Conference Report

ACGA 22nd Annual Conference

Asian Business Dialogue on Corporate Governance 2023

"The future of governance: Asia's fork in the road"

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1-2 November 2023 – The St. Regis Mumbai, India

Preface

When ACGA held its first annual conference in Hong Kong in November 2001 at the old Furama Hotel in Central we had little idea if it would be a success or if there would be a follow-up. Thanks to a lot of hard work and a bit of luck the event went off without a hitch, speakers were excellent, and the Asian Business Dialogue on Corporate Governance was born. It never occurred to us that we would still be doing it 22 years later.

The durability of the conference owes much to a few principles we agreed early on. Never engage in the practice of “pay to play”, where sponsors automatically receive speaking slots. Focus obsessively on content, think hard about the right mix of speakers for each panel, and don’t have too many speakers. Base the programme on ACGA’s independent research and input from our members so that topics discussed are relevant and of practical value. And create a forum for an open exchange of views among diverse stakeholders.

As much as I would like to take credit for this approach, it was essentially the brainchild of our then chair, Ambassador Linda Tsao Yang, who led the ACGA Council from 2000 to 2014. Linda had strong views on many things, not least how to run a good conference! We initially thought “pay to play” would be unavoidable, but she was absolutely right. If the programme is of high quality, she would say, the event will be a success and sponsors will be happy. Hence the presence of many familiar corporate names over the long term on our conference banners: CLSA (every year from 2002); Chubb, Lombard, and Aberdeen in our first decade; then Aberdeen, Capital Group, Fidelity International, NBIM, EY, CLP, UBS and Blackpeak in our second decade. Through her extraordinary connections across the region, Linda also brought in a raft of big-name speakers.

I would like to take this opportunity to thank the ACGA Secretariat for their incredible hard work behind each conference and for constantly pulling rabbits out of the hat. While there are too many people to thank by name, one individual deserves special recognition—our conference logistics manager, Julia Mart. She has worked on every event since 2001, spends much of her time fighting fires behind the scenes, and has been essential to the Dialogue.

The ACGA Council deserves much credit too. For backing the often-risky decisions we have made over the years regarding locations. For understanding conference financials are a volatile beast. And for contributing ideas and speakers to the programme.

We have been blessed with a fabulous roster of speakers over the past two decades, drawn in large part from members and friends, and an equally superb group of delegates. It has been a pleasure putting on these events for such an appreciative audience.

My final thanks must go to our founding chairman at ACGA, Dr David Chiang of Lombard Asian Private Investment Company. David was a vibrant and farsighted business leader who understood well before most the significance of corporate governance to Asia. He and Lombard backed ACGA at a time, the late 1990s, when most people thought better governance in this region to be a lost cause. It was an honour to know and work with David.

Before signing off on what has been my last conference as ACGA Secretary General, I would like to wish my successor, Amar Gill, all the very best for the future. May ACGA and the Asian Business Dialogue go from strength to strength!

Jamie Allen
15 November 2023

Asian Business Dialogue on Corporate Governance 2023

Corporate governance past, present and future came to the fore at ACGA's 22nd annual conference at the St Regis Hotel in Mumbai on 1 and 2 November 2023. Themed "The future of governance: Asia's fork in the road," the event featured 31 speakers from across the region who shared insight during nine plenary sessions and a gala dinner on topics ranging from global stock market competition and corruption to family governance and geopolitics. It was ACGA's third time to host its annual "Asian Business Dialogue on Corporate Governance" in India, having previously held the event in Mumbai in 2008 and 2017.

A big thank you to our principal sponsors **CLSA** and **Fidelity International**, supporting sponsor **EY** and workshop sponsors **Capital Group** and **Norges Bank Investment Management**. We are also grateful to **Institutional Investor Advisory Services (IiAS)** for being our supporting organisation for this year's conference. The event would not have been possible without the original insight and opinions of all our speakers and the ongoing support of our members and other delegates. This year we had over 120 attendees from at least a dozen countries at the event.

As you would expect, the conference relies on a dedicated team behind the scenes to make sure the event is an operational success. Special credit goes to ACGA COO **Irina Medukha**, Office and Event Manager **Mikky Li**, and **Ida Chan**, Executive PA to the Secretary General who worked tirelessly with Conference Manager **Julia Mart** to coordinate speakers, liaise with the hotel and organise ancillary events. A special thanks also must go to our Specialist Advisor for India, **Sharmila Gopinath**, for all her hard work on conference content and logistics.

Day One



The conference opened on the morning of 1 November 2023, with ACGA Secretary General **Jamie Allen** acting as master of ceremonies, and ACGA Chair **Steve Watson** offering a welcome to delegates and thanking **Jamie Allen** for his near quarter century efforts in advancing corporate governance in the region as he steps down from his role next year. We were delighted to have **Ms Madhabi Puri Buch,** Chairperson of the Securities and Exchange Board of India (SEBI) join us for the opening, where she shared the regulator's philosophy, opined on India's growth prospects and took several questions from the audience.

Where is the region heading on CG?

The first Plenary, "Regional overview: Asia's choices" featured speakers **Jamie Allen** and **Seungjoo Ro**, Head of Sustain Asia/ESG Research at CLSA in Hong Kong. Jamie gave a preview of ACGA's new *CG Watch 2023* survey, describing the current state of CG in the region as being at a fork in the road. There is much scope to deepen reforms on basic aspects of governance, including disclosure and he noted ambivalence seen at government and regulatory level in several markets. Still, there is an opportunity to move forward with ESG and sustainability as catalysts for better governance.

He presented slides on key questions of CG in Asia: in terms of board governance, is it still a case of form over substance? Are there limits to what the region can achieve, and will stewardship play a key role? He noted Asia's hybrid governance, where historically there are different forms of board and complicating structural factors. For example, China has a two tier board structure where Party Committees play an increasing role. Concentrated control, he stressed, creates significant challenges for board governance and there are constraints as to what is possible in the region: the typical chair tends not to be independent in action and this is something which is evident from the narrative companies are providing on board evaluations.

The topic of independent non-executive director (INED) pay shows broad alignment in the region, with most paid reasonably simply and reasonably-free of conflicts of interest, which Jamie dubbed a positive. ACGA would prefer a structure where INEDs are paid fees and perhaps partly in stock, but not stock options.

Jamie also spoke about a significant imbalance of power between executive and independent directors, describing inadequate training of directors, the limited breadth of board diversity policies, inadequate financial literacy and superficial skill matrices in annual reports. On the positive side, there have been improvements in sustainability reporting and a move toward better governance on sustainability.

The ACGA Secretary General shared his view that Asia should be scoring much higher on CG after 15 years of reform. There are many negative phenomena in the region such as political uncertainty, endemic corruption, non-diverse boards and he finds that there is an issue of regulators either being too weak or too strong. Overly-powerful regulators can drive reform when a market is not ready, or put too much on the agenda. Ageing boards is a major issue in the region, and Jamie questioned whether these boards are truly fit for purpose in dealing with climate change, as they are not renewing as fast as they should.

However, he sees sustainability as a potential catalyst for change. Climate reporting is being driven at both a national and global level and ISSB is taking the lead in internationally-comparable sustainability reporting standards. Investors are starting to demand more sophisticated, standardised climate governance. Driving the need for assurance of reporting will moreover deepen the integrity of data. Markets such as China and Japan are meanwhile very much in the discussion on global international sustainability standards: both have seats on the ISSB board while the latter plans to converge standards and start reporting from 2025.

ISSB: Asia-Pacific is getting on board

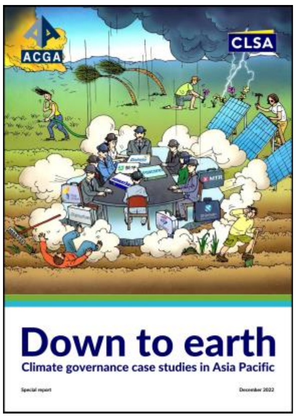
Market	Action
Australia	Recent consultation on climate disclosure; proposing mandatory assurance
China	Seat on the ISSB Board; Beijing office responsible for emerging market promotion
Hong Kong	Recent HKEX consultation on climate disclosure; HKICPA plans to adopt S1 + S2
Japan	Seat on the ISSB Board; created Sustainability Standards Board of Japan in 2021; planning to converge and start reporting from 2025
Korea	Seat on the ISSB Board; formed KSSB under KAI in 2023; it is working on adoption of S1 + S2; new ESG disclosure framework based on ISSB from 2025
Singapore	Formed Sustainability Reporting Advisory Council in 2022; recent consultation on mandatory climate disclosure for listed + large non-listed companies
Taiwan	Sustainable Development Guidemap in 2023. Converge with ISSB over 2024 to 2027. Extending mandatory assurance to GHG inventories for large issuers from 2024.

Source: ACGA research

ASIAN BUSINESS DIALOGUE 2023, PLENARY 1 (JAMIE ALLEN)

There is also significant change in the area of stewardship, Jamie said. These codes are fundamentally important to building a deeper, richer ecosystem of governance. Investors are critical stewards, and in one sense stewardship is nothing new as investors should develop a responsible investment policy, and vote and engage. Over the past 10 years what has emerged that is new is a need for investors to manage conflicts of interest and have strong internal governance structures. Reporting annually on their progress is also vital. On the engagement front, collective engagement works differently in each market but it is a fundamentally important collective: a single voice with a coherent message to companies. On both engagement and stewardship investors have a choice to utilise these powers to their fullest.

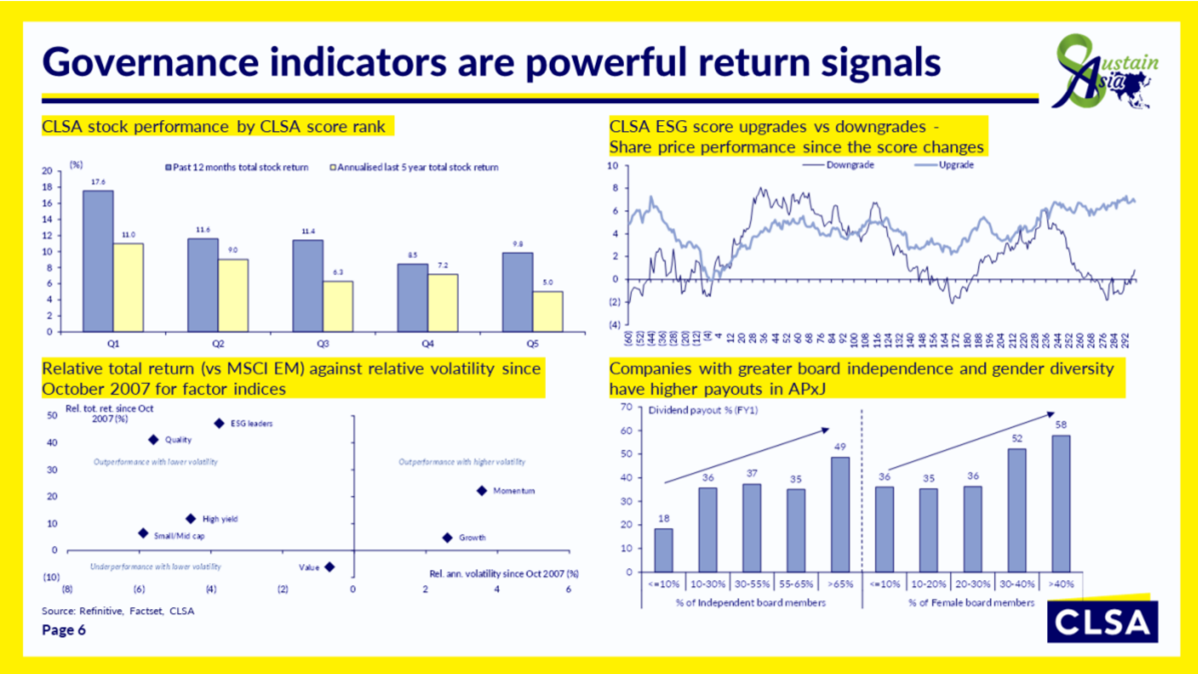
ACGA's climate governance report "[Down to earth: Climate governance case studies in Asia Pacific]"

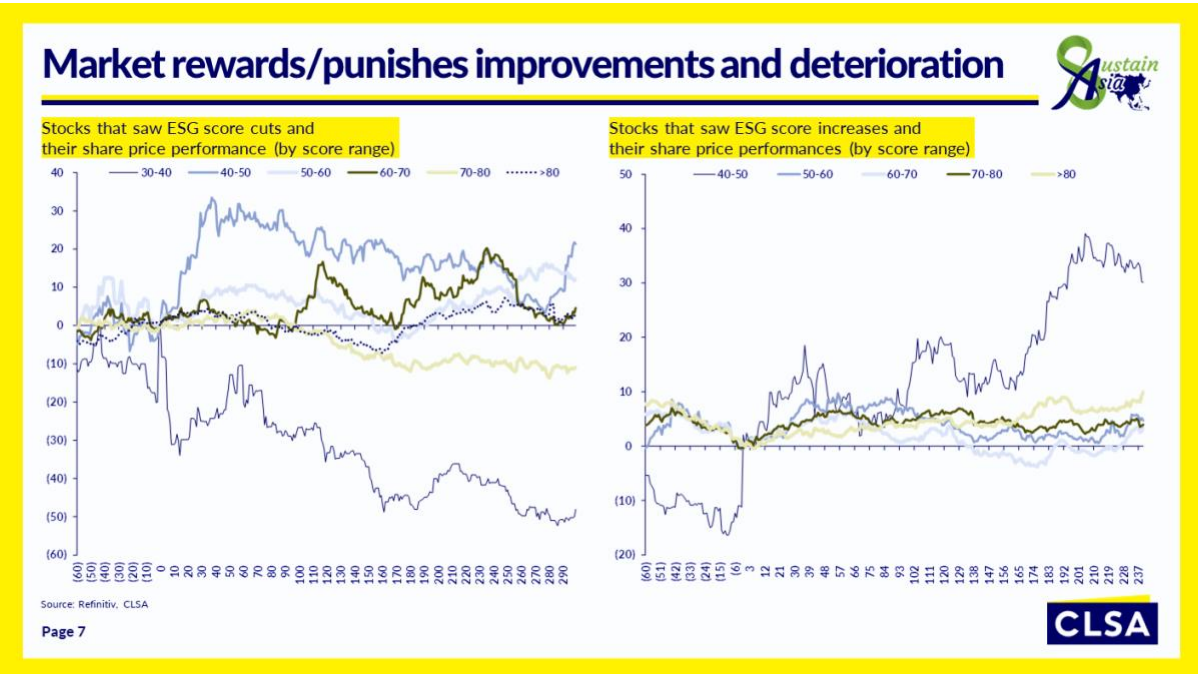


Jamie described current growth markets as Japan and Taiwan. Japan is at a very interesting point in its CG evolution, is really trying to seize the moment and make fundamental changes. The Tokyo Stock Exchange is focussing on capital efficiency and profitability to mitigate low valuations while the Financial Services Authority has embarked upon a new "Action Programme" to accelerate CG reform and address deeply entrenched problems. There is a real sense of urgency. Taiwan meanwhile is moving on sustainable development and assurance, for example it is currently considering mandating GHG assurance. The market has also taken strides with its new Commercial Court.

CLSA's Seungjoo Ro opted to "sprinkle valuations" on Jamie's presentation, sharing his view that a valuation link with governance is increasingly E and S. Governance is a keystone, not just one of three pillars, he noted. It is the starting point, the focal point, the template. He gave a quick preview of CLSA's new revamped bottom-up ESG scores for the region found in their report "Manifesto: defining the next generation of ESG", with Australia, Japan and Hong Kong leading in the rankings. Emission-intensive industries meanwhile are ranking higher in terms of sectors.

SJ took the audience through a number of charts which suggest that governance indicators are a potent signal of returns, noting share price performance (upgrades and downgrades) in light of score changes. He noted that companies at the lower end of the scale have the highest sensitivity when there is a change in scores. SJ noted the value in working with companies, providing a clear argument for activism.





Governance is a strong consumer trend in Asia, he argued, with a growing middle class particularly in China and rising awareness of CG over the past two to three years. Good governance moreover suggests lower social risks. CLSA decided to use governance as a lens to identify the value of individual companies in its report, “Down to Earth Reloaded,” looking at the theoretical earnings impact of climate change. Out of 1,000 companies they chose a mix of firms from different subsectors who are making valiant efforts on sustainability reporting.

While CLSA is increasing the number of environmental and social indicators on their ESG scoring, governance is still the keystone supporting these indicators, he explained. SJ presented their top picks and valuations among companies in the region. By market, Australia, Japan and Hong Kong were the top scorers, while the best-performing sectors were energy, materials and capital goods and autos. At the bottom end was media and internet. In terms of some of the topical analysis they covered, the team looked at state versus privately-owned firms, asking whether companies are free from government interference. They used this as a yardstick to decide whether companies are state-owned or private. There is some reform in the SOE space and generally more trust in state-owned enterprises, he said. These firms are becoming more responsible with less conflicts on boards.

During his presentation, SJ noted the CG score gaps between large and small-cap companies, describing the Philippines, Hong Kong and Japan as the markets where the large caps tend to have better governance in terms of gender diversity and independence.

In the Q&A segment of the session, Jamie spoke about rules on voting disclosure, and noted the importance of reasons being provided by investors when they vote against a resolution. There is a tendency to provide formulaic explanations. He also noted a divergence between the willingness of domestic and foreign investors to engage, with the former tending to feel constrained about engaging collectively. There was also a discussion on the pipeline of independent directors in the region, and whether directors should be subject to a fit and proper test. SJ was asked about family companies and explained that these firms tend to score better. From an investment point of view he described concerns over the next generation of family members, and whether their experience is sufficient.

Competing for IPOs: a race to the bottom?

The second Plenary featured the ACGA Debate: "Is global stock market competition healthy for corporate governance?" **Jane Moir**, Head of Research at ACGA moderated the session which saw **Elisa Cencig,** Senior ESG Policy Adviser at Norges Bank Investment Management based in London square off against **Grace Hui**, Founder and CEO at Net Zero Asia, and former Head of Green and Sustainable Finance at Hong Kong Exchanges and Clearing (HKEX) who spoke virtually from Hong Kong on the topic.

The floor was given to Elisa to speak first on the case against prolific competition between markets. She pointed to research showing that higher investor protection has a strong correlation with market development: those with weaker frameworks tend to see their domestic investors look overseas. Elisa also made the point that regulations on SMEs and listing reviews in markets such as the UK are not helping with market development, nor are weighted voting right (WVR) regimes and the removal of shareholder approval for significant transactions. She said that while in the US companies with a WVR structure may trade at a valuation premium, this eventually turns to a discount after seven years. Elisa also noted that there is a higher valuation for WVR companies where there is a sunset clause and the higher voting rights expire after a determined period.

Grace then took the opposite position in the debate, stressing that structures such as WVR have offered a more diverse offering for investors. Exchanges such as HKEX are tasked with helping issuers list and to find more investment and investors. She takes the view that the horse has bolted: WVR is an accepted feature in most markets and competitive forces now require exchanges to introduce these to allow capital raising and an opportunity for companies to grow and create jobs. She pointed to the lack of empirical evidence of poor listing quality or inappropriate companies listing with WVR. Grace emphasised the role of investors in understanding the issues, participating in AGMs and taking responsibility for their investment decisions; and the part played by stewardship codes.

There was an opportunity for Elisa to respond to Grace's remarks, and vice versa. Elisa encouraged exchanges to take a longer perspective in their strategy, to be mindful about reputational consequences and to work independently as a regulator. High-tech companies warrant a closer look in terms of what they are seeking in terms of listings, she said, sharing the observation that many high-tech firms in Silicon Valley first acquired seed funding and angel investors in Britain or Europe but then went to the United States for their eventual listing, attracted by greater liquidity and a perceived higher market efficiency.

Both shared their views on the routes being taken by stock markets to attract more listings, and the importance of shareholder protection: Grace mentioned China's changed focus toward domestic listings, while Elisa discussed the role of controlling shareholders in changing the dynamics of shareholder rights. Elisa pointed to the UK, which is considering revisions to its stewardship code, and is asking how it can incorporate more minority shareholder perspective into the overhaul. Grace gave the example of Hong Kong to argue that sunset provisions are more robust than the US mechanism of disclosure and class actions which can take years to materialise. She noted that historically the attendance of retail investors at AGMs in Hong Kong is very low because they tend to speculate, while 70% of investors in China are from the retail side. Grace argued that allowing more competition for investors by rolling back stock market monopolies, could be very beneficial. She also views tougher regulation as imperative to enhance investor protection, providing a deterrent effect to errant directors. She noted that while Hong Kong does not have a class action regime, the securities regulator works closely with the China Securities Regulatory Commission in pursuing miscreants. Investors today are better informed about which market and company they want to invest in, she said, so should not be considered passive players. In her view, investors should engage with index providers to determine the direction of investment in markets.

During the Q&A, Secretary General Jamie Allen and Nana Li, chair of ACGA's China Working Group, countered some of Grace's arguments on the governance of WVR companies by giving examples of PRC tech firms where engagement has been a major challenge. There was also a question on the investor pool and how to promote fund raising of issuers, with a suggestion from Elisa and Grace that education is needed to woo back some investors and help the market with better price discovery. Grace in particular suggested regulators spend more on developing technology to give investors better access to material information. The Q&A section concluded with remarks from Tan Boon Gin, CEO of Singapore Exchange Regulation in Singapore who described the regulatory structure adopted in the market, notably the role of the regulation subsidiary as a distinct entity from the overall Singapore Exchange board.

How to get away with fraud

The afternoon's proceedings began with remarks from **Amar Gill**, Secretary General Designate of ACGA. The first session after lunch examined key features of corporate scandals in the region. Titled "Forensic governance: spotting fraud and misinformation," the panel was moderated by **Christopher Leahy**, Specialist Advisor for Southeast Asia at ACGA and Managing Director at Blackpeak based in Singapore. He was joined by speakers **Shireen Muhiudeen**, Founder at Corston-Smith Asset Management who spoke virtually from Kuala Lumpur and **Praveen Sangana**, Vice President, Equity, ESG & Forensic Research at Fidelity Investments in Bangalore.

Shireen summarised the state of play in the region, arguing that some boards seem to be asleep at the wheel when it comes to spotting fraud in corporations; similarly she questioned the alertness of regulators and auditors. She said that sadly there is often a deafening silence from all three when things go wrong.

The depth and breadth of the regulatory response is crucial, Shireen noted, yet she feels there is still selective enforcement in the region and stressed that this is a significant point of concern for investors. Until the region sees class action lawsuit regimes, not much will change, she argued. She shared that China in the past few years has allowed class actions, and she sees this as a step in the right direction.

Shireen described the particular governance triggers she looks for in spotting frauds. She would look at some of the boards' previous decisions, noting that history has shown that some directors in effect have allowed fraud to happen. She said that often it is the individuals within the organisation who drive a culture of misbehaviour.

Praveen shared his observations as a long-term investor, noting the challenges in finding the right kind of firms to invest in. Discerning good from bad takes concerted effort, he stressed, outlining the qualitative assessments made within the firm: including taking stock of corporate and board structures, individual credibility and management practices. Fidelity will also conduct diligence on the financial side, delving into related party transactions, audit and accounting and the legal and regulatory exposure of a company. Among the factors he highlighted are the classic case of a majority shareholder in a company opting to appoint friends and family to the board, political connections and mistreatment of minority shareholders. He said it is imperative to understand these relationships, to make sure there are checks and balances. It is also key to trust the company's auditor.

Many frauds can be led back to governance failures, such as related-party transactions or management manipulating financials to show a better result, Praveen said, and while many companies in the region follow IFRS accounting standards, robust enforcement is lacking.

The discussion broached the issue of short sellers in helping to identify corporate misconduct. Shireen said while their tactics may not sit well with her personally, she understands the role they can play. She suggested that if margin accounts at each broking house were made public, this could provide valuable market information. While there does not seem to be a correlation between short selling and less fraud, Praveen pointed out that Asian markets typically are much less liquid than the US, which limits the pool of stocks which can be shorted.

During the Q&A the speakers were asked if they would hold a company responsible for past mistakes. Praveen said that much would depend on the particular circumstances, whether there was continuity of management and a desire to change. Shireen took the view that it would depend on what had happened and what remedies had been taken: was it a few bad apples who wanted to deceive the system?

Related-party transactions was also a focal point of questions from the floor, with the panellists asked what clues to look for in gauging whether the information being reported is accurate and useful. Praveen said it is key to consider whether there are any undisclosed related parties. Shireen said it is often the transactions which look benign, such as the provision of insurance, which can be the most suspicious.

The role of regulators was another topic of interest from the audience: particularly, what they should be doing. Shireen was of the view that they could be more even, on the one hand issuing stern warnings while at the same time giving extensions when companies are not meeting listing rule requirements. She said that if regulation was a little tougher, and more consistent, boards and management would buck up. Praveen agreed that robust enforcement of rules is important, but stressed that disclosure and surveillance is also something to consider.

Calling time on stale boards

The fourth panel of the day delved into issues surrounding the composition and capacity of boards in the region. Titled “Time for change: board renewal in Asia,” the session was moderated by **Gillian Ng**, Senior Director of Corporate Governance & Sustainability at the Iclif Executive Education Center of the Asia School of Business in Kuala Lumpur. She was joined by speakers **Tan Boon Gin**, CEO of Singapore Exchange Regulation in Singapore and **Niraj Gupta**, Head of the School of Corporate Governance & Public Policy at the Indian Institute of Corporate Affairs in Gurgaon.

The panellists began by sharing observations on board renewal in the region. Boon Gin stressed that the key rationale behind renewal is to enable the board to make better decisions: it is not about being politically correct or giving opportunities. Board composition is also a merit-based decision, he said. International expertise is important, and he questioned whether it would be better for the nomination committee to make decisions on diversity rather than the regulator. Singapore has imposed a cap on INED tenure at nine years, and companies are required to have a diversity policy and roadmap. Amid a volatile world, these changes have been important to ensure a diverse board.

Niraj described India as a country of cultures where rejuvenation is a key theme. In terms of board renewal, he said much has been done to improve the situation of refreshment, including auditor rotation, putting a skills matrix in place, and board evaluations. In part this has involved learning from international practice but board renewal is also a factor of regulatory pressure.
Boon Gin described the process by which boards look for new candidates, saying that once companies look outside their networks they are going to find a significant untapped resource in the form of

female directors. Since Singapore announced its rule on INED tenure, there have been a number of board seats vacated and a significant portion have subsequently been filled by female candidates.

Board independence in India is very important for CG standards, and the effectiveness of the board, Niraj commented. He said if directors are allowed to stay beyond a certain point there is a likelihood that board independence will suffer.

Gillian pointed to a study which showed that many directors sit on boards as a retirement role. If their income depends on the board seat, she asked whether directors could be enslaved by it. Niraj remarked that when he was given pocket money, he could never independently raise his voice. He stressed that there are limits to the board fee: if directors live for that fee and are expected to live of this income, their independence could be compromised. It is a mindset issue as to how you retain your independence, he said.

The topic of board evaluations was raised, and whether there is a link with renewal. Boon Gin said in Singapore evaluations can be subjective but he hoped that the requirement for board renewal could drive a more positive outcome. Niraj noted that board evaluation compliance is in place but that it is the responsibility of nomination committees to be clear in describing the manner in which they evaluate.

Boon Gin also made the point that with long-tenured directors it can be a problem when they leave the company in groups of three, or four. He prefers to see a certain spread in terms of tenure and noted that INEDs can be redesignated as non-executive directors to provide continuity and experience on the board.

On the topic of age limits for directors, Boon Gin said it was more of a question for the individual company than for regulators. There was also a question on overboarding among non-executive directors in India from the audience and Niraj shared his view that if directors are truly professional, they should be able to do justice to the role. Boon Gin took the view that a full-time director should have no more than one other board seat at any time. Singapore Exchange’s guidance is that it should not be more than five.

There was a question on why there are so few foreign directors at Asian companies. Boon Gin believes that the answer lies with the nature of the business itself, and that over time there has been an increase in foreign directors as companies become more international.

A discussion also took place on whether there should be external board evaluations. Boon Gin said that for the objective part of an evaluation, it could be beneficial. Niraj said it was an idealistic state of affairs for the outcome of a board evaluation to be shared with key investors. The caveat should be that confidentiality should not be compromised.

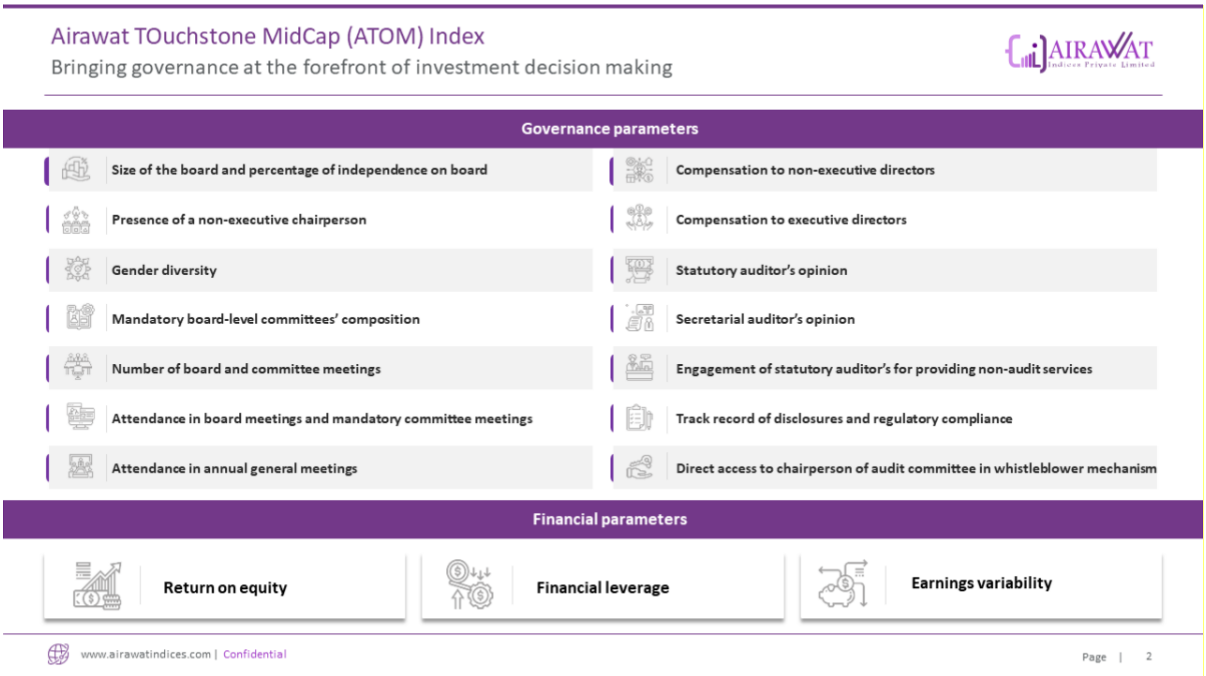
The rise of the mid-cap

The final plenary of day one focused on mid-cap firms. Titled “In conversation with: Mid-cap heroes,” ACGA Chair **Steve Watson**, also a partner at Capital International Investors in Hong Kong, led a discussion with **Debasish Mohanty**, CEO at Airawat Indices in Mumbai and **Udaya Kumar Hebbar**, Managing Director at CreditAccess Grameen in Bangalore.

Debasish Mohanty outlined the parameters that his firm Airawat uses for identifying good governance companies among midcaps in India. Within the market, midcaps are those below the top 100 largest cap companies in the market, the next 150 classified as the midcaps based on SEBI’s classification.

These have a market capitalization between USD 600mn to USD 2.4bn. Among the 14 parameters that Airawat uses to rate the governance of the companies was whether there is direct access to the chairperson of the audit committee in the whistleblower mechanism as well as the number of board and committee meetings in a year. More typical parameters include having a non-executive chairman, the size of the board and percentage of independent directors, compensation terms for executive directors and NEDs, the history on auditors' opinion, auditors providing non-audit services, etc.

Mohanty emphasised that a culture of good governance went beyond compliance. In the rating system of Airawat, compliance aspects were around half of the rating while other aspects include financial parameters such as return on equity, financial leverage, and earning variability in addition to looking at the track record of the company for negative events that may have emerged. In his experience, good governance is size and sector neutral. However, he observes that young promoters (i.e. controlling shareholders) of companies tended to take governance more seriously while the older promoter groups had more ingrained archaic views relating to governance.
Hebbar of CreditAccess Grameen noted that in the short-term investors focused on profitability while long-term investors placed emphasis on governance. He finds that social media forces transparency as breaches of regulations and poor practices cannot be hidden; the greater transparency leads to better governance. Within the context of India where different states have varying minimum wage rates, Hebbar notes that good governance means paying the same amount for the same work across the country.



The panellists were of the view that there was an element of herding in the voting of asset managers who followed the recommendation of proxy advisors. Various industry bodies guidelines require asset managers to explain when their voting does not agree with proxy advisors, which results in some asset managers taking the easier route of not voting against the recommendation of the proxy advisors, in the view of Hebbar. However, a senior representative of a local proxy advisor firm clarified that it was not mandated that investors follow the proxy advisor recommendations and his observation is that asset managers did not blindly follow the recommendations of the advisors. Another delegate added that inclusion in indices like MSCI have tended to improve the disclosures and practices of companies.

Giving women writers a voice

Day one of the conference concluded with a gala dinner and speech by **Professor G.S. Jayasree**, Founder and Managing Trustee at the Samyukta Research Foundation in Thiruvananthapuram. Professor Jayasree began by recognizing the role of journalists in bringing stories to life:

“I have always been in awe of people with a background in journalism. They have eyes that bore into the core of yourself and read your unscripted thoughts,” she said. “There’s a fundamental difference between teachers and journalists. Teachers tend to elaborate. Journalists are no nonsense people. They compress. What we teachers say in 100 words, journalists say in 10. Well, it could be the demands of the profession. Journalists do not have the luxury of time that we teachers enjoy.”

She then described her life in three parts, starting with the early days, where she “played the dual roles of a rebel and conformist.” Prof. Jayasree said she had always wanted to be a journalist. “But my parents, middle class, conservative, representatives of a generation born in the 1940’s—my father was a bank officer and mother, a college professor—could not imagine their daughter training to be a journalist. Doing night shifts, living out of suitcases, reporting from trenches. That was their idea of of a journalist’s life. They wanted their daughter to have a 10 to 5 job.”

Prof. Jayasree thus began a “dual life,” where she found “ways and means to circumvent obstacles.” In 1996 she joined the undergraduate program in English literature in the Government College for Women, thereby respecting the views of her parents. The following year at the age of 18 organised the first party-based election in the college. “It was immediately after Mrs. Gandhi lifted the national emergency and politics was in the air. Though it was unheard of in our campus, a women-only college.” At the same time, she ran for the editorship of the college annual, fulfilling her wish to be in journalism.

In the subsequent years Prof. Jayasree completed her post-graduate studies and doctoral research. She was selected to join Kerala University Service in 1991 after eight years in Government colleges. This signalled the beginning of her “second stint of my activism or, what I would call, activism within the academy.” The 1990s, she noted, “marked an epistemic shift in the history of India. This tumultuous decade opened with violent protests against the implementation of the Mandal

Commission Report. This was the year 1990. In 1991 the economy was opened to global players. Everyone was discussing the GATT (General Agreement on Trade and Tariffs), the Dunkel Draft (1991), and its implications for India. There were vigorous protests in the universities across the country against globalisation. Closely following this occurred the demolition of the Barbari Masjid on 6 December 1992."

Universities across the world, she noted, have historically been "hotbeds of revolution," including the Paris student protests of May 1968, an "iconic symbol of countercultural power." In the 1990's younger female faculty members of the University of Kerala decided to form a forum, that was registered as Kerala University Women's Forum, or KUWF, in 1995. Prof. Jayasree was elected editor of KUWF Newsletter, a 32-page newsletter, but she was "unceremoniously thrown out" in December 1999, for speaking against the leadership. It was painful to have friends and colleagues turn against her.

Ever determined, she then decided to publish a journal of Women's Studies. With the help of friends, she registered an organisation called Women's Initiatives. It was titled Samyukta, meaning 'coming together'. The first number of Samyukta was released in January 2001, and it has continued to be published since then. In 2016 the focus was realigned from 'Women's Studies' to 'Study of Gender and Culture', in keeping with the shifting critical understanding of both gender and culture. Shortly afterwards, the print version of Samyukta changed to the Open Journal System (OJS) of Simon Fraser University.

Prof. Jayasree retired from university service in 2019 and used her retirement benefits to set up an office, the Samyukta Research Centre, where she launched a book publishing venture, Samyukta India Press. "The first book we published was a disaster as we had no idea of pricing and marketing. It wiped out nearly all my savings. Subsequently, we moved to the Print on Demand (POD) mode and our books now enjoy a reasonable readership." Their most recent publication is a three-volume series on Gender, released this September and they have a flagship Writer-in-Residence programme, inviting writers looking for space to complete their books.

"In a way it's my life's journey coming full circle," she explained. "It has been a long and arduous one from the Women's College magazine of 1978 to the handsome Gender Studies Readers of 2023. Forty-five years have gone by. And, if there's one principle that has guided me throughout my life, it is the words of the 19th century British poet Tennyson, be strong in will; to strive, to seek, to find, and never to yield."

Day Two

Jane Moir, ACGA's Head of Research was the master of ceremonies for the second day of the conference, which began with introductory remarks from **Julia Tay**, Partner, Asia-Pacific Public Policy Leader at EY in Singapore.

Prospects for state behemoths

Our first panel of day two focussed on the governance of state-owned enterprises in the region. **Nana Li**, Head of Sustainability & Stewardship, Asia Pacific, at Impax Asset Management in Hong Kong, moderated the panel titled "SOE governance". Nana is also the chair of ACGA's China Working Group. Joining Nana were panellists **Zhengjun Zhang**, Founding Partner and CEO at King Parallel Consulting who spoke virtually from Beijing, and **Hetal Dalal**, President and Chief Operating Officer at Institutional Investor Advisory Services in Mumbai.

The session began with observations from Dr Zhang on SOE reforms, and concerns, in China over the past few years. He believes two areas have seen much improvement over the past decade: the enhanced function of shareholder meetings, particularly among SOEs that are directly supervised by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC). Supervision at the state-owned shareholder level has been strengthened by establishing systems such as disciplinary inspections, audits, inspections, and internal control of compliance risks. On the other hand, the state-owned shareholder level has strengthened the delegation of power to the corporate board of directors for decision-making on important matters. The second area of improvement is that there is greater clarity in the functions of board directors in setting strategies, making decisions, and preventing risks. Because more than half of the directors are external directors, the professionalism of the board of directors has significantly improved.

In his view however two problems remain: supervision and punishment are enforced but incentives are still weak for management; secondly, there is large scale demand for outside directors but resources are limited.

Hetal distinguished two categories of SOE in India: banks and non-banks. For state-owned banks, before Covid risk management was a concern with gross non-performing assets being relatively high; post Covid, it has lowered. Banks were nationalised in the late 1960s with a view to increasing reach to the interiors of the country – these state-owned banks continue to play a critical role in the economy. Consolidation has also happened so there are fewer banks as a result. Banks tend to be better governed because of the regulatory oversight provided by the Reserve Bank of India (RBI). Governance of non-banks is a concern, she noted, pointing to a set of political appointees as

Independent Directors and that several of these companies do not have boards that meet regulatory compliance.

In China, Dr Zhang described SOEs as playing two main roles: a leading role in economic development and strategy; and a supporting role in people's livelihood. SOEs are held to higher governance standards, he said, and must improve their competitiveness and enhance their core function. The current policy directive of the Chinese Communist Party (CCP) is to build world-class enterprises, and SOEs have to improve their market-oriented mechanism.

Privately-owned enterprises (POEs) in China meanwhile have grown dramatically. In recent years, Chinese policy-makers have expressed their intention to introduce the principle of comparative neutrality in the treatment of state-owned enterprises while also promoting the development of small and medium-sized enterprises. POEs participate in market competition and are protected by laws the same way as SOEs.

In India, Hetal said SOEs have had a history of operating in monopolistic or oligopolistic markets and it can be a challenge for them to compete with the private sector. The aviation and telecom industries are examples where state-owned enterprises failed to compete with the private sector. In general, governance standards of non-bank SOEs have improved but they do not match up with the rest of corporate in India. Ultimately, boards of SOEs still report to a Ministry and therefore the national policy agenda often takes precedence over investor interests.

Dr Zhang noted that ESG and social responsibility disclosure in China is significantly better among SOEs than their private peers. The ESG disclosure rate in SOEs is 73% in centralised SOEs, he said. For private companies the figure is much lower. He also said that among foreign-invested companies in China, the figure is lower still. He said SASAC plays a significant role in this: for example, in 2022 SASAC established a social responsibility framework and made clear arrangements for listed companies controlled by central state-owned enterprises to have full ESG disclosure by the end of this year. A new bureau of SASAC has been established to issue guidance to companies and refine SOE ESG disclosure.

There was divergence among both speakers when asked if SOEs have improved their governance in recent years. Hetal said that SOEs are looking attractive with improving margins, but it is unclear if these will sustain. Compliance levels in SOEs have improved but governance levels remain largely unchanged. Dr Zhang said that SOEs have seen improvements in governance and generally perform better than private firms in a sluggish economy.

During the Q&A session the panellists were asked about reporting lines and social targets SOEs must achieve and whether the key performance indicators (KPI) of CEOs and managing directors at these firms were significantly tied to shareholder returns and financial metrics: is there a sufficient incentive to work for shareholder returns. Dr Zhang said that if comparing executive remuneration with international companies, SOE compensation is lower. The incentive issue is something which should be addressed in the future, particularly among companies in emerging industries. Hetal said that CEO compensation is very low in Indian SOEs. It is structural, with certain levels of management getting certain levels of pay. Disclosure on CEO targets is quite rare and generally not clear.

When asked whether there is a blurring line between SOEs and private enterprises, Hetal took the view that there is a clear distinction. Dr Zhang said that in the past two decades, mixed ownership reform has been a policy of the government and has led to quite high levels of these types of firms. However, within mixed ownership companies the state still has a majority, or even up to 70% of the shareholding. He said in the future, reform should focus on diversity of ownership structure.

A family affair

Our second panel of the day, “Family governance” considered a broad range of issues among second and third-tier generation companies in the region. Moderator **Chirag Mehta**, Chief Investment Officer at Quantum Asset Management Company in Mumbai was joined by **Yuelin Yang**, Chief Stewardship and Wellbeing Governance Officer at IMC PAA (and an ACGA Council member) who spoke virtually from Singapore and **Professor Kavil Ramachandran**, Senior Advisor at the Thomas Schmidheiny Centre for Family Enterprise at the Indian School of Business in Hyderabad.

Chirag began the discussion by commenting that in his ESG fund, 63% of portfolio companies are family-owned, but from a longevity perspective among the second and third generation companies, few ultimately survive.

Yuelin touched on a number of key themes in family businesses, including the requirement for families to govern themselves properly as a pre-condition for family business governance, and that robust communication together with adequate structures, processes and documentation is crucial. He also looked at the pros and cons of family business governance and asked how outsiders can play a role. A good indicator of a well-run family business is where there is an enlightened owner coupled with outside help and clear management. Succession management also plays a key role to avoid conflict where there are too many family members or clashes within the group.

He stressed that preparation for the next generation is crucial, but made the point that while second and third generation family members are often educated overseas, and can prove themselves as good as their predecessors in making business decisions, they may not always have humility having grown up privileged. Professionalization has taken place among some family businesses but he questioned whether they truly trust outsiders, and suggested the need to open up further to external management. He took the view that there is a generational change happening against the backdrop of more external pressure on the business, and from investors. These will continue to be drivers of change.

Prof. Ramachandran shared his view that most businesses are family controlled and often family managed. His research shows that most listed companies in India are family controlled and managed. However, only a few second or third generation firms actually survive across generations. This begs the question as to why this is so, and whether family businesses are unique that makes their governance challenging. Family business is the co-existence of three contrasting systems of Family, Business and Owners, creating different shades of interest among the seven different stakeholders. He stressed that families themselves must realise the need to have sound governance: notwithstanding pressure from investors and regulators, the firms have to commit to better stewardship and recognize that ownership is responsibility. He has been trying to create awareness, and also educate families on this across businesses of various sizes.

In terms of changes to governance within the family governance landscape in Asia, Yuelin said he believes nepotism is still an issue. Governance change is difficult where families are insulated, yet many operate in businesses where they are vulnerable, such as real estate. He hoped family businesses would up their governance game as the external world is changing. Yuelin took the view that the next generation of families could be more dynamic given their educational backgrounds and overseas exposure, but some may prefer to take their own career paths. Families are facing multiple transitions within the family itself, from the succession of the head of the family to the distribution of shares, and the role in these companies of a non-family CEO. He said there are many discussions around the family table as to what comes next for the family. This has led to family constitutions and assemblies, which are quite common in particular among fourth and fifth generation European families controlling businesses.

The role of professional management was in the spotlight and Prof. Ramachandran said it is important that families find the right person to manage the business, whether from the family or outside. In several cases, the family takes a backseat. There is also a mixed model where family members play multiple roles, from operational or strategic owner, to investor owner. Ultimately it is imperative to get the right person and get a good board of directors.

Yuelin noted there are cultural elements in having family members at the top of the company, and it may be that businesses decide to have an outsider groom a younger member until he or she is ready. In Europe however he said it is a common belief that when it gets to the third generation of the family business, there should be no more family members. Increasing the number of shareholders in the family business may be no panacea, he stressed: it would not work unless there is good governance in place and even that can be complicated as it is a very emotive matter.

It’s the geopolitics, dummy

A tale of two superpowers was the theme in our plenary on “Geopolitics and capital markets,” moderated by **Jane Moir**, Head of Research at ACGA. She was joined on the stage by **Udith Sikand**, Senior Emerging Markets Analyst at Gavekal Research in Hong Kong and **Karine Hirn**, Partner and Chief Sustainability Officer at East Capital Group, based in Hong Kong. Joining virtually was speaker **Richard McGregor**, Senior Fellow for East Asia at the Lowy Institute, Sydney.

The discussion began with panellists giving their views on the trajectory of US-China relations over the next 12 to 18 months. Richard took the view that there would be some cooling of tensions, but ultimately there would be no course correct. Udith took a similar view, noting that with the upcoming US election there is increasingly more concern among investors particularly in relation to China. Karine stressed that geopolitical tension is much better than war, noting that geopolitical tensions have long been part of the landscape.

The United States has been taking a harder line toward both inward investment from China and outward investment to the market. Richard had a degree of measured optimism in the short term that this would not escalate but profound pessimism in the long term because of structural competition between the US and China. He says that China is actually more predictable than the US these days, the former having made its intentions clear in respect of the South China Sea, East China Sea and Taiwan. Having the prospect of Donald Trump being re-elected in the US makes things more unpredictable.

Asked whether geopolitical tensions would be a catalyst for better governance of companies in the region, Udith expressed his view that there has yet to be any significant change in this respect. For example in Korea there is still top down control from the chaebols. In Japan, in the past two to three years there has been overarching federal corporate governance reform initiatives that have been going on for decades, rather than one single cumulative effect of a particular government. He added that it certainly helped that the Chinese equity market had not had a stellar track record over the past two to five years. Udith made that point however that there is a cumulative effect of all these incremental corporate governance reform initiatives in Japan which are coming to submission, and at the same time investors are actively looking for alternatives to China.

Karine made the point that geopolitics is impacting the extent of company engagement on climate. Russia is the fourth largest emitter on the planet yet investors are not encouraged to engage with Russian firms, or have divested. If tensions continue between the US and China, investors could again be discouraged from engaging with People’s Republic of China (PRC) corporates while China is the second largest economy in the world, and is the largest emitter. One potential area of cooperation between countries despite the political tensions is climate and AI, similar to the Cold War era where the Soviet Union and the US cooperated on science.

China in particular has at the same time seen greater state influence on private enterprise. Richard said that while the CCP more recently seemed to take a less harsh line toward private companies, he questioned the veracity of its reassurance to these firms. He said the line between state and private companies has become blurred, and the Party has also a greater presence in the private sector which is a cause for concern. Richard stressed that many entrepreneurs in China will take the view of ‘once bitten, twice shy,’ and said to thrive, they really must have a political sixth sense. Still, private sector investment is up, and the Party which once used to be secretive about its presence in private firms is being more upfront.

The panel was asked whether Chinese President Xi Jinping cares about the economy. Richard believes President Xi needs a healthy economy to fund the military and thought there may be some incremental reforms for the economy simply for this reason. Karine noted that China has thrived on exports but for this to continue, you need strong relations with other countries. Udith was of the opinion that the Chinese President does not care about the economy: he is not willing to go on the path of reform and is more focussed on innovation and technological development.

What next for CG reform in India?

The conference concluded with a session on prospects for CG in India. Titled "Post Adani: Lessons learned and CG reform in India," **Sharmila Gopinath**, ACGA Specialist Advisor for India, moderated a discussion with **Debanik Basu**, Emerging Markets Lead, Responsible Investment & Governance at APG Asset Management in Hong Kong, **Ruchi Biyani**, Responsible Investment and Governance Analyst at Janus Henderson Investors based in London and **Sandeep Parekh**, Managing Partner of Finsec Law Advisors in Mumbai. It was a lively discussion with different points of view on the responsibilities of investors in instilling best practices, the importance of enforcement and the often unintended cost of ever greater regulations.


Debanik described the escalation process on governance issues at his investment firm. APG does extensive research on company practices; engagement follows if there are gaps that are found; the firm monitors steps the companies are taking and if these are lacking, it looks to collaborate with like-minded investors. If collaborative engagement does not work, then the firm will take voting action. In some cases, there may be a need to escalate with shareholder proposals, or consider class action suits. If none of these lead to desired results, it would ultimately consider divestment.

He made the point that the largest international investors in Adani were those with passive strategies where stewardship efforts are not central to investment decisions. Most active investors, international and local, did not have exposure to the Adani companies.

Ruchi underscored that stewardship is a journey not an ultimate destination. Investors have a key role to play but face major challenges simply in understanding the nuances and unique aspects of different markets. Janus Henderson requires positive assessments on country, company and governance risk assessments to invest. While SEBI has imposed rules regarding complex corporate structures, the concern as a practitioner is how to ensure that good CG practices have been cascaded down to subsidiaries including transparency on related party transactions (RPTs). Thus in other markets, activists are forcing companies to have more focussed structures. As pointed out by Debanik, the 10% threshold for putting shareholder proposals however is a deterrent in the Indian market.

Sandeep underscored how India has come a long way in advancing market practices since 2017 with respect to regulations, disclosure levels and governance. India also has done well in terms of investor protection eg on the World Bank ranking. The main issue is enforcement of contracts given that legal cases may take five years or more to be heard in the courts. However, India has a robust and transparent regulatory and legal system. Thus an expert committee had been formed by the Indian parliament to review the regulator's handling of the recent high profile case and to report to the Supreme Court. The 170-page report of the expert committee findings is public, finding that SEBI did emphasise following not just the letter but the spirit of the law, however with some concerns expressed by the committee on enforcement.

The speakers noted that the Adani issue was not as market shaking as the Satyam debacle of a decade back given that local institutions as well as retail investors were not significantly exposed to the relevant companies.

Participants, including from ACGA's delegation, highlighted that regulations on the qualification of finance experts may need to be fine-tuned. In various companies in the region that had been targeted by short-seller reports, the person deemed to be a finance expert on the audit committee did not have apparent accounting or auditing expertise. While the need for more prescriptive regulations in this respect is debatable, an independent director without such experience would be hard-pressed to challenge a CFO together with external auditors when controversial financial issues arise, as emphasised by another delegate.

While Sandeep emphasized the cost of more prescriptive regulation which would have to be borne by all issuers for matters that may not be widespread, Debanik's view was that certain matters needed to be mandatory to ensure observance particularly in emerging markets where practices are generally compliance driven and there is little access to boards. Related to costs, having class action suits as in India is not especially meaningful without contingency fees. As legal action can be prohibitively expensive and the outcome uncertain, investors affected generally opt to sell their shares rather than pursue legal action. In the case of Satyam, there were no class action suit in India but in the United States the litigants won class action against the company. The legal regime in India to date, however, prohibits advocates from charging contingent fees on the back of perceived moral grounds.