Discussion Points for Our Session

- What is Corporate Governance?
- Why is Corporate Governance Relevant?
- How to Investigate and Report Corporate Governance?
What is Corporate Governance?

GCGF Definition: Corporate Governance is a mechanism through which boards and directors are able to direct, monitor and supervise the conduct and operation of the company and its management in a manner that ensures appropriate levels of authority, accountability, stewardship, leadership, direction and control.
Good Corporate Governance Means…

**Better Companies:** Shareholders get higher return on their investment. Companies enjoy more robust growth, better access to capital, resilience to crisis, higher market capitalization……..

**Better Societies:** Economic growth and stability. Balancing economic and social goals by aligning the interests of all stakeholders – employees, customers, suppliers, and communities……..
But What is it About, Really?

- **WHO** serves on the Board, and how well prepared are they?

- **HOW** the board is structured and operates and reports its performance?

- **WHY** in terms market, legal and regulatory incentives?
Why is Corporate Governance Relevant?

“In the world of risk, time never stands still, and threats and challenges which assault our business continue to emerge and evolve from the faults in the earth to the faults in ourselves.”

Lord Peter Levene
Chairman, Lloyds of London
The Korean Herald, 18 June 2004
Fukushima: Environmental, Economic, and Technological Disaster...
...With Corporate Governance Roots!

TEPCO

- 4th largest electric company in the world
- **No board-level risk committee**
- Audit Board stacked with its employees, compromising ability for independent oversight
- **Only 2 of 20 board directors are independent**
- **Minimal disclosure of board activities**
- Overall GMI corporate governance rating of 3 out of 10, below Japan’s already poor average of 6
- All shareholder proposals rejected in recent years
- 1977-2002: submitted false technical data to regulators on no less than 200 occasions…
Emerging Market Countries

Average Response

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<tr>
<th>Category</th>
<th>1</th>
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<td>Enforceability of legal rights (e.g. contracts)</td>
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<td>Quality of economic management</td>
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<td>Level of corruption</td>
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<td>Predictability and level of taxation system</td>
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<td>Administrative efficiency of government</td>
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<td>Effectiveness of banking sector</td>
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<td>Scale and liquidity of local investment market</td>
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Emerging Market Companies

Average Response

- Distinctions between Co. and family interests: 4.5
- Clearly defined governance arrangements: 4.4
- Accuracy of financial reporting: 4.4
- Legally enforceable minority shareholder rights: 4.3
- Use of performance-related pay for management: 4.3
- Timeliness of financial reporting: 3.9
- Coverage of financial reporting: 3.9
- Presence of independent (non-exec.) directors: 3.8
- Establishment of conflicts of interest committee: 3.3

How to Investigate and Report CG?

“I have no problem with Ethical Issues. I merely ask myself whether I would mind if my old Mother read about this in the Press.”

Company Chairman of a major British public company per Pocket Director, Prof. Bob Tricker
Conventional or Historical View:

- Boring accounting standards and audit
- Elitist CEOs and Chairmen
- Jargon, acronyms, and strange numbers

Subprime lending, going concern, liquidity, trillions and billions

‘There is no such thing as a boring story:
Only uninspired reporters’. 
#### Evolving and Broader Issues:
- Fundamental stories of human needs, wants, desires and aspirations..........

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<th>Humanity</th>
<th>Social Issues</th>
<th>Winners and Losers</th>
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<td>Fear</td>
<td>Wealth Concentration</td>
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<td>Strength/Weakness</td>
<td>Corporate Responsibility</td>
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<td>Unsafe Products</td>
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<td>Status</td>
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<td>Power</td>
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<td>Cross-border Investments</td>
<td>Families</td>
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<td>Bangladesh’s Economic Role</td>
<td>The State</td>
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<td>Globalization &amp; Trade</td>
<td>Regulators</td>
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Government

**Regulatory framework:**
- company law
- competition law
- labour law
- environment law
- human rights law, etc.
- plus international conventions

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**Executive Directors**

**Senior management team**

**Business unit heads, functional heads**

**Trade Unions**

**Employees**

**Board of Directors**

- **Strategic consultants and other independent advisors**
  - Including external board advisory panels

- **Media**

- **NGOs**

- **Other market influences**
  - e.g., Customers, consumer groups

- **Shareholders/financial markets**
  - Analysts, fund managers, investment consultants, pension trustees, independent financial advisers, stock exchanges

- **Voluntary codes of conduct and industry standards**

**Board Committees**

**Non-executive directors**
Key Roles and Responsibilities

- **Board Chairman**
  - Provide overall leadership to the board
  - Responsible for board agenda and work plan
  - Work with chairmen of board committees
  - Counsel individual directors and performance evaluation
  - Relations with CEO and key company stakeholders

- **Chief Executive Officer**
  - Formulate strategy, business plan, budget \(\Rightarrow \) board approval
  - Responsible for financial and corporate objectives
  - Implement major corporate policies and supervise management
  - Ensure effective management succession planning
  - Relations with strategic partners, key suppliers, customers
  - Demonstrate company’s ethical values
  - Management link to the company board
Questions to Ask (1)

The game is to GET THEM TALKING: Use “Openers” and follow on with open ended, “leading” questions:

**Opener:** Do you feel that the board has an effective mix of qualified, diversified and independent directors?

**Follow on questions** to address:

- Diversity in terms of gender, experience in the company’s business lines and experience with boards?
- The role of the family and other controlling interests?
- Do they serve on other boards? Which ones and what relation do those companies have to this company?
- Does the board meet regularly? Are any directors regularly absent?
Questions to Ask (2)

What is the role of the Chairman and the Chief Executive in decision making?

Considerations to raise:

- Relationships between board and management
- Look for and ask about the “people connections” between a board director’s businesses, politicians, customers, suppliers
  - Are they family, friends, colleagues?
  - Do they serve on other company boards?
  - Whose interests are being served?
- Your ethics code says “.........”. So, how was this action justified? Who approved this? Why?
Questions to Ask (3)

My investigation has turned up………which stands in apparent contradiction to your company’s published standard: “………….”

Considerations to raise:

- Financials
  - Timeliness of filings…..what happened?
  - Absence of prescribed disclosures…..why?
  - Deviation from accounting standard…..reason?

- Environmental and Social Issues
  - Environmental NGO claims the river 1 mile downstream of your plant has excessive levels of…..
  - What is done to care for the health and safety of the workers at your facility?
Governance and Corruption

- Moral problem, fundamental obstacle to development!
- Traditionally “Abuse of public office for private gain”
- **BUT** this description is now considered too narrow
  - Private firms often share responsibility in corrupt deals
  - Acts that can be considered unethical or corrupt may not be illegal
  - Embraces market abuse, self dealing, nepotism, etc.
- Conflict of interest, related party deals a particular problem in many emerging markets
- Various international standards and conventions
  - UN and OECD Conventions on Bribery and Corruption
  - International Chamber of Commerce, Transparency International
  - US Foreign Corrupt Practices Act
  - UK Bribery Act
Some Tools For Getting The Story!

- **Listen**
  - Sometimes what a source says is important
  - Sometimes what is **NOT** said is just as important

- **Read the reports, then ask what is not clear**
  - Enron reported many of its off-balance sheet schemes
  - ......but no one asked

- **Pay attention to what doesn’t make sense**
  - e.g. Satyam, Lehman, Nedbank

- **Report, report, report**
  - Ask outside the company: Suppliers, customers, competitors, regulators, local community, NGOs
  - ......but remember that they will be biased to their own motives
Some Examples
Board Governance Framework

Source: KPMG, 2004

Board of Directors
- Achievement of strategic objectives and value creation
- Fulfil responsibilities and duties in law and prescribed functions

Board Operations
- Strategy
- Corporate Policies & Procedures
- Board Governance Instruments
- Monitoring and Evaluation

Key Areas of Responsibility
- Chairman
- Board Meetings
- Corporate Secretary
- Reporting & Disclosure

Governance System and Controls
- Governance System and Controls

Board Committees
- Audit Committee
- Remuneration Committee
- Other Committees

CEO & Management
- Executive Committee
- Internal Controls & Assurance

Combined Assurance Model
- Internal Audit
- External Audit
- Other Assurance Providers
- Management
Concluding Observations

Corporate Governance has great stories, waiting to be told.

The people involved don’t always want those stories told. They hide behind statistics and complexity.

Your job is not to create great stories.

Simply unveil the ones that are there. Hiding, waiting to be found!
BUILD TRUST AND CREDIBILITY

- Respect for the Individual
- Create a Culture of Openness and Honesty
- Set the Tone at the Top

UPHOLD THE LAW

- Avoid Conflicts of Interest
- Set Metrics and Report Results Accurately
- Promote Substance over Form

DO THE RIGHT THING!

- Be Loyal to your Company, Family, and Self
“Few journalists know much about corporate governance, but it is a factor in some of the biggest news stories of our time, from the financial crisis to the ‘Arab Awakening’.”

Robert Holloway
AFP Foundation Director
“There is no doubt that the Forum has played a significant and important role in the long term development of corporate governance in Africa, as we see the potential for replication and dissemination to other DFIs and other sectors, and its close linkage to policy development at the national and regional levels.”

*Stuart Kufeni, CEO, SADC Development Finance Resource Center*
What the Forum Offers

Knowledge Products
- Codes and Scorecards
- Director Training Organizations
- High level policy engagement
- Business investor dialogue

Capacity Building
- Tailoring Good Practice to Local Conditions

Training Programs
- Board Leadership Training
- Resolving CG Disputes
- Media Training

Guidance for Good Practice Implementation

Private Sector Advisory Group

Knowledge Transfer and Skills Enhancement
Our Counterparts

Capacity building and advocacy organizations, such as Institutes of Directors and Corporate Governance Associations

Government institutions, policy makers, regulatory oversight authorities, stock exchanges, etc

Academia, Education and Business Media - Emerging Markets Research Network, Business Schools, Journalists
Our Value Proposition

- **Network of over 6,000 institutions** and practitioners globally provides unparalleled access to knowledge, experiences and practices
- **PSAG offers some of the world’s leading authorities on CG**, brings powerful advocacy and real experiences to our work
- **Acknowledged leader** in developing best practice guidance tools and innovation, custom fit to emerging markets and developing countries
- **Proven efficiencies in project delivery** leveraging our partnerships and private sector, utilizing local knowledge of IFC AS operations
- **Website a key source for products, information and outreach**
### Current Trends that inform Forum Work

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<td>Stimulates surge in CG codes in advanced economies</td>
<td>Worldwide interest in CG as a policy instrument and surge of CG codes in developing countries &amp; transition economies</td>
<td>New flurry of CG rules mainly aimed at banks, emerging relevance of BRIC economies</td>
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- An “Unfinished Agenda” or advent of new paradigm(s)?
- Weak institutional environment remains prevalent in our countries of focus
- OECD CG Principles remain policy benchmark
- Newly dominant emerging markets have their own dynamics and not heterogeneous, potential for CG agenda to become fragmented
- International standards of CG not always directly relevant to LICs
- Requires custom-fit materials and guidance but resource intensive in implementation and guidance, e.g. Malawi, Azerbaijan, Bangladesh
- No common source for accessible tools that seek to harness best practice guidance with global utility (other than through Forum)
- CG Codes and Regulations too often modelled off UK “principles-based” approach where key market conditions are often absent or the US “rules-based” approach but lacking necessary enforcement capacities
Current Trends......cont’d

- SOEs back on the agenda again, but complex policy issues immersed in political sensitivities
- Focus on SMEs well intentioned, but widely dispersed with many variations
- Co-operatives back on the table but again, widely divergent issues/ideologies
- Stewardship Code in the UK and work of the EU highlights role of investors but not universally relevant to developing countries
- Much of the responses to CG are “top down”, but “bottom up” measures via pension funds and role of PF trustees remains open to question
- CSR adds another dimension to already complex issues (as it is an area that touches society directly) but without good CG, CSR is not sustainable
- Regulators often ill-equipped to supervise CG standards and rules