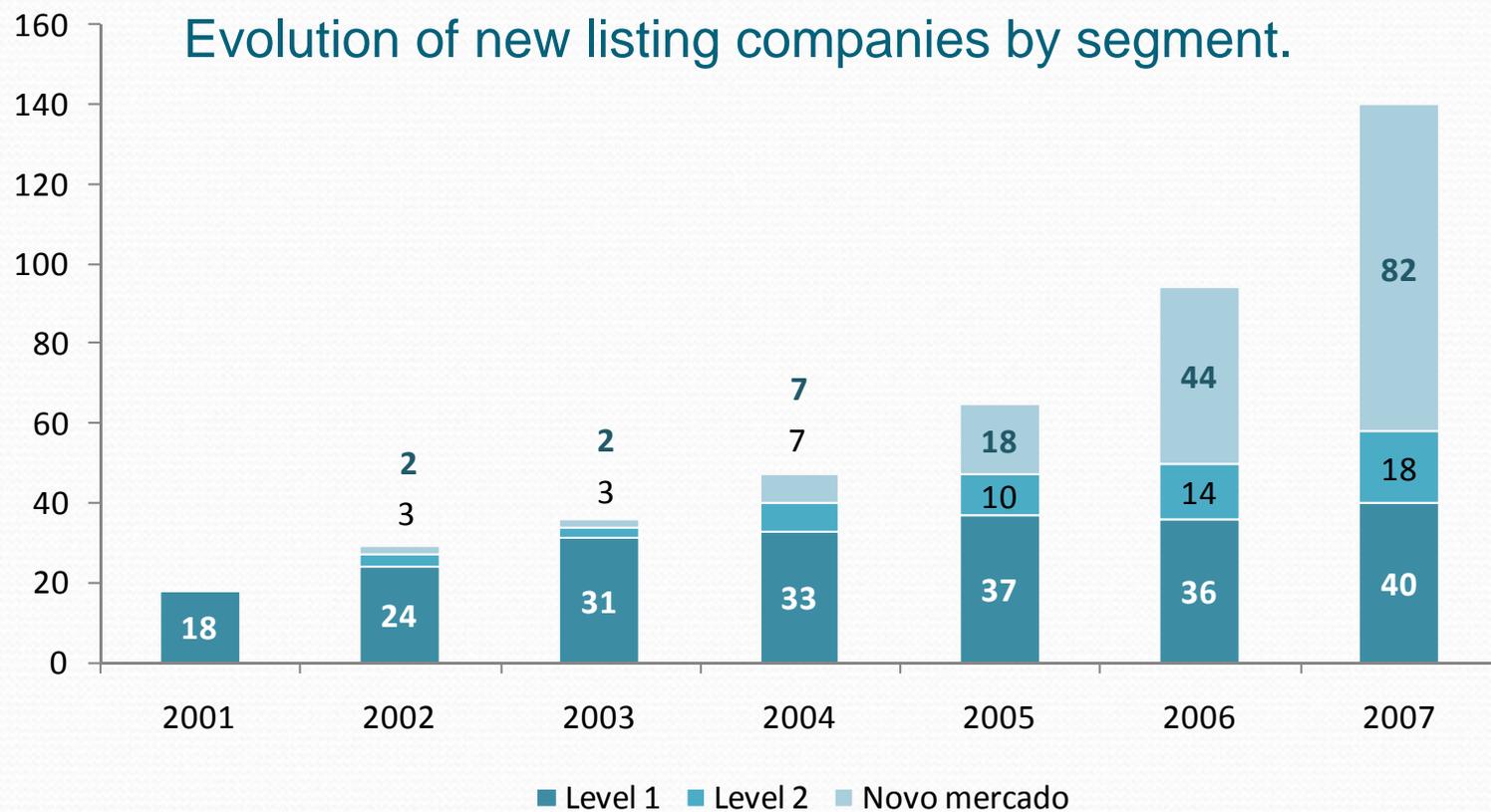
# Bovespa launched Novo Mercado in 2000

- Shareholder rights' improvements: (i) only voting shares are allowed: one share one vote, (ii) give tag along rights to all shareholders at the full price of the deal, (iii) right to a mandatory public offer at least at the economic value in case of delisting, and (iv) right to discuss through Arbitration any shareholder-company dispute that arise related to listing rules and regulation.
- Minority shareholder protection: (i) the board of director must have at least 5 members, all with unified mandates of up to 2 years, (ii) at least the 20% of the board (1 director) has to be independent, and (iii) minimum free float of 25%.

# Bovespa launched Novo Mercado in 2000

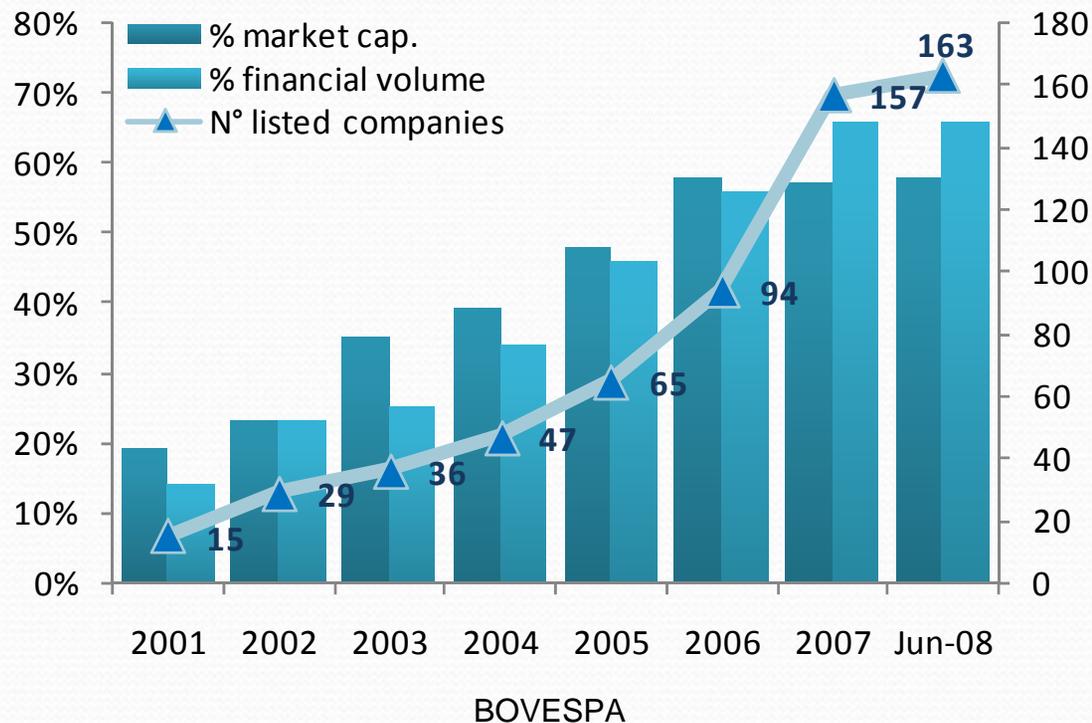
- Two listing segments were created with less requirements than Novo Mercado:
- Level 2: Subject to the same rules than Novo Mercado with few exceptions: (i) companies retain the right to maintain existing preferred shares and to issue new ones up to the limit allowed by law, and (ii) however, this shares enjoy a tag alone rights.
- Level 1: Companies listed in this segment require to: (i) maintain 25% free-float, (ii) publish the quarterly financial statements reviewed by an independent auditor, (iii) disclose on a monthly basis information about the company's securities and its derivatives traded by the insiders and the controlling group, and (iv) inform related party transactions for amounts over R\$200,000 or 1% of company's net worth.

# Novo Mercado



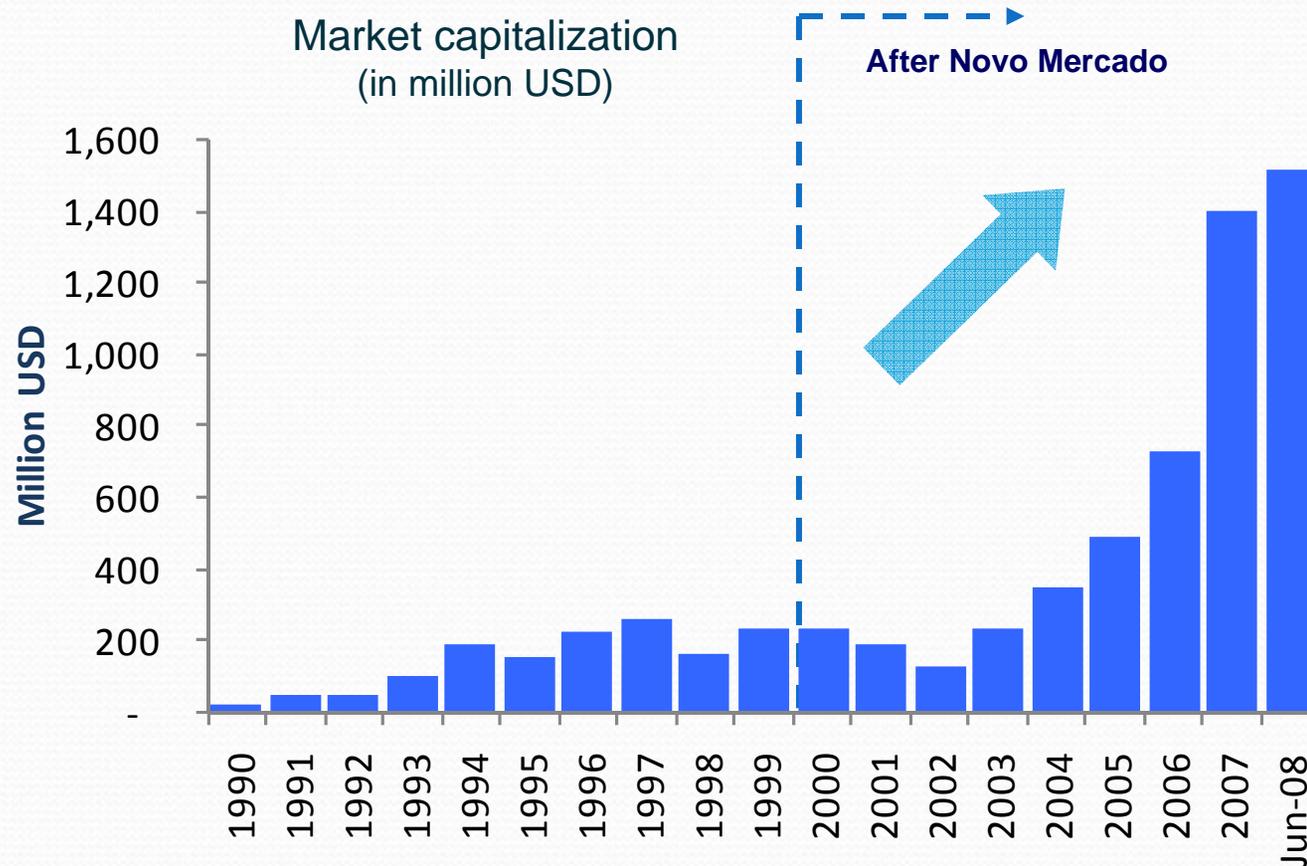
# Novo Mercado, Level 2 and Level 1

- As of June 2008 companies listed in these segment were almost 11 times the number of companies that were at the beginning.
- Market capitalization represents more than 5 times the initial one.
- The volume traded as a share of the financial volume traded in Bovespa increased almost 5 times.



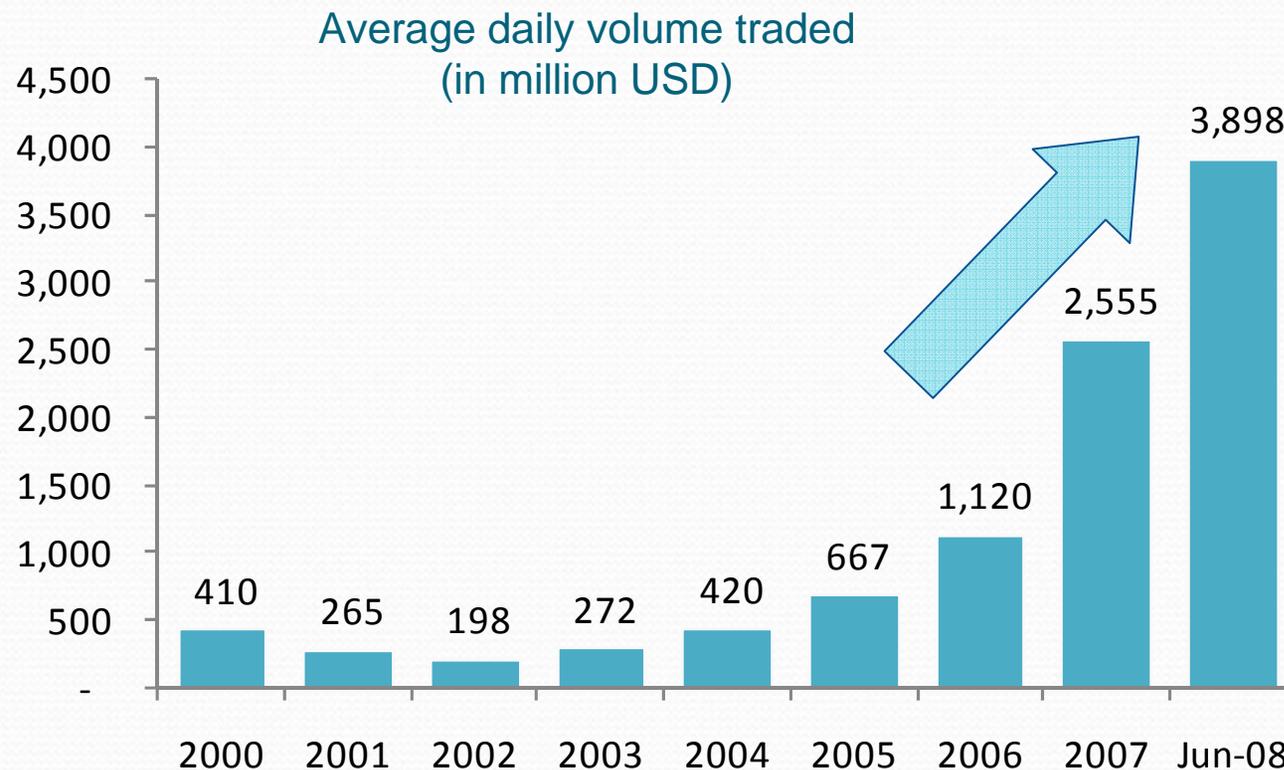
# Novo Mercado

- After Novo Mercado market capitalization has grown at an annual average rate of 38%.



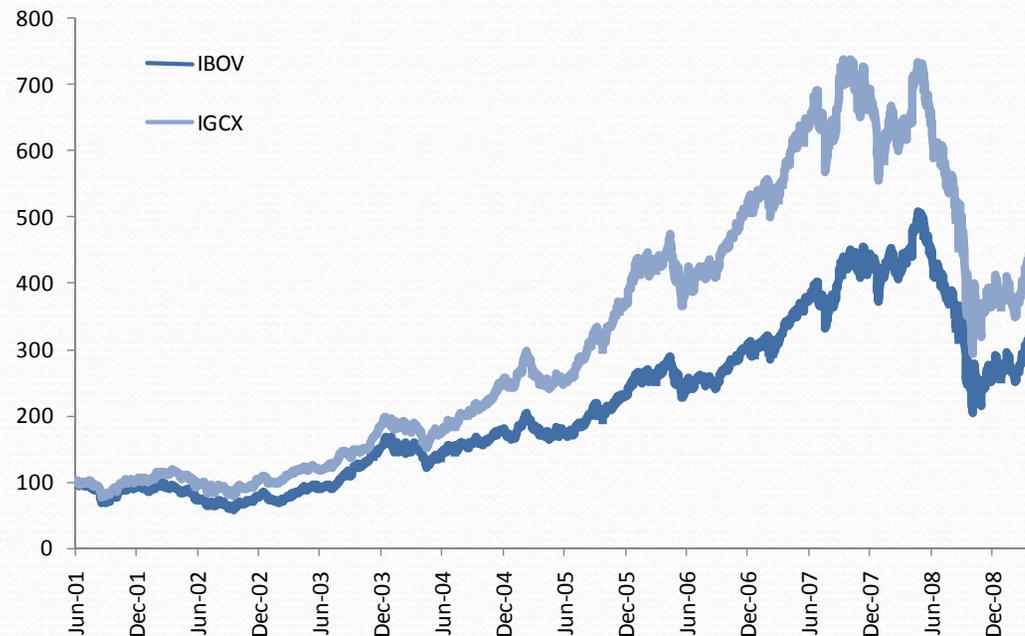
# Novo Mercado

- The average daily volume in 2008 represented more than 15 times the volume traded in 2001.



# Novo Mercado

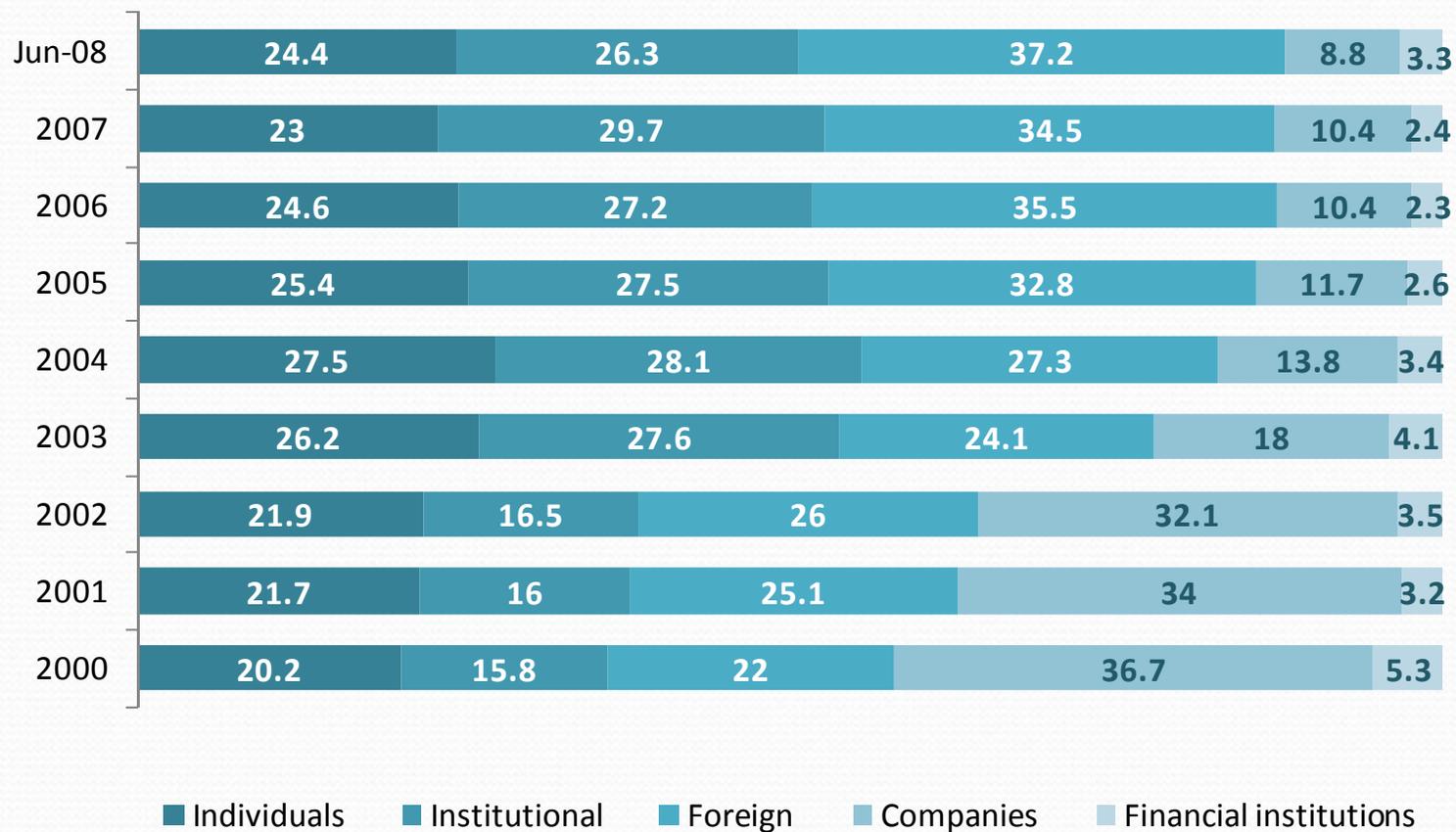
- The IGCX tracks companies in Novo Mercado, Level 2 and Level 1.
- Shares in the index are weighted by market values adjusted by a corporate governance factor (2 for Novo Mercado; 1.5 for Level 2; and 1 for Level 1).
- The IBOV index tracks the 65 most traded stocks in Bovespa.
- Companies with higher corporate governance standards showed better results in the comparison.



Bloomberg (index base June 2001)

# Novo Mercado

- Novo Mercado increased the share of foreign investors, individuals, and institutional investors.



# Novo Mercado

- Novo Mercado was promoted by the private sector.
- Data shows that high standards of corporate governance are valued by investors.
- Transparency implies better quality of prices and more liquidity.
- Protecting minority shareholder rights allows a wide investor base that improve liquidity.
- Adopting international corporate governance standards allows the market to be a financial platform to offer better opportunities to our enterprises.
- Improvements in corporate governance boost the local activity and generates positive externalities.



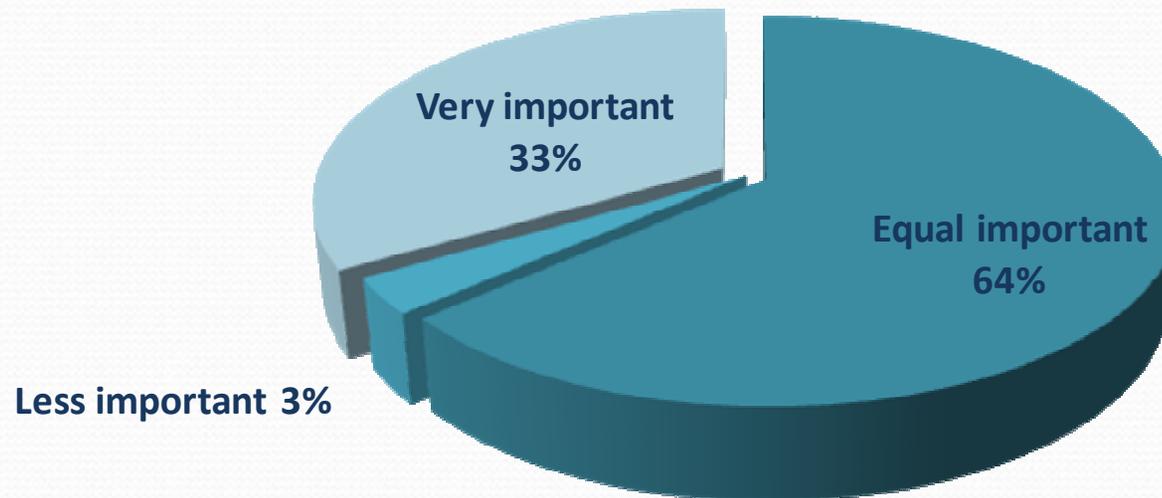
# A recent survey on Latam: The importance of corporate governance in private equity funds

(LAVCA, 2008)

# A recent survey on Latam

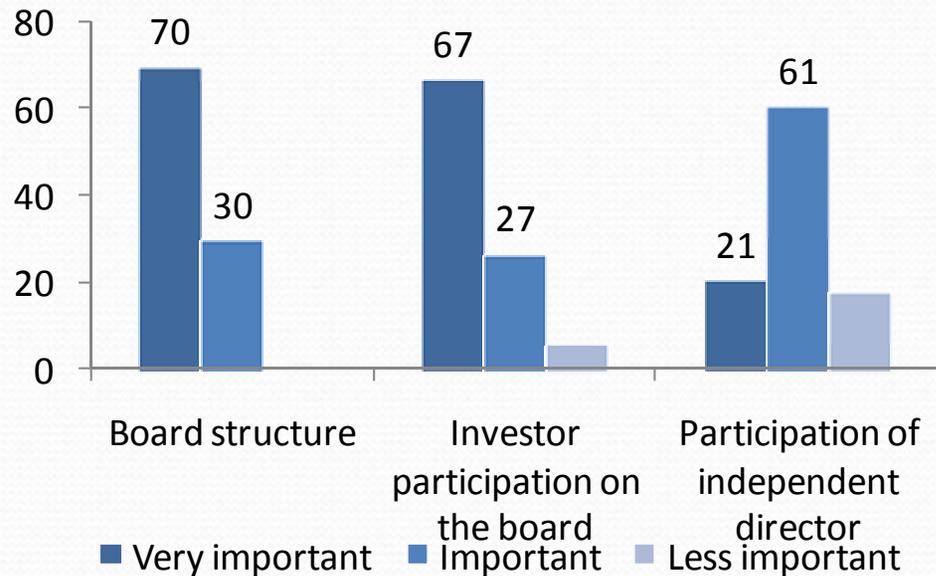
- Available resources for private equity funds has more than tripled between 2005 and 2007 reaching US\$4.4 billions.
- Investment increased 60% between 2006 and 2007.
- The opinion of 28 private equity funds were included in this survey to explore the importance they assigned to corporate governance standards.
- Those funds represent more than US\$4 billion available to invest in close end companies in Latam.

# A recent survey on Latam



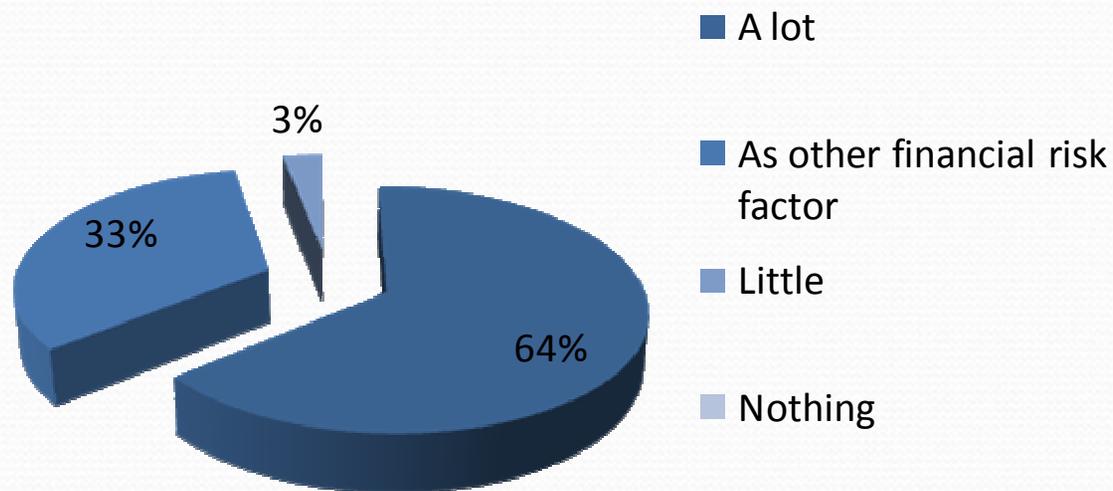
- At least 85% of the private equity funds in Latam answer that corporate governance is a key investment decision factor, equal or more important than the financial company's situation.

# A recent survey on Latam



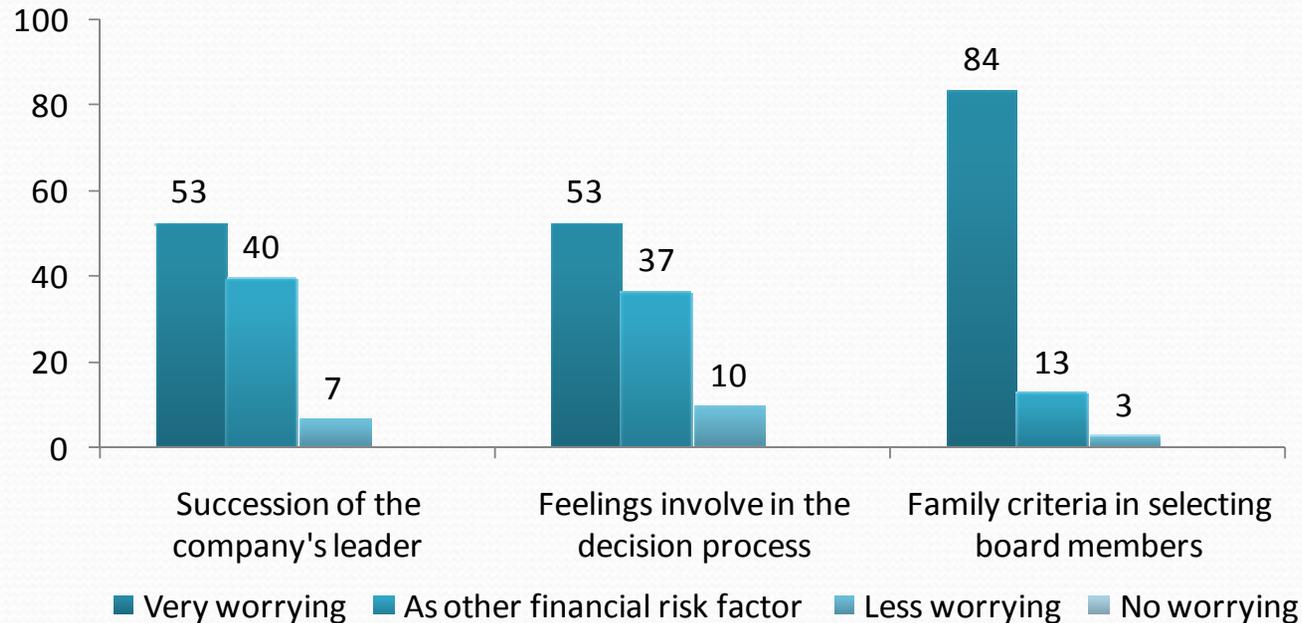
- More than 70% answer that having independent directors is important.
- Investors have interest in participating on boards' decision process. It is crucial to have a board that represents each type of investor.
- They also highlight that independent directors are crucial in representing the interest of minority investors.

# A recent survey on Latam



- 92% highlight that having an external auditor is critical.
- 73% consider that mistakes in information provided by the company represents a high risk for investors.

# A recent survey on Latam



- 83% considered as an important risk factor a family relation in selecting board members. Investors are not willing to take the risk of having non objective decision process because of family relationships.

# A recent survey on Latam

- 70% of those funds polled do not invest in companies that lacks of corporate governance commitment.
- In investing in family owned companies fund managers worry about quality of board members (83%).
- 94% considered that having representation on boards in crucial.
- 70% considered that governments should grant greater legal stability.



Thank you,

**Héctor J. Lehuedé**  
**Chilean Ministry of Finance**  
APEC Training Course  
Hanoi, July 2009

# Corporate Governance in China

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**Dr. Qu Fengjie**  
**Dr. Li Dawei**

**Institute for International Economic Research, NDRC**  
**2 July 2009**

# Outline

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- **Background and history**
  - **Current system**
  - **Improvement**
  - **Challenges**
-

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# Background and history

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## Three phases of government-business relationship

### First phase (from 1978 to 1993)

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#### Policy measure

Removing the impact of the traditional planned economy on enterprises, giving SOEs both the decision-making autonomy and economic incentives



#### Details

1. Delegation of authority to enterprises
2. Allowing enterprises to retain profits earned over the pre-set targets
3. Substituting taxation for profit turn-in

#### Impact

- Pricing in China was by and large no longer determined by the central government, which had given up 90% of its pricing power to the market
  - The traditional relationship between the government and the business began to change
  - Government intervention in business remained rampant
-

## Three phases of government-business relationship

### Second phase (from 1993 to 1998 )

---

#### Policy measure

Introduce modern mechanism into SOEs



#### Details

1. Separation of government administration from business management
2. Introduction of sound corporate management
3. Corporate Law was passed to provide a legal framework

#### Impact

- ✓ Modern enterprise mechanism has been done
  - ✓ Government-business relationship improved
  - ✓ Performance of a number of SOEs failed to match the above efforts
  - ✓ The SOEs lack the power to appoint managers
-

## Three phases of government-business relationship

### Third phase (starting from September 1999)

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#### Policy measure

Strengthening the modern mechanism of enterprises

#### Details

1. Continuous development of the Chinese capital markets
2. Guideline on the Management of Listed Companies on 7 January 2002
3. New company law entered into force on 1 January,2006
4. Encouraging domestically listed companies to establish modern enterprise systems

#### Impact

- ✓ A transparent and sound decision making process
- ✓ Accurate information disclosure arrangement
- ✓ Exercise of prudent accounting norms and practices.
- ✓ Shareholders in the PRC stock markets polarize into majority and minority shareholders

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# **Current system of China's Corporate governance**

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## Corporate governance

### intra-corporate processes and structures

- ✓ Shareholders' Meeting
- ✓ Board of Directors
- ✓ Supervisory Board
- ✓ Management
- ✓ Core Function

### formal and informal control and regulation by outsiders.

- ✓ Standards (e.g. accounting & auditing)
  - ✓ Laws & regulations
  - ✓ Financial Media
-

# Main statutory company laws and regulations

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- the Company Law of PRC(Revised 2006)
- the Securities Law of PRC(Revised 2006)
- Regulation of the PRC on the Administration of Company Registration (Revised 2005)
- Regulation of the People's Republic of China on the registration of enterprises as legal persons
- Guidelines for Corporate Governance of Listed Companies(2001)
- Guidelines for the Articles of Association of Listed Companies(2006)
- Guidelines for independent director of listed company ( 2001 )
- Provisions on Strengthening the Protection of the Rights and Interests of the Public Individual Shareholders ( 2004 )

# Main regulatory bodies of companies and function

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<b>CSRC (China Securities Regulatory Commission )</b>	<b>supervision over securities and futures business, stock and future markets, the listed s exchange companies, others.....involved in the securities and futures business</b>
<b>SAIC( State administration for industry and commerce)</b>	<b>Registering a company</b>
<b>SSE( Shanghai and Shenzhen Securities Exchange)</b>	<b>a non-profit-making membership institution directly governed by the China Securities Regulatory Commission (CSRC)</b>
<b>Takeover Committee</b>	<b>a special internal committee. It is composed of professionals and relevant experts in the takeover area, whose function is, upon the request of a functional department of the CSRC, to provide opinions about takeover regulation, to assist in dealing with complicated issues regarding takeovers.</b>

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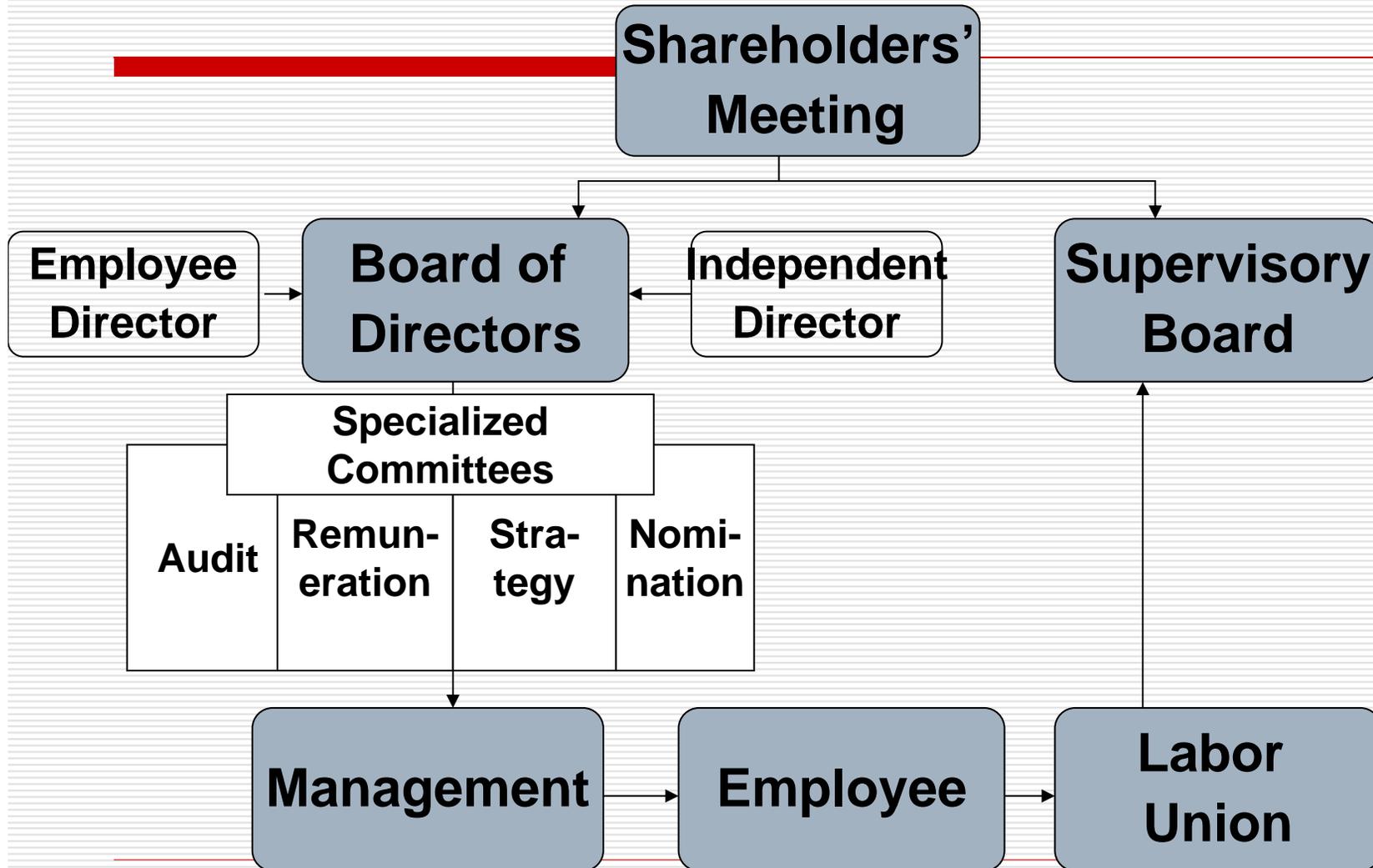
# Types of companies and basic organizational structure

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Types of companies	Joint Stock Limited Company	Limited liability company [including one-person company]
	Public Company (Unlimited number of members )	Private Company (proprietary company)
Members of Directors	5—19 members	3—13members ( one executive director can exist in some small company )
Numbers of 200 initiators Shareholders	2 - 200 initiators	1 - 50 members
Supervisors	Board of supervisors with at least 3 persons.	1 or 2 supervisors and does not have to establish a board of supervisors.

---

# China's structure of intra-corporate governance



## Official agencies of China's listed company

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<b>Chairperson</b>		<b>Generally speaking, directors nominated by controlling shareholder act as chairperson</b>
<b>The board of directors</b>	<b>Specialized Committees</b>	<b>Audit Nomination Remuneration and appraisal corporate strategy</b>
	<b>Independent Director</b>	<b>Independent director should take up 1/3, one of independent director should be qualified accountant</b>
	<b>Employee Director</b>	<b>State-owned company (2 or more shareholders are State-owned companies or enterprises)</b>
<b>Supervisory Board</b>		<b>At least one employee supervisor</b>

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# Dual Supervisory Mechanism in Chinese Listed Companies

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## supervisory board system

- ✓ The supervisory board is statutory agency in a joint stock limited company.
- ✓ It is highly under control of the shareholders' assembly.
- ✓ In fact, these representatives' remuneration, nomination, appointment etc, heavily rely on the board of directors.
- ✓ This connection inclines to smother these supervisors' incentive, because they naturally put their personal interests first.

## independent director system

- ✓ Independent Director of a listed company means a director who does not hold any position in the company other than director.
- ✓ the nomination of independent directors, to a large extent, is manipulated by the controlling shareholders.
- ✓ Most of independent directors never express independent opinions that are divergent from big shareholders

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# **The improvement of corporate governance**

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## The ownership concentration of SOE go down obviously

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- In our research, 17 of 25 enterprises' ownership concentration in SSE 50 index go down from 2006 to July 2009. Most of them are SOE.
  - One financial enterprise which name is China merchant bank keep constant.
  - Only 5 enterprises' ownership concentration go up tightly, 2 enterprise go up obviously.
-

## Some SOE's ownership concentration in 2006 and 2009

Company Name	the first shareholder's ownership	
	2006	2008
HANDAN Iron and Steel	64.65%	37.66%
China Unicorn	69.32%	61.05%
Bao Steel	77.89%	73.97%
Wuhan Steel	69.76%	64.71%

## The proportion of circulate shares go up quickly

---

- In our research, 24 of 25 enterprises' proportion of circulate shares go up in SSE 50 index from 2006 to July 2009. Only one enterprises keep constant.
  - In 2009, All shares are circulate shares in 8 of 25 enterprises' proportion.
  - Shareholder Structure reform from 2006 is the most important factor of the SOE's circulate shares going-up.
-

## Some SOE's proportion of circulate shares in 2006 and 2009

Company Name	the proportion of circulate shares	
	2006	2008
HANDAN Iron and Steel	34.00%	100.00%
China Unicorn	30.66%	100.00%
Bao Steel	27.10%	100.00%
Wuhan Steel	30.00%	40.00%

All the data is from the company's annual report.

## SOE's Independent director

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- 48 of the SSE 50 enterprises' independent director is public issued.
  - 35 of 48 enterprises' independent director number is greater than or equal to 4 in 2009.
-

# The corporate governance of state-owned banks

- Credit rating rising
- Finance situation become better
- Strategic investors

ICBC's credit rating by Moody	2006	2008
Long-term Foreign Currency Bank Deposits Rating	A2	A1
Bank Financial Strength Rating	E+	D-

ICBC's finance situation(A share)	2006	2008
Return on total assets	0.71%	1.21%
Bad loan ratio	3.79%	2.29%
Core capital adequacy	12.23%	10.75%

Strategic investors	proportion(%)
Central Huijin Investment Ltd.	67.53
Hong Kong securities clearing company limited	21.81
Fullerton Financial Holdings Pte Ltd.	4.13

## The ownership concentration of SME going-down

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- In our research, 20 of 50 SME's ownership concentration in the SME board go down from 2006 to now.
  - 22 of 50 SME is equal between 2006 and 2009.
  - Only 8 SME's ownership go up.
-

## The proportion of circulate shares go up quickly

---

- In our research, 45 of 50 enterprises' proportion of circulate shares go up in SME board go up from 2006 to now. Only one enterprises keep constant.
  - 42 of 50 enterprises' proportion of circulate shares exceeded a half in 2009.
-

## SME's independent director

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- 48 of the 50 enterprises' independent director in the SME board is public issued.
  - 42 of the 50 enterprises' independent director's number is greater than or equal to 3 in 2009.
-

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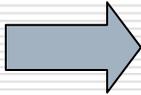
# **The challenges of China's Corporate governance structure**

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# Challenges

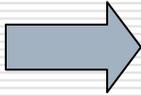
The state or the legal entity shares account for 54%. The director with government background account for 75.5%.

State-owned shares accounts for a comparatively dominant portion of most listed companies' shares in China.



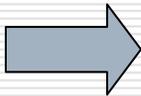
They are in charge of appointment of the company's management board. In this situation, the board of management is very likely only to stand for big shareholders' interests. Lead to "internal person control"

"double-layer" corporate governance of SOE



The parent firm was constructed by many existing subsidiaries. The property right of the parent firm is unified for economy security. But the property right of the subsidiaries is diversified for performance

Dual Supervisory Mechanism

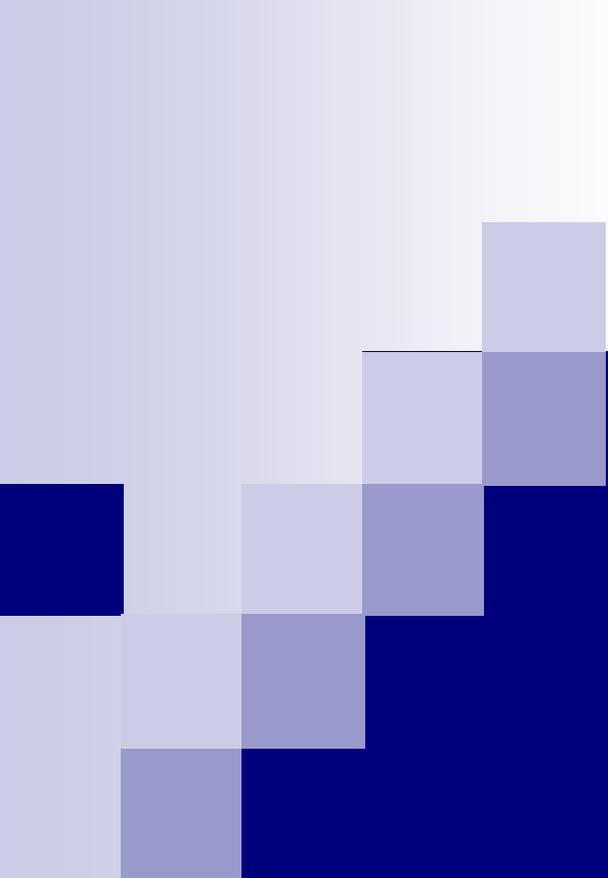


Overlapping of function and "no supervision"

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**Thanks**

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# **Institutes of Corporate Governance and Concentration of Control— *fitting to future requirements***

Svyatoslav I. Abramov

Deputy Head of Corporate Legislation Division

Corporate Governance Department

Ministry of Economic Development of the Russian Federation

# The main characteristics of Russian corporate legislation and legal enforcement

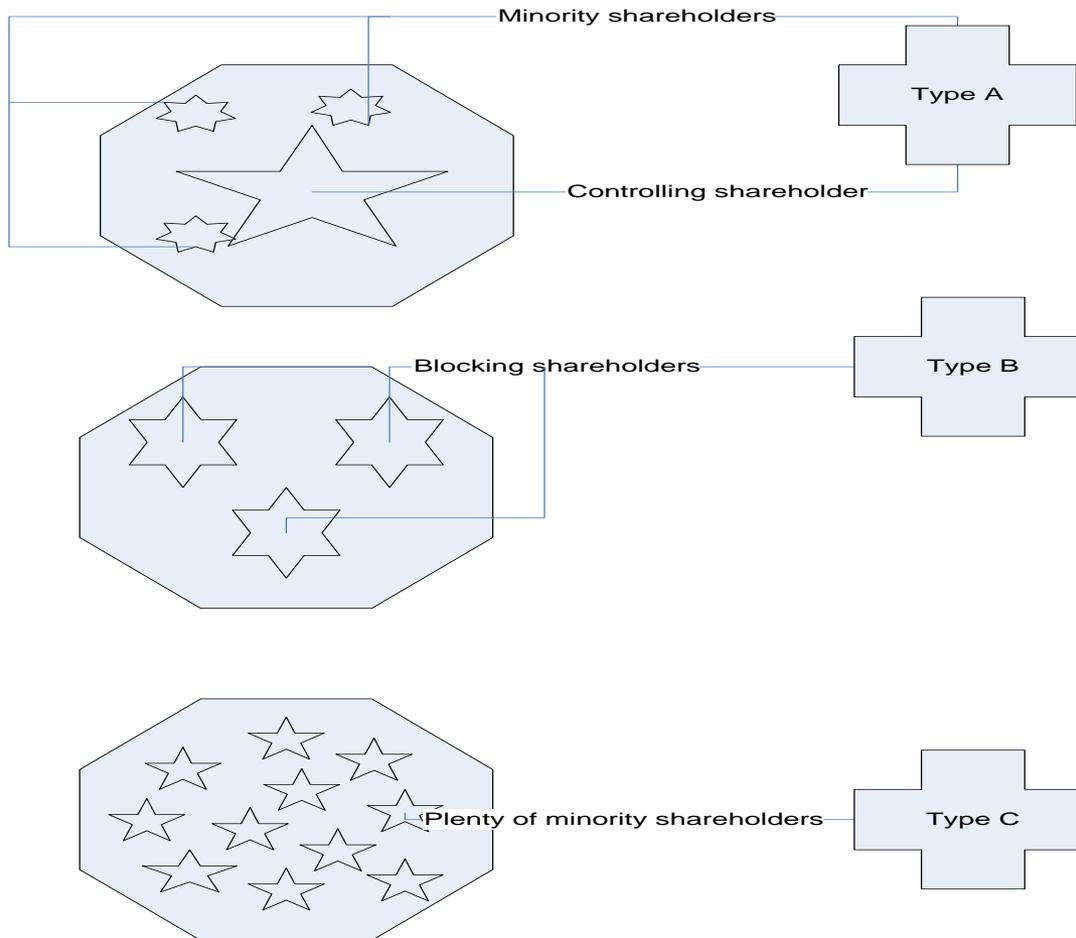
- Excessive regimentation of vertical («company - shareholder») relations
- Lack of legal clarity in horizontal («shareholder-shareholder») relations
- The main principle of corporate legislation: «what is not authorized is all prohibited»
- Discrepancy in legal regulation in favor of minority shareholders

!!!

Inadequacy of company law to the level of concentration of corporate control

High barriers for attracting investments and dispersion of control

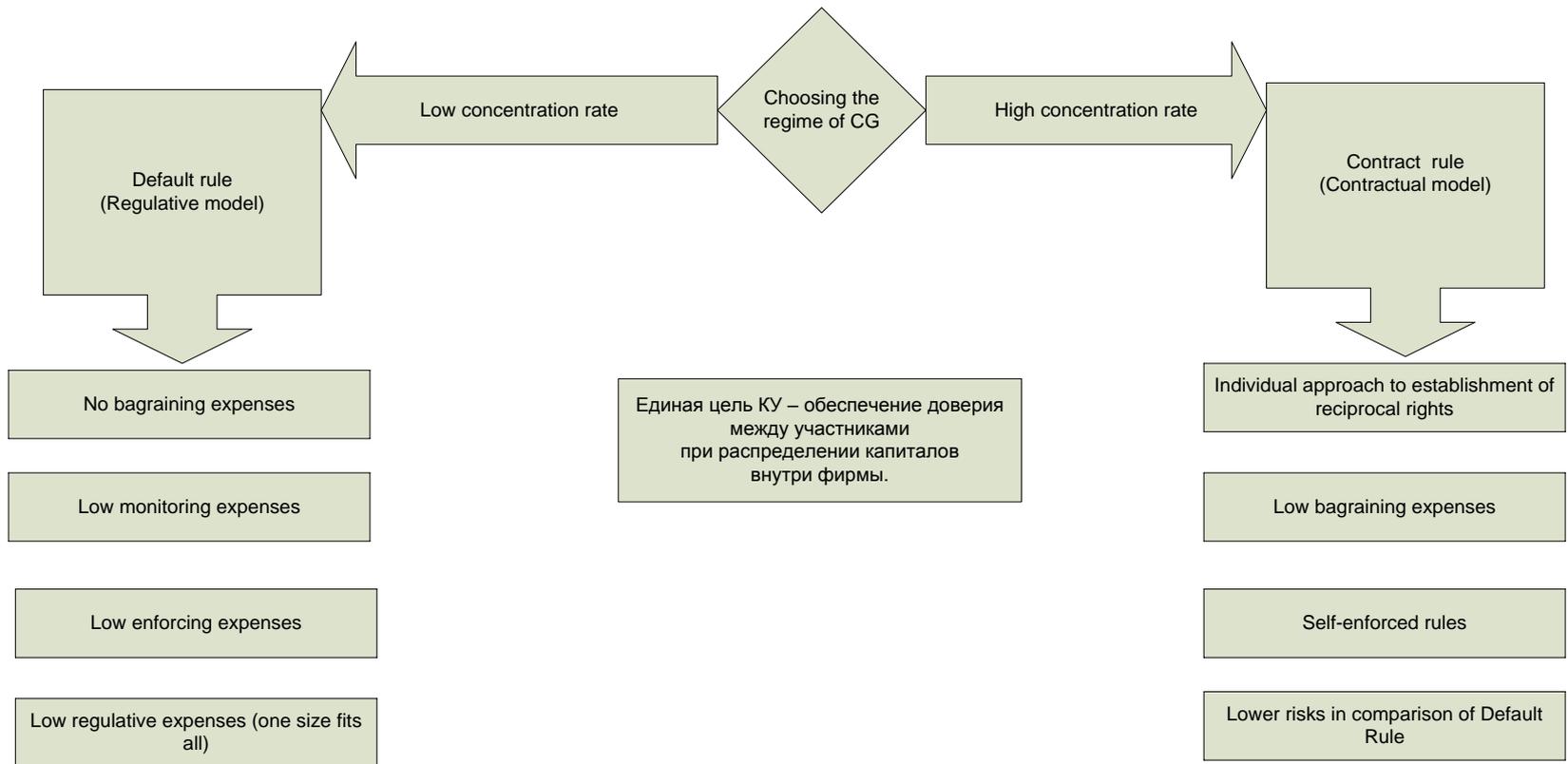
# Types of corporate control concentration



# Corporate control concentration (median rate - %)

■ United States: US_NYSE	8,8
US_NASDAQ	12
■ United Kingdom	9,9
■ Spain	34,5
■ Sweden	34,9
■ Netherlands	43,5
■ Austria	>50
■ Belgium	>50
■ Germany	>50
■ Italy	>50
■ Russia	>50

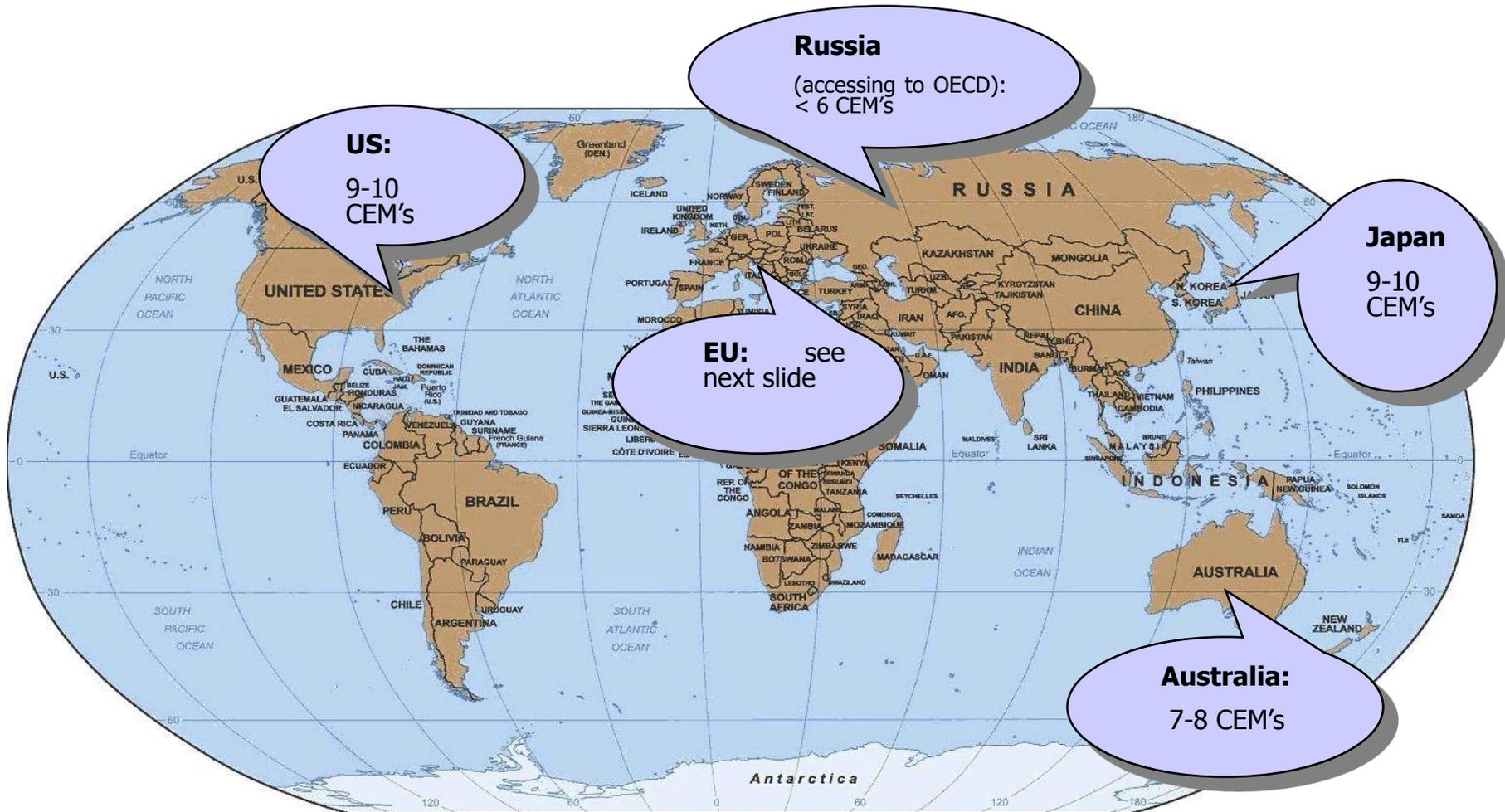
# Choosing the regime of corporate governance



# The main control enhanced mechanisms, CEM's

- Shareholder agreements
- Multi-voting shares
- Non-voting shares
- Priority shares
- Super-majority rule
- Depository certificates
- Voting ceilings
- Golden shares
- Pyramid structure
- Cross-shareholdings
- LLP, LLLP (England), SCA (France), KGaA (Germany)

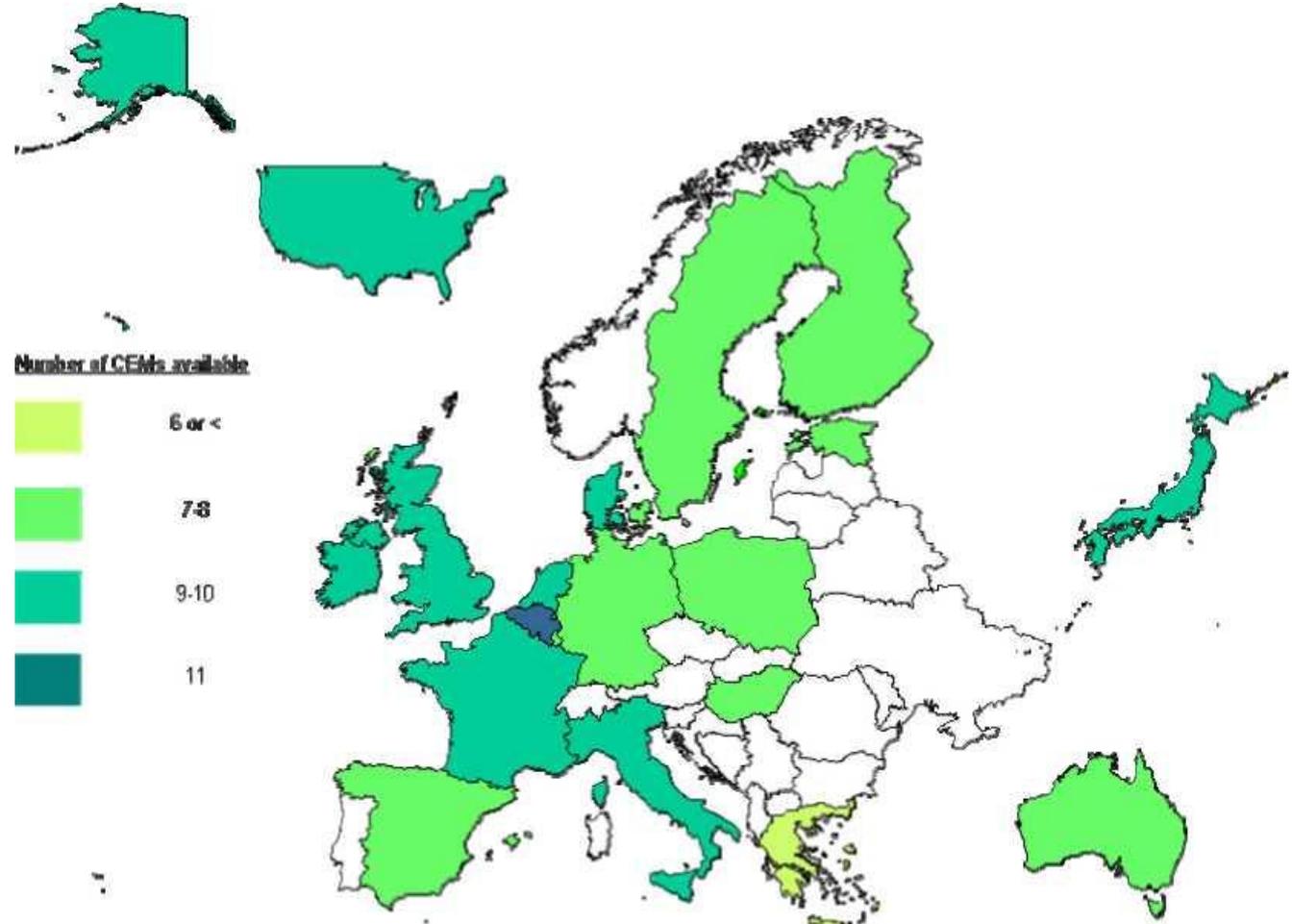
# Distribution of CEM's on OECD countries (part 1)

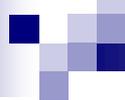


## Distribution of CEM's on OECD countries (part 2)

### EU countries:

- Greece <6 CEM's
- Spain
- Germany
- Poland
- Hungary 7-8 CEM's
- Sweden
- Finland
- Estonia
- Luxembourg
- Italy
- UK
- France 9-10 CEM's
- Denmark
- Belgium 11 CEM's
- Нидерланды 11 CEM's





# The main reasons for the concentration of corporate control are

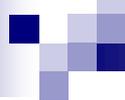
- Institutional (laws, judiciary system, governmental specifics)
- specifics of financial markets (predominance of bank capital or securities market)
- economic centralization and state participation

# Preconditions of the further change of structure of ownership in Russian companies

- Re-structuring of debts with an exchange for the capital
- Increase in a share of the state in the capital of private companies
- New forms of attraction of financing (a mezzanine financing with warrants, MBI, MBO and other exotic forms of attracting capital)

# What it is necessary to change in the company legislation?

- Directly to register an optionality principle
- To expand quantity of CEM's
- To edit mandatory provisions in default rule, having saved possibility of supplementary claims to the public companies from outside exchanges and regulators
- To advance an order of transition of the companies from one mode in other (public and private)
- To strengthen regulation and responsibility for information disclosing about beneficiary shareholders



The short review of the bills drafted by Ministry of economic development of Russia

## DIRECTIONS-PURPOSES:

- Protection of the property rights (in a broad sense)
- Increase of flexibility of the corporate legislation
- Cost-saving on realization of corporate procedures

# Protection of the property rights (in a broad sense)

- The federal statute from 30.12.2008 № 312-FZ (changes in the legislation on Limited Liability Companies)
- Draft bill «About modification of Arbitration Procedure Code and separate acts of the Russian Federation» regarding perfection of mechanisms of the permission of corporate conflicts (so called «Bill on Corporate conflicts »)
- The federal statute from 03.2009 № 73-FZ (changes in the legislation on contest of bargains of the debtor and the subsidiary liability of managers)

# The federal statute from 30.12.2008 № 312-FZ (changes in the legislation on Limited Liability Companies)

- More rigid rules of the account of the rights of participants of LLC on shares in an authorised capital stock
- «Quasi-recovery of shares» - the right of action about a share recognition for the participant who has lost it

# «Bill on Corporate Conflicts»

- Consideration of all requests on corporate dispute in one arbitration court
- Introduction of preliminary judicial review of extraordinary general meetings of shareholders
- Ordering of rules of the appeal of resolutions of the general meeting of shareholders, contest of high finances and interested-party transactions
- Derivative and collective actions

# The federal statute on contest of bargains of the debtor and the subsidiary liability of managers

- New means of returning of assets of the debtor illegally introduced in a threshold of bankruptcy under transactions::
  - With unequal satisfaction
  - Remission transactions
  - To the actions made on the basis of public acts
  
- The additional bases of responsibility of CEO of the debtor and «shadow directors»

# Increase of flexibility of the corporate legislation

## ■ Federal Statute № 312-FZ:

- Variability of positions of the charter about an order of redistribution of shares of LLC
- Introduction of institute of shareholder agreements (in LLC)

## ■ Federal Statute on shareholder agreements (in JSC) (comes into effect on 1-st of July 2009):

- Incorporation of institute of shareholder agreements in the Russian Company Law

# Cost-saving on realization of corporate procedures

- The Bill on affiliated parties, high finances and interested-party transactions
  - Change of approaches to definition of high finances
  - «Post factum» approval of transactions with a conflict of interests
  - approval of transactions with a conflict of interests on the future on the determinate sum
  - Approval of the maximum (minimum) parameters of separate conditions of the transactions hereabove
  
- Federal Statute on 30.12.2008 № 315-FZ:
  - Decrease in barriers to reorganization of banks and public companies in the form of merge and joining
  
- The bill providing various modes of a corporate governance for public and private companies



Thank you for your attention!

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# Governance in SMEs

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# Presentation Outline

- **SME Importance**
- **The Governance Context**
- **A Governance Framework for SMEs**
  - **Stakeholder well being**
  - **Structures and Processes**
  - **Scope and context**
- **Good Governance Practices**

# SME Importance – a reminder (1)

**Table III-2**  
**Number of Non-agriculture SMEs in Selected East**  
**and South-East Asian Countries, various years**  
**(In thousand)**

	Actual 1990	Actual 1996	Estimated 2000
<b>ASEAN</b>			
Brunei Darussalam	3.8	4.1	5.0
Cambodia	n.a.	25.3	25.4
Indonesia <sup>a/</sup>	12 045.6	16 416.0	16 000.0
Lao DPR	n.a.	n.a.	n.a.
Malaysia	n.a.	18.9	19.0
Myanmar	n.a.	34.4 <sup>b/</sup>	n.a.
Philippines	77.8	99.8	81.8
Singapore	31.5	47.0	54.0
Thailand	n.a.	311.5 <sup>c/</sup>	350.0
Viet Nam	1.0	30.0	200.0
<b>NON-ASEAN</b>			
China <sup>d/</sup>	8 608.2	7 253.4	8 000.0
Japan	6 484.3	6 433.6	6 139.7
Republic of Korea	2 094.6	2 677.1	2 700.0

*Sources:* Hall (2002: 12); Myint (2000: 5); Regnier (2000: 24); Tambunan (2000: 28), and Ministry of Industry, Mines and Energy of the Kingdom of Cambodia.

# SME Importance – a reminder (2)

**Table III-3**

**Relative Importance of Non-agricultural SMEs:  
Size and Employment in Selected East and South-East Asian Countries, 2000<sup>a/</sup>**

	SMEs as % of all firms	SME workforce as % of total employment
<b>ASEAN</b>		
Brunei Darussalam	98	92
Cambodia <sup>c/</sup>	99	45
Indonesia	98	88
Lao PDR	n.a.	n.a.
Malaysia	84	39 <sup>c/</sup>
Myanmar <sup>b/</sup>	96	78
Philippines	99	66
Singapore	91	52
Thailand	96	76 <sup>c/</sup>
Viet Nam	96	85
<b>NON-ASEAN</b>		
China	99	78
Japan	99	78
Republic of Korea	99	73

*Sources:* Hall (2002: 12 and 26), SMIDEC (2002: 5), Myint (2000: 5), Regnier (2000: 23), and Ministry of Industry, Mines and Energy of the Kingdom of Cambodia.

# Focus on Governance

- Has always been important
  - **Concerned with improved performance for benefit of stakeholders**
- Importance reinforced (especially for big business) by recent company collapses and excesses leading to global economic crisis

# Defining Institutional (Corporate) Governance

*the set of processes, policies, laws and institutions ...  
affecting the way a corporation is directed, administered or controlled ...  
to encourage the efficient use of resources and to require accountability of those resources ...  
require the expenditure of time, effort and resources (p.25).*

Source: Ramaswamy. V., Ueng, C.J. And Carl, L. (2008) Corporate Governance Characteristics of Growth Companies: An Empirical Study, *Academy of Strategic Management Journal*, 7, 21-33.

# Definitional Issues in Institutional Governance

1. Governance is not only the structure that facilitates internal control but is **also** the process by which the controls are implemented
2. There is a link between the nature of the governance systems and resource commitments (and hence performance)
  - **raises concern with the scope and context of factors that influence governance structures and processes**

# SME Issues in Institutional Governance

- Benefits associated with greater attention to governance issues in large publicly held firms **DO NOT** translate directly to small privately held firms
- SMEs have own unique structures, processes and contexts

# A Research Framework

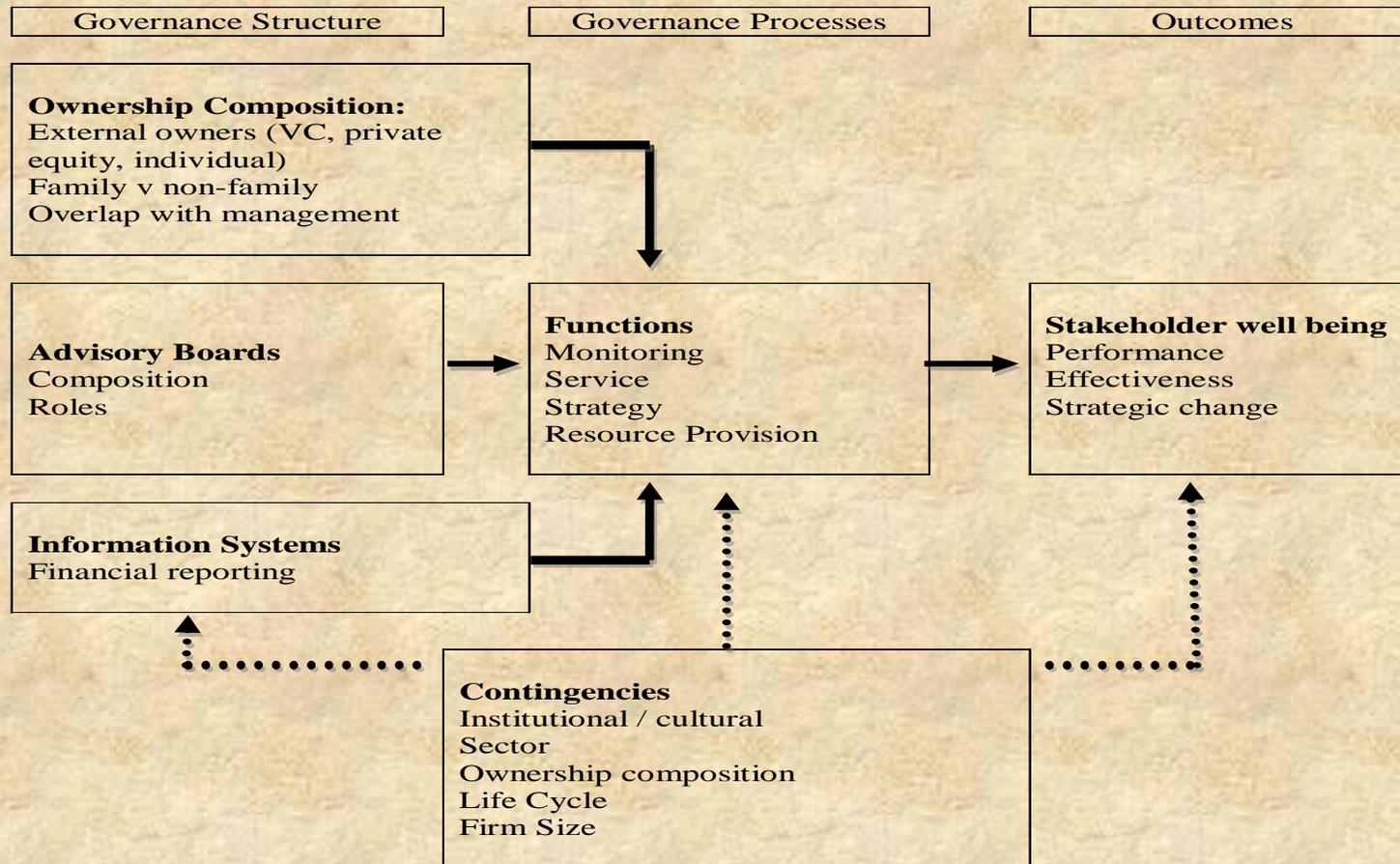


Figure 1: A proposed research framework for exploring governance in privately owned firms

# Stakeholder well being (1)

- **governance mechanisms affect the ability of SMEs to introduce strategic change**
- **governance variables related to ownership, the board of directors and the top management team all affect strategic change**

Source: Brunninge, O., Nordqvist, M. and Wiklund, J. (2007) Corporate Governance and Strategic Change in SMEs: The Effects of Ownership, Board Composition and Top Management Teams, *Small Business Economics*, 29: 295-308.

# Stakeholder well being (2)

- **Differs across countries**
  - **Shareholder**
  - **Financial institution**
  - **Other stakeholders**
    - **All above**

# Governance Structure and Processes

## role of boards

the number of structured boards in privately held firms is extremely low

variation in board structures across cultures

EG USA Shareholder

Europe Stakeholder

## data collection and reporting

EG Financial - Note: Small firm often only rudimentary

## processes

Board and information systems roles

– monitoring, service, strategy, resource provision

# ***The Scope and Context of Governance (1)***

**Institutional context**

**Sector characteristics**

**Ownership structure**

Individuals

Employees

Family members

**Life-cycle**

**Firm size**

# The Scope and Context of Governance (2)

**FIGURE 1**  
**Contrasting Approaches to Corporate Governance**

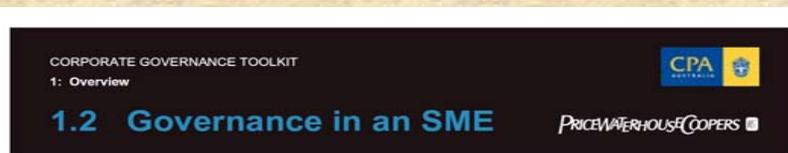
Control		Collaboration
Agency theory (economics and finance)	<b>Theoretical basis</b>	Stewardship theory (sociology and psychology)
	<u>Assumptions</u>	
Individualist Opportunism	<b>Human tendencies</b>	Collectivist Cooperation
Extrinsic	<b>Motivation</b>	Intrinsic
Goal conflict (risk differential) Distrust	<b>Management- owner relations</b>	Goal alignment (firm identification) Trust
	<u>Prescriptions</u>	
Discipline and monitor	<b>Board's primary role</b>	Service and advise
Outsiders Nonduality	<b>Board structure</b>	Insiders, social ties CEO duality
Reduces goal conflict, avoids increasing risk differential	<b>Executive stock ownership</b>	Fosters firm identification and long- term relations
Constrains self serving behavior	<b>Market for corporate control</b>	Curbs psychological commitment

# Good Governance (1)

*The King Report on Corporate Governance for South Africa identified seven primary characteristics of good governance:*

- *Discipline* - *commitment by the organisation's senior management to widely accepted standards of correct and proper behaviour*
- *Transparency* - *the ease with which an outsider can meaningfully analyse the organisation's actions and performance*
- *Independence* - *the extent to which conflicts of interest are avoided, such that the organisation's best interests prevail at all times*
- *Accountability* - *addressing shareholders' rights to receive, and if necessary query, information relating to the stewardship of the organisation's assets and its performance*
- *Responsibility* - *acceptance of all consequences of the organisation's behaviour and actions, including a commitment to improvement where required*
- *Fairness* - *acknowledgement of, respect for and balance between the rights and interests of the organisation's various stakeholders*
- *Social responsibility* - *the organisation's demonstrable commitment to ethical standards and its appreciation of the social, environmental and economic impact of its activities on the communities in which it operates.*

Source:



2nd EDITION. Dated: April 2005

*Corporate governance is consistently evolving to reflect the current corporate, economic and legal environment. This information sheet provides generic guidance on corporate governance practices. There will be specific legal and regulatory requirements in each country which are relevant to individual organisations. To be effective, corporate governance practices need to be tailored to the particular needs, objectives and risk management structure of an organisation. No person should undertake or refrain from any action based on the information in this publication without seeking advice from their professional advisers.*

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# Good Governance (2)

Key elements of, and issues relating to, an effective corporate governance framework

Board structure, composition and membership	Boardroom conduct, relationships and performance	Regulatory disclosures and shareholder communications	Robust risk management and compliance processes	Corporate social responsibilities	Strategy, planning and monitoring	Effective and appropriate committee structures	Relationship with management
<p>Board charter</p> <p>Director selection and appointment process</p> <p>NED independence and objectivity</p> <p>Remuneration</p> <p>Formal letters of appointment to directors</p> <p>Directors' Code of Conduct</p> <p>Separation of Chairman and CEO</p> <p>Skills/selection criteria and term of Chairman</p> <p>Skills/selection criteria and terms of directors</p> <p>Appropriate size</p>	<p>Agreed and understood roles and responsibilities</p> <p>Composition and organisation</p> <p>Induction and training</p> <p>Access to and relationship with independent advisors</p> <p>Management/board relationship</p> <p>Performance evaluation</p> <p>Board agenda, reporting, papers and minutes</p> <p>Frequency, conduct, management and outcomes of meetings</p> <p>Confidentiality of discussions</p> <p>Competent company secretary</p>	<p>Communication with shareholders and stakeholders</p> <p>Annual report disclosures</p> <p>Clear operational instructions and guidance:</p> <ul style="list-style-type: none"> <li>• Delegations of authority</li> <li>• Conflicts of interest</li> <li>• Policies and procedures</li> <li>• Definitions of role and responsibilities</li> </ul> <p>Clearly defined and well managed relationships with stakeholders and regulators</p> <p>Continuous disclosure obligations and company announcements</p>	<p>Policy/framework</p> <p>Board commitment, oversight and review</p> <p>Accountability</p> <p>Risk processes:</p> <ul style="list-style-type: none"> <li>• Risk identification</li> <li>• Risk assessment /measurement</li> <li>• Risk response</li> </ul> <p>Robust appropriate internal control and statutory and regulatory compliance frameworks</p> <p>Communication and training</p> <p>Monitoring, reporting and certifications</p> <p>CEO/CFO statements:</p> <ul style="list-style-type: none"> <li>• Financial reports present true and fair view</li> <li>• Effective and efficient risk management and control</li> </ul> <p>External auditor</p> <p>Internal audit</p>	<p>Code of Conduct / Code of Ethics:</p> <ul style="list-style-type: none"> <li>• Commitment to shareholders</li> <li>• Ethical standards</li> <li>• Expectation of employees</li> <li>• Privacy</li> <li>• Compliance</li> </ul> <p>Conflicts of interest</p> <p>Improper payments/ receipts</p> <p>Political contributions</p> <p>Integrity of advertising</p> <p>Employee relations</p> <p>Health and safety</p> <p>Social and environmental obligations</p> <p>Trading policy</p> <p>Whistleblowing</p>	<p>Vision and mission</p> <p>Strategic / corporate plan</p> <p>Business plans</p> <p>Annual budgets</p> <p>Monitoring and evaluation</p> <p>Management performance monitoring and assessment</p> <p>Management succession planning</p> <p>Component strategies e.g. technology, CAPEX</p>	<p>Charter and clarity in roles and responsibilities</p> <p>Structure</p> <p>Skills / selection criteria and terms of chairman and members</p> <p>Independence and objectivity</p> <p>Frequency of meetings</p> <p>Induction and training</p> <p>Relationships with third parties / access to external advice</p> <p>Annual performance review</p> <p>Relationship with and reporting to the board</p>	<p>Clarity of roles and responsibilities</p> <p>Value adding</p> <p>Open and honest</p> <p>Consultative</p> <p>Accessible</p> <p>Accountable</p> <p>Appropriate performance based remuneration</p> <p>Objective performance measures</p>

# SME Good Governance Issues (1)

- **Characteristics**

- **Discipline – individual / contextual**
- **Transparency – unintentional information opacity**
- **Independence – individual / contextual**
- **Accountability – to who?**
- **Responsibility – to who - individual / contextual**
- **Fairness – range of stakeholders**
- **Social responsibility – to who - individual / contextual**

# SME Good Governance Issues (2)

- **Board Structure**

  - ⌘ **formal v informal networks**

- **Boardroom conduct**

  - ⌘ **same as large**

- **Disclosures**

  - ⌘ **differential reporting - special regulations**

- **Risk Management**

  - ⌘ **controlled by abnormal investment strategy**

# SME Good Governance Issues (3)

- **Social responsibility**
  - ☞ **closer social ties**
    - **Planning**
      - ☞ **Individual / contextual**
- **Other committee structures**
  - ☞ **Relevance?**
- **Relationship with Management**
  - ☞ **Relevance?**

# Concluding comments

- Governance in SMEs is driven by different structures and process than those that apply to large firms
- SMEs may be able to achieve governance outcomes without strict internal and external structures and processes
- Does not mean SMEs can ignore good governance characteristics or that regulators can totally ignore governance requirements for SMEs BUT these must be considered in an appropriate contextual framework and not one transferred from large firms
- Researchers and Policy Makers need to develop a clear understanding of:
  - the what, why, when and how of governance in privately owned firms

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# **Corporate Governance applied to listed companies in Viet Nam**

**Presented by Dr. Nguyen The Tho**

**APEC TRAINING PROGRAM  
Hanoi, July 2-3, 2009**

# Introduction

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- In Vietnam, corporate governance is now becoming key issue at the heart of economic reform in Vietnam in generally and reform of stated owned enterprises (SOEs) and private sector reform to accelerate securities market development in particularly.
- With technical assistance of many international financial institutions such as WB and ADB, Vietnam has already developed the corporate governance standards based on best international practices.
- The foundation for corporate governance has been introduced in the Law on Enterprises 1999 and Model Charters, various government agencies including Stated Securities Commission (SSC), and State Bank of Vietnam (SBV) also have been trying to promote corporate governance.
- In 2002, three Model Charters containing best practices in corporate governance have been issued for listed companies, joint stock banks and equitized SOEs

# Legal Documents on Corporate Governance

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- Corporate Governance requirements in Vietnam are embedded through the enforcement of largely the following legal documents:
  - ► The Law on Enterprises (2005);
  - ► The Law on Securities (2006);
  - ► MoF's Decision 12-2007 dated 13 March 2007 - Establishes rules on corporate governance for application by PLCs. Article 4 specifically stipulates that all listed companies must draft and promulgate internal rules on corporate governance;
  - ► MoF's Decision 15-2007 dated 19 March 2007 - Establishes a Model Charter for all PLCs to follow and adopt at the minimum; and
  - ► MoF's Circular 38-2007 dated 18 April 2007 - Sets guidelines on disclosure of information on the Stock Market

# **Regulation on Corporate Governance in Decision 12-2007**

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**Chapter I:** General Provisions

**Chapter II:** Shareholder and General Shareholder Meeting

**Chapter III.** Members of the Board of Directors (BOD) and operation of the BOD

**Chapter IV.** Supervisory Board and Member of Supervisory Board

**Chapter V:** Preventing the conflict of interests and transactions with the stockholders of the company

**Chapter VI:** Information Disclosure and Transparency

**Chapter VII:** Regime of Report, Supervision and Violation Treatment

# Chapter I: General Provisions

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The terms indicated below shall have the following meanings:

**“Corporate Governance”** is a system of principles to ensure that a company is directed and governed in an effective manner for the sake of shareholders and that of other stakeholders. The principles on corporate governance shall include:

- To ensure an effective corporate governance structure
- To ensure the rights and interest of the shareholders
- To ensure the equal treatment among the shareholders
- To ensure the role of the stakeholders of the company
- To ensure the transparency in the operation of the company
- To ensure the effective management of the BOD and the Supervisory Board.

**Non-executive independent member of the BOD** is the person other than the Director or General Director, Deputy Director or Deputy General Director, Chief Accounting Officer and other managerial officers appointed by the BOD or the principal shareholders of a company.

## Chapter II: Shareholder and General Shareholder Meeting

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A shareholder shall have full rights as provided by the Enterprise Law, other laws and charter of a company, especially as follows:

- To have the right of free transferring shares, except for the cases of limited transfer as provided by regulations of laws and the company's charter;
- To have the right of being fully and regularly/irregularly informed on the company's operations;
- A listed company is prohibited to restrain the number of shareholders attending the General Shareholders Meeting. The listed company shall have to concurrently facilitate the shareholders to nominate proxy representative to attend the General Shareholders Meeting upon their request.

The listed companies shall have responsibility for building up an appropriate corporate governance structure; an effective communication system with shareholders in order to ensure that:

- The shareholders shall have full rights and interest as speculated by laws and the company's charter;
- The shareholders shall be equally treated, especially as for minority shareholders

## **Chapter II: Shareholder and General Shareholder Meeting**

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The company's BOD should establish a regular communication mechanism with the principal shareholders. In some material issues of the company, the BOD should take responsibility for informing and consulting the principal shareholders.

The principal shareholders should not to take advantage of their roles to cause losses and damages to the rights and interest of the company as well as that of the other shareholders

The shareholders shall have the rights to directly or indirectly, through their proxy nominee, attend all sessions of the General Shareholders Meeting. The shareholders shall have the rights to authorize the BOD or the depository institutions to represent them at the General Shareholders Meeting. In the case where the depository institutions are authorized, the listed company shall give guidelines on the authorization procedures and set up the proxy for shareholders as stipulated by the applicable laws.

## **Chapter III. Members of the BOD and operation of the BOD**

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A shareholder or a group of shareholders have been owning less than 10% of voting shares continuously for at least six months shall have the right to nominate one candidate for BOD's members; two candidates if owning from 10% to less than 30% ; three candidates if owning from 30% to less than 50% , 4 candidates if owning from 50% to less than 70%; and five candidates if owning 70% or more of voting shares.

A BOD's member shall be the persons who are not restricted to be BOD's member by the applicable laws and the Company's charter. A BOD's member may not be the a shareholder of the Company.

Company's Charter may stipulate the requirements for a BOD member qualifications. But the requirements shall not violate the principal rights of a shareholder.

To ensure the seperation between supervision function and management function, the listed company should avoid the situations where a BOD's member holds a position in the Management Board.

## **Chapter IV. Supervisory Board and Member of Supervisory Board**

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A member of the Supervisory Board shall not be a person who is restricted to be a member of Supervisory Board by the applicable laws and the Company's Charter. A member of Supervisory Board shall have the adequate qualifications and experience. Members of Supervisory Board may not be shareholders of the Listed Company.

Head of Supervisory Board shall have accounting qualifications and shall not work in the Accounting and Finance Department of the company. He/she also shall not be the Financial Chief Executive Officer of the Company

Members of the Supervisory Board shall have the right to access information and documents relating to the operations of the company. Members of the Board of Directors, Manager or CEO and officers shall have to provide information required by the members of the Supervisory Board.

## Chapter IV. Supervisory Board and Member of Supervisory Board

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The Supervisory Board shall

- be responsible in front of the shareholders of the company for their supervisory activities.
- be responsible for supervising the financial conditions of the company, the validity of the activities of members of the Board of directors, members of the Board of Management, managerial officials of the company, the coordination between the Supervisory Board and the BOD, BOM and shareholders, and other duties in accordance with the applicable laws and the Company's charter to protect the legal interests of the company and shareholders.
- convene the meetings at least twice a year, number of members who participate in the meeting shall be two third of the total members of the Supervisory Board. The minute of meeting of the Supervisory Board shall be made clearly and in details. The secretary and members of the Supervisory Board who participate in the meeting shall have to sign on the minute of meeting.

## Chapter IV. Supervisory Board and Member of Supervisory Board

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In the meetings of the Supervisory Board, the Supervisory Board shall have the right to request members of the Board of Directors, Board of Management, internal auditor and independent auditor to participate and answer the questions that the Supervisory Board are concerned.

The Supervisory Board shall

- be able to report directly to the State Securities Commission or other State management authorities in case where the violations of the laws or company's charter by members of the Board of directors, Board of management and managers are detected.
- have the right to select and make proposals to the shareholders general meeting to approve the independent auditor to audit the financial statements of the listed company.
- be responsible for reporting at the shareholders general meeting as provided in Article 8 of the Regulation.

## **Chapter V: Preventing the conflict of interests and transactions with the stockholders of the company**

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- **Responsibility of honesty and avoiding the conflict of interests of the members of the Board of directors, Board of management**
- Members of the Board of directors, General Director or the CEO and managers shall not be allowed to use the business opportunities that may benefit the company for their own purpose; shall not be allowed to use the information that they obtain from their positions to benefit themselves or for the interests of other organizations or individuals.
- Members of the Board of directors, General Director or the CEO and managers shall have the duties to inform the Board of directors of the contracts between the company and that member of the Board of directors or other people related to that member. These people shall be allowed to continue the contracts when members of the Board of directors have no related interests decide not to bring this into account.

## **Chapter V: Preventing the conflict of interests and transactions with the stockholders of the company**

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- The company shall not be allowed grant the loans, guarantees, or credits to members of the BOD, general director or the CEO, managers and their families or any legal entities that the above people have financial interests, except decided otherwise by the shareholders general meeting.
- Members of the BOD shall not be allowed to vote for transactions in which that member or a person who has relation with that member participates, including the case where the interest of that member of the BOD in this transaction has not been identified and even though it is whether the physical or immaterial interests. These transactions shall be described in the statement of the financial report of the same period and disclosed in the annual report.
- Members of the BOD, General director or the CEO, managers or people who have relations with the above objects shall not be allowed to use the information of the company that have not been allowed to be disseminated to disclose to others or make their own transactions.

# **Chapter V: Preventing the conflict of interests and transactions with the stockholders of the company**

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## **Transactions with related people**

- When doing transactions with related people, listed company shall have to sign a written contract on the principles of equality, voluntary. The contents of the contract shall be clear and specific. The conditions of signing, amendments and supplements, validity, price and the basis to identify the price of the contract shall have to be disclosed as required by applicable laws.
- Listed company shall apply necessary measures to prevent related people from interfering in the operations of the company and harming the interests of the company by making use of the monopoly on buying and selling channels, manipulating the prices.
- Listed company shall have to apply necessary measures to prevent shareholders and related people from making transactions causing the decrease of capital, losses of assets and other resources of the company. Listed company shall not be allowed to provide financial guarantees to shareholders and related people.

# **Chapter V: Preventing the conflict of interests and transactions with the stockholders of the company**

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## **Ensuring the legal interests of the stockholders of the company**

- Listed company shall have to
- respect the legal interests of the stockholders of the company including banks, creditors, employees, consumers, vendors, community and other people who have interests relating to company.
- actively cooperate with the stockholders of the company by:
  - Providing full and necessary information to banks and creditors to help them evaluate the performance and financial conditions of the company and make decisions;
  - Encouraging them to raise their ideas on the business performance, financial conditions and important decisions relating to their interests by directly communicate with the Board of directors, Board of management and the Supervisory Board.
- pay attention to the social wealth fare, environment protection, common interests of the community, and social responsibilities of the company.

# Chapter VI: Information Disclosure and Transparency

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## Regular Information Disclosure

- Listed company shall be responsible to disclose fully, exactly and in time the regular and irregular information on the situation of its business, operation and corporate governance to the shareholders and public. Contents and manners of the disclosure shall be complied with the law and company charter. In addition, listed company shall have to disclose in time and adequately on the other information if they may have an effect on the prices of securities and effect on the decision of the shareholders and investors.
- Information Disclosure shall be conducted by the manners which ensure that the shareholders and the public investors can access it in a fair way at the same time. Words used in the disclosure shall be clear, easy to understand and not cause the misleading to the shareholders and public investors.

# **Chapter VI: Information Disclosure and Transparency**

## **Disclosure on the corporate governance situation**

Listed company shall have to disclose information on its corporate governance situation, include the following contents:

Members and structure of the BOD and Board of Supervision;

Actions performed by the BOD and Board of Supervision;

Actions performed by the non-executive independent members of BOD;

Actions performs by the sub-committee of the BOD;

Plans to enhance efficiency in the corporate governance;

Remunerations and expenses for the members of the BOD, Board of Management (BOM) and Board of Supervision (BOS);

Information on the transactions of the company share made by the members of the BOD, BOM and BOS, major shareholders as well as other transactions made by the members of the BOD, BOM and BOS and their relevant persons.



# **Chapter VI: Information Disclosure and Transparency**

## **Information Disclosure on the major shareholders**

- The listed company shall have to disclose periodically on every principal shareholder, including the following subjects:
- Full name, date of birth (as for individual shareholders);
- Contact address;
- Occupation (as for individual shareholders), areas of business (as for institutional shareholders);
- Number and percentage of its ownership in the company;
- The change of ownership of the principal shareholders;
- The information may cause big changes in terms of shareholders of the company;
- The principal shareholders increase, decrease or pledge the company's stocks.

# Chapter VI: Information Disclosure and Transparency

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## Organization of disclosure

- Listed company shall have to set up the mechanism of information disclosure which cover the following functions:
- Developing, promulgating the bylaws on the information disclosure as stipulated in the Annex 2 attached to this regulation;
- Assigning at least 1 disclosure officer.
- The disclosure officer may be the Company's secretary or a concurrent manager of the company.
- The disclosure officer shall have to be:
- Having knowledge on accounting, financial, having a certain skills in the IT;
- Having full name, telephone number be public so that the shareholders can easily access to;
- Having enough time to carry out his/her functions, in particularly, to contact with the shareholders, receiving shareholders' opinions, feeding back their comments periodically and performing corporate governance as stipulated by law;
- Having responsibility to disclose information of the company to the public investors as stipulated by law and Company Charter

# Chapter VII: Regime of Report, Supervision and Violation Treatment

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- Listed company shall be responsible to report annually to the SSC on the implementation of corporate governance as stipulated by this regulation, the Stock Exchanges and other authorities as stipulated by law.
- Listed company and its related persons, shareholders shall be subject to the supervision in terms of compliance of corporate governance by the SSC, the Stock Exchanges and other authorized agencies as stipulated by laws.
- Administrative punishment shall be imposed on the listed company for having violations or failing to comply with this Regulation without disclosure and report to the SSC

# Corporate Governance in Vietnam's Listed Companies

- According to OECD's basic principles of performance, listed companies on Vietnam stock exchange have well carried out:
- ***Shareholders protect and equality treatment principle:***  
Many company charters of listed companies previously did not have compliant provisions with the Law on Enterprise and corporate governance principles, but now have revised and given rights to shareholders such as the right to attend shareholders meeting. Shareholders are therefore given opportunities to monitor company operation
- ***Financial information disclosure:***  
Companies are increasingly becoming transparency by releasing financial information regularly, irregularly and by request; by disclosing prospectus with setting a division or person in charge disclosure of information, as well as auditing services and announcing their financials through the mass media.

# Corporate Governance in Vietnam's Listed Companies

- SSC has set up criteria to monitor and frequently supervise listed companies in financial disclosure and corporate governance. Not only this will increase responsibilities of the BOD with shareholders and market regulators, but also guarantee that the shareholders will be informed more regularly
- ***Reinforcing the role of shareholders and stakeholders:*** through the financial disclosure and market regulation (state securities commission), benefits to shareholders are improved on all aspects; most listed companies have no debt with government, or overdue debts; employee benefits are increased.
- ***Board of director's responsibilities with shareholders:*** by complying with the rules and policies on corporate governance, by monitoring closely investors and company creditors' transactions, especially those of the management team members, and by financial disclosure, board of director's responsibilities with shareholders have increased, hence improving their monitoring quality

# Current Problems

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- (1) highly concentrated ownership structure,
- (2) weak protection of shareholders' rights,
- (3) lack of disclosure and transparency,
- (4) weak independent board of directors and nomination committees,
- (5) weak supervisory board, and
- (6) weak external governance structure and law enforcement.

# Level of Compliance

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- Generally, the level of compliance to the principles of corporate governance in listed companies is low. Listed companies tend to postpone implementation of corporate governance although there is formal regulation, which obliges the listed companies to implement certain principles of corporate governance.
- Firstly, there is inequality in treatment between different shareholders inside and outside companies, sale of shares, benefits received by majority and minority investors, information exposure between classes of shareholders.
- Secondly, there have been weaknesses in financial disclosing, evidently as organisations do not update information or never update on time, ambiguous figure, unqualified audit and undisclosed benefits received by major shareholders, board of directors, management team members etc.

# Improvements of the Best Practices of Corporate Governance for Listed Companies in Vietnam

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- (1) accelerating shareholder rights;
- (2) improving disclosure and supervision of insider and related party transaction;
- (3) strengthening legal liabilities and enforcement;
- (4) promoting independent directors on the board and clearly defining the functions of supervisory board; and
- (5) improving the quality of the external governance structure.

# Conclusion

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- In order to strengthen the corporate governance system, further legislation reforms are necessary by learning appropriate experiences from OECD countries suitable with legal, cultural and institutional issues of Vietnam.
- Along with legal rules, law enforcement need to be strengthened to resolve efficiently corporate governance disputes to protect investors and stakeholders. Beside that, the codes of corporate governance should be developed to improve governance practice of listed companies.
- Accounting and auditing standards need to be raised to meet international standards. Board Committees, especially audit committee need to be formed as a remarkable recommendation to compliance of best practices of corporate governance.

# Conclusion

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- The roles and duties of the Supervisory Board and audit committee should be clearly defined in corporate governance. Improving corporate governance should be related and cooperated to all parties involved, not only the regulators, listed companies, investors, auditors, but also stakeholders and public media to speed up the change and development in Vietnam's securities market and corporate governance structure.
- A key solution among all recommended solutions need to be high priority considered that is providing education and training for all parties involved in corporate governance by establishing a nationwide training centre for corporate governance in Vietnam.

# Cooperation with the World Bank to Strengthen Work on Corporate Governance

## APEC Training Course on Corporate Governance *Session 4*

*Presentation by  
Paolo R. Vergano  
Partner, FratiniVergano – European Lawyers*

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  1. The corporate governance reform in the EC
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  3. Key players in the EC, dealing with the issue of corporate governance
  4. An non-exhaustive list of the EC instruments, developed to promote a corporate governance reform
  5. The most recent initiatives on corporate governance

# I. The World Bank Report on the Observance of Standards and Codes

## 1. Introduction to the global initiative on corporate governance

- Definition of corporate governance:
- Corporate governance is a system by which companies are directed and controlled. Corporate governance focuses on the problems that result from the separation of ownership and control, and addresses, in particular, the principal-agent relationship between shareholders and directors.
- The 1999 Principles of the Organization for Economic Co-operation and Development (OECD) provide a more comprehensive definition of corporate governance:
- *“Corporate governance involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined”.*

- **The 1999 OECD Principles of Corporate Governance**
- In 1999, the OECD developed the Principles of Corporate Governance, which have since become an international benchmark for corporate governance reforms. The Principles are intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries.
- The OECD Principles have been expected to promote OECD members' policies designed to achieve the highest sustainable economic growth and employment in member countries, to maintain financial stability, as well as to contribute to the expansion of world trade and to the development of the world economy.

- The OECD Principles cover the following six areas:
  - I) Ensuring the basis for an effective corporate governance framework;
  - II) The rights of shareholders and key ownership functions;
  - III) The equitable treatment of shareholders;
  - IV) The role of stakeholders;
  - V) Disclosure and transparency; and
  - VI) The responsibilities of the board.

## 2. The role of the World Bank in monitoring the corporate governance reform

- Numerous studies on corporate governance show that better corporate structure benefits firms through lower capital cost, greater access to financing, better firms' performance, and more favorable treatment of all stakeholders.
- Considering the increasing importance of monitoring corporate governance reform, the World Bank has committed to conduct a worldwide assessments of corporate governance under the overall program of Reports on the Observance of Standards and Codes (hereinafter, the ROSC).

### 3. The assessment procedures under the ROSC

- The assessment of corporate governance practices under the ROSC measures the legal and regulatory framework in the examined country, as well as practices and compliance of listed firms.
- The assessment is based on the OECD Principles of Corporate Governance and addresses six areas set out in the OECD Principles.
- The ROSC assessment is initiated on countries' own initiative and on a voluntary basis.

- The assessment procedures under the ROSC II:
- After obtaining an invitation from a country's government, the World Bank commissions a local consultant to fill the questionnaire designed to capture this country's corporate governance legal and regulatory framework, and information on corporate governance practices.
- Afterwards, World Bank experts visit the country to meet with government officials and market participants, and draft an assessment report.

- The assessment is divided into the following four parts:
  - I) Executive summary;
  - II) Capital market overview and institutional framework;
  - III) Principle-by-principle review, including policy recommendations; and
  - IV) Summary of recommendations highlighting areas for legislative reform, institutional strengthening and voluntary/private initiatives.
- The assessments tend to differentiate between compliance with the legal and regulatory framework and actual situation in the assessed countries.

- The outcome of the World Bank's assessment:
  - At the end of investigation, the World Bank publishes the Assessment Report on its website, if there are no objections of the country involved.
  - Among the EC Member States, the World Bank published on its website the corporate governance country assessments of Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.

## II. The EC Approach to Corporate Governance

- 1. The corporate governance reform in the EC
- In July 2001, the European Commission set up the Group of High Level Company Law Experts (the so-called 'Winter Group'), whose task was to prepare a proposal for an EC Directive and to advise to the Commission on how to establish a modern EC framework for company law, which would include corporate governance.
- In March 2002, at the Barcelona European Council, the Declaration was made that responsible corporate governance was the precondition for economic efficiency. The Council required measures to be taken at the EC level to ensure the transparency of corporate governance and corporate accounts and to better protect shareholders and others concerned (the Barcelona Declaration was preceded by a series of worldwide financial scandals resulted from a non-transparent corporate governance and improper accounting practices).
- In April 2002 in Oviedo, the Commission and the ECOFIN Council agreed to extend the mandate of the Winter Group to review a range of specific issues related to corporate governance and auditing, such as management remuneration, the role of non-executive and supervisory directors, the responsibility of management for financial statements, and auditing practices.

- The corporate governance reform in the EC II:
- On 21 May 2003, the European Commission issued the Communication to the Council and the European Parliament proposing a range of legislative initiatives on corporate governance, *i.e.*, “*Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward*” (hereinafter, the Commission Communication of 2003).
- The Commission Communication of 2003, while embodying some suggestions of the Winter Group presented in the Report of 4 November 2002, formulated the fundamental principles for further legislative processes relating to the improvement of corporate governance in the EC.

## 2. The Commission Communication of 2003

- The Commission Communication of 2003 contains the following main elements:
  - I) It explains why the European regulatory framework for company law and corporate governance needs to be modernised;
  - II) It defines the key policy objectives which should inspire any future action to be taken at the EC level in these areas;
  - III) It includes the Action Plan, prioritised over the short, medium and long term; and
  - IV) It indicates which type of regulatory instrument should be used, and by when.

- Main elements of the Commission Communication of 2003
- I) The key reasons why company law and corporate governance needs to be modernised in the EC:
  - The trend of European countries to engage in cross-border operations in the Internal Market;
  - The integration of European capital markets;
  - The rapid development of new information and communication technologies; and
  - The expansion of the EC.

- Main elements of the Commission Communication of 2003
- II) The key policy objectives in the fields of company law and corporate governance of the EC:
  - Harmonisation of the Member States' rules pertaining to company law and corporate governance, as well as to accounting and auditing;
  - Providing freedom of establishment for companies throughout the EC;
  - Ensuring equivalent protection for shareholders and other parties concerned with companies;
  - Fostering cross-border cooperation between companies in different Member States;
  - Promoting competitiveness and efficiency of business; and
  - Encouraging discussions among Member States on the modernisation of company law and corporate governance.

- Main elements of the Commission Communication of 2003
- III) The Action Plan's initial objectives:
  - Development of a legislative framework aiming at helping shareholders to exercise their corporate rights across the EC;
  - Introduction of an Annual Corporate Governance Statement. Listed companies should be required to include in their annual documents a coherent, descriptive statement, covering the key elements of their corporate governance structures and practices; and
  - Adoption of a Recommendation aimed at fostering the role of independent non-executive or supervisory directors. The EC should devise minimum standards for Member States on the creation, composition and role of the nomination, remuneration and audit committees.

- Main elements of the Commission Communication of 2003
- IV) The Action Plan's initial objectives:
- Adoption of a Recommendation on Directors' Remuneration. Member States should introduce an appropriate regulatory regime giving shareholders more transparency and influence, which, *inter alia*, includes detailed disclosure of individual remuneration; and
- Creation of a European Corporate Governance Forum to promote coordination and convergence of national corporate governance codes and of the way they are enforced and monitored.

- Main elements of the Commission Communication of 2003
- V) Types of regulatory instruments applied in the EC to promote a corporate governance reform:
  - Binding instruments:
    - I) Council Regulations;
    - II) EC Directives;
    - III) Decisions.
  - Non-binding instruments:
    - I) Recommendations;
    - II) Green Paper (a discussion document released by the European Commission to stimulate debate and launch a process of consultations);
    - III) Position Papers (views and information presented to the European Commission in response to a consultation process).

- Main elements of the Commission Communication of 2003
- It should be noted that, according to the Commission's opinion, although a range of specific rules and principles pertaining to corporate governance need to be agreed to at the EC level in Directives or Recommendations, in general there is little need for the EC to develop a pan-European corporate governance code, because of the following reasons:
- I) The introduction of a pan-European code would not result in full information for investors about the key corporate governance rules applicable to companies across Europe, since these rules would still be based on national company laws that are in certain aspects widely divergent;
- II) The introduction of such a code would not lead to the improvement of corporate governance in the EC, since this code would have either to allow for many different options or would include only general principles; and
- III) The initiative to harmonise all the elements of a European code cannot be achieved in a reasonable timeframe.

### 3. Key players in the EC dealing with the issue of corporate governance:

- The EC Institutions, including the European Commission, the European Parliament, and the European Council
- Consultative Bodies in the field of Corporate Governance:
  - I) The European Corporate Governance Forum (established in 2004 by the European Commission to improve the convergence of national codes of corporate governance and to consult the Commission on policy issues in the field of corporate governance. The Forum is comprised of 15 non-governmental experts); and
  - II) The Advisory Group on Corporate Governance and Company Law (established in 2005 by the Commission to assist in the preparation of corporate governance and company law measures. The group comprises non-governmental experts with various professional backgrounds).

#### 4. A non-exhaustive list of the EC instruments, developed to promote a corporate governance reform:

- Directive 2007/36/EC of the European Parliament and of the Council on the exercise of certain rights of shareholders in listed companies;
- Directive 2005/56/EC of the European Parliament and of the Council on cross-border mergers of limited liability companies;
- Commission Recommendation complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies (C(2009) 3177);
- Commission Working Document “*First progress report on the strategy for the simplification of the regulatory environment*” (COM(2006) 690 final);
- Communication from the Commission to the Council and the European Parliament “*Modernising Company Law and Enhancing Corporate Governance in the European - A Plan to Move Forward*” (COM (2003) 284 final).

## 5. The most recent initiatives on corporate governance

- The 2006 review of the Commission's Action Plan (the review prioritized the strengthening of shareholders' rights, but acknowledged the need to pause and allow both businesses and investors more time to digest the already adopted legislation);
- In 2007, the Commission published two reports on the implementation by Member States of the Recommendations on independent directors and directors' remuneration (the reports concluded that all Member States have issued corporate governance codes and most codes apply on a comply-or-explain basis, as it was recommended in the Action Plan); and
- In May 2007, the Commission initiated a consultation on the need for further measures to supplement the Directive on Shareholders' Rights.

**Thank You!**

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private sector | development

# Corporate Governance Department World Bank Group

## Corporate Governance ROSC

Charles T. Canfield  
IFC Senior Corporate Governance Officer  
July 3, 2009

# Who we are...

## Corporate Governance at the WBG

private sector | development

### Global Corporate Governance Forum

- Technical assistance to support corporate governance reform
- Corporate governance codes
- Support to IODs
- Media training
- Development of new toolkits
- Awareness raising

### World Bank

- Assessments of corporate governance framework
- Support to WB programs, projects, and policy
- Implementation of corporate governance reform projects.

EAP

ECA

LCR

AFR

MNA

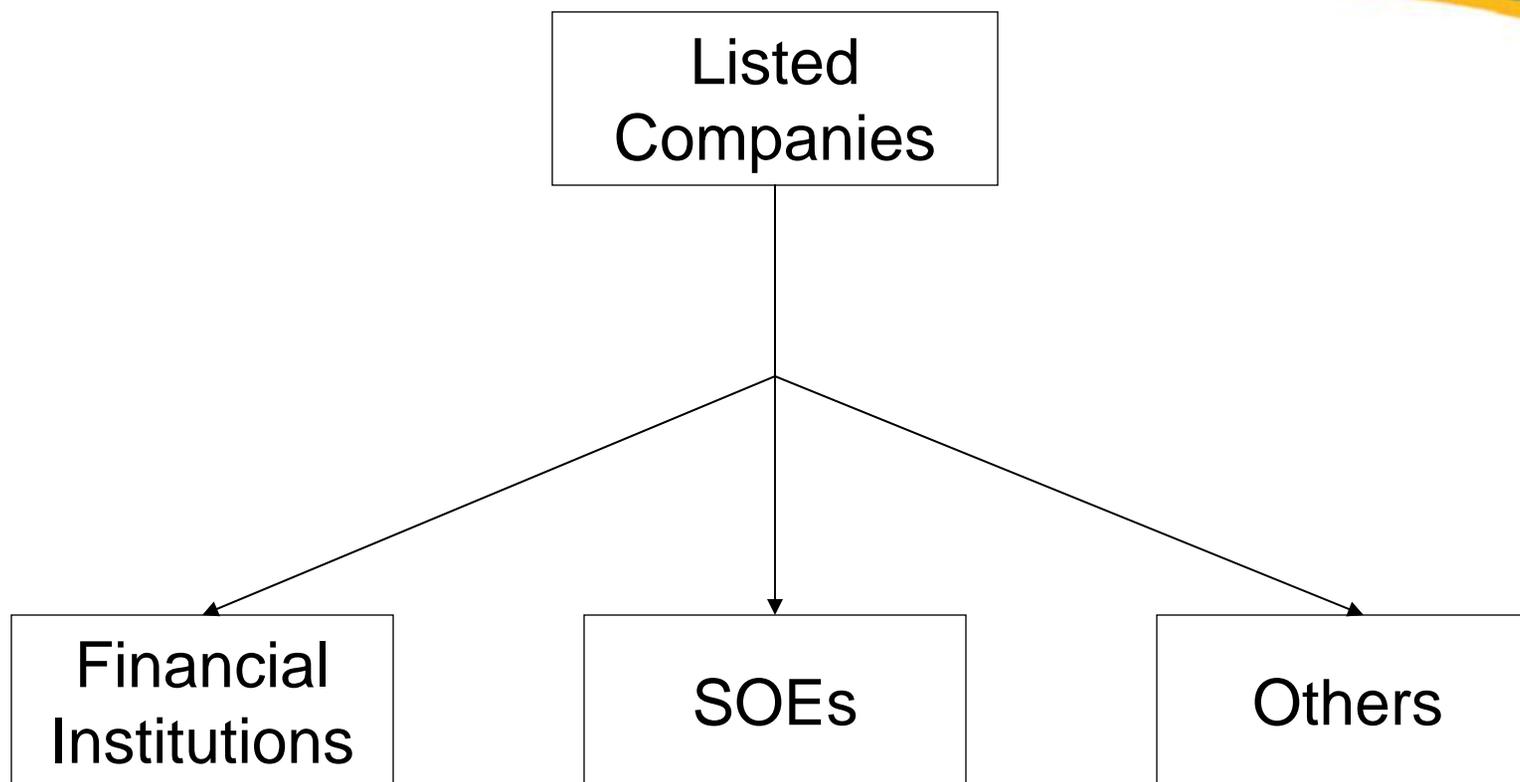
### IFC

- Evaluates client companies
- Recommends improvements
- Helps clients implement best practice
- Technical assistance



# Evolution towards public interest entities

private sector | development



# Tools for corporate governance reform

## Corporate Governance Framework

- **Awareness raising**
- **Legal and regulatory reform**
  - Company law
  - Securities law
  - Secondary regulation
  - Listing rules
- **Codes of Best Practice**
- **Court and judicial reform**
- **Institutional reform and capacity Building**
  - Securities Commission
  - Stock exchanges
  - Central depositories
  - Company registrars
  - Audit oversight bodies
  - Institutes of Directors
  - Shareholder Associations
- **Accounting and audit reform**
- **Company-level training and other interventions**

## Banks / Financial Institutions

- Capacity building and supervisory training
- Banking law reform
- Corporate governance regulations
- Corporate governance codes
- Bank-level training and other interventions

## State-Owned Enterprises

- Capacity building of State ownership entities
- Supporting legal reform
- Development of ownership policies
- Training and other interventions
- SOE-level improvement programs

# Overview of Corporate Governance ROSC Program

# Corporate Governance ROSC Assessments

private sector | development

- Corporate governance is one of 12 standards and codes assessed by IMF and World Bank
  1. Data Dissemination
  2. Fiscal Transparency
  3. Monetary and Financial Policy Transparency
  4. Banking Supervision
  5. Securities Regulation (IOSCO)
  6. Insurance Supervision
  7. Payments Systems
  - 8. Corporate Governance**
  - 9. Accounting** }
  - 10. Auditing** }
  - 11. Insolvency and Creditor Rights**
  12. Anti-Money Laundering

# Overview: Corporate Governance ROSC Assessments

- Country participation is voluntary
- Assessments are benchmarked against the OECD Principles of Corporate Governance
- Standardized and systematic diagnostic, including policy recommendations
- 68 carried out since 2000 in 52 countries
- Updates: measure progress over time
- Publication (voluntary) at:  
[http://www.worldbank.org/ifa/rosc\\_cg.html](http://www.worldbank.org/ifa/rosc_cg.html)

# ROSC Assessments: Country Coverage

private sector | development

2001	2002 - 2004			2005 - 2006		2007-
<i>Brazil</i>	Georgia	Mauritius	Egypt 2	Armenia	Uruguay	<i>Zambia</i>
Croatia	Czech 2	<i>Brazil 2</i>	Slovenia	Poland 2	Bosnia	<i>Argentina</i>
Czech Rep.	Lithuania	Hungary	<i>Russia</i>	Ghana	Senegal	<i>Croatia 2</i>
Egypt	Bulgaria	<i>Ukraine</i>	India 2	Pakistan	Ukraine 2	<i>Malawi</i>
India	Latvia	Korea	Peru	Thailand	Vietnam	<b>Bangladesh</b>
Malaysia	Morocco	Hong Kong	Romania 2	Malaysia 2	Philippines 2	<b>Kenya</b>
Philippines	<i>Romania</i>	Chile	Indonesia	Nepal	Bhutan	<b>UK</b>
Poland	South Africa	Mexico	Jordan	Brazil 3		<b>Saudi Arabia</b>
Turkey		Slovakia	Moldova	Macedonia		
Zimbabwe		Colombia	Panama	Azerbaijan		

Notes: Assessments in **bold** are in process. Assessments in italics have not been published.

# Thank you!

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# Corporate Governance in Viet Nam: From Investor's Perspective

PGS TS Phạm Duy Nghĩa



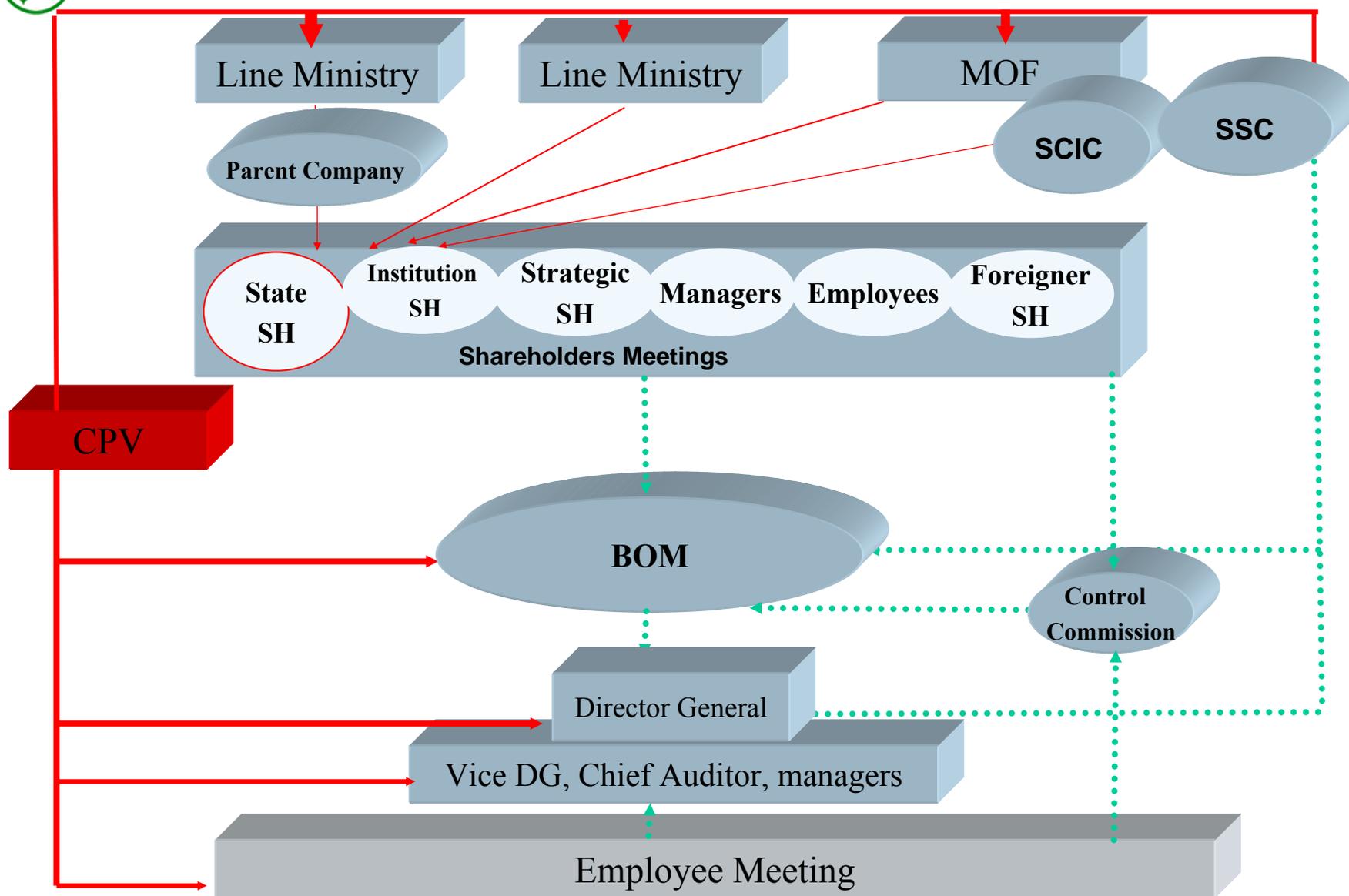
## **Corporate Governance – As seen from the approach of conflict of interests**

### ➤ **Three Dimensions:**

- ➔ Defining the stage-holders
- ➔ Check and balance of conflict of interests
- ➔ Supervision of the executive

### ➤ **Corporate Governance**

- ➔ Set of tools, rules and methods to check and balance in corporation
- ➔ Avoiding confusing business management and corporate governance
- ➔ Sources: Law, Model rules, bylaws, habits and customs





## Important Stage-holders to CG in Viet Nam

- **State holding “golden share”**: SCIC, Line ministries, SOE-corporations, local government, the Party, etc.
- **Institutional shareholders**: (large SOE, strategic shareholders, banks, insurance companies);
- **Foreign shareholders**;
- **Individual shareholders** (managers, employees, shadow-shareholders => keeping relationship needed for business);
- **Power delegation among**: shareholders meeting, BOM, Director General and other executive managers
- **Transparence and public disclosure**
- **Role of the CPV in large SOE-equitized corporations**



## Shareholders Meetings

### ➤ Issues of concerns:

- ➔ Persons authorized to call for ASM, extra-ordinary shareholders meeting
- ➔ Proceedings for calling for meetings (invitations, documents to be prepared, agenda, meeting place, meeting time)
- ➔ Quorum
- ➔ Management of the shareholders meetings
- ➔ Voting
- ➔ Minutes
- ➔ Challenge the legality of shareholders meeting resolutions



## Calling for Shareholders Meetings

- **Ordinary ASM (within four months after the financial year) and extra-ordinary shareholders meetings**
- **Persons authorized to call for meetings**
  - BOM, represented by the Chairman
    - In case of need
    - At request of shareholders holding more than 10% of the charter capital
    - At request of Control Commission
  - Control Commission, if not called by BOM
  - Shareholder(s) holding more than 10% of the charter capital, if not called by BOM and Control Commission



## Preparation for shareholders meetings

- **Who calls for the meeting, shall prepare.**
- **Agenda: Shareholders holding more 10% of charter capital ia allowed to suggest amendment of agenda**
- **One share-one vote: However, in practice often ceiling 0,5 to 1,0%**
- **Invitations shall be sent in advance 07 working days, including agenda, voting ballots, documents for discussion, draft of meeting resolution prepared by the person who calls for the meeting.**
- **Violating of proceedings => Meeting resolutions may be challenged by shareholders => Invalid.**



## Organization of shareholders meetings

- **Quorum: shareholders representing at least 65% charter capital**
- **Chair, Secretary, Committee to collect voting ballots)**
- **Postponing the meetings no more than 03 days:**
  - ➔ If not enough places for the participants
  - ➔ Disturbs, Disorder
  - ➔ If postponed unreasonably, the remaining shareholders may continue the meeting
- **Ballots Collecting**
  - ➔ Affirmative Vote first
  - ➔ Then: Non-affirmative votes
  - ➔ Then: Other votes



## Cumulative voting for BOM and CC

	Shareholders holding 51%	Shareholders holding: 37%	Shareholders holding: 12%	Summary
<b>A</b>	<b>51 + 51</b>	<b>0</b>	<b>0</b>	<b>102%</b>
<b>B</b>	<b>51</b>	<b>0</b>	<b>0</b>	<b>51%</b>
<b>C</b>	<b>51</b>	<b>0</b>	<b>0</b>	<b>51%</b>
<b>D</b>	<b>51</b>	<b>0</b>	<b>0</b>	<b>51%</b>
<b>E</b>	<b>0</b>	<b>37 + 37</b>	<b>0</b>	<b>74%</b>
<b>F</b>	<b>0</b>	<b>37 + 37</b>	<b>0</b>	<b>74%</b>
<b>G</b>	<b>0</b>	<b>37</b>	<b>0</b>	<b>37%</b>
<b>H</b>	<b>0</b>	<b>0</b>	<b>12 x 5 = 60%</b>	<b>60%</b>



## Board of Management

- **3 < Number of BOM < 11**
- **One member one vote; § 104.3.c LOE => listed companies: 1/3 need to be non-executive members of BOM**
- **Meeting quarterly or at extra-ordinary events, when requested by:**
  - ➔ Chair of BOM;
  - ➔ At request of CC;
  - ➔ At request of Director General or at least 05 other executive managers;
  - ➔ At request of at least 02 members of BOM

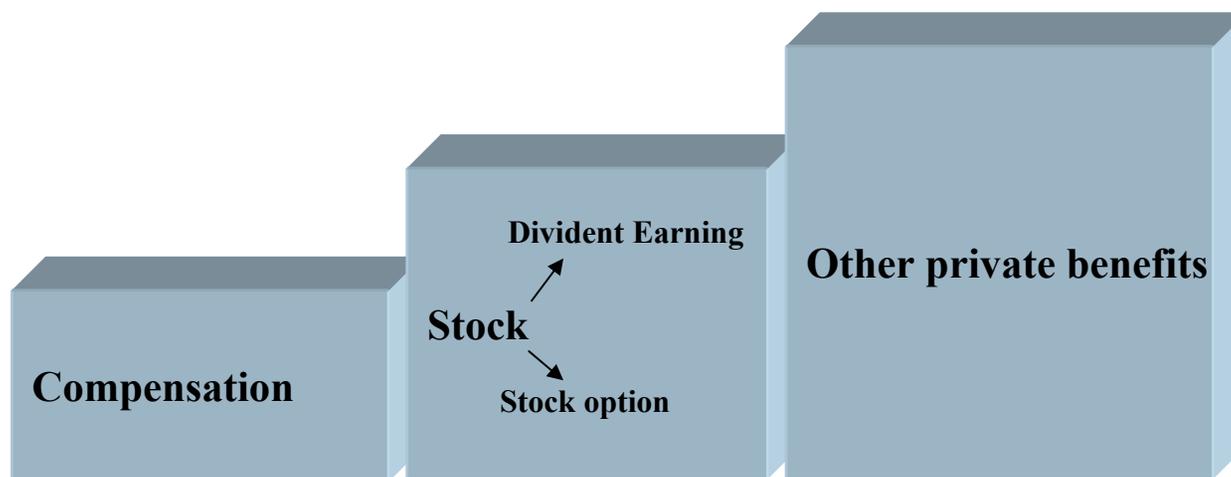


## Proceedings for BOM-Meetings

- **Invitation, agenda, documents, voting ballots must be sent to each BOM-member at least 05 days in advance;**
- **Documentations have to be sent to all CC-members, whose have a right to participate in BOM-Meetings, to discuss, but not to vote § 112.7; § 124.1 LOE**
- **Quorum: At least  $\frac{3}{4}$  of the BOM-members must be present**
- **Resolutions and minutes of BOM-Meeting must be available for shareholder(s) holding more than 10% charter capital § 79.2 LOE**



## Payment for managers





## Attempts to regulate manager's earning

- **Compensation Package for all BOM-members decided by ASM**
  - § 117 LOE, § 17 Model Charter
- **BOM decide on compensation for each member by 100% voting**
- **Disclosure of conflict of interest within 07 working days § 118 LOE:**
  - ➔ If executive managers hold share in subsidiaries;
  - ➔ If relatives of manager hold more than 35 % shares in subsidiaries
  - ➔ If not disclosed, transactions will be void; earnings have to transferred back to the company



## **Access to Information, §§ 114, 124 LOE**

- **Minority Shareholders may have chance to be presented in BOM and CC**
  - ➔ Cumulative Voting
- **Access to Information in participating in BOM, CC Meetings**
- **BOM and CC-Members have right to request Director General, Vice DG and executive managers to report on the business and finance of the company**
- **CC-Members have right to see corporate documents at Operative Office of the company**



## Disclosure and Transparency

- **Applied to public company, § 25, 101 Law on Stock Exchange**
  - ➔ Listed company; or
  - ➔ Having at least 100 shareholders, and charter capital more than 10 billions VND
- **Independent Auditor is appointed by ASM, Financial Report shall be prepared by BOM and sent to CC at least 30 days in advance of ASM**
- **At least 07 working days in advance to ASM, audited report must be available at operative office of the company => shareholders and their auditors have access to this audited report.**



## Disclosure and Transparency (cont.)

- **Audited report as approved by ASM, must be sent to the business registrar; summarized report must be sent to all shareholders.**
- **Audited reports of listed companies must be published by one local and one national newspaper; published in Webpage of the companies.**
- **Listed companies have to disclose:**
  - ➔ within 24 hours:
    - Any decision/resolution made by shareholders meetings
    - Relevant Decisions made by BOM
    - Arrest of member of BOM or CC, decision of Tax Authority on violation of tax law
  - ➔ Information need to be disclosed within 72 hours
  - ➔ Information need to be disclosed at request of SSC
  - ➔ Forms and contents or information to be disclosed is regulated under law



## Change in Corporate Governance

### ➤ **Government**

- ➔ Issuance of guidance and instructions, model charters
- ➔ More Focus on Law Enforcement
- ➔ More Focus on Institutional Settings
- ➔ More Focus on Investor's Protection

### ➤ **Judiciary**

- ➔ Professional and independent judiciary
- ➔ Support to investors in legal proceedings



## Change to Corporate Governance (cont)

### ➤ From the perspective of company

- Consider to adopt advanced international CG standards
- Consider to adopt independent members of BOM

### ➤ From the market

- Shareholders activism
- Better prepared to participate at ASM, ex-ordinary SM

### ➤ From the society

- Participation in law and regulation making
- In Favor of investor's protection

# Corporate Governance in the Philippines



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Head, Corporate Governance Office  
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Philippine Stock Exchange

July 3, 2009, Sofitel Hotel, Hanoi, Viet Nam

# Outline



Two Parts:

## 1. Corporate Governance in the Philippines:

- Review of Standards and Codes I (2001) & II (2006)
- CG Challenges

## 2. Working with international organizations in pushing CG reforms

*Caveat: These are personal views and should not be taken as official views of the PSE.*

# Part 1: Corporate Governance in the Philippines



# The 2001 World Bank ROSC II



- Ensure a mechanism for identification of capital structure (beneficial owners)
- Empower minority shareholders (power to call a meeting , agenda, voting , etc.)
- Consider establishing a minority shareholder association.
- Strengthen the mechanisms by which the board of directors governs the affairs of the company ( rules on self-dealing, conflicts of interest, RPTs, disclosure of practices, training)
- Independence of the Audit (disclosure of relationships, fees, rotation, etc)
- Require the establishment of audit committees composed of a majority of independent directors (require training for members of audit committees)

# Actions taken after ROSC I



## 2001

- The President's Governance Advisory Council was created
- First batch of CG training programs were launched

## 2002

- CG Training for select group (AICD, Yale)
- Philippine SEC Issued a Corporate Governance Code (CG Manual)
- Philippines formally adopted the PECC CG Guidelines
- Required CG Training for directors (bank and public companies)
- First CG Scorecard for banks was developed and released
- Massive awareness campaigns and policy advocacy

## 2003

- Required Audit, Risk & Governance Committees in banks
- Launched CG program for "Reputational Agents" (internal auditors, lawyers, media, judges, analysts)
- SEC requires listed companies to submit a CG self-assessment report
- SEC requires accreditation of external auditors

# Actions taken after ROSC I



## 2004

- Launched the 5-day Professional Directors Program (directors pool)
- Launched “director support” and CG advisory programs
- Public governance reform initiatives were rolled-out
- Launch of CG Scorecard for listed companies
- SEC requires Audit Committees to be composed of at least two independent directors, one of whom should be the Chair
- BSP issues a series of CG-related circulars on disqualification of directors/officers, board responsibilities, board attendance & selection and inclusion of external auditors of banks in the BSP list

## 2005

- SEC requires all listed companies are to have their financial statements in full compliance with IFRS and IAS
- CG programs for regulators (Central Bank, ERC, Insurance Commission)
- CG Scorecards for SOEs was developed
- Insurance Commission & ERC requires CG training for directors

# The 2006 World Bank ROSC II



## Philippine CG has progressed but still needs improvement

- Strengthen enforcement of existing laws (insider trading, disclosure practices, etc.)
- Improve protection of minority shareholder rights
- Strengthen and monitor compliance with IAS/IFRS
- Requiring additional disclosure of internal controls and governance issues
- Encouraging the development of advocacy institutions to promote minority shareholders rights.

# Updates



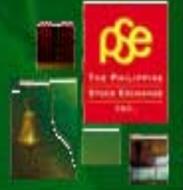
- Issuance of Presidential Memorandum (April 10, 2007)
  - Mandating CG training for directors in Gov't-owned and Controlled Corporations (GOCC)
  - Requiring the creation of governance and audit committees in boards of GOCCs
  - Requiring the establishment of performance-evaluation systems for directors of GOCCs
- Philippine participation and hosting of OECD initiatives (2006-present)
- CG Self-assessment made mandatory (2007)
- Creation of an Institute for Public Corporate Governance to handle CG training needs of GOCCs (under the Office of the Gov't Corporate Counsel) (2008)
  - Revision of SEC CG Code (2009)
  - Inclusion of CG in the National Competitiveness Council development agenda and the MCC programs (2009)
  - Expansion of CG Scorecard (2009)
  - PSE CG Programs (2007-present)

# CG in the Philippines



- Collaborative effort (Main proponents)
  - Institute of Corporate Directors (ICD)
  - *Bangko Sentral ng Pilipinas (BSP)*
  - Philippine Stock Exchange (PSE)
  - Securities and Exchange Commission (SEC)
  - Professional Groups (IIA-P, PICPA, MAP, FINEx, etc)
  - Publicly-listed Companies
  - Department of Finance (DoF)
  - Insurance Commission (IC)
  - Academe (AIM, Ateneo University, etc)
  - National Competitiveness Council (NCC)
  - Office of the President (OP)

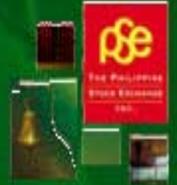
# Results of the 2006 Macro-economic CG Scorecard for East Asia



LAWS & REGULATIONS	Economy RANKING	INVESTOR PERCEPTION
China	1	Singapore
<b>Philippines</b>	2	Hong Kong, China
Korea	3	Chinese Taipei
Thailand	4	Korea
Indonesia	5	Thailand
Chinese Taipei	6	Malaysia
Malaysia	7	<b>Philippines</b>
Hong Kong, China	8	Indonesia
Singapore	9	China

## Corporate Governance Challenge in the Philippines

# CLSA-ACGA Study (2007)



	Rules & Practices	Enforcement	Political and regulatory	IGAAP	Culture	Total Score	2005 Score
<b>Hong Kong, China</b>	60	50	73	83	61	67	68
<b>Singapore</b>	70	50	68	88	58	65	70
<b>India</b>	59	38	58	79	50	56	61
<b>Chinese Taipei</b>	49	47	60	70	48	54	57
<b>Japan</b>	48	46	52	72	40	52	-
<b>Korea</b>	45	39	48	68	43	49	50
<b>Malaysia</b>	44	35	56	78	33	49	56
<b>Thailand</b>	58	36	31	70	34	47	50
<b>China</b>	43	33	52	73	25	45	41
<b>Philippines</b>	39	19	38	75	36	41	46
<b>Indonesia</b>	39	22	35	65	25	37	37

# CG Challenges in the Philippines



- **Public Governance**
- **Enforcement issues** - *“exemptive relief”*
- **The CG Equation** - *Benefits vis-à-vis Costs*
- **Ambiguity, uncertainty, skepticism** (*lack of knowledge*)
- **Predominant ownership structure** (*propensity for abusive related party transactions, insider trading, asset expropriation, etc*)
- **“Additional burden”** , **“irrelevant”**
- **Poor risk management**
- **Weak and compromised boards**
- **Unorganized and passive minority shareholders**
- **Success of “status quo”**

# Moving Forward



- A mechanism to distinguish CG performers
- Strengthen & improve disclosure and transparency standards (CG Scorecard)
- capacitate regulators, harmonize and enforce CG rules
- address abusive related party transactions (through approval and disclosure thresholds)
- Improve board functioning and leadership (risk management, audit and governance)
- strengthen minority shareholder rights (creation of a minority shareholder group)

# PSE's Role



- Improved self-governance
- PSE's Special Corporate Governance Segment
- PSE Corporate Governance Guidelines for Listed Companies
- Support to the ICD Corporate Governance Scorecard for Listed Companies
- Enhance and enforce PSE's listing ,disclosure and broker rules

# Part II: Working with International Organizations



# Pushing CG with partners



## ➤ World Bank Group

- setting up of director institute
- capacity-building (training, seminars, TAs, etc)
- awareness-building (conferences, publications, etc)
- special projects (consultations, CG Board)
- ROSC

## ➤ OECD

- capacity-building (seminars, experts, special projects, etc)
- awareness-building (conferences, publications, etc)
- standard setting

## ➤ Diplomatic Posts

- Australia – Director training program, institution building projects
- Netherlands - training, seminars, conferences,
- UK – CG Scorecard for SOEs, Special CG Segment, seminars
- US – seminars, training

# Pushing CG with partners



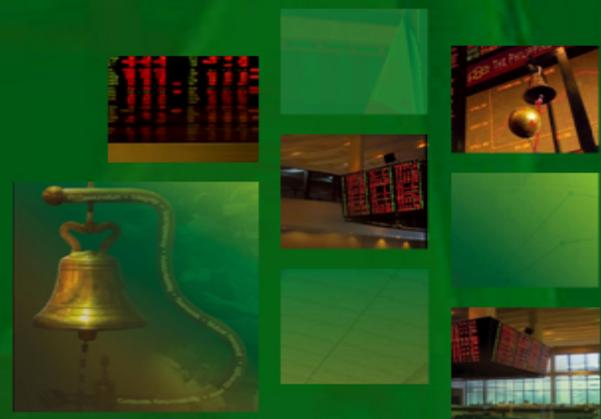
- Professional Organizations
  - Institute of Internal Auditors – CG Scorecard, awareness building
  - CFA – awareness building, technical know how
- Industry groups
  - ACGA – access to members, ideas, issues
  - AOSEF – access to members, ideas, issues
- Others
  - CIPE – Director training program, institution building projects
  - Foreign Chambers of Commerce - awareness, access
  - IDEA.Net – access and network (East Asia)
  - Audit Firms – publications
- APEC?

# Some thoughts on partnership



- There are number of international organizations out there that can and should be tapped for CG reforms
  
- Engage them as they can provide:
  - ideas, technical know how
  - network
  - funding
  - legitimacy
  
- However, they too, have their institutional interests
  - know what they are
  - draw areas of convergence and synergy with your own interests
  
- At the end of the day, engaging partners should be done in a manner that promotes your economy's interests and addresses your development needs

# Thank You



**SUMMARY REPORT**  
**APEC TRAINING COURSE ON CORPORATE GOVERNANCE**  
*2 – 3 July 2009, Hanoi, Viet Nam*

**I. Introduction**

The APEC Training Course on Corporate Governance was held on the 2<sup>nd</sup> and 3<sup>rd</sup> of July 2009 in Ha Noi, Viet Nam under EC 01/2009A Project, which was approved by BMC in 2008. The training course was attended by representatives from Australia, Brunei Darussalam, Chile, China, Hong Kong China, Indonesia, Malaysia, Mexico, Papua New Guinea, the Philippines, Russia, Thailand, the US and Viet Nam. Speakers of the training course are Professor Brian Gibson, University of New England, Australia; Mr Henry Schiffman, US Advisor and Consultant to World Bank, IMF and ADB; Dr. Chris Hall, CEO of Comnami Company, Australia; Dr. Pham Duy Nghia, Hanoi National University; Dr. Dang Dzung, Vice Chairman of Hanoi Young Business Association; Mr Hector Lehuede, Advisor to the Minister of Finance, Chile; Dr. Qu Fengje, Senior Fellow, Vice Director, Institute for International Economics Research, National Development and Reform Commission, China; Dr. Nguyen The Tho, State Security Commission, Viet Nam; Mr Paolo Vergano, Fratini Vergano, European Lawyer; Mr Jonathan Juan DC Moreno, Vice President, Head, Corporate Governance Office and Chief Risk Officer, the Philippines Stock Exchange.

The training course focused on the introduction of corporate governance (CG), characteristics of CG systems in APEC member economies, CG in SMEs and experiences learning from best practices of international organizations such as OECD and the World Bank. Considering CG an important impetus to the business growth and the economy in a whole, the training course provided a very useful platform for open discussion and experience sharing among participants.

**II. Outcomes**

Following are the specific outcomes of the APEC Training Course on Corporate Governance:

*1/ Brief introduction to Corporate governance*

Corporate governance is often understood as timely and reliable reporting and disclosure in running a(n) company/enterprise. This approach takes into account the structures of many enterprises and companies around the world. Many owners and shareholders do not run the company directly but it goes to the responsibility of the board control and managers, who in turn are assisted by teams of operations, staff, and contractors. The need for CG arises from this separation of ownership and management of companies. Without good CG, there remain risks that managers and boards will be able to cheat their owners and stakeholders. This is the reasons why many investors demand that governance of the company must be competent, fair, efficient, profitable and transparent as prerequisites.

Given the importance of CG to the growth of business and impetus to economies, OECD developed Good CG principles as guidelines in 2004, covering: (i) a framework which promotes transparent and efficient markets consistent with rule of law, and with clear responsibilities for supervisory, regulatory and enforcement authorities; (ii) protection and facilitation of the exercise of shareholders rights; (iii) treatment of all shareholders equitably, including minority and foreign shareholders, and allowing effective redress for violation of

rights; (iv) recognizing the rights of stakeholders and encouraging active cooperation between corporations in creating wealth and jobs and the sustainability of financially sound corporations; (v) ensuring timely and accurate disclosure on material matters regarding the corporation, including the financial, performance, ownership and governance matters; and (vi) ensuring the strategic guidance of the corporation and the effective monitoring of its managers by the board, and ensuring the accountability of the board to the company and to the shareholders. The World Bank (WB) also underlines Four Pillars of good CG namely Responsibility, Accountability, Fairness and Transparency.

The main focus of Good CG often go to large listed public corporations, large state owned corporations and sovereigns, and large private firms. In APEC region, there were about 30,000 listed firms in 2007 – 2008; its capitalized value was up to about USD 25 trillion, or a bit over USD 1 billion each, of which 82% of the listed value and 70% of the firms were in developed APEC economies. However, large firms only make up less than 0.1% of business; contribute between 40% and 60% of employment, and about 50% of GDP while SMEs contribute about half of GDP, and about half of all jobs. About 20% of jobs are from medium, 20% from small and 20% from micro. In a typical APEC economy, over 99% of firms are SMEs. And it is a fact that traditional focus on good CG is only on 1% of firms.

Improved CG can benefit the public sectors by leading to willingness to trade or contract with other corporations (because of better information, less risk of default), willingness to invest in new or existing companies (because of lower risks, greater trust and transparency), better informed managers and boards, more efficient allocation of resources (better informed markets), lower risk margins for finance (both debt and equity) so cheaper costs of finance. Large firms and SMEs all benefit from this. All of these contribute to increasing trade, investment, FDI, innovation growth and resilience, meeting the APEC goals within and between economies.

## ***2/ Characteristics of corporate governance systems in APEC member economies***

The training course provided opportunities for participants to have an overview of the CG systems in APEC region. CG in APEC member economies is often characterized by appropriate laws, regulations and many practices, needs for implementation of many rules by companies and their directors as well as needs for enforcement of rules by regulators and courts.

In many APEC member economies, related to rights and treatment of shareholders, CG refers to the issues of minority shareholder rights, cumulative voting for directors, facilitating voting by foreign investors and electronic proxies and voting.

Board composition and responsibilities are also addressed with the following main characteristics. Directors are required to act independently; boards must improve their participation in strategic planning. Directors are also allowed to access to all company's information for processing their duties. Committees of the board are entitled to establish and improve audit committee, governance committee and compensation committee. Fiduciary duty of directors, code of conduct for directors, limit liability of directors are established accordingly, as well as mandatory director training for public companies.

The issues of disclosure and transparency also constitute important components to CG. Related party transactions must be disclosed in a timely and transparent manner by minutes of board meetings on the issues. Others include improving accounting and auditing systems

(IFRS and IAS respectively), as well as disclosing executive compensation. The management statement on policy for and adequacy of internal controls, external audit of adequacy of internal audit and controls must be addressed. Disclosure of shareholding by directors and holding companies as well as interlocking shareholdings is also of important characteristics of CG in APEC region.

The training course provided a deeper insight of CG in some APEC member economies by looking at the CG systems in Latin America, Viet Nam and China. In the case of Latin America, the economic recovery started in Latin America in the early 1990s with the removal of trade barriers, the inflow of foreign capital, and massive privatizations of State Owned Enterprises (SOEs). Since then, Latin America has shown positive GDP growth, but the trajectory has been rough. However, Latam countries stand out for their recurrent macroeconomic uncertainty and political instability. In terms of CG, they share high ownership concentration; small and illiquid stock markets and limited option for corporate financing. As in many other Asian countries, the controlling shareholders appear in Latam as the favorite instrument to prevent agency problems. The controlling shareholders help reduce the cost of investors to coordinate and monitor the administration of the enterprise; however, those controlling shareholders at the same time pose a threat of minority shareholder expropriation that also needs to be handled carefully, especially when minority shareholders increase their bearing.

In Viet Nam, more than 20 years of economic reform has helped keeping high pace of economic growth. And CG is an issue at the heart of economic reform in Viet Nam as it is a key driver for state-owned enterprises reform, private sector development as well as financial market development. In Viet Nam, CG system includes State (Ruling Party, Government, National Assembly, and Supreme Court); Business (SOEs, Foreign Invested Enterprises, Private enterprises); Academia (Political academy, University/Colleges, Scientific Institutions); and Mass Organizations (Fatherland Front, Youth Union, Woman Union, Trade Union, Farmers Association, Veteran Association). State is in charge of administrative and judicial reform. Business goes for building CG, meanwhile mass organizations build up grass root democracy and academia is in charge of education reform.

In reality, the government has tried to impose a top-down approach which is necessary to create the basic business environment. There is a possibility that an incentive-based system using business association as the vanguard is probably the cheapest, most effective means of building a real institutional framework for CG in Viet Nam, deemed as a prospect for CG in Viet Nam.

### ***3/ Corporate governance for SMEs and listed companies***

SMEs are increasingly playing an important role to the economies. In many ASEAN countries, non-agricultural SMEs account for a large percentage of all firms and workforce. In Brunei Darussalam, SMEs make up of 98% of all firms and 92% of total employment. Indonesia is 98% and 88% respectively, while Thailand is 96% and 76% and Viet Nam 96% and 85% respectively. In other APEC economies such as China, Japan and Korea, the total of SMEs are 99% of all firms, SME workforce is 78%, 78% and 73% respectively<sup>1</sup>.

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<sup>1</sup> Sources: Hall (2002:12 and 26). SMIDEC (2002:5), Myintd (2000:5), Regnier (2000:23), and Ministry of Industry, Mines and Energy of the Kingdom of Cambodia.

Given the large contributions of SMEs to the workforce and economic development, CG in SMEs has always been important, especially concerned with improved performance for the benefits of stakeholders. Against the backdrop of the collapse of a series of companies in the last 2 years, which has worsen global economic crisis, CG is of increasingly importance.

If CG is defined as a set of processes, policies, laws and institutions, affecting the way a corporation is directed, administered or controlled, SMEs have their own unique structures, processes and contexts. CG variables related to ownership, the board of directors, and the top management team all affect strategic change in SMEs and differ across countries. Briefly, regarding roles of boards, the number of structured boards in privately held firms is extremely low and remains variation in board structures across cultures. In terms of finance, small firms often are only rudimentary.

The training course also explores CG applied to listed companies in Viet Nam. CG requirements in Viet Nam are embedded through the enforcement of the Law on Enterprises (2005) and the Law on Securities (2006) and a number of decisions issued by the Ministry of Finance.

According to OECD's basic principles of performance, listed companies on Viet Nam stock exchange have well carried out its principles. Concerning shareholders protection and equality treatment principle, many listed companies, whose charters have not yet been in compliance with the Law on Enterprise and CG principles now have revised and given rights to shareholders such as the right to attend shareholders' meetings. Shareholders are therefore given opportunities to monitor operation. In terms of financial information disclosure, companies are increasingly becoming transparent by releasing financial information regularly and by request; by disclosing prospectus with setting a division or person in charge of disclosing information, as well as auditing services and announcing their financials through mass media. State Securities Commission (SSC) has also set up criteria to monitor and frequently supervise listed companies in financial disclosure and CG. Not only this will increase responsibilities of the Board of Director (BOD) with shareholders and market regulators, but also guarantee that the shareholders will be informed regularly. However, it is a fact that the level of compliance to the CG principles in listed companies is low and they tend to postpone the implementation of CG though there is formal regulation, which obliges the listed companies to implement certain principles of CG. In particular, there is inequality in treatment between different shareholders inside and outside companies, sales of shares, benefits received by majority and minority investors, information exposure between classes of shareholders. Also, there have been weaknesses in financial disclosing, evidently as organizations do not update information or do not update on time, ambiguous figures, unqualified audit and undisclosed benefits received by major shareholders, board of directors, management team members, etc. There remains much room for improvement of CG for listed companies in Viet Nam, namely accelerating shareholders' rights, improving disclosure and supervision of insider and related party transaction, strengthening legal liabilities and enforcement, promoting independent directors on the board and clearly defining the functions of supervisory board and improving the quality of the external governance structure.

#### ***4/ Corporate governance built on best practices of international institutions***

Numerous studies of The World Bank (WB) shows that better corporate structure benefits firm through lower capital cost, greater access to financing, better firms' performance, and more favorable treatment of all stakeholders. Considering the increasing importance of monitoring CG reform, the WB has committed to conducting a worldwide assessment of CG

under the overall program of Reports on the Observance of Standards and Codes (ROSC). The assessment of CG practices under the ROSC measures the legal and regulatory framework in the examined country, as well as practices and compliance of listed firms. It is based on the OECD principles of CG and addresses 6 areas set out in the OECD Principles. The ROSC assessment is initiated on countries' own initiative and on a voluntary basis. Under the 2<sup>nd</sup> phase of ROSC (ROSC II), after obtaining an invitation from a country's government, the WB commissions a local consultant to fill the questionnaire designed to capture this country's CG legal and regulatory framework, and information on CG practices. Afterwards, WB experts visit the country to meet government officials and market participants and draft an assessment report. The assessment is divided into the following 4 parts:

- Executive summary;
- Capital market overview and institutional framework;
- Principle-by-principle review, including policy recommendations; and
- Summary of recommendations highlighting areas for legislative reform, institutional strengthening and voluntary/private initiatives.

The assessments tend to differentiate between compliance with the legal and regulatory framework and actual situation in the assessed countries. At the end of investigation, WB publishes the Assessment Report on its website, if there are no objections by the country involved.

### **III. Conclusions and Recommendations**

Through discussions at the training course, some observations can be drawn as follows:

CG remains a critical issue for every economy in the world. The current and past financial and economic crises can be partly attributed to inadequate corporate governance, especially of boards and shareholders not having timely reliable information to base decisions on. There is a crucial need for APEC members to strengthen their CG systems. An effective means is taking the advantages of APEC works on structural reform, which is overseen by the Economic Committee (EC).

APEC is looking towards to 2020 goals of open trade and investment for the region. Structural reform is an essential element that APEC needs to address in order to improve economic efficiency of its members so as to enable them to pursue deeper economic integration in APEC. A common understanding is sought that there can not be any one size-fit-all CG model for APEC member economies due to their different economic circumstances. APEC can play an important role in assisting its members in the running up to the Bogor Goals by encouraging adoption of broad best practice guidelines and regulations on structural reform in general and corporate governance in particular. Information and experiences exchange on corporate governance practices is also an efficient way to help APEC policy makers learn successful as well as failure lessons on corporate governance in APEC members as we also learn much from failure as compared to success.

Participants agreed that there is a big room for APEC's more active contribution in this working agenda.