ECONOMIC RESEARCH CENTER
DISCUSSION PAPER

No.158

Trend of reforming corporate governance in East Asia; A comparative view

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August 2006

ECONOMIC RESEARCH CENTER
SCHOOL OF ECONOMICS
NAGOYA UNIVERSITY

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This paper considers the trend of reforming corporate governance in East Asia in comparative perspective. Chapter 1 considers increasing concern of corporate governance in East Asia .Chapter 2 describes the features of corporate governance in East Asia, chapter 3 analyses the measures of reforming corporate governance in East Asia and chapter 4 makes assessment of corporate governance reform there.

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1 Increasing concern of corporate governance in East Asia

For the past decade, there has been a new trend to consider and reform corporate governance in East Asia. The concept of corporate governance was originated in Anglo-American world, but since 1990s it has spread all over the world including East Asian developing countries. More Scholars and business management in East Asia have started to reconsider their past corporate governance system and to regulate their system in reformative ways. This process has some historical backgrounds.

1) Background

We should look at three levels of background. The first is increasing crimes and scandals in companies and efforts to defend and control them in each country. Many crimes and scandals repeatedly revealed the lack of public disclosure, moral hazard of managers and ineffective control, all of which were related with the problems of corporate governance. The second is Asian Financial Crisis in 1997, which was partly resulted from the dysfunction of corporate governance in financial area (security and banking). The countries suffering from severe

damage, such as Thailand, Indonesia, Philippines and Korea had to do their best to reform their financial and related systems including company system. The third is international efforts to spread and build the principle of corporate governance among developing world by international organizations such as OECD, Word Bank etc. OECD is originally a developed nations organization but has made much effort to spread the principle of corporate governance among non-members developing countries as well as OECD members by organizing many international meetings. OECD adopted a corporate governance principle in 1999 which regulate a general guideline for member countries to make and perform corporate governance code in their own way. Main contents of the principle are as follows: 1）Stockholder right, and equal treatment , 2）Stakeholders Right, 3）Information Disclosure and Transparency, 4）Responsibility and Duty of Board of Directors.

It should be noted that the OECD corporate governance principle offered a frame of reference for making a corporate governance code in East Asian countries. For example, Chinese corporate governance code issued in January 2002 was partly based upon the OECD principle (Kawai ,2002).

OECD and the World Bank established Global Corporate Governance Forum (GCGF) in 1999. GCGF with back-up of OECD and World Bank organized a series of round table conferences on corporate governance in Asia, Latin America, Russia, and Southeast Europe and Eurasia, respectively. The roundtable meetings on corporate governance addressed general corporate governance issues as well as matters of specific concern to their respective regions.

2) Asian roundtable conference of corporate governance

13 nations and an area are members participating in the Asian Round Table. The Asian round table conference has been held seven times until now. Themes and contents of each round table conference were as follows.

The 1st round table conference, “comparative examination of Asian countries and area” was held on 3-5 March 1999 in Seoul. The OECD, under the auspices of the Centre for Co-operation with Non-Members, organized a senior experts meeting on "Corporate Governance in Asia: A Comparative Perspective". The meeting was co-hosted by the Korean Development Institute (KDI) and the Korean government and was co-sponsored by the Japanese government and the World Bank. A debate developed around a set of country papers on corporate governance arrangements in the above countries and a set of substantive presentations by experts and consultants, including presentations by OECD, KDI and the World Bank experts. The continuing relevance of corporate governance as one of the main factors in the 1997-98 crisis and as an area of major policy reform was underlined by all participants. Deputy Secretary General Joanna Shelton focused on the important role that the OECD Corporate Governance Principles are expected to play in the design of reforms and the international policy dialogue that would develop around them. Most of the countries declared their readiness to use the OECD Principles, as a main benchmark and a gauge of progress in the context of this dialogue.

2nd round table conference, "Role of the indication in strengthening of corporate governance and accountability" was held in Hong Kong on 31 May - 2 June 2000. The meeting, co-hosted by the Hong Kong Securities and Futures Commission, the Hong Kong Stock Exchange and the Hong Kong Society of Accountants, focused on three broad aspects of disclosure: the role of the board of directors in overseeing disclosure, accounting and audit standards and their implementation, and non-financial disclosure. As countries move from merit based regulation to greater disclosure based regulation, financial transparency was identified as the remedy of choice for many problems associated with governance in the region.

3rd round table conference, “The role of Boards and Stakeholders in corporate governance” in Singapore on 4-6 April 2001. This meeting was organized by the OECD, World Bank, and ADB and co-hosted by the Monetary Authority of Singapore, Singapore Institute of Directors,

and Singapore Exchange. The Singapore meeting covered a wide range of issues relating to the functions and responsibilities of boards as well as the development of good stakeholder relationships. The meeting participants also discussed the first draft of the Asian Corporate Governance White Paper, which contains region-specific guidance to assist policymakers, regulators, stock exchanges, and other standards setting bodies in the Asian region in their efforts to evaluate and improve the framework for corporate governance.

4th round table conference "Shareholders' rights and the equitable treatment of shareholders" in Mumbai , India, 2002.11. The meeting considered three themes: the first theme was "Promoting Shareholder Participation". Under this theme, there were sessions considering those problems of creating shareholder value in Asia, the general meeting of shareholders and the state as shareholder. The second theme was "Preventing Insider Abuse", considering such problems as the case for "rough justice", related-party transactions, and corporate-control structures and transactions. The third theme was "Enforcing Shareholders Rights", under which there were sessions considering empowering shareholders and private-sector initiatives.

5th round table conference, "Manuscript completion of the white paper and execution" in Kuala Lumpur, Malaysia in March 2003. The meeting comprised drafting sessions on the White Paper on Corporate Governance in Asia, as well as a workshop on implementation and enforcement issues. The meeting was organized by the OECD, in partnership with the Global Corporate Governance Forum and the Government of Japan. The Securities Commission, Malaysia, the Kuala Lumpur Stock Exchange and the Malaysian Institute of Corporate Governance served as joint hosts.

This meeting addressed the main features of the White Paper on Corporate Governance in Asia and its priority key recommendations. It also considered the future work of the Asian Roundtable, which is organized by the OECD in cooperation with the World Bank and in partnership with the Global Corporate Governance Forum and the Government of

Japan. Furthermore, it featured a review of responses to a questionnaire addressing the Implementation and Enforcement Issues in Asia.

6th round table conference, “Implementation and Enforcement in corporate governance”, in Seoul, Korea on 2 and 3 November 2004. Sub themes discussed included 'Quality of the Regulatory Framework'; 'Supervision and Regulatory Enforcement: (i) Investigatory Powers and Sanctions, and (ii) Ensuring Capacity, Integrity and Accountability of Regulators and Supervisors'; 'Judicial Enforcement: (i) Civil Enforcement, and (ii) Criminal Enforcement; and 'Ensuring Judicial Infrastructure'. During the closing session the future work of the Asia Roundtable was discussed; it was decided to form dedicated Task Forces consisting of both Roundtable participants and outside specialists to investigate two or three key topics, e.g. (i) Corporate governance of banks / financial institutions, and / or (ii) Related party transactions, and / or (iii) Convergence to IFRS.

7th round table conference was held in Bali, Indonesia, on 8 and 9 September 2005. The principal agenda items for the meeting included (i) corporate governance of banks, (ii) a stock take of progress in policy reforms since the publication of the Asian White Paper in 2003, (iii) the role of the board in implementing the OECD Principles of Corporate Governance, and (iv) corporate governance of state-owned enterprises. The Bank for International Settlements (BIS) on the topic of corporate governance of banks, the Task Force on Corporate Governance of Banks presented a draft Policy Brief. Subsequently the draft report titled “2005 Stock Taking of Corporate Governance Related Developments in Asian Roundtable Economies” was presented. Furthermore the Advisory Group to the OECD that is drafting the “Boardroom Guide to the OECD principles of Corporate Governance”, stressed in their presentation that the Boardroom Guide will focus on an aspect of corporate governance generic to all jurisdictions: what takes place in or should take place in the boardroom. Public consultation on the Boardroom Guide is anticipated in the near future. In the session about corporate governance of

state owned enterprises both the OECD Guidelines on Corporate Governance of SOEs were presented and the first findings of the Task Force on Corporate Governance of SOEs. Finally, in the closing session the two key areas for the Roundtable's agenda in the coming year were identified to be (i) corporate governance of SOEs, and (ii) enforcement of corporate governance legislation / regulation

3) Asian corporate governance white paper: a step toward Asian corporate governance norm

The white paper on Asian corporate governance was formally announced in Tokyo, in Nov. 2003. The white paper had been prepared by the 5th roundtable in Malaysia within the framework of the Asia program of the OECD Center for the co-operation with the non-members of Asian nations.

The White Paper included the following contents: ①equal treatment of shareholder's rights, ②role of stakeholders, ③information disclosure and transparency, and ④responsibilities of board of directors. The framework of the White Paper was basically the same as the OECD corporate governance principle(1999), although it had some modification based on Asian conditions.

Among these four contents, the first stress was placed on the equal treatment of shareholder's rights as well as responsibilities of board of directors in terms of amount of page coverage（16p and 15p respectively）.The second stress was on information disclosure and transparency(12p.) and the least on the role of stakeholders(5p.). The difference of stress reflected concern of corporate governance on the part of Asian roundtable participants.

The White Paper is an ambitious undertaking, because Asia is a very diverse region in areas such as regal tradition, regulatory system and economic development. To the Asian roundtable's credit, it has harnessed this diversity to drive home the essential points that different jurisdictions may adopt different approaches to the same concern based on the their

understanding of national/regional conditions. Therefore, the White Paper was not a particular but a general guideline which gave each nation much room for its concrete way of fulfillment.

According to the White Paper, six priorities for reform are proposed for Asian countries and areas（executive summary）

(1) Public- and private-sector institutions should continue to raise awareness among companies, directors, shareholders and other interested parties of the value of good corporate governance.

(2) All jurisdictions should strive for effective implementation and enforcement of corporate-governance laws and regulations.

(3) Asian roundtable countries should work towards full convergence with international standards and practices for accountings, audit, and non-financial disclosure. Where, for the time being, full convergence is not possible, divergences from international standards and practices and reasons for these divergences should be disclosed by standards setters; company financial statements should repeat or reference these disclosures where relevant to specific items.

(4) Board of directors must improve their participation in the strategic planning, monitoring of internal control systems and independent review of transactions involving managers, controlling shareholders and other insiders.

(5) The legal and regulatory framework should ensure that non-controlling shareholders are protected from exploitation by insiders and controlling shareholders

(6) Government should make further efforts to improve corporate governance of banks and the regulation towards banks

It is a fundamental task to raise social awareness of value of good corporate governance among corporate stakeholders because generally they are less or not aware of the value and even if they aware they have different views of what good corporate governance is. This proposal regards international standards of corporate governance, reflected in the OECD corporate

governance principle as model for reference and insists that Asian countries should try to remold their reality converse with the international standards, although admitting some divergence for the time being.

2 Overview of the nature of corporate governance in East Asia

The feature of corporate governance of public companies in East Asia has been discussed in a series of Asian Roundtable meetings and was reviewed in the White Paper. The paper mentioned three features; concentration of ownership, strong private character of relationship among interested person and a very diverse system of law and economy. These features are mentioned by many scholars, some of whom participated in the Asian roundtable meetings.

1) Concentration of ownership

One of the strong features in listed companies in East Asia is concentrated ownership of family and government. Table 1 shows highly concentrated ownership of family as ultimate owners in many East Asian countries except Japan. Overall the nine East Asian countries all have high rate of family ownership approximately on the average of 50%(S.Claessens et al .1998).

Table 2 shows that the concentrated situation basically remains unchanged in term of ownership weighted by stock market capitalization, although the average rate of ownership is a little less than that of unweighted ownership as seen in **table 1**.

Then we can see a concentrated ownership of government such as Singapore, Malaysia, Thailand and Korea in **table 2**. But on the other hand there are much smaller ownership of government in Taiwan, Philippines, Hong Kong and Japan.

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2) Strong informal feature of relationship among stakeholders

Concentration of ownership by family and government lead us to assume the second prominent feature of corporate governance in Asia. That is the strength of informal or private relationships among stakeholders. The informal feature can be found not only in the concentrated ownership by family members or close friends even in the large enterprises but also in the informal transactions among companies. The informal nature of stakeholder/company interaction can produce real and lasting benefits for stakeholders, which equal or exceed those offered through more formal approaches based on the rights. At the same time trend towards globalization and greater minority shareholder activism are leading to changes in the business relationships, as well as to debate about recasting informal interests as formal rights enjoying formal protection mechanisms.

Rajan and Zingalas（1998）noted that East Asia had more relationship-based system of transaction than arms-length market-based system as seen in Anglo-American countries. Tsui and Shieh（2002）described four types of corporate governance regimes in the emerging markets: 1）market based corporate governance regime, 2）family based corporate governance regime, 3）bank lending corporate governance regime, ４）government- affiliated corporate government regime. Among these four types of regime, ２）to ４）are more or less informal relationship based.

Family based regime are generally seen in the emerging markets especially seen in Hong Kong, Indonesia, Malaysia, Thailand, Singapore, Taiwan and Korea etc. It is noted that company with high concentrated family ownership could have less agency problem that stem from the conflicts of interest between owners and managers because family company has less separation between shareholders and managers. But on the other hand, such concentrated ownership could lead to the suppression of minority rights and could adversely affect the economic development of market characterized by weak enforceability of the legal and regulatory institutions. And also family based regime has less transparency on corporate

governance practices such as disclosure of financial information should be expected in market regime.

Banks in emerging markets more or less are controlled and intervened extensively by government in lending decisions. This has led to little interest in deriving good disclosure from companies. In Korea, Indonesia, Malaysia, the government would act a de facto guarantor for loans extended to companies in targeted industries. With the lack of financial transparency in these countries, lending decisions of banks were made primarily on the basis of relationship rather than on an objective assessment of the prospects of the company. These banking lending relationships generally show the lack of effective corporate governance mechanism and lack of transparency.

Government affiliated corporate governance regime can be found in China, Singapore and Malaysia. In China government has very high rate of ownership approximately with 65% of total shares issued on stock markets. Singapore government directly or indirectly controls up to 80% of listed companies in Singapore, although the rate of ownership has been reduced in 1990s through the

privatization program. This kind of regime also could result in less financial transparency lending to possibility of earning manipulations by corporate managers who are also agents of government to expropriate wealth from the minority shareholders.

3) Asian business has a very diverse system of law and economy.

With respect to legal traditions, Hong Kong, India, Pakistan , Malaysia and Singapore have common law framework. Thailand and the Philippines have framework based on French civil law while China, Taiwan and South Korea draw upon German civil law traditions. Japan also had German civil law tradition which has been modified with the influence of Anglo-American law after World War Ⅱ. Relatively speaking, nations with common law framework are superior to civil law nations in equity participant protection, capital market

development, creditor protection, and respect of the rule of law（La Porta et al.,1997）.

Overlaying these different legal traditions in many countries are behavioral norms stemming from various cultural and religious traditions. Economically Asian countries also constitute much diversity of economic development with broad spectrum of infrastructural resources.

3 The measures of reforming corporate governance in East Asia

In this decade, many East Asian countries have made efforts to improve corporate governance through various legal measures including company law, securities exchange act, rule of listing shares in the exchange market and some other administrative regulations, non-obligatory documents. Increasing countries drafted and issued their corporate governance code which itself was not an obligatory rules **Fig.1** shows the diffusion of corporate governance code in the world since 1978. This trend is true in East Asian countries after 1990s. For example, corporate governance code or its preliminary document was issued in Hong Kong （1989,1996,1999,2000）, Singapore（2001,2003）Korea（1999,2003）, Taiwan（2002）、Thailand（1999,2000,2002）, Indonesia（2000,2001）, Malaysia（2000）, Philippines（2004）, China（2002）and Viet Nam.

There are much similarity in the measure to reform corporate governance in East Asian countries as seen in **Table 3**. The table shows that each country has the same intent of reform in term of increasing shareholders value, adoption of independent director, independent board committee, principle of best practice, increasing financial disclosures and importance of institutional investors. This partly means that East Asian countries have the same orientation towards market-based corporate governance system as a model..

But East Asian countries differ in some fields of corporate governance such as stress of stakeholders, composition of board and the volume and scope of the code as seen in **Table 4**. There are two types of board system, namely one-tier system and two-tier system. One-tier

system is that board of directors plays executive function as well as audit function. Two-tier system is that executive function and oversight function are separately performed by two different boards. In popular cases board of directors perform executive functions and board of auditors perform oversight functions. The volume and scope（conclusiveness）of the code shows indirectly the degree of concern of corporate governance on the part of policy makers in each country. Therefore we can see stronger concern or intent held by policy makers in Thailand, India, Japan and China.

Now we are not able to cover all aspects of the reform, therefore only pay a particular attention to two important fields of reform: one is reform of board of directors and director responsibility, the other is protection and equal treatment of minority shareholders.

1) reforming board of directors

The reform of board of directors is the key to strengthening outside control of management and increasing directors' accountability toward shareholders. In this regard many East Asian countries adopted two reforming measures; ①introduction of independent directors (or outside directors) and ②setup of board special committees as seen in Table 5. Many Asian corporate governance legal frameworks already provide for the appointment of independent directors. Minimum numbers of independent directors should be two or three, minimum percentage of directors should be 20％, 33％ and 50％ in special case. However, because controlling shareholders often choose the entire board, the real objectivity and independence and the real value of nominally independent directors can be undermined.

Board special committees include audit committee, nominating committee, remuneration committee, strategy committee, risk management committee etc. These special committees should be chaired by an outside director or outside directors members should be more than insider members. Therefore these board committees are an institutional means through which to strengthen outsider control.

The most popular and important committee is an audit committee which should be an obligatory organ in almost all reforming countries. But nominating committee and remuneration committee are optional but recommended in many reforming countries.

Now look at concrete examples of the setup of independent directors and board committees in some countries.

① South Korea According to a research of listed companies in April 2003, average number of outside directors of a firm listed on the big board are 2.18 persons, making up 35.05％of total directors. This figure shows that actual average percentage has cleared the percentage of 25％ regulated by rule. But it is not clear whether outside control can be effective by setting up the outside director system. Job distribution of outside directors are as follows ; 32.2% corporate managers, 20.3% college professors and researchers, 14.8% financial business circles, 9.5% lawyers, 9.3% former government officials, 7.2% official accountants and tax accountants. Companies which already setup an audit board committee constitute only 16.5％ of listed companies (Imaizumi and Abe, p.60)

② Taiwan According to a research in 2004, independent director system was adopted by many listing companies in Taiwan. Companies with at least one independent director are 245 in number, comprising 36％, companies with two independent directors and more are 175, comprising 26％, companies with three independent directors and more are 32, comprising 5％. These figures show that reform of setting up independent directors in Taiwan has not yet reached, has still been a long away from the regulated target of at least two independent directors in each listed company.

③ China China's effort to building corporate governance framework has been intimately related with the reform of state-owned enterprises（SOEs）,because main field where corporate governance should be set up was large scale SOEs and joint-stock companies which were mainly originated from SOEs. The China Securities Regulatory Commission (CSRC) issued a

directive in setting up independent directors in listed company, saying that each company should have at least two independent directors by June 30,2002 and then should have independent directors who comprise at least one third of directors by June 30,2003. Under this policy push, more and more listed companies introduced independent director system. The system was introduced in 348 listed companies at the end of 2001, comprising 30.7% of all listed companies, with the average of 0.62 independent directors per company. 1124 listed companies comprising 94.7％ set up the system with the average of 2.1 persons per company by the end of June, 2002. 65％of listed companies set up independent directors comprising one third and more of directors and 82％of listed companies have independent directors comprising one forth and more by the end of June, 2003. These figures show that regulated target of the number and the average of independent directors has been basically achieved. Independent directors come from several job backgrounds; university and research institutions are the largest comprising 58.4％, company managers 25.5％, independent intermediate organs 15.2％ and others 19.3％（Ma Qingquan, first, p.7）

Board committees were set up in 98 listed companies in 2001， including audit committee （25.2％）Remuneration committee（27.9％），strategy committee（19.4％），merit rating committee（10.6％），nominating committee（9.3％）（Wang Zhongjie, 90）. Only less than 20％ of listed companies set up four board committees and about half of listed companies did not yet set up any board committees in 2003.

④ Singapore (2003) Singapore had more positive achievements of setting up independent directors than any other East Asian countries. For example, 41％of listed companies have independent directors who comprised more than half of directors in 2003.（22％in 2001）82％ of listed companies have independent directors comprising one third and more. Each listed company has an average of 3.1 independent directors and 43％average ratio of independent directors. Board committees have been most positively set up in Singapore as seen in **Table 6**.

Three main committees（audit, remuneration, nominating）were set up in the majority of companies. In each board committee independent directors are more than executive directors in term of average numbers.

2) Protection and equal treatment of minority shareholders.

Unequal treatment among shareholders is one of the remarkable features in East Asian corporate governance. This has been proved by many facts that dominant shareholder who control the management through concentrated ownership virtually appropriate the value of minority shareholders. Various measures have been made in order to protect and treat equally minority shareholders rights. Some major measures are as follows.

a) intensified disclosure of information.

In the years prior to 1997 financial crisis, disclosure of information was too frequently inadequate; financial statements not only failed to present the company's true financial situation but were often highly misleading. Most Asian countries such as China, Hong Kong, Malaysia, Singapore, Taiwan and Thailand have introduced more rigorous disclosure rules in these years. In addition some countries also display greater assertiveness in monitoring and enforcing regulations. In recent years, some Asian countries have taken significant steps to improve financial disclosure, including the adoption of international accounting standards. One particularly significant reform in some countries has been the introduction or enhancement of consolidated financial reporting for corporate groups.

Besides financial disclosure, non-financial disclosure has improved in many East Asian countries. For example, some countries including China now require disclosure of corporate governance structure and practices, the background and remuneration of directors and key executives as well as related party transactions（between affiliated companies or between the company and the controlling shareholders or managers）. The stock exchange in some Asian markets, China, Hong Kong, Malaysia, Singapore and Taiwan require disclosure of deviations

from a code of conduct. Correspondingly investors in Asia increasingly voice a desire for better non-financial disclosure. As for disclosure of self- dealing and related party transaction is strong in some countries and weak in others. In Malaysia, Kuala Lumpur Stock Exchange has recently broadened the definition of related party transactions to capture a wider range of self- dealing activities.

b) deliberations of cumulative voting in a general meeting of shareholders

Cumulative voting has become a necessary means of protecting minority shareholders rights. In countries such as Pakistan and Russia already mandate cumulative voting. In some countries including China, Korea, Taiwan, optional right of cumulative voting can be exercised under a certain conditions as seen in Table 7. For example, the corporate governance code in China（2002）lays out a middle ground

By requiring cumulative voting for listed companies that are more than 30% owned by controlling shareholders. China's company law revised in 2005 formally prescribed that shareholders could exercise cumulative voting in electing directors and auditors in the general meeting of shareholders. Of course, where a family or group controls a high percentage of the voting shares, even cumulative voting can not ensure a balance of interests at the board level. Korea addressed this situation by partially restricting the voting rights of certain major shareholders in large corporations. Where a Korean company has more than 2 trillion won in assets, shareholders with more than three percent of all voting shares cannot exercise the voting rights of those shares that exceed three percent when voting for non-executive directors who will serve on the audit committee. But the practical effects of this rule which is not yet mandated by the OECD Principles remains unclear in either China or Korea.

c) shareholders derivative action suit and class action suit

On the whole, Asian legal systems favor regulatory over judicial redress. Until recently, Asian legal system generally lacked the legal infrastructure to permit class-action or derivative action

suits. In addition, where infrastructure for class-action or derivative-action suits does exist, instigation of these suits can be hampered by high minimum share requirements, high court filing fees and other mechanism that hinder litigation. But there has been an accelerating trend favoring greater availability and use of class-action or derivative- action suits. General outlook of the rule of derivative suits and class action suits can be seen in **Table 7**. For instance, Taiwan recently enacted norms permit shareholder class-action lawsuits and Korea has liberalized its derivative-action rules and has seen a related increase in litigation. A court in China permitted that country's first common action by shareholder plaintiffs and the derivative action suits was firstly promulgated in the company law revised in 2005. The Malaysian Securities Commission （MSC） made steps to implement recommendations by the High Level Finance Committee on Corporate Governance of the Ministry of Finance to make derivative actions more "user friendly" in terms of process and cost. MSC is also undertaking a study of class-action suits for the purpose of possible inclusion among the tools available to shareholders to enforce their rights.

4 Assessment of the reform among East Asian countries

How can we assess achievements of the reform of corporate governance in East Asian countries. It seems too early for us to assess accurately the real achievements and the problems facing the reform. But from the comparative overview above, we can say that there has been an accelerating trend of enacting and enforcing new norms of corporate governance that are a significant improvement in this decade. However, the enforcement of corporate governance rules in each Asian country has not be fully realized and core areas such as accountability, responsibility, transparency and independence of directors are lagging far behind. There has been a significant gap between actual performance and the advancement of the corporate governance rules. As Jamie Allen, head of the Asian Corporate Governance Association put it,

“there is a long way to go”. The effectiveness of the rules might be more or less restricted and undermined.

La Porta et al（1997）assessed many countries in the three area of shareholders’ rights, creditors’ rights, and the rule of law. They found that ,in general, countries with civil law systems（Indonesia, Japan, Korea, Taiwan, Thailand etc.）offered lower levels of investor and creditors rights, as well as a lower rating of rule of law than countries with common law systems（Hong Kong, Malaysia　Singapore, Philippines etc.）.This distinction can be clearly seen in **Table 8**, both shareholders’ and creditors’ rights are lower in the five countries with civil law tradition. The average rule of law score was 7.5 for common law countries and 5.9 for civil law countries. In addition to the lower score, a much wider range of values is seen among the civil law countries. Indonesia and Philippines have the lowest rule of law scores in the group, therefore it is likely that it is more difficult for shareholders and creditors to enforce their rights. As for corruption and expropriation of shareholders’ interests, Philippines and Indonesia also the highest corruption and expropriation scores, therefore further exacerbating the poor level of shareholders’ protection.

It should be noted that the data in Table 8 showed the situation before 1995（La Porta et al, 1997）. Therefore the assessment of legal protection and enforcement as seen in Table 8 does not basically show the result of corporate governance reform..　The data seen in **Table 9** is the latest assessment of the enforcement of corporate governance, so it is useful to see how corporate governance rules have been enacted, enforced and regulated effectively. We can find that in general Asian countries with common law system have higher score than civil law countries. This trend is basically the same as seen in Table 8. Indonesia has the lowest score in almost all areas including rules, enforcement, policy/ regulation and IGAAP.　China is also the lowest in area of rule and corporate governance culture and the second lowest in policy/regulation and IGAAP, although enforcement is scored higher than Indonesia,

Philippines and Thailand. Distinctions of the level of enforcement among East Asian countries have not changed, though corporate governance has more improved than before in each county.

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Table 1. Ownership / control structure of listed companies in East Asian countries/ area.

unweighted (%)

	Listed company	Distributed ownership	Family ownership	State ownership	Distributed type Financial institution	Distributed type Corporation
Hong Kong	330	0.6 *7.0*	64.5 *66.7*	3.7 *1.4*	7.1 *5.2*	24.1 *19.8*
Indonesia	178	0.6 *5.1*	67.1 *71.5*	10.2 *8.2*	3.8 *2.0*	18.3 *13.2*
Japan	1240	41.9 *79.2*	13.1 *9.7*	1.1 *0.8*	38.5 *6.5*	5.3 *3.2*
Malaysia	238	1.0 *10.3*	57.7 *67.2*	17.8 *13.4*	12.5 *2.3*	11.0 *6.7*
Philippines	120	1.7 *19.2*	41.3 *44.6*	3.6 *2.1*	16.8 *7.5*	36.7 *26.7*
Singapore	221	1.4 *5.4*	51.9 *55.4*	23.6 *23.5*	11.5 *4.1*	11.5 *11.5*
Korea	345	14.3 *43.2*	67.9 *48.4*	5.1 *1.6*	3.5 *0.7*	9.2 *6.1*
Taiwan	141	2.8 *26.2*	65.6 *48.2*	3.0 *2.8*	10.4 *5.3*	18.1 *11.5*
Thailand	167	2.2 *6.6*	50.8 *61.6*	7.5 *8.0*	17.9 *8.6*	21.7 *15.3*

Claessens et al(1998) left figure：10% cut-off of voting rights, *right figure*：20% cut-off,
ownership is referred to as ultimate ownership

Table 2. Ownership Weighted by market capitalization %

	Listed company	Distributed ownership	Family ownership	State ownership	Distributed type Financial institution	Distributed type Corporation
Hong Kong	330	7.0	71.5	4.8	5.9	10.8
Indonesia	178	6.6	67.3	15.2	2.5	8.4
Japan	1240	85.5	4.1	7.3	1.5	1.6
Malaysia	238	16.2	42.6	34.8	1.1	5.3
Philippines	120	28.5	46.4	3.2	8.4	13.7
Singapore	221	7.6	44.8	40.1	2.7	4.8
Korea	345	51.1	24.6	19.9	0.2	4.3
Taiwan	141	28.0	45.5	3.3	5.4	17.8
Thailand	167	8.2	51.9	24.1	6.3	9.5

Claessens et al (1998) ownership is referred to as ultimate ownership

Table 3. Corporate governance reform : Similarity

country and area	Strengthening shareholder value	Independent director	Financial indication Advancement	Independence board committee	Best practice principle	institutional investor's importance
China	Yes	Yes	Yes	Yes	Yes	Yes
Hong Kong	Yes	Yes	Yes	Yes	Yes	Yes
India	Yes	Yes	Yes	Yes	Yes	Yes
Indonesia	Yes	Yes	Yes	Yes	Yes	x
Japan	Yes	Yes(selection)	Yes	Yes (selection)	Yes	Yes
Korea	Yes	Yes	Yes	Yes	Yes	Yes
Malaysia	Yes	Yes	Yes	Yes	Yes	Yes
Philippines	Yes	Yes	Yes	Yes	x	Yes
Singapore	Yes	Yes	Yes	Yes	Yes	Yes
Taiwan	Yes	Yes(IPO)	Yes	Recommendation	Yes	x
Thailand	Yes	Yes	Yes	Yes	Yes	Yes

Jamie Allen, 2000, and 2005. -- partly corrected by author

Table 4. Corporate governance reform : Difference

	Stake-holder	One-layer system Board	Two-layer system Board	The quantity of a code			The range of a code	
				small	medium	large	Limited	Comprehensive
China	O	x	O			○95		O
Hong Kong	x	O	x	O			O	
India	x	O	x			O		O
Indonesia	O	x	O		O			O
Japan	O	x	O			O		O
Korea	O	O	x		O			O
Malaysia	Notes	O	x		O			O
Philippines	x	O	x					
Singapore	Notes	O	x	O			O	Notes
Taiwan		x	O		○65			O
Thailand	O	O	x			O		O

Jamie Allen and 2000 -- partly corrected by author

Table 5 Establishment of independent director and board-of-directors special committee

country and area	Independent or outside director number and ratio	Establishment of a special committee
China	Three persons and 33%	Audit, nomination, remuneration, a strategy committee etc. They are codified and virtually duty.
Hong Kong	Two persons (three persons recommendation)	Audit committee is duty. Remuneration, nomination1 com. are arbitrary
Indonesia	30%	Audit com. is duty, nomination and remuneration com. are optional, however, should be encouraged.
Japan	Two-person outside director (selection system)	A duty is imposed in a committee established company.
Korea	25% Three persons, 50% (the property of 2 trillion wong or more)	Audit and nomination (property of 2 trillion wong or more) are duty, and a committee is arbitrary.
Malaysia	Two persons, 33%	Audit com. is duty, nomination and remuneration com. are optional, however, should be encouraged.
Philippines	Two persons, 20%	Audit, nomination, remuneration com. are arbitrary
Singapore	33%	Audit committee is duty. nomination and remuneration com are optional, however, should be recommended.
Taiwan	Two persons	The bill that installation is possible is submitted.
Thailand	Three persons	Audit com. is duty, nomination, remuneration and risk management com. are optional, however be recommended

originated from ACGA, Julian Roche (2005), White Paper on Corporate Governance in Asia, and 2003 grades.

Table 6. Establishment of board committees in Singapore（2003）

committee	No./ % companies	Average no. of committee staffs	Average no of Executive directors	Average no. of Independent directors
audit	119（100）	3.1	0.3	2.4
remuneration	90（76）	3.1	0.5	2.1
Managing directors	38（32）	3.9	1.8	0.9
Stock option	40（34）	3.1	0.9	1.7
nominating	76（64）	3.1	0.5	2.1
strategy	5（4）	4.4	1.4	2.0
technology	1（1）	6.0	2.0	0.0
Risk management	3（3）	3.0	1.8	1.7

(Imaizumi and Abe, p.194)

Table 7. Regulated protection of minor stockholder's equal right

	Shareholders' derivate action	Shareholders' Class action	Person paying action costs	Stockholders obligatory permission of affiliated persons dealings	Cumulative voting system
China	No regulated → 2005 regulated	No regulated	Lost side	Regulated (over 5% of tangible net assets, or 30 million yuan)	Regulated (30% or more of a controlling stockholder's ratios of shareholding)
Hong Kong	regulated	No regulated	Lost side	Regulated (when exceeding the minimum line)	
Indonesia	regulated (voting rights of over 10%)	regulated	Court determins	Regulated (stockholder who is not a connected person)	
Japan	regulated	regulated	Lost side		
Korea	Regulated (stockholder with 1% of the stock balance)		Un-answered.	Un-answed.	regulated (the stockholder of 1% or more of holdings can be charged)
Malaysia	regulated	regulated (those with restrictions)	Court determination	regulated (in the case of over 5% of tangible net assets)	
Philippines	regulated	regulated	Court determination	regulated	
Singapore	Regulated	Regulated		regulated (in the case of over 5% of tangible net assets)	No regulated
Taiwan	regulated (stockholder who will have 3% of stocks for one year in a period)	Regulated	Winners side	No regulated (only main business transactions duty-izing)	regulated (exclusion by articles of association is possible)
Thailand	regulated (an at least five-person stockholder or 20% of stocks)	No regulated (under bill examination)	Lost side	regulated (3% super-また of tangible net assets is 10 million bahts)	exclusion by company articles is possible) but will be abolished by a new bill.
Viet Nam	regulated	No regulated	Lost side	regulated (in the case of over 20% of net assets)	

Originated from White Paper on Corporate Governance in Asia, 2003, Imaizumi and Abe (2005), etc.

Table 8 Evaluation to legal protection and execution of East Asia

	Shareholder rights	Creditor rights	Rule of law	Corruption	Ex propriation
China	n/a	n/a	n/a	n/a	n/a
Hong Kong	4	4	8.22	8.52	8.29
Indonesia	2	4	3.98	2.15	7.16
Japan	3	2	8.98	8.52	9.67
Malaysia	3	4	6.78	7.38	7.95
Philippines	4	0	2.73	2.92	5.22
Singapore	3	3	8.57	8.22	9.30
Korea	2	3	5.35	5.30	8.31
Taiwan	3	2	8.52	6.85	9.12
Thailand	3	3	6.25	5.18	7.42

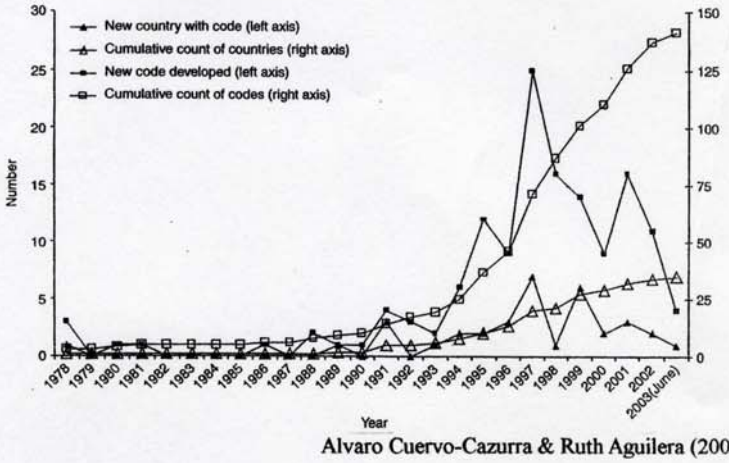
La Porta.et al 1997. Ferdinand A.Gul and Judy S.L.Tsui (2004), p.7

Table 9 Country components of corporate governance 2004

	Rules	Enforce	Pol/ Reg	IGAAP	CG Culture
China	5.3	4.2	5.0	7.5	2.3
Hong Kong	6.6	5.8	7.5	9.0	4.6
Indonesia	5.3	2.7	3.8	6.0	2.7
Malaysia	7.1	5.0	5.0	9.0	4.6
Philippines	5.8	3.1	5.0	8.5	3.1
Singapore	7.9	6.5	8.1	9.5	5.8
Korea	6.1	5.0	5.0	8.0	5.0
Taiwan	6.3	4.6	6.3	7.0	3.5
Thailand	6.1	3.8	5.0	8.5	3.5

Scores out of 10.0. Corporate Governance Watch 2004 a joint report by CLSA Asia-Pacific Markets and ACGA. Jamie Allen 2005

Figure 1. The Diffusion of Codes of Corporate Governance



Alvaro Cuervo-Cazurra & Ruth Aguilera (2004)