



# Asian Business Dialogue on Corporate Governance 2017

## Conference Report

Mumbai, India  
November 14–15, 2017

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on Corporate Governance 2017

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## Preface

In 2008 the Asian Corporate Governance Association (ACGA) hosted its first Asian Business Dialogue on Corporate Governance in India. We were delighted to return to in 2017 to host our 17th Annual Conference at the Trident Hotel Bandra Kurla in Mumbai over November 14–15. It was an opportune time to be in India, with the recent proposals from the Kotak Committee on moving corporate governance forward, and many significant developments in the corporate and regulatory spheres.

The conference was attended by some 160 delegates and speakers from 14 countries and markets including 11 in Asia-Pacific. Discussions, debates and workshops were tailored around the theme—“Nurturing corporate governance ecosystems in Asia”—a theme that endures from our work in *CG Watch*. In our analysis, robust governance regimes flow from balanced stakeholder ecosystems and the collective interaction of key parties, including governments, regulators, companies, investors, auditors, and civil society groups. We are optimistic that Asia’s engaged stakeholder groups will continue to help nurture stronger corporate governance systems.

As in previous years, we are very grateful to several ACGA members and friends for their on-going support of the Asian Business Dialogue on Corporate Governance. We would like to express our appreciation to the following companies for continuing their generous support for the conference:

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We also express sincere thanks to our new sponsors and supporters this year:

Supporting Sponsor	<b>EY</b>
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Supporting Organisation	<b>Institutional Investor Advisory Services India</b>

In addition, we would like to extend our sincerest thanks and appreciation to our Masters of Ceremony—**Douglas Henck** and **Ka Shi Lau BBS**—and all speakers, moderators and delegates.



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## Opening Dialogue with the Securities and Exchange Board of India (SEBI)

This year the opening session of the conference was a dialogue between **Jamie Allen**, Secretary General, ACGA and **Ajay Tyagi**, the new Chairman of the Securities and Exchange Board of India (SEBI). The pair discussed contemporary governance issues faced by India and what actions the regulator intended to take.

**Jamie Allen:** What made you decide to set up the SEBI Corporate Governance Committee (commonly called the Kotak Committee)?

**Ajay Tyagi:** Corporate governance committees were created as the result of other reviews undertaken in this country. After a decade, the corporate governance landscape has changed. We felt that independent directors and auditors were not fulfilling their roles as gatekeepers effectively, primarily because independent directors continue to be appointed by promoters. SEBI views such appointments as a box-ticking exercise and that needed to be rectified. We also struggled between principles-based and rules-based approaches. Each has merit, however, rules are often rejected as being restrictive and intrusive, whereas principles-based approaches often result in nothing being changed. We needed to strike a balance.

**Jamie Allen:** Are promoters of companies ready for institutional investors to play a greater role as company stewards in light of the difficulties you mentioned earlier?

**Ajay Tyagi:** I do not think promoters have a choice. They are accessing markets and raising funds. They need to play by the rules. SEBI's view is that, regardless of whether you are a bank, a non-financial banking company, a mutual fund or an insurance company, all institutional investors should be governed by a uniform stewardship code, and SEBI should have oversight as we are the markets regulator. We are developing a code and it is due to be released shortly.

**Jamie Allen:** You have both a stewardship code and the results of the Kotak Committee coming. A lot of this will be concentrated on independent directors, boards, related-party transactions (RPT) and auditors. What other plans do you have for SEBI and improvements to the capital markets during your time?

**Ajay Tyagi:** SEBI's activities are inter-related. We are improving investor protection as well as development and regulation of the market. Once we have improved all those areas we will be able to move forward in a more comprehensive manner. Last year Rs8 trillion (US\$126 billion) was raised through the markets, primarily in bonds. In 2017 the final figure will be greater than 2016, so raising money through bond markets will be a priority as banks have issues with non-performing assets, making financing in terms of infrastructure and the like, quite difficult. Capital raising through the equity side has been simplified—listing times and listing norms. IPOs this year have been estimated at Rs800 billion, which is a record. We need to focus on the commodities derivatives market, which came under SEBI's purview two years ago, however, due to our lack of expertise we lost out. From a regulatory perspective, we want to simplify regulation and overhaul the majority of rules, which were during the 1990s in complicated language. SEBI has over-engaged in terms of enforcement, which has caused delays. We are hiring more enforcement officers and revising our enforcement policy so that we waste less time on smaller cases (and have a more benevolent outlook). Overall, investor protection is our greatest priority and we strive to work on that.

**Jamie Allen:** SEBI has been a strong advocate for stock exchanges having a front line regulatory role. Now that the Bombay Stock Exchange is a listed company and the National Stock Exchange is following that route, do you see their commercial imperatives being at odds with their regulatory role?

**Ajay Tyagi:** The Reserve Bank of India looked at these issues in 2012. It put regulations in place and advised SEBI what it should look into regarding market infrastructure institutions. The exchange corporations will behave like businesses, but they are frontline regulators first and foremost. They need to balance their responsibilities. The regulations do provide some safeguards. For example, public independent directors (PID). The number of PID and executive directors need to match. Another example is a Chinese wall between corporate and regulatory staff and departments. Staff in the separated departments will be covered by different codes of conduct. I could go on.

**Jamie Allen:** How has your career in the Indian civil service prepared you for your current role?

**Ajay Tyagi:** Working for 33 years for different governments has taught one what, and what not, to expect from governments! One also knows when it is said that SEBI is an autonomous organisation the level of autonomy it has. At the Ministry of Finance, one had a first-hand feel of the nuances of the legislative process in the parliamentary system and how laws are made. This helps when it comes to regulations as a regulator—how the process works, how one has to think. I also set up a regulatory board previously, so that all helps.

## Plenary 1 – Asia Overview, India Focus

**Jamie Allen**, Secretary General, ACGA, and **Sandeep Parekh**, Managing Partner, Finsec Law Advisors, Mumbai, engaged in a dialogue to measure the current status of corporate governance across 11 Asian countries.

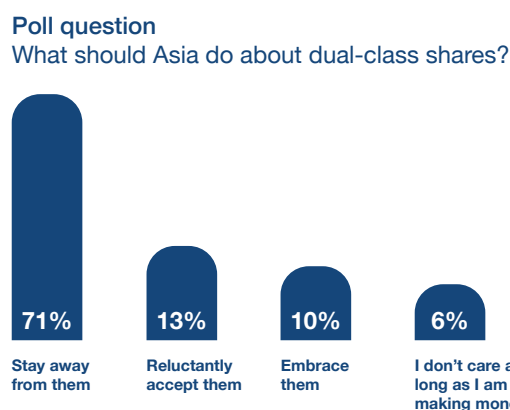
A brief regional overview was provided by **Jamie Allen**. Each market has made some clear progress but also regressed in certain areas and is marking time on some issues. In the India context, the fact that there was a review of corporate governance standards and practices, undertaken by Uday Kotak and his committee, is positive. The Kotak Committee noted that audit regulation in India was not fit for purpose in the current business environment. India remains one of the few markets in Asia, indeed globally, without an independent audit regulator.

While ACGA is quite optimistic about the growth, progress and the direction of corporate governance in Asia, at least three major policy contradictions have emerged:

- Dual-class shares, which will likely undermine corporate governance standards and market regulations;
- Promotion of stewardship codes as opposed to the antipathy towards collective engagement by investors; and,
- The “one size does not fit all” approach as opposed to the high degree of replicating codes from other markets in a near-verbatim fashion, in particular the corporate governance and stewardship codes from the United Kingdom.

Soft law challenges persist as a result of copying codes that fail to consider, or address, local issues. Some examples are presented below:

- Related-party transactions, particularly in organisations with concentrated or family ownership;
- “Comply or explain” approaches to codes, has led to many companies box-ticking and complying with regulations to avoid explaining why they are not;
- No clear division between soft and hard law;
- Lack of pre-existing market conditions to enable a “comply or explain” approach to be introduced. For example, a deeply engaged institutional investor base;
- Regulators not engaging with companies enough in order to effectively educate senior managers and boards on what soft law means.



**Sandeep Parekh** added that enforcement in India is problematic as the regulator, SEBI, appears to be enforcing small infractions with the same fervour as large violations. The implication: SEBI is wasting time and resources that could be diverted to addressing more significant issues. Different approaches to regulation continue to plague Indian companies, because as a culture Indians are more comfortable with hard law and compliance-based approaches. Indian organisations and investors need to push the regulator to adapt, and adopt more principles-based approaches. A cultural shift is required to harness the true value of a principles-based regime. Indeed, while the Kotak Report was commissioned by SEBI, the views expressed in the report are not necessarily the views of the regulator.

He highlighted three key issues contained in the recommendations of the Kotak Report:

1. The splitting of roles—chairman and managing director—should not be applied uniformly, it should be dependent on the complexity of the business model of the individual firm.
2. Investors over-estimate the power of boards. There is an insufficient focus on top-level managers that are (or should be) industry experts. This is increasingly important as boards become more independent.
3. One independent woman director on every board—caution should be shown prior to this recommendation becoming a SEBI rule. It should not be a criminal offence not to have an independent woman director, when 40% of companies failed to comply with SEBI's mandate for one woman director on a listed company's board.

Minor issues include the board size increasing from three to six members, minimum meetings raised from four to five per year. Such issues should be left to the boards of companies to decide, or put in a company code of conduct.

There have been many changes in corporate governance over the past 10 years. But they have been the results of incidents and scams rather than introduced by the regulator. For example, related-party transactions at Satyam, the breakdown of standards and governance at Infosys, and the boardroom coup at Tata Sons.

Proxy advisors have achieved a lot, which cannot be formally recognised. The impact of their soft advocacy remains quite effective and is often underestimated. For example, proxy voters privately informing a company that they will oppose the reappointment of a long-term director. In response, the company withdrawing that director's nomination before it is made public. On the other side of the spectrum, institutional shareholders are becoming more active, but, not as much as in other jurisdictions, such as the US. India is noticing more institutional action and all of it is quite positive.

The government also took the issue of related-party transactions very seriously in the Companies Act 2013. The legislation ensures that transactions are carried out at arm's length and only unaffected persons are enfranchised during votes on such transactions.

The areas where there have been limited progress include:

- Auditor regulation;
- SEBI regulations;
- State-owned enterprises not complying with the law;
- Independent directors;
- Accountability at AGMs.

The way forward for India should be:

- Convert recommendations from the Kotak Committee into a code of conduct;
- Reduce excessive focus on boards, and cast an eye over top-level managers
- Embrace the Stewardship Code;
- Learn from the public battles at Tata Sons, and Infosys.

## Plenary 2 – The ACGA Debate

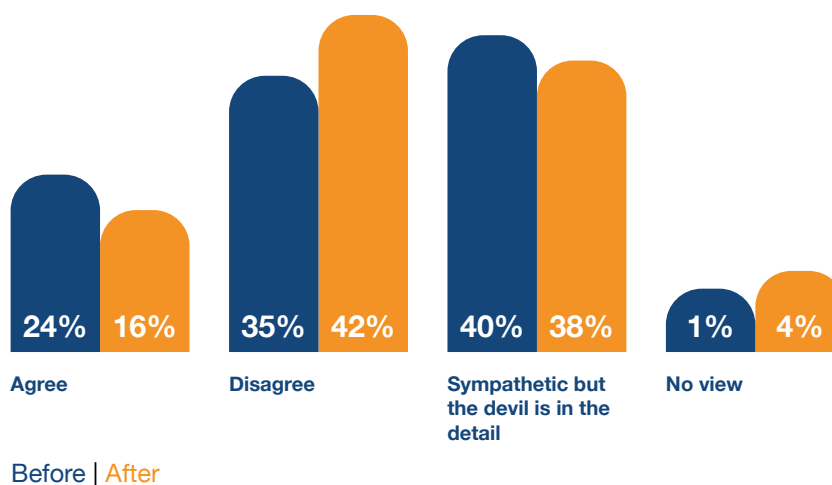
The ACGA Debate this year contested the statement: “Only minority shareholders should be allowed to vote on independent directors”. The affirmative position was argued by **Jaideep Singh Panwar**, Global Responsible Investment and Governance, APG Asset Management Asia, Hong Kong, and the negative by **Vladislava (Slava) Ryabota**, Regional Corporate Governance Lead, South Asia, International Finance Corporation, Mumbai. The debate was a lively exchange of the various points of view. **Mike Lubrano**, Managing Director, Corporate Governance and Sustainability, Cartica Management, Washington DC, moderated.

**Jaideep Panwar (affirmative):** In respect of minority shareholder protection, the role of the independent director has generally become increasingly important with each improvement or update in regulation. Their service life cycle, however, is managed by the controlling shareholder—from selection to dismissal. Despite various regulation, clear elements of governance failure persist in India, as can be currently seen in the banking sector. Current circumstances in India – recent high profile governance cases, broad-based governance inadequacies in the banking sector, and the political tone from the top that cronyism needs to be addressed—presents an opportunity to take the lead in introducing truly meaningful governance reform.

This is all the more important given that government actions have triggered an unprecedented flow of domestic money into the public equity markets; triggering this is the easier part, maintaining the flows (important to lowering cost of capital) over the long-term is conditional on trust—that these shareholders’ interests are meaningfully protected. Stronger governance codes and company stewardship would help, and making independent directors more accountable to other shareholders—and not just the controlling shareholders—is critical for this. Keeping the controlling shareholder involved in the nomination process is acceptable, but other investors should have the power to say “no”. This would give minorities a stronger voice while ensuring that boards remain cohesive and constructive.

### Debate question poll: before and after

Only minority shareholders should be allowed to vote on independent directors



**Slava Ryabota (negative):** Independent directors clearly have a central role, but how would minority shareholders’ exclusive enfranchisement actually help? The real question is: how are lists of board candidates compiled, and by whom? In India, a family-controlled company and board produce a family-controlled list. Only 30% of investments are made by domestic and foreign institutional investors, who do not talk to each other or coordinate their actions. The result is an asymmetry of information. We want to avoid a group of uncoordinated, uninformed, mostly passive persons selecting board members. It is unfair as it provides an advantage to promoters in that they can abrogate responsibility by saying “that director was not my choice”.

A wrongly chosen director can disrupt the working order of the board. If a concept (ie, the topic of this debate) is introduced too quickly, you end up with action based on compliance. The result of which is akin to a toddler with a skateboard. More time should be invested in getting buy-in from promoters. Shareholders are no longer constrained by tradition—they can engage in activism using social and mainstream media. The emphasis should be on the quality of engagement.

**Jaideep Panwar:** How does it help if the selection list is controlled by promoters? It may help in terms of creating the potential for challenge (by minority shareholders). Poor candidates can be voted against. While there are mechanisms that allow institutional investors to help contribute to the list, they are very rarely used. As for the problem of coordination and investors passivity, the related-party transactions (RPT) vote in India for minority shareholders only is a useful precedent. In some cases, it has been noted that companies reverse RPT decisions, therefore investors are not incapable of coordinating. Directors have to fit into the board. It would be a non-starter to have minorities propose a director with a “bad fit”.

**Slava Ryabota:** As for the “majority of minorities” vote on RPTs, the affirmative argue that it is working—this highlights my point. The main independent director issue relates to RPTs. Independence is a state of mind. It is not ticking the box. It is about challenging perceptions. There is a small group of independent directors that will challenge promoters, even when the promoter picked them to be a director. Promoters need to grow into governance. You cannot make them do good governance. Market education is required. When the Companies Act changed, we saw many workshops for company secretaries—what about now?

**Jaideep Panwar:** RPTs are not the only way that minorities can be taken advantage of, for example, accountancy matters. Succession—particularly with regard to family members. The incentives and mind-set can be changed if one is willing. You cannot make honest people from dishonest ones, but mechanisms for minority shareholders to hold them accountable can be created and that is what the affirmative propose.

**Slava Ryabota:** Composition of the board and committees is critical, processes and roles as well. It is quite possible to sabotage the work of the independent director by changing the process or the role. This is particularly important with respect to how information flows to the board. For example, if the internal audit report is a huge stack of papers with no analysis from an outsourced party, the Audit Committee has little chance of understanding or interpreting it properly.

Delegates were asked if they agreed with the contention of the statement debated both before, and after, they had heard the arguments. The “negative” side won the day—42% of the delegates disagreed with the statement—full results are presented on the page 5.

## Investor Workshop

**Hetal Dalal**, Chief Operating Officer, Institutional Investor Advisory Services, Mumbai, opened the workshop by providing delegates with an overview of the current position in India. This included an overview of: the equity market; the laws, regulators and administrators that operate within the country; the measures that India has taken to protect minority shareholders; the value of regulation; stewardship sponsored by Indian regulators voting engagement; and the adoption of stewardship codes in the insurance industry.

In contrast, **Arnout van Rijn**, Chief Investment Officer Asia Pacific, Robeco Hong Kong, took a broader approach and spoke about issues in Asia. For example: why performance metrics, quantitative data, excessive diversification and long-term chains make it difficult for investors to become active long-term owners. He emphasised that “passive [asset] managers” usually means “automated voting” and that engagement costs. Governance is closest to the hearts of fundamental investors, however lack of incentive and the “free-rider” effect present a significant challenge for investors wishing to engage on governance issues. Above all, research is essential, investors need to be “active” not “activists”, and they should collaborate.

Furthermore, investors should take both a bottom-up and top-down approach: be present at AGMs and explain why they are voting a particular way; be patient yet persistent when dealing with Asian companies; and engage with regulators to let them know their needs. Avoidance of the media is key as their involvement is counterproductive!

Four questions were posed to eight tables of delegates. A summary of the answers follows below.

### Are institutional investors in Asia ready to be active stewards?

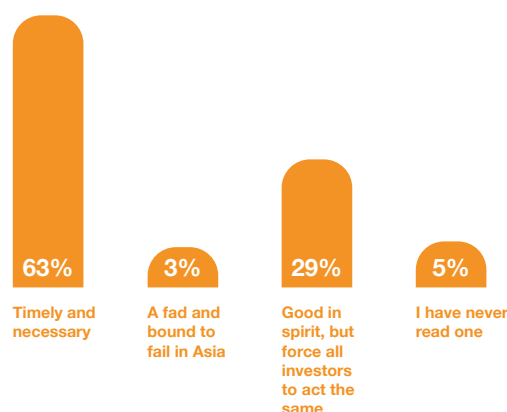
- Delegates hoped that it would not take the introduction of a stewardship code to make investors *want* to engage with companies.
- While Malaysia, Singapore, Japan and India have stewardship codes of some form, implementation presents challenges because of cultural diversity issues. Pressure from foreign investors is particularly high.
- Taiwan is in good shape. China is not ready. India is somewhere on the spectrum! In general, across all Asian markets, where there is a majority shareholder, a strong company culture of complete control and ownership will exist and it can be difficult to challenge in that environment.
- There is a view that there is a need for a regional stewardship code rather than jurisdictionally based codes.

### Are listed companies in Asia ready for investor stewardship?

- It depends—it varies by market, by company and by investor!
- Large-cap companies are more willing to engage as they are better resourced. Even if intent is evident, companies may not have the resources or skills to engage. Some companies are active in seeking investor feedback while others are less so. A balance needs to be struck between the two.
- The vast majority of investor funds do not want to provide feedback to companies, particularly when they are a small shareholder.
- One-on-one discussions are most effective.

#### Poll question

Stewardship codes for investors are ...



- Investors who are cross-market, cross-sectoral investors are more willing to engage.
- Challenges are faced by those investors wishing to engage with family-owned or majority-shareholder driven firms: although they may operate using a Western model, they are often unwilling to engage or to make significant changes.

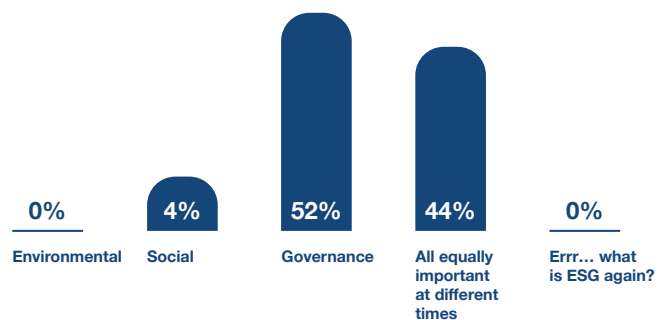
**Is there a need for auditors to have a more defined role in stewardship?**

- Delegates felt that the original question (Is there a need for auditors to have a more defined role in stewardship?) was better interpreted as “yes, there is a need for assurance that asset managers are performing their stewardship role appropriately”. Their answers included:

- Yes, the auditor should be talking directly with investors;
- No, as investors, we have our discussions with the audit committee as that is the appropriate place to check if they are conducting their role appropriately. Expanded auditor reports are beginning to be useful as they contain information that allows investors to ask more informed questions;
- I do not know, meeting with individual investors rather than collectively could raise issues of legality.

**Poll question**

In approaching ESG codes in Asia, which is the most important to you?



- Auditors should have a more defined role, however, there was lack of agreement as to what that role is.

**How should investors balance their focus on environmental, social and governance issues in Asia?**

- Corporate governance is seen as a milestone that needs to be met. Environmental and social concerns need to be aligned based on the type of investors that companies have or wish to attract. Also, if a company has bad governance it does not mean they will have bad “E and S”. Questions were raised asking if boards in Asia are competent or strong enough to be a voice for good governance.
- Governance is often equated with compliance.
- ESG has to be linked to materiality in order to impact on the financials and ultimately to the company’s performance and reputation. Does it lead to shareholder creation or destruction in value— who knows?





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# Regulatory Workshop

CG Watch 2016 - Market Rankings

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## Regulatory Workshop

Hong Kong is facing a challenging time. On the one hand, the battle of dual-class shares continues to be a thorn in the side of both investors and regulators. On the other there is a “comply or explain-based” stewardship code. Coupled with that, there is no dominant asset owner in Hong Kong and most listed companies are from China. The landscape is certainly changing.

**Michael Duignan**, Senior Director, Securities and Futures Commission (SFC), Hong Kong, indicated that the current focus for the Corporate Finance Division of the SFC was “front-loaded regulation”: stopping certain companies from listing or undertaking transactions that will damage the market, and not allowing valuations to be regarded as a “get-out-of-jail-free card”. The SFC was concerned about small companies trying to “expand out of trouble”, and it has seen too many valuation reports that overstate the worth of the target companies used to justify such expansion. Using its current statutory powers earlier in the process, it plans to object to listings or suspend companies where necessary, rather than rely entirely on protracted enforcement actions. Shell companies are also on the radar.

The issues surrounding the introduction of dual-class shares also invite questions: if appropriate investor protections are in place, are weighted voting rights a race to the bottom? Does Hong Kong want to risk companies going offshore and listing in the US? And is Hong Kong overly protecting investors at the expense of missing out on significant gains?

**Melissa Brown**, Partner, Daobridge Capital, Hong Kong, and Specialist Consultant, ACGA, felt that regulators need to focus on long-term investors. Asian markets still have a lot of work ahead of them—corporate governance, stewardship, ensuring investors can act. Investor voices are being compromised. It appears that regulators receive criticism from both sides of the spectrum and they cannot please everyone.

This issue is a double-edged sword. Companies wish to list to allow access, however, investors need to be more educated in understanding the market and associated risks. The assumption is that all investors are investing in the same thing and in the same way, which is not the case.

Four broad questions were posed during the breakout sessions. The answers provided by delegates are summarised below.

### **If the Stock Exchange of Hong Kong and Singapore Exchange adopt dual-class shares (DCS), will all other markets follow? Should they?**

- For many companies in India, controlling shareholders have no need to adopt DCS structures in their companies.
- As far as delegates could see, it was not in the interests of investors to adopt DCS.
- DCS does not appear to be on the agenda in India, even if Hong Kong and Singapore adopt it later.
- Having the option for DCS in India is not going to attract global technology companies to list in that country.

### **Will index providers be the regulators of the future? What standards would you like to see them address?**

- The index should reflect the market as a whole.
- It is difficult to put the genie back in the bottle, especially when market leaders are pointing at the US as an example of who to blame.
- It is not fair to ask index providers to do the job of regulators.

**Can premium market segments drive higher standards?**

- India has a very concentrated market structure. If instructed correctly, then influential companies could act together to voluntarily agree to meet higher standards. However, it remains the index that sets the standard.
- Yes, it is possible for both index providers and companies to raise the corporate governance standards of markets.
- In India, companies can join the SME Board first, then adhere to higher rules later.

**What is at the top of your regulatory wish-list and why?**

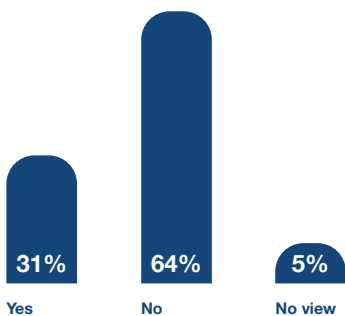
- Information disclosure from companies needs to be more specific and substantive.
- Executive compensation needs to be linked to company performance.
- Integrated Reporting has been used by some companies to cover up areas where they do not wish to make proper disclosure.

In response, **Michael Duignan** commented:

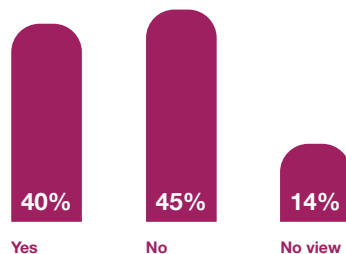
- Defining “new economy” is very difficult. This has been the predominant discussion in the SFC rather than DCS.
- The shareholding structure of the Hong Kong market includes a high percentage of retail investors. This complicates the DCS discussion in Hong Kong as investors do not necessarily understand the risks associated with DCS.
- Regulators never asked index providers to play a role as a regulator—that came from investors and the index providers could change their stance again if they wanted to.
- Executive compensation is a real, and universal, issue that is not confined to India or even to Asia.

**Poll questions**

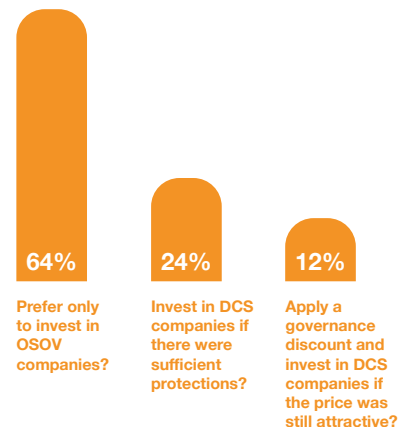
Do you think that safeguards can offset the major risks of DCS?



Will DCS become increasingly common for listed companies in Asia?



“One share, one vote” (OSOV) may be the “gold standard”, but would you ...



## Listed Company Workshop

With corporate governance codes being revised around the region, the advent of investor stewardship codes, and a heightened focus on ESG and sustainability, including climate change, the demands on boards and directors have never been greater. **Peter Butler**, Partner Founder Emeritus, GO Investment Partners, London, **Cyril Suresh Shroff**, Managing Partner, Cyril Amarchand Mangaldas, Mumbai, and **Mario Abela**, Director, Redefining Value, World Business Council for Sustainable Development, London, discussed a range of topical issues facing companies in Asia: board leadership for sustainability; succession planning and board diversity; individual director skill and competence; and how to improve disclosure on governance and ESG. The panel also touched on the extent to which boards should develop competence on climate change and cyber risk.

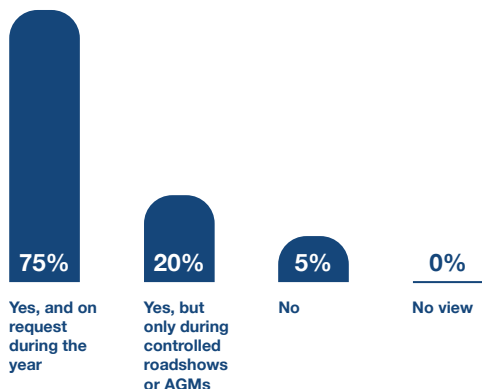
**Cyril Shroff** opened the discussion noting that there were unresolved conflicts in the concentration of power within Indian companies. In around 92% of listed company share registries in India, the respective promoter holds in excess of 50% of the shares. This has led to a situation where promoters develop an “owner’s mindset”—a control equation comprised of 50% shares + 1 = board control. This is problematic as it may cloud the lines of control and lead to situations where the majority shareholder has “*de jure, de facto* and shadow control”. The only solution is to resolve the issue via a regulatory focus and introduce a custodial model that: separates the status of ownership from the function of management; encourages a trustee/fiduciary mind-set while reinforcing the fiduciary duties of directors; and, focuses on the long term. In addition, he suggested the adoption of certain Kotak Committee recommendations was essential: in particular, the recommendations on splitting Chairman/CEO roles, embracing independent directors and disclosing the board’s skills matrix, and the enhanced role of board committees.

Changing the focus to sustainability, **Mario Abela** challenged the audience to think about company performance from a different perspective. According to his research at the World Business Council for Sustainable Development, the best performing companies are acting to create meaningful change, not talking about it. The challenge for companies is how they disclose information once a decision has been made. Investors too need to actively seek information from companies as this helps to encourage a culture of disclosure. He argued that, in his view, environmental and social concerns were an integral part of director fiduciary duties—ensuring long-term sustainability of the business. Sustainability risks are, therefore, business risks, but are not often listed in risk registers. This could be a symptom of the increased short-term mentality of many companies.

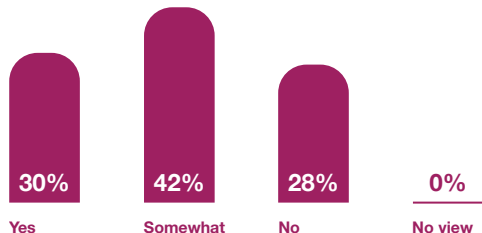
Before breaking into table discussions, **Peter Butler** led the panel in a conversation about nomination committees—which are not working as well as they should. He suggested that companies needed to refocus and spend an equal amount of time on their nomination committees as they do their audit and remuneration committees. Not enough time is spent on key issues: succession planning, recruitment, and the like. Because stewardship codes and corporate governance codes are vague on the roles of nomination committees, issues arise. Examples include: irregular meetings; conflicts of interest, such as family members on the committee; and no agreed standard of scope. He indicated that dysfunctional boards replicated themselves as there was an element of “hiring from the same mould”. One possible solution was the introduction of the Swedish model, whereby the nomination committee is comprised of representatives of the four to five largest shareholders, plus an independent non-executive director in the role of chairman, and the committee recommends who sits on the board of directors.

**Poll questions**

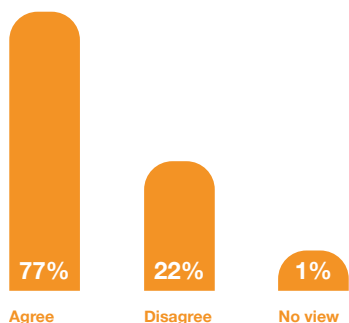
Should companies allow their independent directors to meet institutional shareholders?



Should there be greater involvement by institutional investors in Nomination Committee processes on board appointments and succession planning?



Global issues such as climate change, present risks that companies should be addressing as part of their risk management



Four questions were posed to eight tables of delegates. A summary of their answers is provided below.

**The nomination committee is the neglected committee: do you agree?**

- A majority agreed that nomination committees were often forgotten or neglected.
- However, in the case of state-owned enterprises (SOEs) with government-appointed directors, or where there is a majority shareholder in a private enterprise, the operation of the committee can be difficult.
- It is not about concentration of ownership—there is a small pool of candidates that committees use as a resource when seeking replacement directors. However, a good charter would help in cases of planned succession.
- Committees need to build skills matrices to build board skill.
- Asian companies require different skills from their nomination committees compared to European and US companies.
- Long serving directors are sometimes guilty of hiring in their own image.
- Take a UK approach in Asia and have the committee comprised entirely of independent non-executive directors.

**Should investors in Asia be encouraged or required to sit on nomination committees?**

- The Swedish model may not work in Asia.
- Institutional investor involvement would lead to greater disclosure of the nomination process. There is limited opportunity for large investors to be involved in smaller companies.
- The government should be treated like other shareholders in an SOE, but investors should take note of changes in the machinery of government as the appointee of one administration may not serve well in the case of a change of government (ie, right-wing to left-wing, or vice-versa).
- Dialogue between companies and investors would be best—particularly in promoter-controlled companies.

- Board evaluation should be encouraged and taken seriously.
- Short-term thinking can affect the outcomes of nomination committees.
- Long-term investors should be encouraged to participate as they can assist in identifying the right skill sets.

**The new SEBI Corporate Governance Committee has made numerous recommendations for improving corporate governance in India. Which do you find most compelling?**

- In general, the recommendations are following best practice, therefore they are significant changes for India, but none are really compelling.
- The requirement for boards to engage annually with stakeholders to exchange views is compelling, however, “stakeholders” in this context refers to shareholders so it could limit the meaningfulness of the dialogue.
- The role of women, especially as independents.
- Softer criteria such as information sharing as opposed to prescriptive measures.
- Related-party transactions—good to remove the loopholes in the current system.
- Lead independent director, culturally important in India as that person is a lightning rod.
- Being more transparent in succession planning.
- Setting an upper limit for directorships at seven (compared with 20).

**Do boards in Asia have the competence to address climate change and other sustainability risks?**

- Boards are not ready to address climate change and other risks. Such risks are difficult to measure, especially for companies that do not appear to be immediately affected by the change in climate.
- Most companies are complying with regulation. Risks are present, but opportunities are also missed.
- There is a lack of talent available in companies to inform boards and to address the issues at hand.
- Skills should be integrated within the board—perhaps an expert director.
- Investors need to become more familiar with the risks posed to each company and then advocate for risk matrices.
- A number of Chinese companies that failed to meet certain environmental risks have shifted to India. The implication being that India is behind in ESG matters.
- Board training is required.
- Investors need to be transparent in disclosing how they invest using an ESG framework.
- Investors should promote more ESG funds in Asia to generate better behaviour in the corporate sector.
- Investors need to behave in a long-term manner as climate change is a long-term issue.
- Regulators could introduce a regime where companies are penalised for not complying with ESG reporting requirements.





## Auditor Workshop

As capital markets continue to rely on financial statements, there has been increased focus on financial reporting and audit quality in Asia. This session discussed how audit quality has been and can be further enhanced with the establishment of independent audit regulation, strengthening of the independence and competence of audit committees (AC) and the adequacy of HR capacity of CPA firms.

**Julia Tay**, Partner, Asia-Pacific Public Policy Leader, EY, Singapore, opened the workshop with a short introductory presentation about the different stakeholders that collectively contribute towards ensuring investors receive trusted financial information. These stakeholders not only include company preparers, ACs and auditors but also independent audit regulators, whose oversight had helped improve audit quality over the past 15 years. One of the most tangible benefits to investors from independent audit oversight has been the public disclosure of audit inspection findings, albeit in varied forms, by many audit regulators.

The introductory presentation also shared snippets of findings from an EY-ACGA Investor Survey of ACs. In the survey, investors affirmed that independence and competence is critical for ACs to be effective in their oversight role of financial reporting and audit quality. Investors also indicated that ACs needed to develop new competencies such as cybersecurity and data analytics. As audits involve the exercise of professional scepticism and judgement by highly experienced auditors, audit quality is highly correlated to the adequacy of HR capacity of CPA firms. However, high staff attrition, low retention and a mismatch of resources compared to audit complexity, are real issues for CPA firms in Asia.

**Pru Bennett**, Director, Head of Investment Stewardship APAC, BlackRock, Hong Kong, indicated that BlackRock would work with ACGA to encourage those markets that did not have an independent audit regulator to implement one as soon as possible. Independent audit regulators are a very important component to raise the quality of audits. Not only do they oversee the quality controls of CPA firms, some independent audit regulators also affect the standard of corporate governance within companies. For example, in Australia, there is regulation to avoid what is called “audit shopping” where companies will change auditors if there is a chance that the auditor may issue a qualified opinion. The regulation requires an outgoing audit firm to write to the regulator (the Australian Securities and Investments Commission) stating that there was nothing untoward with respect to the company’s decision to change audit firms. On the topic of independence and competence of ACs, the issue remains that it is still too difficult for investors to confidently assess the competence of directors based on the company’s disclosure and assessment of director skills.

Each table was asked to respond to three questions related to one of the four areas outlined above.

### Table 1: Independent audit regulation

- The independent audit regulator does have a very important role in improving audit quality but that is only a small sub-set of corporate governance. To have wider impact, audit regulators may need to expand their regulatory remit as seen in the example of the UK Financial Reporting Council.
- The qualifications of the “independent audit regulator” should be looked at.
- The AC could be the recipient of inspection reports on material matters from audit regulators to help it assess the quality of its auditor.
- As quality controls of global network audit firms are designed centrally, the audit regulator should also look at the global network controls besides the audit work performed locally.
- The communication between the auditor and the company is also important and should be disclosed. For example, the Key Audit Matters, which was previously only discussed with the company, is now being disclosed in the new auditor’s report.

**Table 2: Independence of Audit Committees**

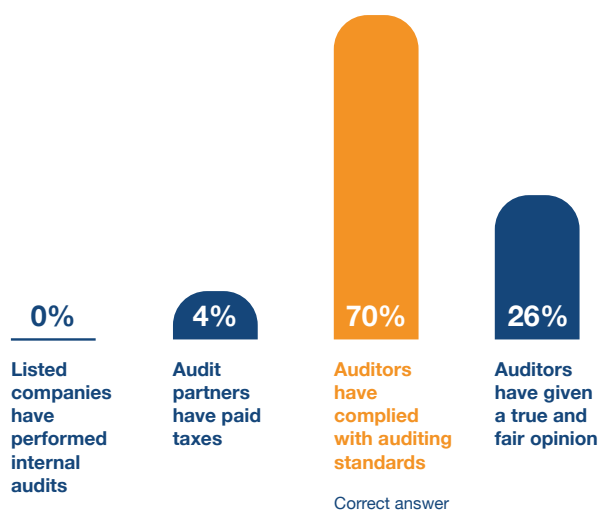
- It is near impossible for an outsider to know if an AC is really independent inside a company.
- Even when the independence is achievable in some cases, it is highly culturally-related.
- Disclosure needs to be much more substantial.
- The focus should be on effectiveness rather than independence of the AC.
- Disclosure cannot indicate the independence of the AC; disclosures are often around bright-line rules, for example, relationships with owners or management. Relationships in Asia are subtle, nebulous, and often, complex—beyond what is restricted by legislation and rules.
- Nomination by minority shareholders is not the solution to ensuring independent directors.
- Proxies such as an independent press could be useful for assessment of AC independence.

**Table 3: Competence of Audit Committees**

- While it would be ideal for AC members to possess many skillsets, the skills must support the committee’s fundamental role of financial reporting oversight.
- AC members need to be genuinely qualified and have real expertise in the financial sense, not purely hold CA or CPA accreditation.
- Disclosure of the skill set, independence and other information related to ACs should be made available to investors.
- An extended report on AC oversight activities would be useful to investors.

**Poll question**

Inspections by audit regulators involve checks that ...



**Table 4: HR Capacity of CPA firms**

- Audit firm transparency reports are important for investors to assess the quality of CPA firms and it would be useful to have HR indicators in those reports.
- Low audit fees are contributing to the HR issues faced by CPA firms and investors should be asking questions if audit fees are being lowered.
- Auditors should tell ACs if they are doing a lot of what should have been done by company preparers—this is a win-win because auditors would be able to spend less time preparing accounts and ACs can be better assured of internal controls.
- Audit tenure could also be another factor to impair the independence of auditors.



ACCA



## Gala Dinner

**Shaheen Mistri**, Chief Executive Officer, Teach for India, Mumbai, addressed the guests at the Gala Dinner this year. Asking delegates to set aside common business ideals for a few moments, she then requested all in the room to reflect on: the education they had received; how it had helped propel them to whatever position they held now; and how it is going to prepare them for whatever step they intend to take next.

In highlighting how much an excellent education can reverse the misfortune experienced by children since birth, Ms Mistri compared the life of two young women from India. The first was her daughter, who is studying in the United Kingdom. The second was a disadvantaged girl who struggled to get an education, yet overcame her plight to end up studying in the United States. Their fates could have been very different, on the flip of a coin. Both were lucky that the coin landed on the side of opportunity—yet 76% of children in India do not complete school or continue their educational path and read at university. Much of what they do learn is by rote and critical thinking skills tend to be under-developed.

Ms Mistri impressed upon the audience that an excellent education is not only going to help young persons to go wherever it is they want to be, but it establishes the values that will guide them throughout their lives. In considering this, delegates were asked, “What do our children really need, what is going to drive systemic change?”. The answer was a story about leadership.

In her opinion, India’s best and brightest children are not going into careers that “make a difference”. India’s youth stars are following a well-trodden path into traditionally respected jobs—law, medicine, banking, and the like. Supporting her argument, she presented the story of a young man who worked for the Commission for Human Rights for two years. He worked for next to nothing for the first two years, after that he received Rs20,000 per month and an office. He is now responsible for a government organ that designs and evaluates national curriculum programmes.

Teach for India has approximately 2,000 members in its alumni. The programme involves spending two years teaching young children. After the two years, participants are free to leave the organisation, however, Ms Mistri would hopes that her alumni went into careers that helped them to remain committed to children.

In closing her address, she imparted three lessons:

- The power of what belief can do.
- Leadership equals limitless potential. Children are the “present today”, not the “future”.
- It takes a village to raise a child—be part of the village!



## India Market Focus

**Rahul Bhasin**, Managing Partner, Baring Private Equity Partners India, Gurgaon, welcomed **VR Narasimhan**, Chief Regulations, National Stock Exchange of India, Mumbai, and **Amit Tandon**, Managing Director, Institutional Investor Advisory Services, Mumbai, to join him on the stage.

He opened the session with an overview of the challenges faced by India, as an emerging market: the inadequacy of legislation that governs fiduciary relationships between investor and investee and its lack of enforceability; the need for an independent audit regulator; and the government's need to create capacity to investigate high-profile governance transgressions and ensuring consequences.

**VR Narasimhan** highlighted that regulations in India are “emboldened and empowered” because they are a hybrid between principles-based and rules-based regulation. Enforcement of regulations, however, is a work in progress. He felt that the substance of corporate governance is the responsibility of the investor not the regulator. For example, investors should determine if a director is independent or otherwise. The role of the Exchange is clear. The market has seen significant changes over the past two years with stock exchange initiatives and regulations, for example, the introduction of principles around disclosures, shareholder protection and rights and board responsibility; enforcement; minimum corporate governance standards; and capacity building.

According to **Amit Tandon**, there has been a significant increase in the percentage of capital voted upon (73% to 78%) because regulators are pushing investors to vote. SEBI asked asset management firms to vote, as have pension funds. Recently the insurance regulator has asked the insurance companies to adopt a stewardship code, so this number will only increase. Engagement with companies has increased and the research community is active in tracking companies. Therefore, companies are engaged in dialogue with more investors than before.

The adage “never waste a crisis” holds for governance reforms in India. Each governance crisis/failure, has led to reforms, with a committee being set up by the government, that is by the Ministry of Corporate Affairs or the regulator, SEBI.

Improvements include transparency and a greater focus on disclosures. India has also aligned itself to the OECD's corporate governance principles over time. The Kotak Committee has made 81 recommendations, some straightforward and easy to be implement, while others will need more time. Some areas of consideration were:

- Strengthening oversight over the auditors
- Strengthening oversight of the subsidiaries
- Cyber/technology related risks and addressing these;
- Appropriately skilled board members and boards;
- Refocusing of the stakeholder empowerment committee to better understand investors, including meeting with investors yearly; and
- Access to information by the controlling shareholder.

**Rahul Bhasin** summarised the conversation by stating that as an investor and as a manager, sometimes one needs to focus on substantive issues. Form is pushed, to the point where it has become cumbersome without substance being addressed—regulators need to take note of this and keep in mind that India is a relatively young economy.

Disclosure cannot be done mechanically, and a holistic view needs to be taken. Sometimes it is better not to disclose immediately. For example, when cases of fraud are detected, first investigate internally and then disclose the event and the corrective action in a way to minimise disruption to all stakeholders.





## China Market Focus

The panel in this lively session examined: the new direction of SOE reform; the enhanced role envisaged for Party Committees in listed companies; and governance challenges in the M&A process (both in China and for outbound investment). The diversity of governance systems among privately owned firms and new corporate governance policy developments were also discussed. This session drew upon on key conclusions from the forthcoming *ACGA China Corporate Governance Report*. The session was moderated by **Jamie Allen**, Secretary General, ACGA.

**Nana Li**, Project Manager, ACGA, Hong Kong, provided key insights from the *ACGA China Corporate Governance Report*. She highlighted the results from ACGA's survey of foreign institutional investors (154 respondents) and China listed companies (199 respondents). It was not surprising that there were divergent views on: the investment potential of China's A-Share capital market over 5-10 years; the level of agreement with MSCI's decision to include 222 A-Shares in its Emerging Market's Index; and the need to undertake additional analysis on the corporate governance of China A-Share firms.

The data reiterated that Chinese listed companies believe that they have good corporate governance because they comply with the law and regulations. Institutional investors had a strongly opposing view in that it was absolutely necessary to complete significant analysis of the corporate governance of A-Share firms before investing.

China's approach to corporate governance contains some unique features. The discussion in the report covers aspects of "corporate governance with Chinese characteristics". For example: Party Committees (PC); boards of directors; supervisory boards; independent directors; state-owned enterprises (SOEs) and privately-owned enterprises (POEs); and the auditing industry in China.

One of the major developments in corporate governance in China over the past two years is the reinforcement of the role of the PC in Chinese companies, especially SOEs. Foreign investors are worried by the lack of transparency with regard to the function of the PC, as well as how the Committee affects the decision-making process in Chinese SOEs.

Given greater dispersion of shareholding structures of companies, the struggle in the boardroom of some Chinese companies has become much more intense. The fight for control between large shareholders has left minority shareholders seeking an avenue where their voices may be heard.

China's style of board structure is a fusion between the North American-style independent directors model and the Germanic-style supervisory board model. The structure was introduced with an aim to create more checks and balances in the system. In reality, however, the goals have not materialised. In fact, the supervisors in Chinese companies are acting more like monitors as they are sitting below the board, with no real supervisory power. The independent directors are acting more like consultants—as they have no real influence over the decision-making process of the management, which appointed them in the first place.

Ms Li also mentioned that, in so far as corporate governance practices are idealised in SOEs and POEs, what is practiced is something quite different. It is necessary to examine these two groups separately, take for example, the agency cost issue in SOEs and POEs. For SOEs, the agency cost comes from the dual-role of management as these enterprises often serve both political roles and business roles at the same time. Executives at state and private firms often have different priorities for the two roles when it comes to decision-making time. For POEs, the agency cost is more akin to a textbook example: the cost of controlling shareholders' self-interest at the expense of minority shareholders. Therefore, context is essential when analysing corporate governance issues.

The last two points Ms Li spoke about were: integrated auditing systems, which consists of internal auditor, audit committee and external auditor, which have not been implemented in the majority of Chinese listed companies; and the lack of synergy generated from merger and acquisition deals made by Chinese companies, especially in foreign markets.

**Vincent Poizat**, Senior Manager, Risk Advisory, Deloitte Touche Tohmatsu, Tokyo, was the final speaker of the session. Mr Poizat has been engaged in mergers and acquisitions (M&A) in Asia for more than 20 years. From his perspective, 20 years ago, research showed that value creation tools were appalling. Less than 30% of transactions added value to the acquiring company and 40% destroyed value. Since then, much progress has been made, particularly in the areas of valuation techniques, integration planning, and due diligence, as well as the proliferation of readily available tools from consulting firms, publications and the like. Yet the M&A success rate has not shifted, it remains around 30%. This does not mean that the situation in Asia has remained stationary. The landscape has evolved. The market is saturated with M&A advisers and firms. There are two main groups. The old guard that was around 20 years ago are serial acquirers, have evolved proper systems, and have achieved a higher M&A success rate. The new guard are newcomer-companies that are predominantly from Asia, but China in particular. They have been plagued with failure, rushed exits and reputation damage.

Value destruction is the difference between closing a bad deal compared with not closing a good deal. This is caused by three issues: failure to originate; failure to close; and over-paying for the asset. In addition, many firms do not integrate due diligence findings into decisions.

There is still a lot of work to be done. He advised the audience that there were three sources of risk that need to be navigated to achieve a successful M&A deal:

- **Strategic risk**  
Source: M&A initiative (company, market)  
Treatment: review and monitoring
- **Execution risk**  
Source: process from origination to post-deal management  
Treatment: best practices and monitoring
- **Target risk**  
Source: target company or deal  
Treatment: focused and integrated due diligence

In order to deliver effective oversight, there needs to be an efficient review of approval processes. The key challenges to be addressed include:

- Application of rigorous framework to assess strategic fit;
- Risk approach to M&A management;
- Efficient, systematic yet adaptable approval processes; and,
- Adequate competences of boards and committees.





## The Chairman's Dialogue

By popular demand, long-term ACGA council member and outgoing Chairman, **Douglas Henck**, reconvened the Chairman's Dialogue. This year, **Nicholas Allen**, Independent Director, CLP Holdings, Hong Kong, and **Leo Puri**, Managing Director, UTI Asset Management Company, Mumbai, were the guests on stage.

**Nicholas Allen** reflected on his personal experiences of: interacting with investors; being an independent director; training that prepared him for his directorships; and differences between being a director and a chairman. He indicated that corporate governance is often misunderstood as a compliance activity. At the same time, he suggested that investors need to interact more with boards of directors.

**Leo Puri** contextualised corporate governance compliance in India. The focus on corporate governance compliance within that country is driven by a desire to avoid criminal prosecution. In developing the argument, he indicated that neither the corporate sector or regulators in India were comfortable with principles-based regulation as it was too arbitrary—a point raised by Sandeep Parekh during the Asia Overview (cf. Page 3). A rules-based approach is easier to implement and comply with as all parties can tick a box.

A selection of the questions posed by Mr Henck to his two guests and their summarised answers follow below.

**Q:** Addressing the barriers to dialogue between companies and investors, chairmen do not like interaction and independent non-executive directors (INED) do not know what to say. Perhaps every new INED should be required to meet the top 10 shareholders. Is this a good idea and, as an asset manager, would you be prepared to spend the necessary time to make it happen?

**A:** Views were convergent. There should be an ability for INEDs to understand what investors want and how they think. Balancing priorities of the business and investors is key.

**Q:** If you look at the SOEs in India, would you say they meet India's current corporate governance ranking?

**A:** SOEs should be subject to the same standards of corporate governance as listed companies. It is the regulator's job to ensure that it does not give the government better treatment than the rest of the market. SOEs often do not comply and think they are exempt because they are "the government".

**Q:** What corporate governance issues or concerns do you have with respect to the listing of asset management companies?

**A:** Listing of asset management companies and an insurance company should not create problems. Systemically, insurance companies and asset management companies need some thought. In India, the largest insurance company is owned by the government, whereas asset management companies are owned by companies or banks. The industrial sector should be kept separate from the financial sector.

**Q:** As regulation increases, are there any specific areas that we need to rebalance towards the entrepreneur? Have we gone too far?

**A:** You can make it difficult for entrepreneurs to make the decisions they need to make and so maybe the bar is being placed too high. These people are not criminals; they are genuinely trying to create shareholder value. So, yes, we need to pay attention to that risk. What if independent non-executive directors need to be appointed, where I, as the entrepreneur—due to nomination committee rules—

have no say, what does that mean? What about the independence of the chairman? What about strategic issues where only minority shareholders vote? How do I, as an entrepreneur, ensure that these do not detract from strategy?

**Q:** Rules that mandate a synergistic relationship between entrepreneurs and independent shareholders are unrealistic. In your view, can you mandate that kind of relationship?

**A:** Perhaps we will end up arriving at that point via case law. One needs to consider various factors such as:

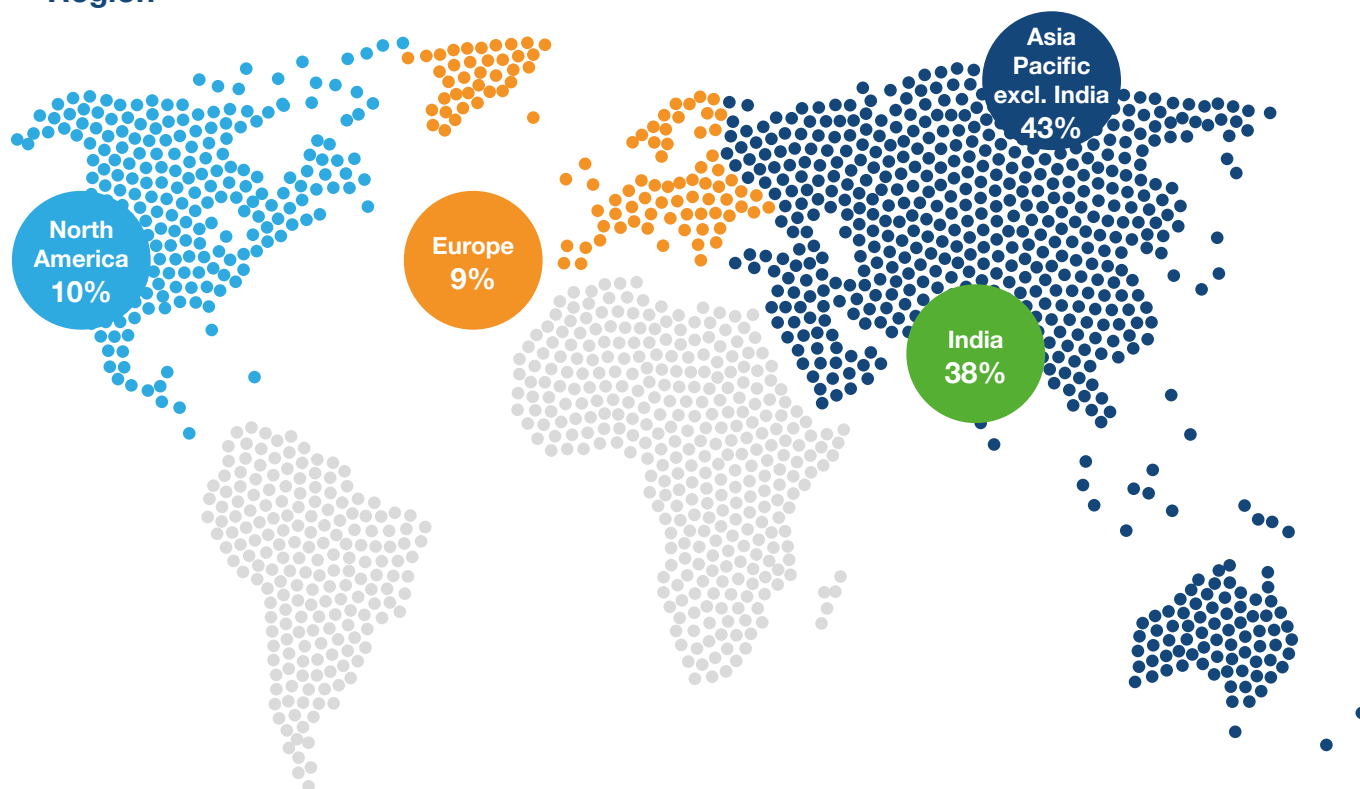
- What constitutes egregious compensation?
- Does the company have an independent chairman?
- SEBI will regulate for it, but should it?

Finally, we shall leave you to think about this: can we point to where we have had a truly professional independent chairman in India?

## Delegate Statistics

This year, a total of 156 delegates attended our conference. The delegates came from 14 markets representing three geographic regions and the host nation, India. The distribution of delegates by region, seniority and industry is as follows.

### Region



Note: This map is artistic in nature and not meant to represent actual national borders.

#### Europe

- Luxembourg
- United Kingdom

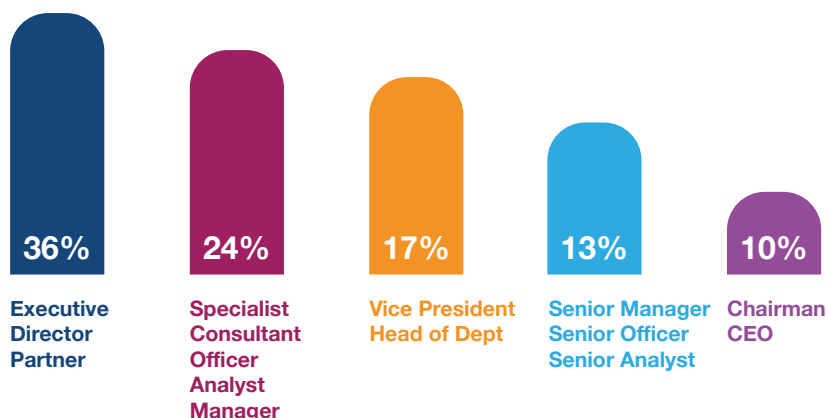
#### North America

- United States of America

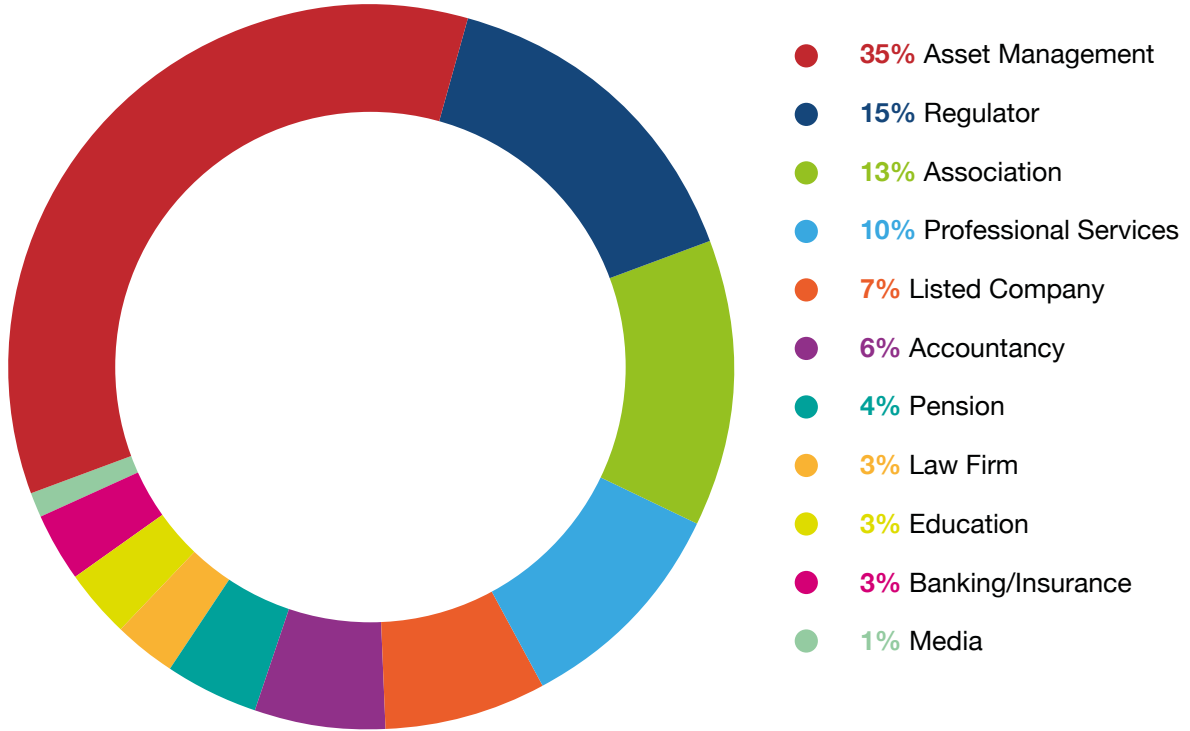
#### Asia-Pacific

- Australia
- China
- Hong Kong
- India
- Japan
- Korea
- Malaysia
- Philippines
- Singapore
- Taiwan
- Thailand

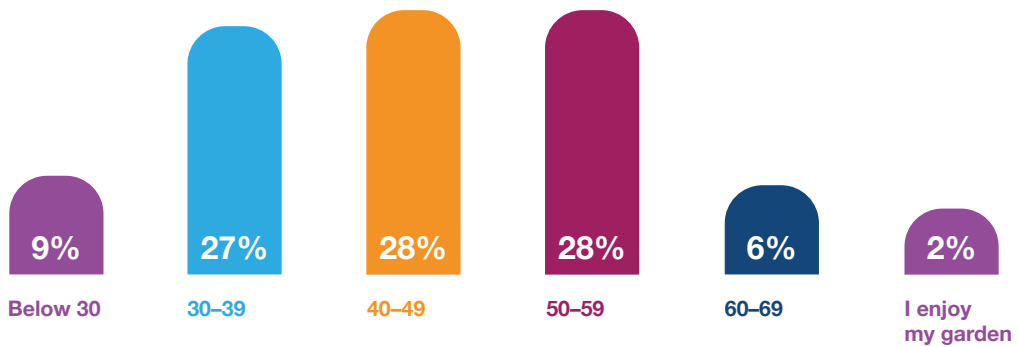
### Seniority



### Industry sector



### Self-disclosed age









# See you in Beijing

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