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Economic Cooperation

# APEC Economic Policy Report 2010

APEC Economic Committee

Advancing Free Trade for Asia-Pacific Prosperity

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Tel: (65) 6891 9600 Fax: (65) 6891 9690 Email: [info@apec.org](mailto:info@apec.org)  
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# 3. Individual Economy Reports Summary

This chapter presents individual economy reports (IERs) from 18 APEC member economies prepared between May and August 2010. We first present a summary of the reports' contents; the complete IERs follow.

## **INSTITUTIONAL FEATURES OF CORPORATE GOVERNANCE AND COMPANY PROFILES**

### **Legal and Institutional Basis of Corporate Governance**

Responding APEC economies report that the legal basis for corporate governance in their economies rests on a body of “company law” supplemented by securities laws, stock exchange listing requirements, corporate governance codes, and regulations of securities commissions or integrated financial sector regulators.<sup>39</sup>

Some economies have developed voluntary guidelines or codes of corporate governance, and some government regulations or stock exchange listing rules require listed companies to explain their degree of compliance with voluntary corporate governance codes, often in companies' annual reports.

The Philippines is one of the member economies in which the judiciary has explicit authority to enforce disputes between a company and its shareholders, including with regard to the election of directors.

Since 2000, many APEC economies have amended laws to strengthen provisions for corporate governance. In 2008, Thailand amended Securities and Exchange Act (SEA) to provide a clearer scope of fiduciary duties, stipulate sanctions for breaches of those duties, and strengthen the rules governing related party transactions including stronger protection for investors' interests. Some, like Indonesia, have established economy-wide bodies or provided existing bodies of public and private sector representatives a new mandate to develop rules for good governance. In some cases, governance strengthening was prompted by the revelation of alarming company misconduct that current practices, laws and regulations had not prevented. In other cases, amendments arose as host economies and international finance institutions cooperated in promoting good governance as a way to increase foreign direct investment and economic growth. Several economies report that the OECD Principles of Corporate Governance have been useful.

### **Number of Publicly Traded Companies and Market Capitalization**

From 2005 to 2009 the number of publicly listed companies remained consistent in most APEC economies, increasing or decreasing by less than 10%. The global financial crisis of 2008–2009

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<sup>39</sup> Some respondents provided information on the content and enforcement of securities laws on matters more closely connected with trading of securities than with corporate governance. To the extent that securities law and practice directly affect basic corporate governance matters highlighted in this report, they are included in the discussion.

probably played a role in this lack of growth. At least five economies—Australia, Malaysia, Mexico, New Zealand and Hong Kong China<sup>40</sup>—reported delistings, but no economy reported a trend in “going private,” whereby companies voluntarily choose to delist or fail to qualify because of a declining number of publicly traded shares. From 2005 to 2007 total market capitalization on APEC stock exchanges grew strongly then in 2008 declined markedly—by 30 to 40%. By 2009, economies reported market capitalization as much as 20% lower than the 2007 peaks.<sup>41</sup>

## Corporate Governance Rules and Practices

Responses to Annex 2 of the questionnaire submitted for this year’s IER are provided in Table 3-2. Overall, responses indicate that company transparency regarding financial condition and operations is good. One exception is the conformity of financial statements with International Financial Reporting Standards (IFRS). Some economies, especially those where the standards will become mandatory by 2013, say that meeting the standards is a challenge. But even where the standards are not mandated, a number of listed banks and companies with significant international investors are adopting them to help attract and retain international investment.

The rights of shareholders in APEC also conform largely to the important elements of good corporate governance, although many respondents did not make clear whether the rights of shareholders are in fact being exercised (e.g., adding items to the agenda for annual shareholder meetings).

One area that could be improved and strengthened is the composition and responsibilities of the board of directors, the company body responsible for establishing and overseeing good governance. In the United States and Korea, the boards of large listed companies are required to have a majority of independent directors. Other responding economies indicated requirements for as few as two independent directors and typically no more than one-third of the board.<sup>42</sup> The principle here is that boards must be capable of exercising objective and independent judgment. Ensuring objectivity often requires that a sufficient number of board members not be employed by the company or its affiliates and not be closely related to the company or its managers. The number or percentage of independent directors needed to achieve objectivity and independence will vary with the size and structure of the company and the board’s committee structure and workload. The specific number of independent directors, of course, is less important than the directors’ quality and integrity and ensuring that board members enjoy the respect and confidence of shareholders.

Only four economies report that independent directors are responsible for or have an explicit role in determining what information the board receives from management.

In Indonesia, the Philippines and Russia, board members are elected annually. In some economies board members may have a term of office as long as three years.

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<sup>40</sup> In Hong Kong China, most delistings applied to failed companies. New listings outpaced delistings by a ratio close to seven to one in 2009.

<sup>41</sup> A notable exception to this trend is an economy in which the number of listed companies grew steadily by about 30% per year from 2006 to 2009 and market capitalization quadrupled.

<sup>42</sup> A legal definition of “independence” was not requested for the IER, and unquestionably varies among economies

## CORPORATE GOVERNANCE RULES: DEVELOPMENT, ENFORCEMENT AND PRACTICE ASSESSMENT

### Development

There is considerable variation among APEC economies but, in general, capital market regulatory authorities and securities exchanges have taken the lead in developing corporate governance rules, sometimes by first establishing economy-wide advisory committees of public and private sector representatives to develop new rules for corporate governance.

In the 2002–2004 period, during which many reforms were undertaken worldwide, legislators seem to have exercised less initiative than securities commissions, integrated financial sector or capital markets regulators, other executive branch government entities, and stock exchanges. Various private organizations (directors associations, chambers of business and commerce, shareholder rights groups) have been developing corporate governance rules in recent years.

### Enforcement

In APEC economies with a common law tradition shareholder lawsuits are often relied on to compel compliance with corporate governance rules. In these economies, the financial regulators tend to enforce laws governing the issuance and trading of securities rather than enforce rules of corporate governance, for securities firms or otherwise. One exception is Hong Kong China, which has a common law tradition. The Stock Exchange of Hong Kong (SEHK) is the main regulator of listed companies' corporate governance.

In APEC economies with a civil law tradition, regulators and the stock exchanges in which they wield authority enforce rules for corporate governance. In some APEC economies institutional investors have become more involved in enforcement, often without recourse to regulatory authorities or lawsuits. For government-owned companies oversight bodies enforce corporate governance rules by means of directives issued to noncompliant companies.

One of the most common subjects of enforcement actions is failure to disclose material information or providing false or misleading information. Other actions pertain to tardy disclosure, failure to disclose related-party transactions, and directors' disqualifications. Other than failure to provide required disclosures, few stock exchange delistings were attributable to violations of governance rules. Questions about other disciplinary measures were not asked.

Relatively few enforcement actions were reported. Most economies reported fewer than a dozen actions in the past two years and only four reported more than 100. Several economies say that failure to enforce important shareholders' rights marks a major weakness in corporate governance.

Many companies follow important governance rules because they must otherwise explain noncompliance. Having to explain noncompliance, especially for matters easily complied with, seems to increase compliance with principle-based codes.

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#### Updating Company Law in China

The Standing Committee on Company Law Reform was established as a formal but nonstatutory body in 1984 to ensure that company law, including rules for corporate governance, keeps pace with the business environment. The Companies Registry acts as the secretariat and cooperates with the government in recommending amendments to the Company Ordinance. It launched a comprehensive rewrite of the Ordinance in mid-2006, which also covers amendments to the corporate governance rules.

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## Assessment of Practices

Before 2007, at least 11 APEC economies completed a report on the observance of standards and codes (ROSC) with respect to the OECD *Principles of Corporate Governance*.<sup>43</sup> Chile and Australia conducted self-assessments of compliance with the principles.<sup>44</sup> Russia has just started its self-assessment. And several economies report having implemented reforms based on ROSC assessments. In the Philippines, the stock exchange and the institute of directors both issue annual scorecards of compliance with good corporate governance practices. Since 2001, the Thai Institution of Directors' Association (IOD) has conducted corporate governance surveys of Thai listed companies, which are based on the Principles of Corporate Governance of the OECD. The objective of this survey is to provide an update of the governance practices employed by Thai firms.

## AWARENESS AND ADVOCACY

### Company Directors

More than half of APEC economies report having a directors' institute or association that promotes professional development through training in subjects of interest to directors and that provides a forum for exchanging ideas about the role of boards of directors. Viet Nam is planning to establish an institute of corporate governance in the near future. Mission statements and size vary, but some institutes provide training for hundreds and even thousands of directors. In some economies directors are required to undertake continuing education.

Some institutes have issued their own guidelines for directors and some issue certificates or designations that signify successful completion of training. Very few economies require director certification. Some institutes engage in advocacy in relation to proposals for new laws, regulations, or codes for corporate governance.

### Media

Most economies have developed programs to inform print and television journalists about the elements of good corporate governance. Such programs are sponsored by institutes of directors, stock exchanges, securities commissions and universities. In a few economies stock exchanges or securities commissions also provide background briefings for journalists on noteworthy developments.

All economies report that their financial media report news related to corporate governance, with some economies having more to report than others. In Canada, the *Globe and Mail*, an economy-wide newspaper, publishes *Board Games*, which evaluates and ranks corporate governance in Canada. In Singapore, the *Business Times* introduced its Corporate

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### Publications for Good Corporate Governance in Thailand

The Securities and Exchange Commission teamed with the Stock Exchange of Thailand and other institutions to publish guidelines and codes of best practice to aid good corporate governance. These include the Director's Handbook; Financial Advisor Due Diligence; Nomination Committee Guidelines; Remuneration Committee Guidelines; Corporate Governance Self Assessment; Best Practice of Shareholders; Code of Best Practice for Directors of Listed Companies; Audit Committee Checklist; Director Compensation Best Practices; Director Nomination Best Practices; Internal Control Checklist; and Q & A: Risk Management.

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<sup>43</sup> The ROSC assessments were typically part of the Financial Sector Assessment Programs undertaken between the host economy and the World Bank and the IMF.

<sup>44</sup> In an assessment of compliance with the OECD Principles of some 650 publicly traded companies in 2009, one economy concluded that two-thirds of the companies did not observe or materially did not observe the Principles.

Transparency Index in conjunction with the National University of Singapore Corporate and Financial Reporting Centre to gauge the transparency of Singapore-listed companies. The *Business Times* also sponsors the annual Singapore Corporate Awards to recognize excellence in shareholder communication and corporate governance. The Stock Exchange of Thailand periodically has a column in the *Post Today* newspaper, Enhancing Business with Corporate Governance.

## Educational System

Nearly every APEC economy reports that corporate governance is an integral part of its tertiary curriculum for business and legal studies. A few report that corporate governance is also covered at the undergraduate level.

## Stock Exchange

Stock exchanges in APEC economies have been prominent supporters of high standards of corporate governance as well as institutional supervisors of compliance. They have also been proactive in developing the understanding and skills required for corporate governance to be more effective. Stock exchanges in APEC economies have offered or supported director training programs as well as general programs in retail and institutional investor education that cover corporate governance. The stock exchange in Canada offers to assist companies in identifying qualified directors to serve on their boards.

## CORPORATE GOVERNANCE OF STATE-OWNED AND FAMILY-CONTROLLED ENTERPRISES

### State-owned Enterprises

According to the IERs, authority-owned or controlled enterprises in APEC economies are governed by centralized oversight bodies in the ministry of finance or economic affairs, or by other sector- or ministry-level bodies. In Peru, Singapore and Russia an investment company owns such enterprises and is operationally separate from any ministry. Whether such enterprises are subject to the same corporate governance requirements as privately owned enterprises varies across APEC economies. Some have special regimes, but it is common for listed companies to be subject to listing requirements regardless of ownership.

For many years authority-owned or controlled enterprises in Russia had governing bodies composed essentially of government officials, some appointed by different ministries. The current trend is for such enterprises to have independent directors and board members who are not civil servants and are designated to represent the government in accordance with mandates on certain subjects.

### Family-controlled Enterprises

At least eight APEC economies have high concentrations of large family-owned companies, and Indonesia reports that approximately 10 families control the majority of listed companies. APEC economies with a high concentration of such companies reported many issues

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#### Board Members for State Enterprises in Thailand

The State Enterprise Policy Office introduced the Directors Pool in 2008 to ensure the appointment of appropriate board members to authority-owned or controlled enterprises. The pool consists of specialists whose knowledge, skills and expertise comply with the principles and procedures approved by the cabinet. In this regard, the General Qualifications of Members and Officials of State Enterprise Act, B.E. 2518 (1975) as amended in 2007 stipulates that at least one-third of board members of authority-owned or controlled enterprises who are not ex officio in any state enterprise shall be selected from the pool.

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related to corporate governance,

including nonprofessional directors on boards, lack of independence of nominally independent directors, and lax practices for disclosure, approval, and fairness evaluations of related-party transactions. In some economies, competitive pressures compel these companies to be governed like companies not controlled by families. In Canada, family control is maintained by having classes of shares with different voting rights, with family-owned shares having voting control. Korea reports that family-owned companies are in the forefront of advancing corporate governance and the rights of shareholders with relatively small ownership interests.

Most economies report that corporate governance requirements do not discourage family-owned companies from becoming listed companies. Two economies report that such requirements are a disincentive to listing, with New Zealand citing specifically the requirement for nonexecutive directors and the costs of compliance as deterrents.

## **PROFESSIONAL SERVICE PROVIDERS AND CORPORATE GOVERNANCE**

The IERs received suggest that professional service providers have been involved in or supportive of recent developments in corporate governance. The notable exception is Viet Nam, where professional service providers other than auditing firms have not played a role in corporate governance counseling thus far.

### **Accounting and Auditing Firms**

Accounting and audit firms have been advising boards and helping revise practices and formats to comply with IFRS. Only a few economies have started having audit firms provide an opinion on the quality of a company's internal audit and controls to the board or board audit committees.

### **Security Analysts, Banks, Rating Agencies**

Professionals from security rating agencies, security analysts and banks have closely followed or been involved in corporate governance as it affects investor appeal, creditworthiness, disclosure requirements, compliance determination and other concerns. They have advised director institutes, trading exchanges, regulatory agencies, or task force committees formed to develop guidelines on good governance.

### **Law Firms and Corporate Governance Specialists**

Law firms have become increasingly involved in helping listed companies comply with corporate governance requirements—by preparing or reviewing documents that must be filed with regulatory authorities supervising compliance with rules and statements made in annual reports and disclosure documents or other company documents regarding governance practices. Some economies report increasing use of specialists in corporate governance compliance, especially with regard to executive compensation and independent director requirements.

## RECENT DEVELOPMENTS

### Corporate Governance

A number of economies reported significant developments in corporate governance policies and practices in the past year. These include changes in legislation, in stock exchange listing requirements and regulatory actions, and voluntarily adopted company practices.<sup>45</sup>

**Legislation.** New legislation affecting corporate governance practices has been recently passed, is underway, or is under consideration in at least 13 APEC economies.

**Governance Codes.** Malaysia recommended that the audit committee of the board be composed wholly of independent directors. In Thailand, it is mandatory that the audit committee of the listed companies must be composed wholly of independent directors. Some other APEC economies, including Canada and Indonesia, report increased attention to company policies regarding corporate social responsibility.

### Enforcement

The IERs reflect wide variance in the enforcement of corporate governance rules.

**Transparency.** More than eight economies, including Mexico, Peru, Singapore and the United States, report sanctions for violations of listing and financial disclosure requirements. Malaysia's securities commission has established an audit oversight board to improve the quality of audit reports of listed companies.

**Shareholder Rights.** Only the United States saw a significant number of reports of shareholder actions. At least several hundred lawsuits alleging violation of shareholders' rights are brought each year in the United States, and many of these are resolved by settlement or otherwise and do not result in a court decision.

**Board Responsibilities.** Several economies report breaches of fiduciary duties of due care and diligence by directors and officers of companies. In Chile, the regulator fined a company's CEO for concealing material information and fined directors for not exercising their duty to be fully informed. In 2009, the Thai SEC filed 12 complaints with the criminal authorities alleging 51 persons for violating securities or derivatives laws. Two major cases involved the act of fraud and embezzlement of assets of the publicly traded companies by their executives, accounting for the estimated damages of 1,998 million baht in total.

### Challenges for Corporate Governance and Priorities for Reform

Broadly speaking, APEC economies are strengthening corporate governance by (1) protecting shareholders' rights, (2) making boards of directors more effective, and (3) improving the enforcement of corporate governance rules. Table 3-1 summarizes the most common priorities in these three areas.

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<sup>45</sup> "Following submission of its IER, two notable developments occurred in the arena of Corporate Governance in the United States. First, on August 25th, 2010, the SEC approved a final "proxy access" rule that will make it easier for large long-term shareholders in public companies to nominate corporate board members. Also in July, the US Congress passed the Dodd-Frank Act, which institutes significant reforms, including requiring additional compensation disclosure, 'say on pay' votes and independent compensation committees for publicly traded companies."

Table 3-1  
*Most Common Priorities for Reform*

Shareholders' Rights	Boards of Directors	Enforcement
Raising awareness and understanding of shareholder rights and responsibilities to encourage shareholder engagement	Increasing the knowledge and professionalism of board members	Augmenting the capacity of regulatory agencies
Protecting the interests of minority shareholders	Expanding the pool of qualified independent directors	Increasing effectiveness of civil sanctions
Reducing the cost of protecting shareholders' rights, including facilitating class action lawsuits	Reforming board oversight of executive compensation policies and practices	Improving transparency and disclosure
Using of modern communication technologies to facilitate disclosure, voting, and other shareholder participation	Enhancing the effectiveness of board committees on strategic issues, including for risk management	Improving oversight and enforcement of securities exchange listing rules
Addressing conflicts among stakeholder groups	Separating the roles of chief executive officer and chairman of the board	Strengthening regulation of auditors

For instance, in the United States last year, the Delaware General Corporation Law<sup>46</sup> was amended to clarify the power of stockholders to adopt bylaws that (1) require the company to include stockholder nominees for election as directors in the company's proxy solicitation materials, or (2) require the company to reimburse a stockholder for costs of soliciting proxies on behalf of one or more nominees for election as director. Similar amendments were made to the Model Business Corporation Act, which serves as a model for corporate statutes in approximately 30 other US states.

In Thailand, since 2006, the SEC, in cooperation with the TIA and the Thai Listed Companies Association (TLCA), conducted an assessment of the Annual General Meeting (AGM) to increase awareness of listed companies about the importance of AGM and to encourage shareholders' active participation. The SEC also provided an AGM checklist as a best practice guideline for listed companies. One assessment of the checklist is that the company provides an opportunity for shareholders to propose additional agenda items and nominate qualified directors before the AGM notice. The result of the 2010 AGM assessment project stated that 61% of listed company complied with this recommendation (an increase from 51% in 2009).

### ***Response to Global Financial Crisis***

The global financial crisis of 2008–2009 originated in the United States and affected many other economies. APEC economies were less affected because their leading financial institutions had not invested or traded heavily in mortgage-backed securities and were not exposed to the risks carried by financial institutions involved with these and related financial products. Still, many economies suffered the secondary effects of the credit contraction and the subsequent economic contraction.

APEC economies reporting on the impact of the crisis on corporate governance structures tend to cite one or more of three areas as targets of reform: corporate risk management, executive compensation and oversight by boards of directors. There is special concern about misalignment of compensation practices and excessive risk taking in financial institutions.

Table 3-2 summarizes the responses by member economies to the Appendix portion of the IERs. Numbers in columns indicate how many member economies responded a particular way. Full IERs follow the table.

<sup>46</sup> This law is applicable to most Fortune 1000 companies in the United States.

Table 3-2  
*Summary of Key Corporate Governance Rules and Practices in APEC*

Element	Yes	No	NC <sup>a</sup>	Source <sup>b</sup>	Comments
<b>RIGHTS OF SHAREHOLDERS</b>					
1. Do shareholders add items to the agenda for shareholders' meetings?	15	1	2	CL, SL, SLR	Not common in practice; typically for shareholders owning 10% of equity
2. Do shareholders ask questions of directors at shareholders' meetings and do they receive answers?	17		1	GP, CL, CGC	This is a common practice but nowhere are answers required by law or regulation
3. Must company transactions with its insiders be on a nonpreferential basis?	10	2	6	CL, SL, SLR, CGC	Approval by shareholders or disclosure is not the same as fairness
4. Is a super majority vote required for major company acts affecting shareholders' rights?	14	2	2	CL, SLR	Supermajority generally requires 75% in APEC economies
<b>COMPOSITION AND ROLE OF BOARDS OF DIRECTORS</b>					
5. Must boards have independent directors? What percentage?	11	4	3	CGC, CL, SLR SL	Typically a recommendation, or if required, one-third; non-executive director is not <i>per se</i> independent
6. Do independent directors have significant influence over (a) internal and external audit and (b) executive compensation?	7	5	6	CL, SL, CGC, SLR, GP	When audit committees must have majority of independent directors, (a) is yes and (b) is usually "no." Both (a) and (b) are typically a code recommendation.
7. Do independent directors decide what information the board receives from management?	2	10	6	CGC, CL	Should be the case if chairman of board is independent
8. Are the chairman of the board and chief executive officer different persons in the majority of listed companies?	10	4	4	CGC, CL, GP	Typically this is recommended in a code, or is a common practice, but not required
9. Are all board members elected annually?	3	14	1	CL, GP, CGC	Board members are usually elected for more than one year
10. Does the board oversee enforcement of a company code of conduct?	8	4	6	GP, CL, CGC, SLR	Some answers confounded code of conduct (ethics) with corporate governance code
<b>TRANSPARENCY AND DISCLOSURE OF INFORMATION</b>					
11. Do financial statements comply with IFRS?	9	4	5	SL, SLR	In only a few economies is this now required; some require in 2011-13
12. Are the identities of the five largest shareholders disclosed?	16	1	1	SL, CL SLR	Disclosure of beneficial ownership of nominee and holding companies is an issue
13. Is compensation of company executive officers disclosed?	14	3	1	SL, SLR CGC, CL	
14. Are extraordinary corporate events disclosed?	17		1	SL, SLR CL, CGC	Promptly in some economies; in others as late as in the annual report
15. Are risk factors disclosed in securities offering materials?	18			SL, SLR	
16. Are transactions of a company with its insiders disclosed?	15	1	2	SL, CL SLR	Timing of disclosure varies; if the identity of beneficial owners is not disclosed, transactions with insiders cannot be known

NC=Not Clear. For example, the comments indicate that a practice is desirable or required but not that it is typically observed. Source abbreviations: CL= company law, SL= securities law or regulations, CGC=corporate governance code, SLR= stock exchange listing requirement, GP=general practice but not obligatory.

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