CG WATCH 2023

ASEAN

Spectrum of standards

Regulators set the tone on CG progress

Special report - June 2024

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All prices quoted herein are as at close of business 10 June 2024, unless otherwise stated

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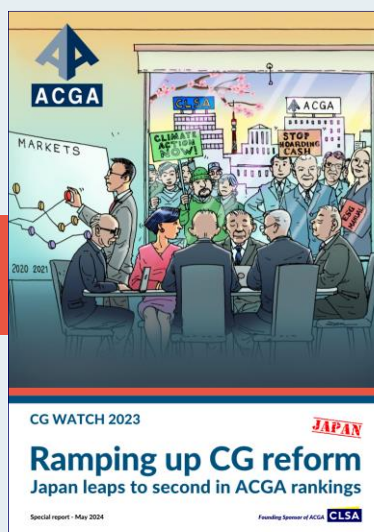
Evolving landscape



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Spectrum of standards

Contrasting CG approaches in Southeast Asian markets

Corporate governance (CG) progress since our last CG Watch has varied across Asean. Singapore and Malaysia are leading in implementing strong regulatory improvements, maintaining high standards and enforcing securities laws while the Philippines and Indonesia face significant challenges. A common factor in all of these markets is the role played by regulators as the main catalyst for CG progress. The CG ecosystem, including issuers and investors, also need to promote and enhance CG practices in these regions.

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The Asean five: Far from homogenous

Singapore and Malaysia are the Asean frontrunners within ACGA's overall 2023 rankings at joint third and fifth position, respectively; the Philippines and Indonesia remain at the bottom of the ranking of 12 Asia Pacific markets. Where all of the region's markets align is on the need for improvements in the quality of disclosures companies are making, an issue which will only grow as investors increasingly focus on how corporates are able to respond to climate change. Boilerplate reporting and a compliance culture is going to come at a greater cost to companies as global sustainability standards take shape around the region. Corruption in several Asean markets remains a significant concern and shows little sign of improving (the main exception being Singapore) and the ability to shine a light on corporate misconduct is being increasingly compromised by limits on press freedom. While there are sparks of life in other areas of civil society—notably the provision of director training and work being done by shareholder and other investor groups—a greater focus on CG by business groups would be welcome.

Rising from grassroots to greatness

CLSA's bottom-up CG scores indicate a 3ppt improvement in Asean corporate governance compared to 2020. Having said that, aggregate Asean CG scores are still well below the rest of Asia. Indonesia is a laggard in independence, but financial regulators have started to raise the bar. Malaysia leads in CG rules and has one of the best board diversity in Asian markets. In Philippines, several CG cases over the past two years illustrate the challenges it faces in lifting its lowly ranking. However, there are individual companies that stand out. Examining CLSA CG scores by key thematic characteristics of ownership and gender diversity, we found that gender-diverse firms have the highest CG scores, whereas founder-run companies score the lowest. We provide the top scorers and improvers within CLSA Asean coverage: Alliance and ACSM appear in both lists.

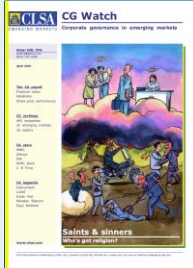
Singapore and Malaysia lead Asean; Philippines and Indonesia lag

CG Watch 2023 market rankings and scores (%)

Market	Previous ranking	2023	2020	Change vs 2020 (ppt)
1. Australia	1	75.2	74.7	+0.5
2. Japan	=5	64.6	59.3	+5.3
=3. Singapore	=2	62.9	63.2	-0.3
=3. Taiwan	4	62.8	62.2	+0.6
5. Malaysia	=5	61.5	59.5	+2.0
=6. Hong Kong	=2	59.3	63.5	-4.2
=6. India	7	59.4	58.2	+1.2
8. Korea	9	57.1	52.9	+4.2
9. Thailand	8	53.9	56.6	-2.7
10. China	10	43.7	43.0	+0.7
11. Philippines	11	37.6	39.0	-1.4
12. Indonesia	12	35.7	33.6	+2.1

Note: Total market scores are not an average of the seven category percentage scores. They are an aggregate of the exact scores for each of the 108 questions in the survey, converted to a percentage. Total points for each market out of 540 were: Australia (402.5); Japan (349); Singapore (339.5); Taiwan (339); Malaysia (332); Hong Kong (320); India (321); Korea (308.5); Thailand (291); China (236); Philippines (203); and Indonesia (193). The denominator for Australia was 535, not 540, as one question on SOEs does not apply. Source: ACGA

CG Watch through the years



Saints & sinners

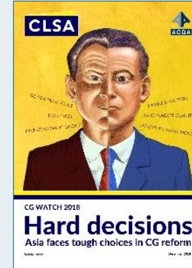
April 2001

Our first edition surveyed and ranked 495 stocks in 25 emerging markets. High CG scorers generally outperform. South Africa, HK and Singapore score well as do transport manufacturing, metals/mining and consumer.

On a wing and a prayer

September 2007

We include "clean and green" criteria in our corporate governance scoring. Climate change is now a matter of corporate responsibility, with attendant economic risks. Yet, Asian firms are largely ignoring the issue.



Hard decisions

December 2018

Regional markets face hard decisions in CG reform as mounting competition for IPOs raises pressure to lower standards. But there is still plenty of evidence of the push toward better CG. Australia maintains its lead, while Malaysia is the top mover.

Make me holy . . .

February 2002

Almost invariably, companies with high CG scores remained market outperformers this year. The top-CG quartile outperformed the country index in nine out of 10 Asian markets under CLSA coverage.

Stray not into perdition

September 2010

Corporate governance standards have improved, but even the best Asian markets remain far from international best practice. Our CG Watch rankings may surprise investors this year even more than the 2007 reordering.

Future promise

May 2021

Our latest edition of CG Watch is bigger and better than ever - two powerful reports provide unique perspectives on how markets and sectors in Asia are rising to the challenge of building sustainable growth.

Fakin' it

April 2003

Companies are smartening their act as stocks with high CG scores outperform. But much of the improvement is in form - commitment is not yet clear. Market regulations are moving up and it is time for regional shareholders to organise.

Tremors and cracks

September 2012

Cracks in Asian corporate governance have become more apparent since our last CG Watch. We provide CG and ESG ratings on 865 stocks, rank the markets and indicate issues investors should watch for in the tremors of Asian investing.

A new order

December 2023

Capturing the biggest ranking shift in 20 years, we see Japan surging and Hong Kong posting a precipitous slide. Strong governance pays, and firms with good CG scores tend to have higher social scores.

Spreading the word

September 2004

Our more rigorous CG survey of 10 Asian markets ex-Japan finds improvements in many of the 450 stocks we cover, following new rules introduced in recent years. CG also emerges as an explanation for beta.

Dark shades of grey

September 2014

This year, we rated 944 companies in our Asia-Pacific coverage. Japan has moved higher, while Hong Kong and Singapore have slipped. Corporate scores have fallen, particularly in Korea. We have revamped our environmental and social scoring.

Ramping up CG reform

May 2024

Japan's corporate governance has made significant progress, placing it second in top-down regional rankings, the highest in 20 years, as per ACGA's CG Watch. Regulatory reform and stakeholder progress have been crucial factors in this achievement.

The holy grail

October 2005

QARP (Quality at a reasonable price) is a guide for stock selection in the quest for high-CG stock performance. In the three years to 2004, the QARP basket of the largest 100 stocks in Asia ex-Japan beat the large-cap sample.

Ecosystems matter

September 2016

Governance matters and ecosystems are key. No one stakeholder drives the process; it is the collective interaction that delivers outcomes. Australia heads our bottom-up survey and joins ACGA's top-down survey at No.1. Asia is improving.

Dismantling the discount

June 2024

Korea's corporate governance advanced one spot to eighth place in ACGA's CG Watch survey. Increasing influence of retail investors has pushed CG issues into the political agenda and the government has launched initiatives to boost its equity market.

The Asean five: Far from homogenous

We look at five markets in this Asean report

In this report, we look at five markets in the Association of Southeast Asian Nations (Asean) bloc: Indonesia, Malaysia, the Philippines, Singapore and Thailand. Singapore and Malaysia lead the pack by a relatively wide margin, with the city-state scoring 62.9% and tied at No.3 with Taiwan in our survey of 12 markets in the Asia-Pacific region. Malaysia follows in the No.5 position with a 61.5% score, followed by Thailand with its 53.9% score and No.9 ranking. The Philippines is No.11 with a 37.6% score while Indonesia comes in last with 35.7%.

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Singapore and Malaysia are well ahead of their Asean peers on CG

The obvious gap is between leaders Singapore and Malaysia, with only a few percentage points between them, and the Philippines and Indonesia, traditionally the laggards in our ranking. Thailand sits in between, nearly ten percentage points shy of Singapore but a comfortable distance in terms of score, from the bottom two. While the markets may share the same Asean economic goals, they are distant neighbours on many fronts in terms of their CG progress.

Regulators set the tone on CG progress in these markets

Differences in government support and how this is executed at the regulatory level are evident in CG reform. Singapore and Malaysia enjoy more credibility when driving governance change through upgrades to their rulebooks, setting standards and robust securities laws, even if enforcement does not always hit the spot. They fare better than the other markets in funding their regulators sufficiently to execute policy. One thing all five markets have in common is that, by and large, it is the regulators who prescribe and drive any corporate governance improvements among issuers: the Otoritas Jasa Keuangan (OJK) or *Financial Services Authority* in Indonesia, the Securities Commission (SC) and Bursa Malaysia in Malaysia, the Securities and Exchange Commission in the Philippines, the Monetary Authority of Singapore (MAS) and Singapore Exchange (SGX) and the Securities and Exchange Commission in Thailand. To varying degrees, their appetites for and ability to effect change are what determines progress. When independence, funding and capacity for these regulators fall short, it shows. A poorly-resourced securities regulator in the Philippines run as an arm of the national government has little scope to pursue errant corporates, never mind chart a path to tangible CG reform. In contrast, Malaysia's SC, which sets and manages its own budgets, has been a driving force behind the market's position as No.2 in the region on CG Rules, just behind Australia.

Significant gaps in disclosure and independence of boards

The Philippines, Thailand and Indonesia would benefit from better progress in going above and beyond what the rules on disclosure and behaviour require of them. Independence also remains a perennial issue among these lower-scorers. Malaysia leads the way in the listed company category, ranking No.2 with a score of 66%, although it still trails Australia by 10 percentage points. Singapore follows with 58% to rank No.4 in this category, with Thailand following in No.7 place with 51%. The Philippines has lost ground in the quality of disclosure its issuers make, falling to No.10 place from No.8 with a score of 48% while Indonesia followed suit, shedding two percentage points to score 36% and coming in last.

Singapore performs well on enforcement and Malaysia is improving

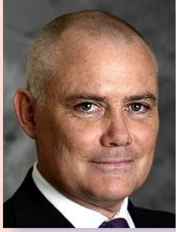
Singapore is an outlier in enforcing market misconduct, behind leaders Australia and Hong Kong by just one percentage point to rank No.3 in this category. Malaysia has, however, dragged itself from No.10 to No.8 place with a score of 60%, a six-percentage point gain on 2020. Thailand ranks No.9, while the Philippines and Indonesia are the two worst performers. Notably absent from the regulatory enforcement scene among the low scorers is an appetite to rigorously pursue cases. Thailand and Malaysia both have solid securities laws but use them sparingly. Indonesia criminalised insider dealing back in 1995 but has yet to successfully prosecute anyone for it. It is a similar story in the Philippines, a market bereft of any notable scalps for serious market misconduct. Even Singapore has come up short in terms of notable regulatory outcomes for the large-scale financial scandal at commodities trader Noble Group.

Corruption is a huge drag on scores in certain markets

The degree to which corruption is present plays a significant role in the CG performance of these markets. In Transparency International's 2023 Corruption Perceptions index, out of 180 countries it rates, Indonesia and the Philippines both rank 115th, Thailand 108th while Malaysia fares better at 57th. Still, corruption there remains a key challenge as demonstrated by the time and political upheaval it took to convict former Prime Minister Najib Razak for his role in the 1MDB scandal. In contrast, Singapore is seen as one of the region's cleanest markets, its TI score placing it No.5 in 2023.

Civil society and investors need to pull their weight

One important observation to make is that Covid hit many of these markets hard and there is a sense that CG took a backseat as several markets' poor public governance revealed major shortcomings in how the pandemic was handled. The obvious exception here is Singapore. Another theme to emerge is that as regulators largely take the lead, other parts of the CG ecosystem are not pulling their weight, including investors and civil society. The extent to which civil society and media are able to influence CG policy and corporate behaviour is a notable tale of contrasts. Singapore ranks No.4 in this category, buoyed by a healthy training regime for directors and company secretaries, while Malaysia has gained ground in this category, jumping from eight to sixth place in 2023 on a score of 53%. It is still more than ten percentage points behind Singapore but well ahead of Thailand, which ranked eighth with 46%; Indonesia, which scored 44% to rank No.9; and the Philippines, which came No.11 with 33%. Freedom of the press is still a major issue in a number of these markets: there remains a yawning gap between the Asean five and Australia with its score of 82%.



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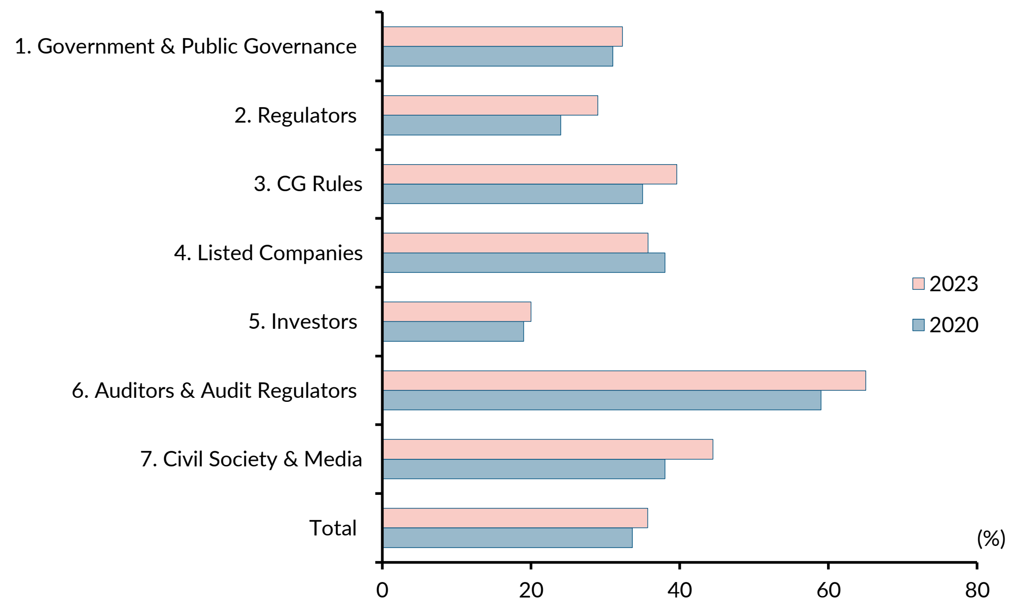
Indonesia - In limbo

- ❑ Indonesia placed last in our 2023 survey, the same as in our 2020 CG Watch report with an overall score of 35.7%, an increase of 2.1 percentage points. The market narrowed the gap with the Philippines, which ranked No.11, to just 1.9 percentage points
- ❑ CG reform has stalled somewhat in Indonesia, affected badly, as was the Philippines, by the Covid-19 pandemic. A new strategic effort is needed to increase reform momentum if scores are going to improve from an already low base
- ❑ The OJK remains the only real regulatory catalyst for CG, while the IDX focuses on its not inconsiderable success of attracting large IPOs, including some notable local tech champions
- ❑ Indonesian politics have taken on a murkier and more troubling hue at the tail end of President Joko Widodo's second and final term. Crony politics and corruption may increase under Jokowi's successor, controversial ex-general Prabowo Subianto, providing a difficult backdrop for the OJK and the prospects for further meaningful, CG reform

Figure 1

Indonesia CG macro category scores: 2023 vs 2020



Source: ACGA

Introduction

Still last place, with a modestly improved score of 35.7%

Indonesia clawed its way back somewhat from its cut adrift position in the 2020 CG Watch, increasing its overall score by 2.1 percentage points to 35.7% and narrowing the worrying gap that had emerged between its score and its perennial roommate at the foot of our league table, the Philippines. But the closing of that gap had as much to do with the Philippines losing reform momentum from its positive 2020 performance as it did with any discernible impetus from within Indonesia to improve governance standards.

Political problems spill over to the securities regulator

CG reform and its principal domestic champion, the Otoritas Jasa Keuangan, (OJK), the chief securities regulator, appears to have been affected by the more difficult political landscape that has emerged at the end of Jokowi's second term. While the OJK is self-funded, the Commissioners are appointed by government and thus the political thumb is easily applied to the scales when needed. The risk of additional politicisation of securities regulatory oversight is likely heightened by the election of President-elect and ex-general, Prabowo Subianto. His inauguration is in October 2024, so we will watch with interest the extent of any progress, or regress, in CG standards in our next CG Watch in 2025.

The OJK is a jack of all trades

The OJK remains very much the key CG proponent in the country and has made laudable efforts in the past at improving CG standards. However, post the Covid-19 pandemic, the overall sense is one of drift and lack of discernible progress. The OJK oversees securities, banking and insurance and also undertakes some central bank functions. Focus on CG-related issues does not appear to be near the top of the list of its many priorities.

Recapping CG Watch 2020

Category scores improved but the overall picture remains disappointing

Indonesia scored a total of 35.7% in this year's survey, placing last but with a modest increase in score of 2.1 percentage points. Indonesia's scores were higher in every category except for Listed Companies. A good part of the increase in scores can be attributed to changes in our survey questions and methodologies, however. The overall score for Indonesia, while an improvement over last time, still leaves it in last place just behind the Philippines and with many challenges to overcome.

Indonesia needs to rethink its CG strategy

Indonesia, as with the Philippines, remains materially behind other regional markets: a full eight percentage points behind the next-placed market, China, and 39.5 percentage points behind our 2023 survey's stop-scoring market, Australia. Indonesia needs to rethink its CG strategy if it is to make material improvements in scoring in our next survey. That will take determination and courage on the part of OJK and material political support from the new administration.

Limited to no progress in areas identified in 2020

Figure 2

Indonesia: recap of 2020

	Recommendations	Outcomes
1.	Improve quality and timeliness of data disclosure by regulators.	No discernible progress: data disclosure remains very poor.
2.	Revamp regulator websites - especially OJK and for English language content.	Some limited improvement on English language content. But the OJK site especially is fiendishly difficult to navigate and finding information frustratingly hard.
3.	Revise CG Code to refocus Indonesia towards best practice.	No obvious progress. The OJK likes to publish CG roadmaps, but these need to be followed up with meaningful codes that are then enforced.
4.	Improve regulatory enforcement with increased resources.	No progress. A lack of market enforcement, especially against insiders, remains a major problem.
5.	Revise RPT rules to eradicate "affiliated" transactions.	No progress. Indonesia's RPT rules are woefully behind best practice.

Source: ACGA

Indonesia ranks joint No.10 with a score of 32%

1. Government and public governance

Indonesia's score for government & public governance rose a single percentage point to 32% in 2023, placing it joint No.10 in our survey, alongside China and just ahead of the Philippines at the bottom of our rankings. The increase of a single point says much about the lack of change in the government's approach to corporate and public governance in Indonesia which has atrophied under the increasingly politicized second term of President Joko Widodo.

Capital market reform is not the country's highest priority

Indonesia's capital markets remain lower on the list of political priorities than many other more pressing national imperatives and while the local securities markets continue to grow, they remain, to a very large extent, the bailiwick of the wealthy and the politically-connected. Retail participation, direct and indirect, in local capital markets remains very low, although the Otoritas Jasa Keuangan (OJK), Indonesia's key market regulator and the Indonesia Stock Exchange (IDX) remain keen to increase it.

Limited progress on CG regulation - and some regress

There has been no new edition of the government's CG Manual - which is not a code but a set of "best practice" recommendations - and is still in its second edition (2018). So it is now six years since it was revised. Requirements in the manual are still principally on a comply-or-explain basis and standards fall well short of international best practice and are looking increasingly dated. The CG Code has not been updated since 2006. And while the OJK has issued a CG roadmap, that was in 2014 and much of it remains only partially implemented. In 2022, like several other markets in Asia Pacific, Indonesia introduced dual class shares (DCS) to compete with other markets seeking to attract large technology IPOs and listings. We deduct points in our survey for the introduction of DCS regimes.

OJK is independently funded . . .

The OJK is Indonesia's key financial regulator and oversees banks, the capital markets and insurance companies among other sectors. Independently-funded via levies from market participants, the OJK is superficially independent and has capable, if stretched staff. Commissioners are appointed by the government however and increased politicisation is a material risk given the experience of Joko Widodo's second term. The current board of commissioners, appointed for the term 2022 - 2027, comprises 11 members, nine males, two females, of which two are existing government officials (sitting as ex-officio officers). A further four have a government background, while the remaining five hail from the financial services industry.

. . . but not fully independent

As stated in the OJK 2022 (latest) Annual Report: "The OJK levies charges [on] parties conducting activities in the financial services sector. OJK receives, manages, and administers these levies in an accountable and independent manner and, in the event that any levies received in the current year exceed OJK needs for the following fiscal year, the excess is transferred to the State Treasury." The OJK's annual budget is also discussed with and approved by a Commission of the House of Representatives. So the OJK's finances are not fully independent of government.

Public protection takes priority over corporate governance

The OJK demonstrates effective oversight of the banking and insurance markets and that appears to be where much of its efforts are directed, along with the protection of the public from ubiquitous scams and Ponzi schemes. This leaves more limited resources for securities regulation. Much of that effort, as with the

Philippines, is focused, with some justification, on monitoring and where necessary, censuring or fining securities companies and other market participants. Behind all this, corporate governance reform, perhaps understandably, takes a back seat.

Capital Market Roadmap 2023-2027

In January 2023, the OJK published its latest roadmap, the Indonesian Capital Market Roadmap 2023-2027. A "big picture" tome, like its predecessors, the roadmap is long on charts and targets and short on detail as to exactly how the OJK intends to implement its objective, cited as, "Promoting a deep, liquid, competitive, trusted and sustainable Indonesian capital market." (See box, "Road to Nowhere" below).

The Exchange remains focused on profitability and IPOs

The OJK remains very much the key financial regulator and key proponent for CG reform and standards. The Indonesian Stock Exchange (IDX) functions as a for-profit exchange with huge appetite for IPOs and little for CG regulation and reform, which it seems content to leave to the OJK. What enforcement IDX undertakes tends to be against securities firms for market manipulation, which remains a serious problem in Indonesia. Meaningful and prompt enforcement against companies for breaches of IDX's listing rules is limited.

KPK: wings clipped but still flying

Indonesia's beleaguered independent anti-corruption commission, the KPK, has defied predictions of its imminent demise for several years now, after its once-significant powers of investigation and prosecution were materially circumscribed under Joko Widodo's government. It is hard to see a resuscitation of its powers under President-elect Subianto Prabowo: it seems more likely that its powers will be further eroded, or the KPK will be abolished altogether.

Corruption is worsening . . . and may get worse

Corruption in Indonesia remains endemic, and seems to be worsening. The Transparency International (TI) Corruption Perceptions Index 2023 ranked Indonesia in 115th place (out of 180 countries) with a score of 34/100, marking a steady erosion of standards since its score of 40/100 in 2019. Notably, Indonesia and the Philippines, our two lowest-ranked countries in CG Watch 2023, scored identical scores in the 2023 TI corruption survey.

Corruption ubiquitous

Public sector corruption is the worst

Public sector corruption in Indonesia remains a significant problem. The government has not published a public sector code of conduct and nor has it ratified the OECD "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions". The OJK and Bank Indonesia do both publish a code of ethics, including basic whistle-blowing provisions, but the codes do not incorporate cooling-off periods for public sector officials accepting commercial appointments.

The ombudsman is ill-equipped

Indonesia has an ombudsman, established by statute in 2008 that claims to be independent of government interference or influence: "The Ombudsman is a State Institution that is independent and has no organic relationship with State Institutions and other government agencies, and in carrying out its duties and authority is free from interference from other powers." However, its commissioners are career academics and NGO heads and it has no powers of enforcement.

There is no meaningful whistleblowing regulation

Indonesia has a pseudo whistle blower protection, known confusingly as, "Procedures for Implementing Community Participation and Providing Rewards in the Prevention and Eradication of Acts of Corruption". Signed in September 2018, the rule offers no meaningful protection for whistle blowers save provisions already contained in criminal law relating to witness and victim protection, which are designed to address vastly different circumstances. The impact to date of this legislation has been practically nil.

The Judiciary is slow, inefficient, and corruptible

Indonesia's judiciary is extremely slow and inefficient. There are no special courts to hear securities cases and the judiciary is widely regarded in Indonesia as corrupt. It is still possible for wealthy Indonesians to use the courts to obtain positive outcomes in many cases regardless of the facts of a case. In local corporate litigation, this can often lead to egregious legal decisions obtained by management and insiders against minority and particularly foreign investors.

Insider trading: illegal since 1995 and zero convictions

Insider trading remains illegal under the 1995 Capital Markets Law which provides reasonable powers of investigation, penalties and sanctions, even criminal ones. Yet no one has ever been successfully prosecuted for insider trading in Indonesia. In January 2023, the government passed Law No. 4/2023 on Development and Strengthening of the Financial Sector. One of the provisions of this law slightly tightened rules around insider trading, closing a glaring loophole on how insiders may obtain inside information yet evade prosecution. The new law also changed criminal sanctions for insider trading from a maximum of 10 years' imprisonment and fines up to IDR15bn (US$930,000, to a term of between five- and 15-years' imprisonment and fines of IDR5bn minimum to IDR150bn maximum.

No practical class action recourse

Class action and collective lawsuits are governed in Indonesia by the Supreme Court's Class Action Procedures. However, these procedures are not specific to securities cases and there is no legislation specifically governing the prosecution of derivative lawsuits for securities cases. Almost all collective actions that have taken place in Indonesia have been in respect of environmental or social issues. So, while in theory, securities derivative litigation is possible, in practice it does not happen.

Political will for CG reform is lacking . . .

Any meaningful change in CG standards in Indonesia can only practically occur if the political will exists to effect the necessary changes. It is not enough for the OJK to provide roadmaps and occasional incremental regulation. Public governance is already very weak and under current and possibly forthcoming leadership, may well worsen. In such a poor political environment with endemic corruption and already weak public governance, it seems extremely unlikely that meaningful reform will be possible.

. . . so any improvements will be limited

The most likely prognosis is for more of the same. Corruption will worsen further, and standards of public governance will continue to slide. And while the economic progress of the country will likely continue notwithstanding that, the economic price of corruption and weak public governance will continue to be a drag on more meaningful economic progress.

More of the same

We thus expect more of the same: CG reform, such as it happens at all, will continue to be driven by the OJK. Given the lack of political will, more pressing economic priorities, and limited available resources, any such CG reforms, if they happen at all, will be incremental and evolutionary rather than structural and revolutionary.

No shortage of roadmaps for financial markets

Reports are strong on rhetoric but short on detail

Investors may yet feel lost

Road to nowhere

Indonesia seems to love roadmaps for its financial markets: the OJK has launched them regularly for years for every manner of strategic purpose. Its latest of note is the 2023-2027 Indonesian Capital Market Roadmap. Compiled with input from government ministries and agencies, Bank Indonesia (the central bank) and self-regulatory organisations and other market and non-market participants, the output is a glossy report with lots of data on aspirational targets and goals but little in the way of practical detail on how these targets and goals will be achieved.

The latest roadmap cites a vision of "Building a resilient, stable and sustainable capital market to accelerate the national economy" and a mission of "promoting a deep, liquid, competitive, trusted and sustainable Indonesian capital market." Clearly lofty and laudable goals, but the report is short on practical detail on how it will achieve these, notably as it relates to corporate governance reform.

The roadmap talks about five pillars:

1. Accelerating market deepening through efficient financial sector product and services
2. Accelerating sustainable finance programs
3. Strengthening the role of industry players in the development of the financial sector in line with best market practices and market conduct
4. Increasing investor protection
5. Enhancing digital financial services to increase financial sector's credibility and public trust

Under the pillar of "Increasing investor protection", it cites just two objectives: enforcing issuers and public companies' disclosure and enhancing supervisions' infrastructure. These objectives are clearly CG-related and critical to the aim of improving confidence in the capital market, yet there is no additional insight as to who is responsible for these initiatives and how or when they might be expected to occur. Investors could be forgiven for feeling a bit lost despite the roadmap.

Indonesia scores 29% and ranks No.11 in regulators category

2. Regulators

Indonesia's overall score under the regulators section rose five percentage points to 29% placing it No.11 in our rankings, up one place compared to 2020 and ahead of the Philippines and materially behind China in No.10 place (56%). Scores improved in both the funding and capacity section as well as the enforcement section, but these were improvements from extremely low bases.

Indonesia ranks No.11 In this sub-category with a score of 35%

2.1 Funding, capacity building, regulatory reform

Indonesia gained four percentage points in this sub-category, increasing its score to 35%, ten percentage points ahead of last-placed Philippines, to rank No.11 as it did in 2020. The OJK, while fully funded via transaction levies (since 2016), still agrees its annual budget with government and remits any surplus to the treasury, leaving no accumulating surplus, making it difficult to plan for expansion.

The OJK regulatory remit is wide . . . and widening

It is almost impossible to assess the adequacy (or otherwise) of human and financial capital available to the OJK due to the extremely limited data publicly released by the OJK, especially in English. The OJK's 2022 Annual Report identified extremely ambitious objectives for its expanded regulatory remit and consequent legislation required to support this effort (see box above).

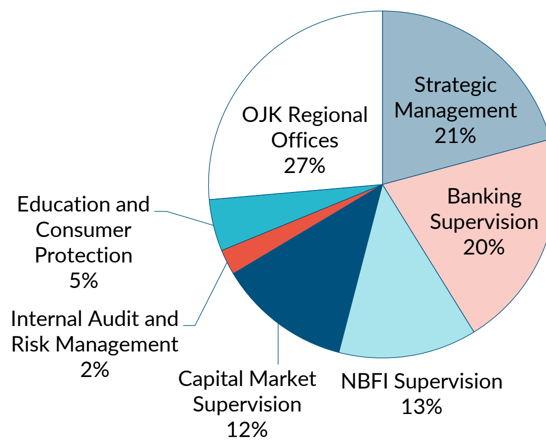
The OJK lacks a capital markets focus

The OJK is very much a super-regulator with oversight over vast swathes of the Indonesian financial sector: banking, insurance, consumer protection and education as well as capital markets. It is unclear whether the OJK has the human and financial wherewithal to regulate the capital markets sufficiently given its other material functions. Total staff numbers in 2022 increased to 4,300 over the 2019 number of 3,900, an increase of a little more than 10%. The breakdown of this human capital tells an interesting story, with significantly more staff allocated to banking supervision, strategic management and regional offices than are allocated to capital markets supervision (see chart below).

More staff allocated to banking supervision, strategic management and regional offices

Figure 3

Breakdown of OJK staff by Function



Source: ACGA

OJK enforcement activity remains low . . .
. . . and focused on banks

The OJK's 2022 Annual report states that it has 17 investigators (12 police and 5 civil servants) within its enforcement division to cover the entire banking, capital markets and insurance markets. This is clearly woefully inadequate to cover a market as large and as fast-growing as Indonesia. In 2022 the OJK handled 20 cases in total, of which 18 were in the banking sector. This compares with a total of 22 cases in 2019, of which four cases were in respect of capital market violations. Those statistics tell their own story. True, the 2022 Annual Report identified some recent investment in surveillance and data monitoring software systems (OSIDA) as well as big data management systems to improve internal decision making. But the effects of these investments will likely be seen (if at all) in future surveys.

IDX enforcement: a mystery

IDX enforcement is focused more on securities firms rather than listed companies

The Indonesia Stock Exchange (IDX) undertakes investigation and enforcement via the office of the Director of Surveillance and Compliance with two sub-departments—the Member Compliance Division and Market Surveillance Division. There is no detailed breakdown provided of the staff employed in these areas, making it impossible to assess the adequacy of resources. The IDX 2022 Annual Report states that it employs a total of 585 employees, a reduction of a single employee from 2021. But the IDX provides no breakdown of employees by specific function other than by way of basic title so it is impossible to assess the adequacy of resource allocated to key functions. We would note however that a static work force in 2022 compares with a revenue increase of 9.6% over 2021 and a 15.96% increase in trading volumes.

IDX enforcement data disclosure is basic

The IDX reported in its 2022 Annual Report that via its surveillance function it issued 128 Unusual Market Activity (UMA) announcements for 106 securities, enforced suspensions on 41 securities for price cooling measures, suspended a further 21 securities for other reasons and performed 26 investigations. In addition, IDX undertook 97 routine inspections on 72 of its exchange member firms in 2022. The scope of these periodic inspections included, inter alia, analysis of margin transactions and internal controls. In 2022, IDX issued ten sanctions against exchange members, including one suspension. It also issued written warnings to exchange members on a further 216 occasions in 2022.

No listed company enforcement data

In 2022, IDX did not delist a single company for any disciplinary offence or due to any financial issues. While IDX notes in its 2022 Annual Report that it "monitors and ensures that listing requirements and fulfilment of the Listed Company's obligations to stakeholders and IDX have been carried out according to prevailing regulations," it provided no data on any disciplinary or enforcement action taken against errant listed companies. Nor did it offer any disclosure as to any sanctions or action taken against listed companies arising from IDX monitoring of companies' compliance with continuing obligations.

Dual class shares are permitted

OJK has issued a number of new regulations since our last report, but most of these are focused on banking and securities markets rather than CG specific. Notably, OJK also issued the latest iteration of its five-year Indonesian Capital Market Roadmap (see box, "Road to Nowhere" in the Government & Public Governance section above) which is an aspirational document that covers wide-ranging issues, including governance and sustainable issues. OJK also permitted the introduction of dual class shares during the period under review, in line with several regional markets, which we view as CG-regressive.

IDX rules loosened

Similarly, IDX issued no specific regulations on CG matters, other than the negative DCS issue mentioned above. IDX introduced new guidelines for so-called New Economy companies that meet specific criteria to list via DCS issues. IDX also established a special listing designation, the Special Monitoring Board, to permit better price discovery and liquidity in companies designated via 11 specific criteria. Trading in these designated stocks takes place via call auction arrangements. Additional regulations to permit placement of such designated companies as well as enhanced trading facilities have been drafted, subject to OJK approval.

Big data software to assist enforcement

Since our last report, IDX has invested further in its Decision Support System (DSS) application, a Big Data-based application that can provide comprehensive data and information with informative graphical visualisations to facilitate the analysis process for strategic and operational decision-making needs. DSS aims to support enforcement activities by providing supporting information that can be used as a reference in making decisions related to law enforcement.

Public consultation processes by regulators do not really happen

Neither the OJK nor IDX are good at undertaking public consultation processes ahead of the proposed introduction of new regulation. In fact neither appears to bother consulting the public at all. This is likely in part due to the lack of a sufficient domestic institutional base as well as few interested NGOs and stakeholders. However, OJK does a decent job of "socialising" new regulations by announcing

new rules early, providing a date by when such rule(s) will become effective, sometimes as long as six months, so this provides some opportunity at least for market absorption and adaptation.

The OJK website remains difficult to navigate

The OJK's website remains difficult to navigate, with "zombie" sections that have not been updated, in some cases for years. Confusingly, there are also sections that seem to provide the same or at least very similar information, as if someone changed their mind on nomenclature half way through and simply started a new section rather than renaming the existing one. Accessing timely information is extremely difficult and immensely frustrating, particularly so in the English language sections, which are clearly far behind in their currency. We have discussed this with OJK *ad nauseum* in the past, yet nothing seems to change.

IDX website improvements

IDX site has improved as has its company database

In contrast, the IDX website is good, and the English version is generally up to date. While it is more informative in most respects than the OJK site, in terms of CG, it is much less so, likely because the IDX doesn't seem to take CG very seriously. English and Bahasa language announcements are provided in an easy to access and navigate database. When we last ranked Indonesia in CG Watch 2020 we noted that the site only provided two years' data, and hoped that the database would be incremental from then on. So far we are pleased to report, it seems that may be happening: five years' financial data are already provided and we hope that as new data are added for forthcoming years, the database on each company grows annually.

OJK e-voting system Is fully functional

The OJK introduced an effective electronic share meeting and voting platform which was accelerated due to the Covid-19 pandemic. The so-called e-RUPS system allows shareholders to appoint a proxy and to vote on their behalf electronically and crucially, without a power of attorney. It also permits shareholders without proxies to cast their votes electronically if they wish.

Better enforcement needs more resource

The OJK is self-funded but is still required to remit surplus funds over its agreed budget back to the treasury. So, its hands are tied to a material extent. We believe that this risks valuable and limited resources being misallocated and given the sparse enforcement data and disclosure, combined with the limited enforcement activities we know about, capital markets enforcement at the OJK is significantly underfunded for a market of Indonesia's size. OJK must be allowed to invest in the human and technical resources necessary to police the market if actual enforcement in Indonesia is going to improve.

IDX needs to promote CG among local companies

Similarly, IDX needs to promote better CG practices among locally listed companies if CG standards are going to improve. IDX has the duty as well as the resources to police its rules and prosecute violators. It just doesn't seem to want to, perhaps for commercial reasons.

OJK is already under-resourced and it is about to get worse

Mission: Impossible

The OJK already has what seems to be an impossible task. In addition to its role as chief regulator of Indonesia's capital markets, it also regulates banks, insurance companies and other non-banking financial institutions and undertakes certain central banking functions.

New omnibus law will be enforced by the securities regulator

In January 2023, the government enacted the "Omnibus Law for the Financial Sector", or "Law No. 4 of 2023 on Financial Sector Development and Reinforcement." Known locally as the PPSK Law, it attempts to embrace emerging assets classes such as cryptocurrencies and other digital assets as well as an emerging carbon exchange. New regulations were also introduced for SPVs and trustees and all of these new regulations will be overseen by the OJK. The PPSK Law allocates the following *additional* oversight roles to the OJK:

1. Financial services activities in derivative finance and carbon exchanges;
2. Activities in digital financial assets and crypto assets;
3. Bullion business activities;
4. Cooperatives that conduct certain activities in the financial services sector;
5. Market Conduct Supervision;
6. Integrated Financial Sector and Financial Conglomerate systemic impact assessment.

Additional responsibilities will be a burden

With already stretched resources and existing government interference over budget allocations at the OJK, it is difficult to understand how the OJK can devote the resources clearly required to set, police, and enforce better CG standards among listed companies in Indonesia with these additional responsibilities.

2.2 Enforcement

Indonesia ranks No.12 with a score of 22%

Indonesia increased its score by six percentage points to score 22% in this sub-category, an improvement over 2020 but still leaving it in last place among the 12 markets surveyed. This time it trails the Philippines by just 2 percentage points (it trailed by 10 points last time). Indonesia's enforcement of securities laws and its own regulations remains very weak with minimal signs of improvement in 2023. As discussed in the previous section, there is no evidence that enforcement resources have increased to match the growth in the market. Insider trading has been illegal in Indonesia since 1995, yet no one has ever been prosecuted for the crime. Enforcement by the OJK against exchange members remains more vigorous, however and a lot of enforcement resources available appear to be directed in that direction, or more generally in the enforcement of the banking and NBFI sectors (see previous chart of OJK staff breakdown by department).

OJK has the power . . .

OJK has powers of surveillance, investigation, sanction, and compensation within its constitutive regulations but rarely uses them. The OJK handled fewer cases in 2020 (20) than in 2019 (22). Of the 20 in 2020, just 2 were capital markets cases - the rest were in the banking sector. In 2019, the number of capital markets cases was just four: still twice the most recent number. Disclosure of enforcement statistics by the OJK remains awful, perhaps for good reason.

Legal issues

. . . but its powers are circumscribed

Indonesia has no specific law for corporate fraud: most offences fall under the Penal Code, which is administered by the Criminal Procedures Code. Persons authorised to prosecute cases under the Criminal Procedures Code are generally police officers, who seldom prove to be the best people to investigate what are often complex securities cases. The OJK has powers to investigate criminal investigations in the financial services sector, but again case investigators are police officers seconded to the OJK, or OJK civil servants specifically hired for that purpose. The OJK has the power to impose civil sanctions on violators, but all prosecutions must be undertaken by a public prosecutor under the Attorney General's Office (AGO), a notoriously cumbersome, inefficient, and ethically challenged department.

IDX acts against brokers, less so against listed companies

IDX has the powers to sanction, fine, suspend and delist companies: it seems to seldom use them. In 2022, IDX issued 128 Unusual Market Activity (UMA) announcements for 106 securities, enforced suspensions on 41 securities for price cooling measures, suspended a further 21 securities for other reasons and performed 26 investigations. In addition, IDX undertook 97 routine inspections on 72 of its exchange member firms in 2022. It did not delist a single company for any disciplinary offence or due to any financial issues. In 2019, it delisted six companies, the last time it appears to have taken such a measure.

There is no obvious government support of regulators

The government provides no obvious support to the OJK or IDX, and neither do the police or the court system. The increased politicisation of the legal system and the ongoing restrictions on the KPK, Indonesia's anti-corruption commission, continued throughout the second Jokowi administration. The incoming administration of President-elect Prabowo Subianto is unlikely to treat these institutions any better.

Politics is put before capital markets

Without a fully independent and fully independently funded OJK, capital markets regulation and especially enforcement will not improve materially. Independent leadership at the OJK and to a lesser, but still important extent, at the IDX, is sorely needed if Indonesia is going to better and more effectively regulate, monitor and enforce its capital markets. The fate of the KPK over the last five years or so provides a sobering example of what can happen to independently minded leadership seeking to make meaningful changes and improvements to corruption and cronyism in Indonesia. It is hard to be optimistic that matters will improve for the OJK and IDX, even if they want to, given the likely nature of the incoming administration.

3. CG rules

Indonesia ranks No.12 with a score of 40%

Our score for Indonesia under CG Rules increased by five percentage points to 40% compared with our last survey. Indonesia still came last, some way behind the next placed market, the Philippines with a score of 48%. Most of the increases in scores arose from improvements made by the OJK with respect to disclosures by insiders on dealings and issues relating to price sensitive information: welcome changes. But apart from these positive changes, precious little changed in our scoring, a reflection of how little has changed in the CG landscape in Indonesia since our last survey.

Financial reporting remains behind best practice

Corporate and financial reporting standards in Indonesia are still materially behind what we regard as best practice. These include lengthier deadlines for quarterly reporting and annual and audited financial statements. Management discussion and analysis statements are required but generally fall short of international standards

especially with respect to issues of materiality. IFRS are generally adopted in Indonesia and discussions of key risk factors to a company are discussed, but local financial reporting standards still lag best practice. Specifically, we find that detailed disclosures of key items such as operating expenses, share pledges, segment reporting and loans all fall short.

Vague rules

IDX disclosure rules lack specificity

IDX rules state that companies must make "Periodic Disclosures" and "Incidental Disclosures", which is vague and lacks specificity. Indonesia has a slightly odd concept of a "Public Expose", which amounts to a public presentation by management of a company's prospects and plans. This public expose must be made annually. Companies take this seriously and there is generally a detailed level of disclosure, but again, it lacks specificity. Periodic disclosure for listed companies under IDX rules means releasing mandatory quarterly statements - within three months for audited quarterlies; two months for a limited review; one month for unaudited. Audited annual statements must be released within three months of the financial year-end.

Financial statements are solid, but detail is lacking

In any financial statements release, companies must include profit and loss, balance sheet, cash flow and changes in equity, all including notes, although no specific requirements are stipulated as to what must be in the notes and this can lead to less detail and clarity. Financial statements must be drawn up in accordance with an OJK rule, "Guidelines for the Preparation of Financial Statements". Interim statements do not have to be audited but if not, must "contain equivalent quality of disclosure to the disclosure that is existed [sic] in the latest Audited Financial Statement".

CG reporting remains basic and comply-or-explain

CG reporting requirements are still based on an OJK rule passed in 2014 and standards remain basic. The 2014 rule requires companies to report CG and ESG disclosures via their websites as well as in their annual reports. The disclosure obligations are on a comply-or-explain basis and many Indonesian companies still opt to explain away their non-compliance rather than embrace the spirit of disclosure. IDX has no CG-related disclosure requirements.

ESG reporting still poor

ESG and sustainability reporting standards remain very limited in Indonesia. The OJK regulation referenced above requires companies simply to provide basic disclosures. These relate principally to CSR policies under environment; employment, health and work safety practices; social and community development; and product and/or services responsibility. IDX has no such disclosure requirements.

Substantial ownership disclosure rules have improved . . .

Disclosure requirements for substantial ownership in listed companies have improved by virtue of a new rule passed in January 2023 (Law No. 4/2023 on Development and Strengthening of the Financial Sector) that has shortened the disclosure time of changes in shareholding of a substantial shareholder (which means 5%, with additional disclosure at each 0.5% integer.) Previously disclosure was required within ten days; the new rule stipulates five days which is a material improvement for Indonesia.

. . . as have those for insiders

Under the same new law, insiders - directors and commissioners of public companies - are also required to report changes in their ownership within five days; previously it was ten days.

Insiders' rules are weak

There are no local rules on share pledges

There are still no specific regulations in Indonesia with respect to the disclosure of share pledges by controlling shareholders. The only rule that potentially catches this is the OJK requirement obliging listed companies to disclose material facts or information that may affect the share price, within two business days, to the public. The rule references, "any other information that is deemed material", which should reasonably cover a share pledge by a controlling shareholder. IDX has a rule stating that an incidental report must be made as soon as possible to the exchange in respect of material events, including, "other matters which appropriately can be deemed potential in influencing the price and or investment decision of an investor". Again, this would reasonably capture a share pledge, but we would prefer to see a specific rule.

No blackout periods for insiders . . .

Insider trading is forbidden by the Capital Markets Law (1995) and OJK regulations require additional disclosure of share dealings by directors and commissioners. But curiously, there are still no rules requiring blackout periods banning insiders from trading shares in their companies. There is a blanket provision banning insiders from dealing in shares when they are in possession of material non-public information (MNPI), but again, there should be a specific rule.

. . . and no policing of policies

Some Indonesian companies disclose policies in their CG reports that incorporate blackout periods which are usually one month before any results announcement (and of course when they are in possession of MNPI). It is not possible to know if these policies or regulations are effectively policed, but it is surely pertinent that despite insider trading having been illegal since 1995, no one in Indonesia has ever been convicted of the offence.

No specific rule on PSI

The OJK regulation requiring the disclosure of material facts and information that may affect the share price covers the disclosure of price-sensitive information (PSI). There is no OJK rule that specifically deals with PSI. There is also no regulation requiring companies to suspend trading in their shares if they have failed to disclose PSI in a timely fashion. While the OJK's catch-all rule mandates disclosure within two business days, the OJK clarified in an amendment to rule (11/POJK04/2017) that disclosure must be immediate and not just within two business days, notwithstanding the rule. A curious approach, perhaps, but an improvement nonetheless. IDX's rule also requires disclosure as soon as possible.

Related-party rules are far behind best practice

Indonesia's rules relating to related-party transactions (RPTs) remain very weak. The current OJK rule, from 2009, provides two concepts of RPTs. The first is what is deemed an "affiliated transaction". These can be announced to the market after the event (within two business days). Only basic transaction details are required and an independent appraiser report must opine on the terms of such a transaction. No circular is required to be sent to shareholders and they do not get to vote on the deal.

Split definition of RPTs is open to abuse by insiders

The second transaction, a "conflict of interest" transaction, resembles a more traditional RPT. Directors, commissioners and major shareholders are excluded from voting and a circular must be sent to shareholders and pre-approved by a majority of independent shareholders. No prizes for guessing which category of RPT is most popular with controlling shareholders of Indonesian companies.

Large, affiliated transactions do need an independent vote

To its credit, in 2020 the OJK tried to address the issue of insiders bending the rules when it passed a new regulation (No.17/POJK.04/2020 Material Transactions and Change of Business Activities) that required any major transaction (any acquisition

or disposal representing 20% or more of a company's equity, assets, profits or revenues) that is also an affiliated transaction, to be the subject of a specific vote of independent shareholders. It would have been better if the OJK overhauled its RPT rules entirely to do away with affiliated transactions, but the rule has arguably helped restrict more abusive transactions.

Poll voting at GMS is not mandatory . . .

Voting at company general meetings of shareholders (GMS) is still not required to be carried out by poll. In Indonesia voting generally takes place on what is called a "deliberative consensus" basis, which effectively means a show of hands. A formal poll is conducted if there is no consensus, at which point the voting threshold is typically 50% of those voting in person or by proxy. Voting abstentions are traditionally counted with the majority, which is questionable. Voting results are required to be disclosed however.

Poll voting post-pandemic

. . . but is starting among large caps

In part due to pressures from external shareholders (principally foreign institutional investors) some local companies, particularly large caps, have voluntarily adopted poll voting. In response to the Covid-19 pandemic, the OJK introduced its e-RUPS voting system, an electronic voting platform that allows shareholders to vote directly and electronically.

The CG Code is dated and needs an overhaul

Indonesia is long overdue a revision of its CG Code, which remains unchanged from the 2006 version. True, it has published follow up guides, such as the 2016 CG Guidelines for public companies, which is based on a comply-or-explain approach and in 2014 it published a CG roadmap. In 2018, OJK published a CG Manual (second edition) but this is not a code, more a guideline. An overhaul of the 2006 CG Code is required. There is still no code of best practice.

Board independence is OK, but not after six months!

OJK and IDX rules on independence for directors (commissioners in Indonesia due to the two tier board system) are generally sound. They prohibit independent commissioners from having any prior management or oversight role over the company, not to own any shares in the company or nor to have any business or affiliated relationship with the company or any of its directors, commissioners or principal shareholders. The problem is that the time limit, or cooling off period for any such relationship is just six months, which is ludicrously short.

Board remuneration disclosure is still poor

Current OJK rules require only the disclosure in the annual report of total remuneration paid to board members and senior executives for the previous financial year. This rule has not been updated since 2014 and is far behind best practice. There is still no requirement to disclose the remuneration of individual directors or senior management. Under the same OJK rule, companies are also required to disclose how directors' compensation is reviewed and evaluate board remuneration. In practice, however, disclosure is boilerplate and compliance driven.

Audit committees are mandatory with genuine accounting expertise

Audit committees are mandatory in Indonesia, although they are not fully independent. However, OJK rules state that one member of an audit committee must be an independent commissioner and two other members must be appointed outside of the listed company. These appointees are typically external accountants. There are also restrictions relating to share ownership and connections with other board members, so this provides an element of independence and the external accountants provide an added professional credibility to the committee. Audit committees report to the board rather than the internal audit function, however, so their ability to access and communicate independently with the external and internal auditors is questionable.

Other board committees are less independent

OJK rules mandate the formation of nomination and remuneration committees but only require the chair to be an independent commissioner. The other two (or more) members can be outsiders, commissioners, directors or executives, although the latter cannot comprise a majority of committee members. The terms of reference for the nomination committee set out in the OJK regulations are adequate but not extensive.

Minority shareholder director nomination is possible, but rare

It is possible for minority shareholders to nominate independent directors, but it is not easy and very rarely happens in Indonesia. For listed companies, a shareholder (or group of shareholders) must hold 10% or more of an issuer to call a GMS or 5% or more to propose a resolution. The voting requirement to pass any such resolution is 50%, however. In practice, very few INEDs get nominated by minority shareholders.

There are tough rules for convicted directors

Indonesia has surprisingly tough rules banning persons convicted of fraud or other corporate crimes from serving on the boards of listed companies. Anyone sentenced for a crime relating to the financial sector or one that caused losses to the state, is forbidden from acting as a director. Directors held responsible for the bankruptcy of a company are also barred. It is not clear whether they are enforced in practice, however and directors are seldom convicted of such acts in Indonesia.

Pre-emption rules have improved but remain weak

Pre-emption rights for minority shareholders remain weak. A 2014 OJK regulation requires any non-pre-emptive issues to be pre-approved by shareholders and limited to 10% or less of the issued share capital. But there are no limitations to the discount at which shares may be issued, which is a major loophole. Financially stressed and distressed companies may issue shares without pre-emption. These rules need to be revised and tightened.

AGM notice and the information provided both need revision

The minimum notice period for an AGM (known as General Meetings of Shareholders or GMS, in Indonesia) is 21 days, compared with our benchmark of 28 clear days. Information required to be provided to shareholders in meeting notices is vague to say the least. The relevant OJK rule states: “Shareholders have the right to receive information on the meeting agenda and corresponding material related to the agenda as long as it is not against the interest of the Public Limited Company.” Potential board appointees must have their CVs posted on the company website ahead of the GMS but there is no specific requirement to include that information in the GMS notice.

Basic minority protections in takeovers and delistings

Minority shareholder protections during takeovers, voluntary delistings and major transactions remain basic. An OJK regulation issued in 2018 introduced some positive changes, lowering the threshold at which a mandatory takeover is required in certain circumstances to below 50%. There are also certain restrictions on the prices at which these transactions can be effected. Major corporate transactions (between 20% and 50%) simply require post facto notification to shareholders and an independent appraisal. An independent shareholder vote is required for a transaction of more than 50% and, following the rule change mentioned under the section dealing with RPTs, since October 2020, an independent shareholder vote is required for a major transaction that is also an affiliated transaction.

Collective engagement: permissible, unwelcome and rare

Institutional investors are free to undertake collective engagement if they choose to do, but it seldom occurs and is never welcome. Indonesian law does not specifically recognise institutional investors as distinct from other investors and concert party rules in Indonesia are weak. In practice, institutional collective engagement and activism is both difficult and rare.

CG guidelines should be regulations

An overhaul of Indonesia's CG code is long overdue, and the guidelines should ideally be incorporated into regulations to push standards higher. In terms of CG reform, it is the OJK that pushes the agenda and so it will inevitably be up to the OJK to improve CG standards. However, support from all interested constituencies - political, stock exchange, corporate, investors - will also be critical if Indonesia is to improve its CG standards and practices.

Upgrades are overdue

Specific areas of CG that require an overhaul:

- RPTs: close the "affiliated transaction" loophole
- Mandate disclosure of share pledges
- Introduce limits on price discounts for pre-emptive issues.
- Improve board committee independence.
- Introduce a formal takeover code.
- Enforce insider trading rules.

4. Listed companies

Indonesia's score for this category fell two percentage points to 36% in 2023, and it continued to rank at the bottom, slightly behind China (39%). Issuers still performed poorly in providing transparency on a range of key CG areas such as board governance, board diversity, director/commissioner remuneration and executive remuneration policies. In terms of ESG and sustainability reporting, the disclosure of material issues remained generic, and the adoption of international frameworks was uneven. On a brighter note, there was an improvement in the independence and competence of audit committees (AC). It is also worth highlighting the significant performance gaps between leaders and laggards in this category. The disparity between the highest and lowest scores amounted to 4.5 or 5 in six out of 15 questions. In most cases, one or two companies stood out with a score of 4.5 or 5 while many of the rest struggled to earn a point.

Where Indonesia does well (above average)

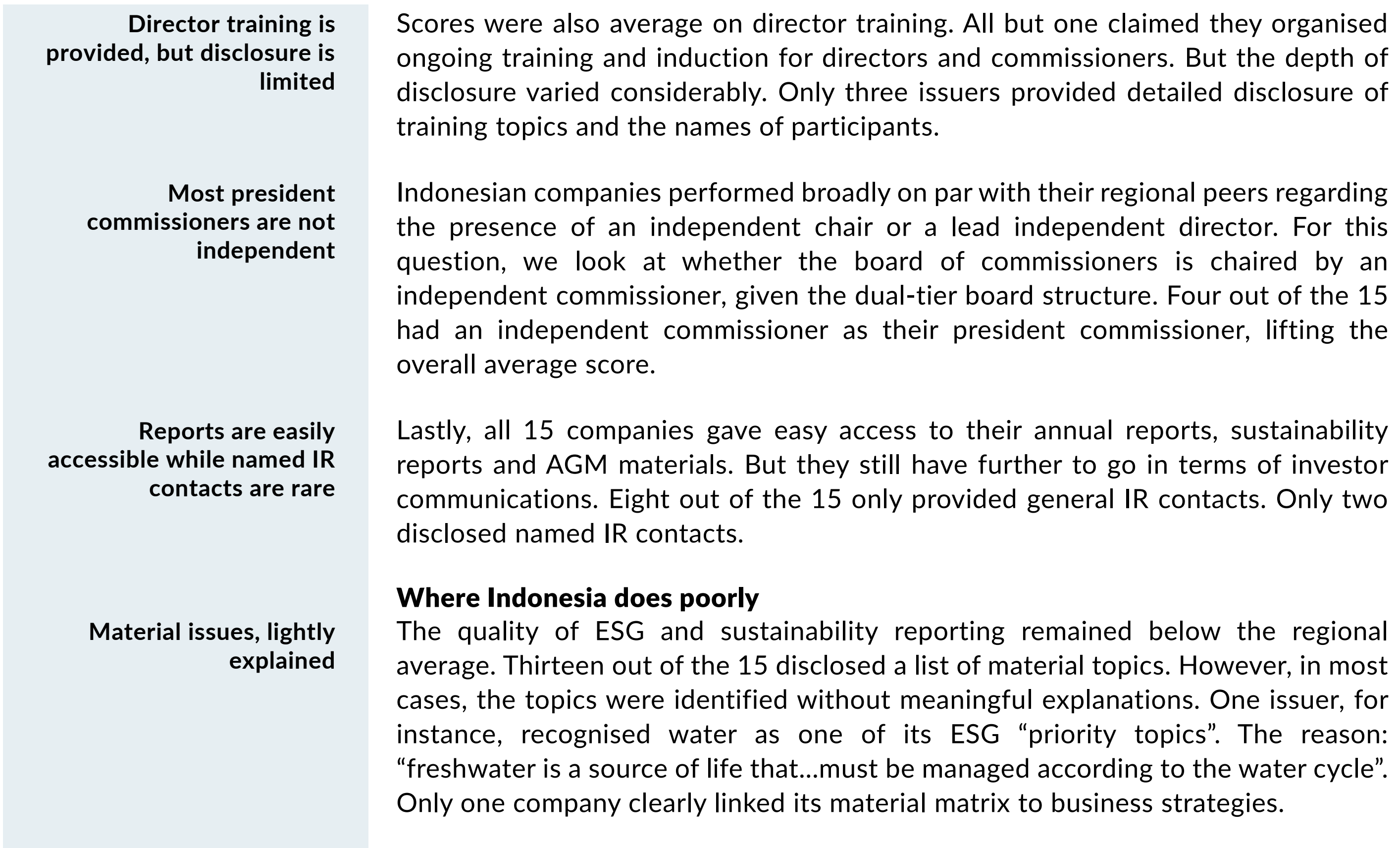
The quality of audit committees improve

Indonesian companies mostly performed well on the independence and competence of ACs, with two-thirds of the 15 large caps scoring full marks. All of them appointed an independent commissioner as its AC chair. Additionally, 10 out of the 15 had an AC whose members all appeared to have clear competence in accounting or finance. There were still sporadic exceptions: one real estate developer installed a medical professor as the AC chair, and another issuer has an AC chair with a background in agricultural engineering.

Where Indonesia performs averagely

All issuers perform board evaluations, none shares areas for improvement

One area where Indonesian issuers performed averagely is on board evaluations. All of the 15 large caps performed annual evaluations of their board of directors and board of commissioners. While self-assessment was still the predominant evaluation method, the use of a third-party assessor was found at one telecoms company. The disclosure of evaluation results, however, was disappointingly limited. There was no shortage of self-confirming, qualitative conclusions. A typical example: all directors and commissioners "have carried out their duties and responsibilities properly". One company disclosed numerical results without showing the full score. Still, none shared areas for improvement.



Director training is provided, but disclosure is limited

Scores were also average on director training. All but one claimed they organised ongoing training and induction for directors and commissioners. But the depth of disclosure varied considerably. Only three issuers provided detailed disclosure of training topics and the names of participants.

Most president commissioners are not independent

Indonesian companies performed broadly on par with their regional peers regarding the presence of an independent chair or a lead independent director. For this question, we look at whether the board of commissioners is chaired by an independent commissioner, given the dual-tier board structure. Four out of the 15 had an independent commissioner as their president commissioner, lifting the overall average score.

Reports are easily accessible while named IR contacts are rare

Lastly, all 15 companies gave easy access to their annual reports, sustainability reports and AGM materials. But they still have further to go in terms of investor communications. Eight out of the 15 only provided general IR contacts. Only two disclosed named IR contacts.

Where Indonesia does poorly

Material issues, lightly explained

The quality of ESG and sustainability reporting remained below the regional average. Thirteen out of the 15 disclosed a list of material topics. However, in most cases, the topics were identified without meaningful explanations. One issuer, for instance, recognised water as one of its ESG "priority topics". The reason: "freshwater is a source of life that...must be managed according to the water cycle". Only one company clearly linked its material matrix to business strategies.

Figure 4

Indonesia listed companies' scores, CG Watch 2023

Question	Average Score	Range of Scores
1. Does the company's board governance reporting compare favourably against international best practice?	1	0.5-3.5
2. How would you rate the quality of the company's ESG/sustainability reporting?	1.5	0.5-4
3. Does the company provide comprehensive, timely and quick access to information for investors?	3.5	2.5-5
4. Does the company undertake annual board evaluations, either internally or using external consultants?	2	2-3
5. Does the company disclose and implement a credible board diversity policy?	0.5	0.5-2
6. Does the company provide induction and/or ongoing training to all directors?	2.5	0-4
7. Does the company have an independent chairman and/or a lead or senior independent director?	1.5	0-5
8. Does the company disclose total remuneration of each member of the board of directors?	0.5	0.5-2
9. Are the independent directors paid partly or wholly in stock options or restricted share awards? Do they share in a percentage of company earnings or other commissions in addition to their base fee?	1.5	0-5
10. Are audit committees (or an equivalent) independently led and competent in financial reporting/accounting matters?	4.5	4-5
11. Does the company have an internal audit department that reports to the audit committee?	1.5	1-3
12. Does the company provide a detailed explanation of its executive remuneration policies?	1	0-4.5
13. Does the company have a nomination committee and is it independently led?	2.5	0-4
14. Does the nomination committee have a female chair or at least one female director?	1	0-5

Source: ACGA research. Based on 15 large caps from a range of sectors.

Adoption of international reporting standards is still in its early days

Nearly all issuers adopted at least the OJK guidelines and GRI standards for ESG reporting. Two only used the domestic guidance. Among the 13 large caps that adopted the GRI, only three provided reasonably comprehensive disclosures.

Common missing topics included indirect economic impacts, procurement practices, and supplier environmental assessment. The use of other international reporting standards remained rare: one petrochemical company followed TCFD, and two issuers partially used SASB. On a more positive note, one bank announced the plan to adopt TCFD.

TCFD and SASB have yet to become the mainstream

Figure 5

Uses of ESG reporting standards at 15 large caps in Indonesia

Source: ACGA

Poor board governance reporting except one positive surprise

The quality of board governance reporting was also poor: 11 out of the 15 earned a 1 or less on this question. The vast majority of the 15 did not disclose any specific topics discussed at the board and committee level. But one issuer provided a positive upside surprise, disclosing key topics deliberated at each board meeting.

Board diversity policies articulated in a monotone

Scores were even lower on the question about disclosure of board diversity policies. All 15 large caps parroted the OJK's guidelines on board diversity, although two issuers briefly highlighted the importance of board diversity to their operations. It is therefore not a great surprise to find a low female representation on boards. Half of the 15 still had a male-only board of commissioners. But one company was head and shoulders above the rest with women taking more than 30% of seats at the board of commissioners. In addition, disclosure of skills matrix was still hard to come by. Only two provided information on the work experience of directors and commissioners.

Director remuneration remains an enigma

Lastly, Indonesian companies still have a long way to go in terms of the disclosure of remuneration of individual directors or commissioners. Thirteen out of the 15 still disclosed board/commissioner remuneration on a grouped basis. Only one offered greater transparency by reporting director remuneration in bands. Additionally, the disclosure of executive remuneration policies was exceedingly terse, with 14 out of the 15 earning a 1 or less. But one bucked the trend to earn a 4.5/5.

5. Investors

Indonesia ranks No. 12 with a score of 20%

Indonesia's score in our Investors category rose by a single percentage point to 20%, but it ranked last in our survey, behind China (22%) and the Philippines (25%). The landscape for investor engagement and action in Indonesia has been left unchanged in the main: just two scores changed in the whole survey.

Domestic institutions are weak

The domestic institutional investor sector, while growing strongly, is still nascent. Government-linked institutions have been riven with financial and mismanagement problems scandals (for example Asuransi Jiwasraya and Asuransi Sosial Angkatan Bersenjata Republik Indonesia) that will likely take time to address.

AMII and APRDI are the local industry bodies

The Asosiasi Manajer Investasti Indonesia (or AMII), the local investment management industry association, has approximately 15 foreign members (depending on how one defines foreign ownership) among a total membership of some 90 members. While it has adopted a code of ethics, it is basic, inwardly-focused and has no voting commitments or policies, nor provisions to manage conflicts of interest. The Indonesian Association of Mutual Fund Managers (APRDI) undertakes some training and professional education for members and acts as a representative body. It has not published any CG, proxy voting or stewardship policies.

New Investor Code of Conduct from the OJK

In late 2023, the OJK finally issued its long-promised code of conduct for investment managers. As the name suggests, the code of conduct is not strictly speaking a stewardship code but does incorporate an obligation on the part of investment managers to vote their shares at meetings of listed companies and to avoid potential conflicts of interest in so doing. There are also sanctions such as fines and even deregistration available to the OJK to assist with compliance. It is laudable progress.

Existing state pension funds have very limited CG frameworks

Existing state pension funds are basic and none of these has anything that would be close to a stewardship code or even a full code of conduct. What they have is generic and inward-looking policies focused on internal governance, some stakeholder engagement and in a few examples, environmental responsibility statements. None has a detailed CG policy or statement, stewardship strategy or proxy voting guidelines.

Sell don't stay

Foreign investors sell rather than engage when CG problems arise

While some foreign institutional investors will try to engage with locally listed companies if a difficult CG issue occurs, their ultimate sanction is simply to sell rather than stand and fight: the local CG ecosystem and legal apparatus do not lend themselves to assisting foreign investors in local disputes. Most of the major foreign players in Indonesia are AMII members but we have seen no evidence that any of these members are proactively pushing CG issues in Indonesia or have any obvious CG strategy or focus.

Local investors attend and vote but with management . . .

Domestic institutional investors tend to attend and vote at GMS, although almost always with management. None of the major domestic investors discloses voting activity or outcomes. Since Indonesian company law does not distinguish between institutional and other shareholders, it is unsurprising that companies tend to view shareholders as a single group rather than as distinct constituencies. And the absence of a successful track record of activism in Indonesia clearly drives company behaviour on shareholder engagement and the company's own CG practices. Indonesian companies very much view their responsibility as one of compliance with OJK corporate governance regulations.

. . . while foreign investors often attend and vote, sometimes against management

Foreign investors also tend to attend and vote at GMS, including voting against or abstaining from resolutions they oppose. Many foreign institutions routinely attend and vote at the GMS with a small but prominent group providing a company-by-company breakdown of proxy voting actions in Indonesia and/or engagement and voting summaries.

Responsible investment and stewardship are non-existent

There is no leadership among domestic institutional investors with respect to responsible ownership or stewardship. If this is going to happen in Indonesia, the OJK will almost certainly have to be involved and, notably, it is the OJK, not any domestic asset managers or owners or their associations that has managed to produce a code of conduct for investment managers. While some domestic funds cite basic CG and CSR principles on their websites, none of them is promoting responsible investment. We are not aware of any collective engagement with listed companies by domestic investors in Indonesia.

Foreign IIs collaborate on specific CG problems

Foreign institutions are better resourced and more experienced to undertake such activities. From time to time, usually in the face of a key CG issue that has arisen with a large Indonesian company, a small number of foreign institutional investors have collaborated on engagement.

OJK code of conduct

Local codes of ethics among domestic managers are basic

Domestic institutional investors have not published codes or policies on managing conflicts of interest although AMII, the local asset management association, publishes a code of ethics that commits its members to manage conflicts of interest in respect of investing, which is quite detailed. Domestic institutional investors do not publish any voting policies or activities at company level. There are still no local proxy advisor firms in Indonesia. As described earlier, the OJK issued a detailed investment manager code of conduct in 2023 which includes sanctions for non-compliance, and we would expect that to help improve industry standards.

Retail investors are a tiny constituency . . .

The local retail investor market remains tiny compared with the size of Indonesia's population and its economy, although it continues to grow quickly and both OJK and IDX undertake financial education aimed at promoting wider share ownership, with some success. According to the IDX 2022 Annual Report, the total number of investors in the capital market in 2022 was more than 10 million, about 4% of Indonesia's population. While that total grew almost 38% over 2021 according to IDX, it includes all investors, institutional, retail and others. Total active investors in the market in 2022 according to IDX was a much lower 1.7 million, some 0.6% of the country's population. Retail investors thus currently play a tiny role in the Indonesian market.

. . . but do attend GMS

Probably because of this tiny retail representation in the local market, there are no retail investor associations in Indonesia despite retail investors tending to attend shareholder meetings. There is no retail collective engagement in Indonesia although the OJK did set up the Indonesia Investor Protection Fund, but this is obviously not independent.

Class action is legally possible but does not happen

While class action is possible under Indonesian law it is generally only used in respect of civil claims taken against companies and other entities in respect of public environmental and health issues rather than against directors and companies.

OJK is likely key to better investor engagement

As with most CG-related matters, it will likely fall to the OJK to promote higher CG engagement and standards among domestic institutional investors. Most publicly owned investment institutions are very poorly run and have significant financial issues to address so cannot be expected to demonstrate CG leadership. Privately-owned domestic institutional investors may step up, but most likely with prodding from the OJK and/or those with foreign shareholders/owners.

Indonesia's sovereign wealth fund is not pushing CG yet

The Indonesia Investment Authority, the country's sovereign wealth fund, has thus far shown no obvious signs of being a CG leader, but it is early days - it is only a few years old - so it is worth watching in the coming years.

Private sector investors need to do more

The private sector has an obvious role to play here and both domestic and foreign institutional investors could be doing much more than they are. The two local asset management associations should be doing more and perhaps will now that the OJK has pushed the agenda, via its Investment Manager Code of Conduct.

6. Auditors and audit regulators

Indonesia ranks No. 10 with an increased score of 65%

Indonesia's overall score in this section climbed by six percentage points from our last survey, to 65%, from 59% remaining in third last, ahead of China and the Philippines. The same placing as our last survey, despite the increased score, is a function of a general increase in scores for almost all markets in this section: only Australia's score fell in this category. Overall, Indonesia's financial reporting standards are good, especially for an emerging market. While there is still some way to go before Indonesia becomes fully aligned with international standards on accounting and auditing, we note that good progress has been made since our last survey towards synchronizing local accounting and auditing standards to international standards.

Full IFRS convergence is on the way

Indonesia has not adopted International Financial Reporting Standards (IFRS), but is on a stated path to do so. All listed companies are required to use the Indonesian Financial Accounting Standards (Standar Akuntansi Keuangan—SAK) which track IFRS closely. Indonesia's approach to IFRS adoption hitherto has been to maintain its national GAAP (SAK) and converge them gradually with IFRS as far as possible.

IFRS to be adopted verbatim

However, in 2021, the independent national accounting standard-setting body, the Indonesian Financial Accounting Standards Board (Dewan Standar Akuntansi Keuangan - DSAK-IAI) operated by the Ikatan Akuntasi Keuangan (IAI), the Institute of Indonesia Chartered Accountants, adopted a new policy to incorporate IFRS verbatim. From the website of the International Federation of Accountants (IFAC), the global organisation for the accounting profession: "The IFRS Foundation and the DSAK-IAI note that the SAK does not incorporate all the requirements of IFRS. As of 2021, DSAK-IAI is in the process of developing the Indonesian International Financial Accounting Standards (SAK Internasional - SAK I), a new reporting framework adopted word-for-word from IFRS." So, while local accounting standards in Indonesia are not yet completely converged, full convergence is on the way, and that is progress.

Local auditing standards still lag ISAs

Under the Public Accountants Act of 2011, the Institut Akuntan Publik Indonesia (the Indonesian Institute of Certified Public Accountants, or IAPI), has direct responsibility for setting auditing standards and has adopted the Indonesian Public Accountant Professional Standards, known as SPAPs, which follow International Standards of Auditing (ISAs), but lag the most recent ISAs. In January 2021, IAPI issued an exposure draft for the adoption of the 2018 ISAs, to be effective 2022. So, while Indonesia has a policy of full adoption of ISAs, it is still some years behind full adoption. IFAC still considers Indonesia to have partially adopted ISAs.

Ethical progress

Auditor independence has improved, and an ethics code now adopted

Effective July 2020, all three accounting bodies in Indonesia adopted a joint code of ethics for all professional accountants. The code is aligned with IFAC's 2018 International Code of Ethics for Professional Accountants. IFAC regards the Statement of Membership Obligations No. 4 to be adopted. That is progress from our last survey.

Non-audit work disclosure Is still weak

OJK regulations require separate disclosure of audit and non-audit work undertaken by a listed company's external auditor. However, there is no specific requirement to provide any narrative to this disclosure and most listed companies do not. OJK Audit Committee rules require audit committees to evaluate the company's external auditor's work against current auditing standards to ensure consistency and quality.

KAMs are required from January 2022

In July 2021, IAPI finalized the new and revised auditor reporting standards which include a new Standard on Auditing (SA) 701, Communicating Key Audit Matters (KAMs) in the Independent Auditor's Report. These are required on all audits of listed companies with effect from January 2022, with some exemptions. Key to the success of this measure, however, will be the extent to which listed companies embrace the KAM principle. Our review of initial attempts of listed companies at producing KAMs is discussed in the Listed Companies section. We will get a fuller picture from our review during our next survey.

Audit oversight remains fragmented and confusing

Rather than having no independent regulator, as in the Philippines, Indonesia has three! This causes inefficient, unnecessary and confusing duplication and overlap in roles.

IAPI is the main audit regulator . . .

Both the audit and accountancy professions are regulated with practitioners required to be members of the IAI for chartered accountants, or IAPI for public accountants. Auditors are regulated by IAPI under the Public Accountants Act 2011.

. . . but there are also two more!

Pusat Pembinaan Profesi Keuangan, or the Centre for Supervision of the Financial Service Professions (PPPK), is the authorised body to regulate and supervise the accountancy profession in Indonesia, including monitoring the professional activity of statutory auditors. The PPPK is a member of IFIAR and is recognised as a competent authority by the EU. In addition to the PPPK, the OJK also registers and oversees auditors for entities under its supervision, which includes banks, securities firms, insurance companies *and* listed companies.

Audit oversight has teeth, but experienced inspectors are few

The PPPK has powers to sanction and does, including fines, reprimands, licence revocation and even mandatory training. However, it is severely resource-constrained and oversight is patchy. According to the World Bank Report on Observance of Standards and Codes, finding staff with substantial practical audit experience remains challenging: so challenging that the PPPK is forced to use inspectors from within the audit profession. So the audit profession ends up policing itself! To achieve some independence from the auditors being reviewed, the PPPK imposes a three-year cooling-off period and makes inspectors sign a conflict of interest statement. But, still!

Enforcement data is not as current as it should be

PPPK does publish some basic enforcement data but it is generally quite out of date. At the time of writing, the latest data was from September 2022. Individual announcements are made promptly on public sanctions made against specific auditors or audit firms however, so the PPPK is actively sanctioning errant firms and individuals. In addition to inspections of public accountants and auditors, the PPPK also audits valuers and actuaries.

Enforcement by PPPK seems to have tailed off

The latest PPPK consolidated data on enforcement from September 2022, identified a total number of sanctions issued by PPPK on public accountants of 37 (2022 *year to date*), compared with total sanctions against public accountants in the whole of 2021 of 117. No action was taken against accounting firms in year to date 2022 (2021: nil).

Audit capacity has improved, but remains chronically low

According to the PPPK, the number of public accountants increased to 1,480 as of September 2022 from 1,454 in 2021. Meanwhile the number of audit practices increased from 876 to 916 over the same period. Indonesia continues to suffer from a chronic shortage of qualified audit personnel and a lack of audit firms, other than the local affiliates of the Big Four. There has been some progress in increasing numbers of public accountants and audit firms but for an economy as large and fast-growing as Indonesia, the shortage remains a major problem.

Audit oversight should be rationalised

The overlapping audit oversight responsibilities of the OJK, the PPPK and IAPI should be rationalised with the consolidation of all audit responsibilities into one adequately funded and resourced entity, independent from government. That would likely mean IAPI. A single regulator would help focus precious resources into the key needs of increasing audit capacity and improving audit quality via training, monitoring, and effective enforcement. Political issues in Indonesia are likely going to continue to prevent that outcome, however.

Inspection and enforcement should increase, and disclosure improve

The PPPK continues to play an active audit oversight role but is heavily resource-constrained, meaning its enforcement is very limited over such a relatively large industry. Even so, there is nothing to stop PPPK improving the disclosure of what inspection and enforcement activities it does undertake.

7. Civil society and media

Indonesia ranks No.9 with a score of 44%

Indonesia's score for this section increased by six percentage points to 44%, placing it fourth last in our rankings, ahead of China, the Philippines and Korea. The score improved due to increased and better director training, better ESG awareness training undertaken by Indonesia's three accounting bodies and a slightly higher score for media coverage of CG issues in country. All other scores remained the same as in our last survey.

IICD and ICSA provide high quality training

Indonesia's directors' institute, the Indonesian Institute for Corporate Directorship (IICD), is proactive and well-run, founded as a non-profit by educational institutions. IICD provides good quality training for company directors, including a Corporate Governance Leadership Programme, delivered by professional and well-qualified trainers. IICD is the appointed agency to manage Indonesia's Asean Annual Corporate Governance Scorecard, a programme that has been resurrected post the Covid-19 pandemic. IICD works closely with the OJK on its CG Roadmap initiatives and participates in the World Bank's ROSC process. Curiously, for such an active organisation, the latest annual report in its website is still from 2018! The Indonesia Corporate Secretary Association (ICSA) is another well-run and focused organisation that remains active with regular training to its members via its ICSA Academy.

Not much else happens CG-wise

Other than IICD and ICSA there is not much more of note with respect to CG or ESG promotion by other professional associations, notably the financial analysts or banking institutes and other professional associations. The two main accounting institutes, Ikatan Akuntan Indonesia (IAI) and Institut Akuntan Publik Indonesia (IAPI) focus primarily on training for accounting and auditing qualifications and socialising new accounting and auditing standards. They have started to provide courses on ESG-related issues also. IAI has also run courses on whistleblowing. Institut Akuntan Manajemen Indonesia, Indonesia's management accountant institute, offers similar activities to IAPI and IAI, but is less active and with no obvious focus on CG training. The local CFA branch provides no CG training, events, or courses and neither does the Indonesian Investment Manager Association. It has published a very basic code of ethics but nothing on CG. The same applies to the Association of Indonesian Publicly Listed Companies.

Business chambers play no role in promoting CG

KADIN (Kamar Dagang dan Industri Indonesia) is the Indonesian Chamber of Commerce and Industry. Chiefly a members' association designed to promote business matching and to advance Indonesian businesses, it provides no training in terms of public courses and no CG training at all. The International Chamber of Commerce Indonesia offers public training courses, but these are focussed on trade promotion and trade-related training only. The National Committee on Corporate Governance (Komite Nasional Kebijakan Governance) is a government-sponsored entity set up in 1998 after the Asian financial crisis. It provides some socialisation of CG matters, especially relating to SOEs and is focused more on an advisory and monitoring role. It doesn't offer any CG training. The National Center for Sustainability Reporting is active in training—providing GRI and Certified Sustainability Reporting Assurer (CSRA) certification as well as undertaking the Asia Sustainability Reporting awards.

There is plenty of CG research but it is of little practical use

Indonesian academic institutions publish a surprising amount of academic research on CG and ESG matters, although most of it is theoretical and academic in approach, making it of questionable use to companies and other CG practitioners. But this Indonesian research gets published widely, especially in the Islamic world.

Media muzzled

Media reporting on CG issues is poor and perilous

Indonesian media reporting on companies generally is of poor quality and superficial. It is very rare to find in-depth analysis of CG scandals and issues, although there are many to report on of course. Major SOE scandals tend to get a lot of press, but the focus is more about reportage and coverage than providing more thoughtful analysis. Freedom House, in its 2022 survey states: "Indonesia hosts a vibrant and diverse media environment, though legal and regulatory restrictions hamper press freedom." A 2008 law extended libel to online media and criminalized distribution or accessibility of information 'contrary to the moral norms of Indonesia,' which covers gambling, blackmail, or defamation. "Journalists carrying out legitimate reporting have been arrested under the 2008 [law]," notes the Freedom House report.

A new president will likely test press freedom limits

The incoming administration of President-elect Prabowo Subianto will be a further test for the freedom of the press in Indonesia. Our next survey will be watching closely for any signs of further erosion of press freedoms and/or self-censorship.

Civil society remains apathetic at best towards CG . . .

Indonesia's civil society plays a limited role in CG awareness and promotion. The IICD and ICSA play an important role in promoting CG practices, supporting CG research, and offering board room training. But other than these associations, there isn't much else of note going on.

. . . many professions are disinterested . . .

The banking, accounting and business associations should play a much more prominent role in promoting better CG standards for Indonesian companies. However, political pressure, vested self-interest and a lack of resources make this unlikely.

. . . and the media are focused on politics

The media remain focused on Indonesia's lively political scene, unsurprising perhaps given the run up to the Presidential election and the upcoming inauguration of the new President. Coverage of companies remains basic with no meaningful analysis. It is hard to see that changing under the incoming administration.

Next steps

Political reform unlikely

Indonesia's lowest scores in our survey are for regulators (especially enforcement) and investors. Scores are also low for government and public governance and CG rules. Absent material political will (which would likely mean reform), there is little prospect of improving scores for government and public governance. Scores for investors would require domestic investors especially to embrace CG as a core investment strategy. Given many of the key domestic institutions are government-linked, again, this seems an unlikely outcome.

OJK is the key to higher scores

So, the simplest way for Indonesia to materially improve its score would be via changes in its regulatory scores - especially enforcement - and its scores for CG rules. The good news is that much of this is within the purview of the single strongest CG proponent in Indonesia's capital market - the OJK.

"Easiest" win would be a new Code

A new CG Code more aligned with best practice is now long overdue and mandating compliance with key aspects of any revised code would be a good way to improve scores quickly. The same applies to tightening enforcement, especially for listed companies and insiders. Of course, it would be preferable if the OJK is joined in that effort by IDX. We would like to see IDX align itself more closely with the OJK regulation and enforcement strategy and play a much more active role in front line enforcement. Hope springs eternal . . .

Data depth and disclosure

Even improving the depth and timeliness of data disclosure of IDX and especially the OJK would help improve scores. Annually disclosed data are not granular or detailed enough and reporting is often late.

Downgrade watchlist

What to avoid

Factors that will continue to keep Indonesia's score low in CG Watch 2025:

- ❑ No revised comprehensive CG Code - more in line with best practice
- ❑ Data disclosure by regulators should improve - more timely; more detail; more English!
- ❑ RPT rules need revision: the "affiliated transaction" loophole needs closing; and disclosure improved
- ❑ Continued absence of IDX involvement in CG reforms

Next steps

The securities regulator needs more human capital and cash to be effective

Our recommendations for the next stage of CG reform in Indonesia include the following:

1. **Regulatory funding**: while the OJK is self-funded, it must remit any surplus to the Treasury. The regulator is potentially significantly underfunded as a result, since it has no ability to accumulate a surplus, which would permit longer term planning. It would also permit the OJK to invest in the human and technical capacity required to police the market. This is the only way enforcement is going to improve.

CG rules are long overdue a refresh

2. **Revise the CG code**: the code has not been updated since it was introduced in 2006. Specific areas which could do with an overhaul include related-party transactions, disclosure of share pledges, pre-emptive rights, board committee independence and insider dealing rules. Indonesia would also benefit from the introduction of a specific takeovers code.

Investors need to up their game on stewardship

3. **Stewardship**: it would be significant if the Indonesia Investment Authority, the country's sovereign wealth fund, were to take the lead on CG. Meanwhile, the private sector—both domestic and foreign institutional investors—need to up their game on stewardship.

Better insight on regulation efforts could be gleaned from more timely and relevant data

4. **Data disclosure**: regulators would benefit from introducing more timely disclosure of their efforts, and especially in English. The websites of both the OJK and IDK are in dire need of an upgrade.

Core questions for companies

Actions companies could take over the short to medium term to enhance their governance practices and disclosure include the following:

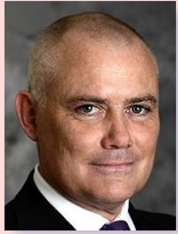
1. **Evaluating directors**: issuers could benefit from using third parties to assess the performance of the board, rather than relying on self-evaluations, and it is worth challenging them on this practice. At the very least it would be helpful if the company could explain where there are areas directors could improve.
2. **Director training**: provide details on the frequency of training, what courses directors have attended and the topics covered. Providing this information on a named basis would be a vast improvement.
3. **Independent commissioners**: reasons why the company has not appointed an independent commissioner could be provided, and what steps are being taken to manage any conflicts.
4. **IR contacts:** companies should provide named individuals for investors to get in touch with, providing this information for all to see on their website.
5. **ESG reporting**: provide explanations for why a material topic has been identified and what makes it significant to the company. How is the issuer linking its materiality matrix to its business strategy?
6. **Remuneration**: visibility on how directors are paid on a named basis, and the policy adopted in arriving to this figure, would be welcome.

Click to rate this research

Great

Solid

Meh



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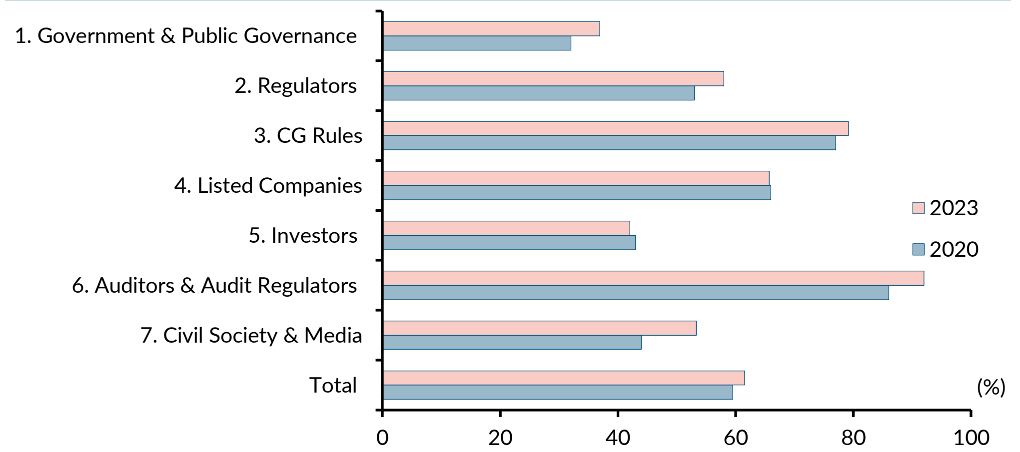
Malaysia - Back on track

- Malaysia came in at No.5 in our 2023 survey, with a score of 61.5%, an increase of two percentage points over our 2020 survey, just behind Taiwan and Singapore.
- Malaysia's score increased in five out of seven categories, saw no change in one (Listed Companies) and fell slightly in one (Investors).
- After the chaos and corruption arising from the 1MDB scandal and the Najib Razak administration, we are pleased to see Malaysia back on track, although recent political turmoil provides a reminder as to how fragile stability is.
- Malaysia remains a regulator-led corporate governance story with a lot of catch-up required by other ecosystem stakeholders, notably listed companies and investors.

Figure 6

Malaysia CG macro category scores: 2023 vs 2020



Source: ACGA

Introduction

Malaysia ranks No.5 on an improved score of 61.5%

Malaysia's overall score in this year's CG Watch survey increased to 61.5% from 59.5% in 2020, an increase of two percentage points, putting Malaysia in No.5 place overall in our rankings behind Taiwan and Singapore in equal third place.

Scores rose in five out of seven categories

Malaysia's category scores rose in five out of our seven categories - Government & Public Governance; Regulators; CG Rules; Audit & Audit Regulators and Civil Society & Media. The score for Listed Companies remained unchanged while the score for Investors fell slightly. Overall this was a more positive outcome for Malaysia.

Recapping CG Watch 2020

Malaysia seems to be back on track . . . for now

After the tumultuous final months of the Najib Razak administration, Malaysia seems to be more or less back on track, although political shenanigans and in-fighting continue to hamper progress on economic and market development. The revolving door of administrations hinders progress on much-needed economic reforms and of course, the perennial problem of rooting out endemic corruption.

The market needs to catch up with its regulators

Despite the political chaos of recent years, Malaysia's chief regulators, the Securities Commission (SC) and Bursa Malaysia (BM) have persisted with their reform programmes, including genuine efforts to improve CG and ESG disclosure. Material progress has been made by regulators in these areas. The problem now is for the rest of the market participants to catch up with the regulators! Listed companies and investors are far behind the standards of CG disclosure demanded of them by their own regulatory apparatus, as evidenced by the disparity in category scoring.

Progress on climate disclosure . . . but little else

Figure 7

Malaysia: recap of 2020

	Recommendations	Outcomes
1.	Regulators to address climate disclosure.	New climate-related disclosures introduced.
2.	Address government interference in GLCs.	Limited obvious progress. No change.
3.	Strengthen remuneration disclosure.	No progress. Loopholes remain.
4.	Finalize Bursa RegSub arrangements.	Delayed due to politics: incorporated but not yet operational.
5.	Require voting disclosure for institutional investors.	No progress.

Source: ACGA

1. Government and public governance

Malaysia scores 37% and ranks No.8

Malaysia's score in this category improved by five percentage points to 37% from our last survey, gaining one place to stand at eighth in our rankings. It is behind India, which scored 45% and ahead of Thailand which scored 35%. That is still a poor result overall and a reflection of the continued political upheavals the country has faced in the aftermath of the collapse of the Najib Razak administration following the 1MDB scandal. Since Razak's government fell in 2018, Malaysia has seen no less than *four* separate governments and prime ministers.

1MDB fallout creates chaotic politics

From our research we found no obvious evidence of any political support for the work of regulators in the promotion of CG reform. In fact, Malaysia stands out in our survey for a CG market that is probably the most regulator-led of any. While we were encouraged by the slight improvement in public governance evident from the eventual conviction of Najib Razak and wife Rosmah Mansor in July 2020 and September 2022 respectively, for their roles in the 1MDB kleptocracy, subsequent chaotic government changes and intense politicking among ethnic political groups give reason for caution. The large number of Government-Linked Companies (GLCs) and their significant influence over both the domestic economy and capital markets is also concerning. Some of these GLCs (for example, Petronas and a few under the oversight of Khazanah) are well or reasonably-well managed. Others are little more than zombie companies, the pet projects of past politicians. GLCs can also be negatively affected by changes in leadership arising from government changes, not an environment conducive to sound corporate governance.

Rational regulators

Regulators function well despite political noise

Above, or perhaps beneath, all the political noise and machinations, Malaysia's capital markets institutions continue to function, apparently seamlessly. Bank Negara Malaysia (BNM), the country's central bank, maintained its reputation for prudent oversight of the domestic banking sector and avoided any obvious signs of political interference, despite the revolving door at the Prime Minister's office.

SC and BM cooperate on regulation and CG reform

Likewise the chief capital markets regulators, the Securities Commission (SC) and the local stock exchange, Bursa Malaysia (BM), generally continue to operate efficiently and effectively with more coordination and cooperation between the exchanges and commission than we witness in many other markets in our survey. This is a positive facet of the securities markets in Malaysia and one reason that the country's CG scores are higher than the chaos of the political headlines might suggest. That said we maintained our score from our last survey and did not award a higher score on this question in part due to the delay in launching the Bursa Malaysia regulatory subsidiary. We understand that BM still intends to launch RegSub but political considerations have delayed implementation. We will monitor progress on this closely.

SC is not fully independent of government . . .

The Securities Commission, despite its efficiency, is not free of political influence: its eight member board is appointed by the Minister of Finance. And despite a statement barring SC board members joining the boards of listed companies, statutory bodies, agencies or GLCs, such appointments are permitted subject to the SC Board's approval, provided that, "it would not interfere with his or her independence in discharging his or her functions as an SC Board Member . . ." In practice, most of the SC board hold outside appointments. The SC board thus appears to be policing itself.

. . . but is fully funded independently

That said, the SC is genuinely independent from outside interference when it comes to its funding status. The SC funds its activities completely from fees levied from market transactions and crucially, it retains full control over its own budget with no allocation from, or contribution to, the Ministry of Finance. And while the SC has incurred losses in the last two years, in the main due to Covid 19-related issues, it maintains reserves of approximately RM1bn (US$213m).

Corruption remains public enemy No.1

Malaysia has hit global headlines in recent years for all the wrong reasons when it comes to corruption and, like many economies in Southeast Asia, this remains one of the country's key challenges. While the eventual conviction of Razak and Mansor for their egregious roles in the 1MDB scandal is to be applauded, the length of time it took to secure their convictions and the political toll it took on the country, demonstrate how far Malaysia still has to go to eradicate endemic corruption.

MACC is vulnerable to political interference . . .

The Malaysia Anti-Corruption Commission (MACC) is the principal agency charged with tackling state corruption. Despite attempts to defang it by Razak during its investigation into the 1MDB scandal, MACC was eventually successful in bringing a case against him. Recent investigations into other high-profile politicians, notably former finance minister Daim Zainuddin, and some loophole-closing amendments in 2018 to the anti-corruption laws, raise concerns that the MACC is still being used as an agency to settle political vendettas. .

. . . as evidenced by charges dropped against Hamidi

Case in point: in September 2023, multiple charges of criminal breach of trust, money laundering and bribery were discharged against former Deputy Prime Minister Zahid Hamidi and president of UMNO in connection with a charitable foundation, Yayasan Akalbudi. The move to discharge the case was seen as heavily politically-motivated.

Corruption remains stubbornly persistent

Transparency International's 2023 Corruption Perceptions Index scored Malaysia at 50/100, placing it in 57th place out of 180 countries, a slight rise over the 2022 score but almost unchanged since our last survey in 2020.

Prosecuting securities violations is difficult . . .

Less optimistically, the judiciary in Malaysia remains politically influenced. While the SC has the power to prosecute criminal cases against market miscreants, it requires the consent of the Attorney General's Office (AGO). We found evidence of serious market misconduct cases brought by SC being spiked by the AGO (see box, "Securities Commission Enforcment 2021-2023" in enforcement section). The SC has successfully prosecuted some securities cases however and that deserves credit, although it often takes many years to secure a successful prosecution. Securities cases are complex, time-consuming and can be difficult to prosecute with a judiciary at times ill-equipped to hear complex financial cases. And in many cases, the defendants in these cases have significant financial resources and are able to string out hearings and delay proceedings almost at will.

. . . and is even harder for minority shareholders

The legal system still does not permit minority shareholders easy access to the courts to pursue companies and insiders: the SC can and on occasion, has taken up cases on behalf of suppressed minorities, but these face the same challenges as other SC prosecutions.

Politics needs to become boring and predictable

Malaysia needs political stability more than anything else. The current administration of Prime Minister Anwar Ibrahim, a former Finance Minister and long-time political dissident, remains in a fragile coalition with Barisan Nasional, the original coalition of parties responsible for the governments of Razak and Mahathir (among others). Anwar has serious issues to deal with, including ongoing concerns about political and civil service corruption, a slowing economy, rising inflation and a chronically weak ringgit. It is not surprising perhaps that corporate governance is not prominent on the government's agenda.

SC/BM lead CG reform . . . time for others to catch up

The good news is that despite the political comings and goings and mounting political and economic problems in the country, the SC and BM continue to carry the burden of improving CG standards in Malaysia. As the following sections of this survey will show, they are generally doing a good job promoting higher standards of CG in Malaysia. Indeed, much of the credit for Malaysia's overall CG score in our survey is due to their efforts. The regulators' biggest problem now is getting the corporate, investor and other stakeholders to join in their efforts.

2. Regulators

Malaysia ranks No.6 on a score of 58%

Malaysia's overall score in the Regulators category increased by five percentage points to 58% in 2023, placing it No.6, just behind Hong Kong and Singapore and ahead of Korea and India. These scores are an average of two sub-categories: Funding, Capacity Building and Regulatory Reform; and Enforcement. Malaysia improved its scores in both categories, most notably in the enforcement section.

2.1 Funding, capacity building, regulatory reform

Malaysia came in at No.4 with a 56% score in funding, capacity and reform

The score in this sub-category increased by three percentage points, from 53% in 2020 to 56% in 2023. This places Malaysia equal No.4 with Singapore in the region. The Securities Commission (SC), as a self-funded statutory body, reports to the Minister of Finance and its annual accounts are tabled in parliament. But SC is independently funded and gets to set and manage its own budgets. As of 2022, it had accumulated reserves of approximately RM1bn, despite recent Covid-19-related losses. Bursa Malaysia (BM) is a for-profit company which operates the local stock exchange where it is also listed. It acts as the frontline regulator for its own listing rules.

The SC knows where it is headed CG-wise

The SC has developed a Capital Market Masterplan, which is a five year strategic framework covering 2021-2025. The plan includes a focus on unlisted SMEs to support access to capital, since local banks are reluctant to lend to SMEs. Part of this strategy aims to develop a growing number of private sector corporations that will ultimately head to the listed markets. It is an ambitious plan and difficult to tell at this early stage whether it will work. But you have to applaud the long term vision.

Masterplan includes major IT investment . . . but HR investment is less clear

The Capital Market Masterplan has also involved investment in technology for the listed companies sector. PLC 360 is an in-house data analytics business that provides SC with a risk-based supervision tool. SC has also invested in cybersecurity solutions, again in-house. While technology investment has arguably improved, it is difficult to assess the adequacy of human resource dedicated to its surveillance and enforcement activities. The quality of data disclosure by SC and BM on specific investments for market monitoring and enforcement is frustratingly sparse. SC does not provide a breakdown of staffing by function. As of 31st December 2023, SC employed total staff of 838, a net increase of just nine staff compared with the same date in 2022.

Bursa RegSub proposal killed off by politics

As with SC, BM has good resources available to it to monitor and enforce its listing regulations. The 2022 enforcement data suggest increased levels of activity, but BM undertakes enforcement together with SC so it is difficult to ascertain precise numbers. One disappointing outcome of the BM monitoring and surveillance effort was the shelving a formal proposal announced in 2020 to hive off the exchange's regulatory and enforcement function into a separate subsidiary of BM, tentatively called Bursa RegSub. This is a structure pioneered with considerable success by Singapore Exchange. With its own board of directors, the majority of them independent, the plan was for SC to regulate Bursa as a commercial, listed company and market operator and to maintain oversight of the regulatory functions that would be undertaken by RegSub. As late as October 2023 the government stated that it was still considering the move, but we understand that plans have since been delayed pending political approval, we expect due to internal political opposition to the plan from vested interests.

Sustainability reporting

SC and BM introduction of DCS is a regressive step . . .

In terms of regulatory reform, both BM and SC announced in late 2022 plans to permit new companies to list on BM using dual class shares (DCS), a move we view as extremely regressive. Of course, they are not alone: the move towards DCS was started in the region by Hong Kong and Singapore, triggering a regulatory race to the bottom of the barrel in an increasingly desperate scramble to capture market share from an evaporating pool of regional listing candidates.

. . . sustainability reporting rules are progressive

Other than DCS, the most prominent regulatory move by both SC and BM was the introduction of sustainability reporting rules and guidelines for listed companies, incorporated into the listing regulations in September 2022. These rules, which appear to be well thought-out, provide a framework for sustainability reporting under five key areas (see box, "Climate Disclosure off to a good start" in the CG Rules section) and will be phased in over the next year or so for main market companies and in 2025/2026 for ACE (second board) companies. It remains to be seen of course how listed companies will deal with the additional disclosure and how serious they will take it. But the move is welcome.

. . . as are additional rule tightening measures

In addition to the above key changes, SC and BM together have made certain additional changes to BM's listing rules and guidelines, including setting term limits for independent directors, tightening director fit and proper criteria, introducing basic targets for female directors on boards of listed companies, mandatory sustainability training for directors (from 2025) and improving disclosure requirements for conflicts of interest on boards.

Public consultation practices are good, especially at BM . . .

Both SC and BM undertake public consultations when introducing new listing regulation and capital markets rules. Generally, the SC provides minimal notice periods but the BM's approach is better. It generally provides public consultation periods of at least six weeks, sometimes longer and also has a comprehensive section on its website providing details of all consultation processes undertaken over the past 15 years.

. . . and both regulators' websites are among the region's best

Both SC and BM operate excellent websites that are generally easy to navigate and provide detailed discussions of their organisational structure, terms of reference, as well as significant data and access to regulations, announcements and reports. The BM's website has a database of listed companies' announcements and financial and other data going back more than 23 years. The SC and BM websites are among the best in the Asia Pacific region.

No e-voting platform in Malaysia

Less encouraging however is the total absence of an e-voting facility for shareholders. According to the Minority Shareholders Watch Group (MSWG), about 76% of annual general shareholder meetings in 2022 took place virtually, with the balance of 25% being physical. While virtual meetings are permitted as a result of rules passed during the Covid-19 pandemic, MSWG feels that too many companies are using virtual meetings as a means of convenience and expediting the passing of resolutions, rather than permit physical meetings and thus encouraging more active dialogue and voting. We understand that BM itself undertook its 2022 AGM virtually.

Shareholder votes at large companies are well organized

Despite the lack of a true e-voting platform to facilitate greater shareholder voting, especially for institutional investors who typically hold their shares through nominees and custodians, generally voting at AGMs of large listed companies takes place using electronic handheld devices that enable immediate results of votes on resolutions to be announced at the meeting. Detailed minutes of meetings are typically released within 30 days. Smaller listed companies tend to undertake their voting at AGMs via paper ballots and take longer to disclose minutes.

Pre-IPO listing processes are weak

Also sub-standard is the pre-IPO listing regime for listing candidates. Very little effort is expended in preparing IPO listing candidates for life as a public company. Boards tend to be formulaic and handpicked by controlling shareholders. Investment banks, law firms and other advisers spend little time and effort in training or otherwise preparing new directors for post IPO board life.

2.2 Enforcement

Malaysia's enforcement score rose sharply to 60% putting it in No.8 place

Malaysia's enforcement score rose six percentage points to 60% from our last survey in 2020, placing it eighth overall, ahead of all other Southeast Asian markets except Singapore, which came No.3 on a score of 70% and ahead of India with a score of 54%.

Regulators proactively pursue enforcement, but with mixed results

We felt that Malaysia deserved a higher score than our last survey in part because both the SC and BM are active in pursuing securities violations, as evidenced by data disclosed on their websites and they are serious in their intent. That said, new cases brought against violators of securities laws and regulations have fallen in the last year or two, likely at least in part due to logistical issues around enforcement during the Covid-19 pandemic.

SC enjoys good powers of enforcement, but must liaise with AGO

The SC has good powers of surveillance, investigation, sanction and compensation, and uses them to the extent that it can. However, while the SC can prosecute securities cases in court, it must do so with the consent and cooperation of the AGO and that clearly has an impact on prosecutorial outcomes, both in terms of time taken to prosecute and in some cases, the shelving of cases altogether (see box below, "Securities Commission enforcement 2021-2023").

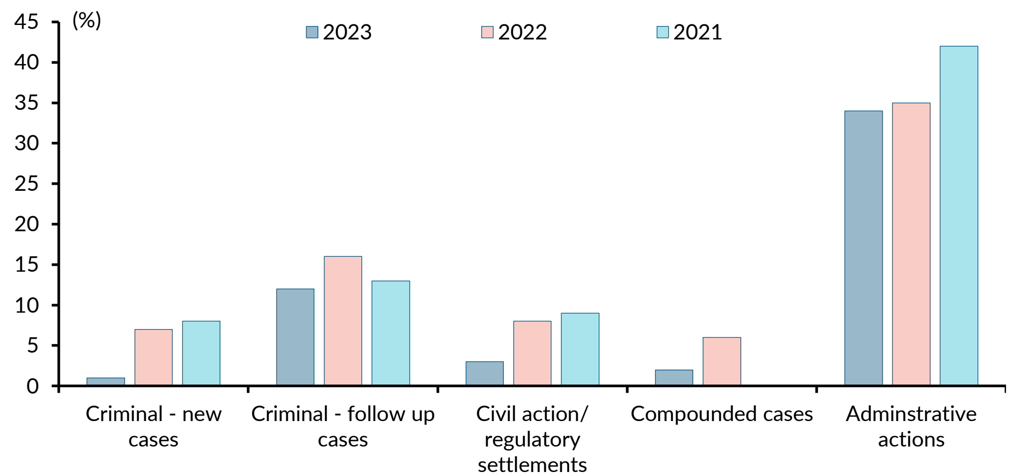
Enforcement seems to have slowed somewhat and disclosure needs to improve

It is hard to escape the impression from a review of cases disclosed on the SC website that a lot of effort is expended prosecuting very old cases, or "easier/lighter" cases with case cherry-picking and government interference both playing a role in enforcement outcomes. The SC has improved its enforcement data disclosure and details are provided of all cases going back 20 years. However, there is still little analysis about the reasons for and significance of changes in the patterns of cases. The data from SC's website suggest that enforcement activity has slowed since our last survey, in terms of case numbers.

This is where the SC is putting enforcement efforts

Figure 8

Securities Commission enforcement 2021-2023



Source: Securities Commission Malaysia

Enforcement cooperation

Enforcement is a key focus of regulators

BM also holds some powers of investigation and sanction for breaches of its listing rules - mainly reprimands and fines. Understandably, serious violations get handed over to the SC and ultimately, the AGO. There is clearly a lot of cooperation between the SC and BM on a number of operational issues; enforcement is one of the key areas.

Enforcement disclosure could be better organised

The BM also provides reasonably detailed disclosure of its enforcement activities, which covers the past ten years. However, key cases only are covered in detail and a lot of enforcement disclosure covers selected cases with some case studies anonymized. Detailed case announcements are made on the news section of the BM website though. We suggest that this should be reorganised to be incorporated into the enforcement section.

Shelving of RegSub plans a setback

Much of BM's enforcement activity relates to boilerplate-type regulatory breaches and is reasonably straightforward to deal with. Less clear to us is the extent to which BM's enforcement activities are working to tackle more serious problems in the market that are evident, such as market manipulation (a serious problem in Malaysia, especially among smaller stocks) and insider trading. The apparent scrapping of the laudable proposal to hive off BM's regulatory and enforcement activities into a separate subsidiary similar to the Singapore Exchange model, which we can only assume happened for political reasons among vested interests, is an obvious setback.

Politics is hampering regulatory enforcement efforts

We lowered our score for government support of the SC and BM and their enforcement activities. It is clear that shifting political imperatives and vested interests are hampering transparent and arm's length enforcement efforts. The AGO is increasingly politically-influenced and prominent anti-corruption cases have been spiked, notably the discharge of the case against former Deputy Prime Minister and UMNO head, Ahmad Zahid Hamidi.

Climate disclosure a work in progress

It will be interesting to see how SC and BM's climate disclosure regulation fares with listed companies. This will only become readily apparent in our next survey once these additional disclosures are incorporated into listed companies' audited financial statements. But the initiative is welcome.

More detailed disclosure is needed on enforcement resource . . .

Regulators should be much more forthcoming about detailed human and financial capital investment made into key departmental areas, especially with respect to enforcement, with a detailed breakdown of staff by department and activity rather than simply providing basic demographic totals. Financial data on key IT and infrastructure projects would also be welcome.

. . . as well as enforcement outcomes

Of course we would like to see the BM RegSub initiative completed. Time will tell. Enforcement activity should increase ideally: it has dropped in each of the last two years. SC could also improve its reporting on enforcement to provide more detail about cases, why they were brought, why they were successful (or unsuccessful) and what conclusions can be drawn from SC's enforcement activities (efficacy, improvements needed, deterrence).

Political clout spikes massive fraud case

Egregious financial fraud goes unpunished

A high-profile criminal case originally brought by the SC in 2021 against locally listed oil and gas group, Serba Dinamik Holdings was mysteriously dismissed once it reached the AGO's office. Market rumours noted that the strong political connections of the group's CEO and others accused helped to have the case shelved.

Charges involve falsified financial statements

In December 2021 the SC announced criminal charges against Serba Dinamik CEO, Abdul Karim Abdullah and Executive Director, Syed Nazim Syed Faisal under the Capital Markets and Services Act 2007. The charges concerned falsified financial statements which, on conviction, would carry prison sentences of up to ten years and minimum fines of RM3m. An arrest warrant was even served on Abdullah who was described by the SC as "at large".

A whistleblower report by the company's auditor prompts raid

The charges arose after a raid by SC officers on Serba Dinamiks's head offices following a whistle-blower report by the company's auditor, KPMG. The raid uncovered, among other things, dozens of editable excel spreadsheets of putative third-party customer and supplier orders as well as boxes of company stamps belonging to prominent third-party oil and gas companies, including state-owned oil and gas company, Petronas.

The case then vanishes

Despite material evidence of a massive financial fraud perpetrated at Serba Dinamik, after the SC filed the case with the Kuala Lumpur Sessions Court, it was suddenly and mysteriously dismissed. Market rumours were rife that strong political connections held by key executives at the company helped have the case quashed at the AGO's office.

The final outcome is a public reprimand

In December 2023, two years after the initial charges were filed by SC, BM announced a public reprimand of Serba Dinamik and ten of its directors, including Abdullah and Faisal, for breaches of its listing rules and "serious dereliction of duties", relating to failures in the correct and timely disclosure of material information. Abdullah and Faisal were each fined RM1.38m. That would be of little comfort to minority shareholders, however. In August 2023, Serba Dinamik's shares were suspended and subsequently delisted after announcing massive losses.

3. CG rules

Malaysia No.2 in regional rankings for CG Rule on a score of 79%

Malaysia's score increased slightly by two percentage points in this category to 79% from an already high 77% in 2020. Malaysia now sits No.2 in the rankings: only Australia has a higher score. Notably, Malaysia now bests Hong Kong in this category (75%) and Singapore (77%). That is quite an achievement and credit must go to both the SC and BM in significantly improving Malaysia's scores in the CG Rules sector. Just eight years ago, we ranked Malaysia's CG Rules score at 54%!

. . . while rules are strong, practices are weak

So much for the good news. While standards of CG rules are high, practices among listed companies are less so, as our next section will highlight. And much of the Malaysian CG rules are comply or explain in nature, so there is a lot of compliance-driven disclosure that detracts from the efficacy of the rules.

Financial reporting rules could be timelier

CG rules relating to the reporting by listed companies of financial information are good, although they could be timelier. There has been no change to the rules on these requirements for some time now. Something for SC/BM to tighten up on.

New CG Code needed soon, with less comply or explain

The latest SC CG Code dates from 2021. While reporting standards are high they are not yet fully in line with international standards and we would like to see the Code move more towards a full compliant approach rather than a comply-or explain strategy, which in our view just encourages recalcitrant companies to approach their disclosure obligations as a compliance process, rather than as voluntary and helpful disclosure to their shareholders. The last mile of CG convergence with international standards is very much cultural in nature.

New climate disclosure rules are a good start

As discussed earlier, in 2022, the SC and BM jointly introduced a new sustainability reporting regime designed to improve local sustainability reporting standards (see box below, "Climate disclosure off to a good start"). These represent a good start to Malaysia's sustainability reporting regime and the SC and BM are to be applauded for introducing this into what was surely material opposition and reluctance from most listed companies. It will be interesting to review progress on reporting standards in the next survey as these are being introduced on a phased basis between main board and second board companies.

CG rules generally good, but still no share pledge rules

In other areas of CG rules and practices, Malaysia does well. Quarterly reporting is mandated under BM listing rules and disclosure is of a good standard, with consolidated and fully integrated financial statements released with decent MD&A statements. Rules on disclosure of substantial ownership are good, as are rules on disclosure of directors' dealings in shares. Curiously, disclosure of share pledges by substantial shareholders, that can see a rapid and undisclosed change of control happen to a listed company, still is not required. BM circulated a public consultation paper several years ago proposing some rules regarding share pledge disclosure, but these have not been incorporated. It is not clear what happened to the proposals or why they were not adopted.

Blackout rules are weak with a big loophole for insiders

Also weak are BM's existing rules on blackout periods for directors' and insiders' dealings in shares of a listed company. These set the blackout period as 30 calendar days before the announcement of any quarterly report: we view best practice as 60 days. Moreover, if a director/insider is not in possession of price sensitive information, they are permitted to trade provided they disclose their trade plans to the company one day ahead. The company is then obliged to announce this immediately to BM. This is a long way from best practice. Curiously, the regulators' definition of price sensitive information is precise and comprehensive, as are rules relating to the disclosure of related party transactions and rules prohibiting insider trading. Voting by poll at shareholder meetings is mandatory and the rules for immediate disclosure of voting results are robust.

We expect a revised CG Code in time for our next survey

As mentioned earlier, the latest CG code is 2021 and we would expect this to be revised and upgraded in the next year or so, particularly given the SC's disclosed CG strategy and priorities. We hope and expect this new code to reduce existing comply-or-explain provisions and to mandate more of the practices.

Malaysia is a stewardship leader in the region

Malaysia was one of the first markets in Asia to introduce a stewardship code for institutional investors and this was revised and updated in 2022. Adoption has improved, encouraged by government-linked pension and other funds.

Cooling off periods for INEDs are far too short

Definitions of independence for directors assuming office are not in line with best practice, largely because the cooling off period for advisors joining boards are too short at two years. Predictably, this results in boards of local Malaysian companies stuffed with partners of ex-lawyers and ex-auditors to the companies. Not the best way to introduce board diversity and avoid group think. Perhaps that is the intention? Independence ends after a nine-year stint but can be extended via an annual two-tier vote. BM listing rules require listed companies to disclose the remuneration of each director by name, broken down into specific categories.

Board committee rules are sound

Rules in Malaysia are robust generally with respect to board committees. Audit committees (AC) are mandatory under BM rules and must comprise a majority of independent directors (but note our point earlier about too-short cooling off periods for independence qualification). The rights of the AC include independent access to the external auditors and the existing CG code requires that AC members have sufficient financial literacy. Nomination committees are required by the listing rules and must have a majority of independent directors, including the Chair.

Pre-emption rules are too weak and need tightening . . .

Malaysia's Companies Act permits a shareholder(s) with 5% of more of a company's shares to propose a resolution at a general meeting of shareholders, including nominating a director(s). Directors and officers convicted of fraud or other serious crimes are banned by law in Malaysia from being directors and must resign or will be removed. Pre-emption rules are in place in Malaysia but like many Asian markets, they trail best practice. Thresholds for non-pre-emptive issues are too high (10%) as are discounts (10%). Notice periods required for AGMs are 21 days by the rules, with the CG code requiring 28 days (as we would recommend) but on a comply-or-explain basis.

. . . as do Malaysia's takeover rules

Malaysia has a takeovers code which is generally sound. However thresholds are generally not aligned with best practice. A mandatory takeover is triggered at 33% control - we would expect to see 29.9%; the creeper provisions are set at 2% (we would like to see 1%) and takeovers must be set at not less than the highest price paid for shares in the previous six months (we would expect to see 12 months.)

Next Steps

Work to do to bring local CG rules in line with best practice

Malaysia's CG rules are robust in the main, reflected in our continued high score. However, they are far from perfect. Areas to improve include increasing the 21-day AGM notice to a mandatory 28 days. Annual reports should be released within three months, in line with best practice. And cooling off periods for new directors, especially independent directors, should be lengthened from the existing ludicrously short two years. A revision of the takeovers code is overdue as is a revision of the pre-emption rules which are now looking outdated and well behind best practice. And of course, there should be rules around share pledges.

Malaysia's new climate disclosure rules

Climate disclosure off to a good start

The SC approved Bursa Malaysia's proposal for amendments to the Main Market Listing Requirements and ACE Market Listing Requirements in relation to the enhanced sustainability reporting by listed issuers in September 2022. The amendments have the following key aims:

1. Improve the quality and comparability of sustainability disclosures;
2. Ensure sustainability disclosures address the information needs of listed issuers' stakeholders;
3. Align disclosure requirements with international best practices; and
4. Promote the adoption of sustainable business practices by listed issuers.

The new rules require mainboard and second board-listed companies to make disclosures according to the following basic framework:

- ❑ Provide a sustainability statement;
- ❑ Address common sustainability matters, based on nine key themes;
- ❑ Identify data and performance targets against these themes; and
- ❑ Provide a statement of internal review to ensure the suitability of the company's approach to its sustainability reporting.

There is no requirement for external assurance

No external assurance of a company's sustainability reporting is required. Main market companies are required to report in line with the Taskforce for Climate-related Financial Disclosure (TCFD) guidelines. Secondary (ACE) market companies must provide a basic plan to move towards a low carbon strategy. Compliance with the new rules has started for the main board listed companies in fiscal year 2023; it commences for second board companies in 2025.

4. Listed companies

This is one of Malaysia's best-performing categories, where it maintained a score of 66% in 2023 and remained in No.2 place, still trailing Australia (76%) but comfortably ahead of India (60%). It scored above regional averages in ten out of 15 questions in this category. Notable areas of outperformance included director training, the presence of senior independent directors and independent chairmen, and disclosure of director remuneration. In contrast, scores were still below average on independent director remuneration, disclosure of executive remuneration policies, ESG and sustainability reporting and transparency of board governance.

Where Malaysia does well (above average)

Malaysian companies performed well in multiple areas. For example, they continued to excel in providing comprehensive information on director training. Scores on the accessibility of investor information remained comfortably above the regional average: seven issuers received a score of 4 and two earned a 5.

Crystal clear disclosure of director remuneration

One area where Malaysian corporates stood out from the crowd was on the disclosure of board compensation. All of the 15 large caps scored perfectly as they disclosed how each director was paid on a named basis. This was, however, in a stark contrast to the lack of transparency on executive remuneration policies.

More than half of Malaysian issuers disclosed areas for improvement

Companies also did reasonably well in their approach to board evaluations. Eight out of the 15 engaged a third-party assessor to conduct board evaluations. Two disclosed an intention to use an independent assessor for board assessments. Additionally,

eight issuers highlighted areas for improvement in their disclosure of evaluation results. One bank offered a good example: it identified digital skills, communication strategies, and director training as key areas for enhancing board effectiveness.

All NCs have an INED chair, and women have a say on NCs

Independence of nomination committees (NC) compared favourably with other markets. All of the 15 companies appointed an independent chair on the NC or its equivalent ie, the Nomination and Remuneration Committee. In terms of meeting frequency, seven out of the 15 convened five or more NC meetings during the year. It is also refreshing to see a decent female representation on NCs. All but one had at least one woman on the NC, and four had a female NC chair.

Where Malaysia performs averagely

Board governance reporting lacks details

We found areas of weakness in board governance reporting. Among the 15 large caps, only six disclosed some specific topics discussed by their boards and board committees. The rest either identified broad areas of discussion (eg, “business plan”, “financial results”, “risk management status”) without providing any details or dwelled instead on the board’s responsibilities. Additionally, the disclosure of director biographies in AGM materials was exceedingly brief. None of the 15 explained why directors were elected or re-elected. One issuer, for example, simply reiterated the requirements for re-elections instead of providing relevant reasons.

Lukewarm board diversity policies still exist, despite the MCCG guideline

It is a bit surprising to find areas of weakness in the disclosure of board diversity policies. The 2021 Malaysian Code of Corporate Governance (MCCG) recommends a goal of at least 30% female representation on boards. But two issuers did not set any gender diversity targets and one timidly stated that it was “mindful” of the MCCG’s guideline. Disclosure of skills matrices was generic at best. The general practice among the 15 large caps was to show directors’ skills and expertise in a concise chart or table without names. Only one provided a skills matrix with the names of directors.

Figure 9

Malaysia listed companies’ scores, CG Watch 2023

Question	Average score	Range of scores
1. Does the company's board governance reporting compare favourably against international best practice?	2	0.5-3.5
2. How would you rate the quality of the company's ESG/sustainability reporting?	2.5	1-4
3. Does the company provide comprehensive, timely and quick access to information for investors?	4	3.5-5
4. Does the company undertake annual board evaluations, either internally or using external consultants?	3	2-4
5. Does the company disclose and implement a credible board diversity policy?	2	0.5-3.5
6. Does the company provide induction and/or ongoing training to all directors?	4	3-5
7. Does the company have an independent chairman and/or a lead or senior independent director?	3.5	0-5
8. Does the company disclose total remuneration of each member of the board of directors?	5	All get 5
9. Are the independent directors paid partly or wholly in stock options or restricted share awards? Do they share in a percentage of company earnings or other commissions in addition to their base fee?	2.5	1-5
10. Are audit committees (or an equivalent) independently led and competent in financial reporting/accounting matters?	4.5	4-5
11. Does the company have an internal audit department that reports to the audit committee?	3.5	3-4
12. Does the company provide a detailed explanation of its executive remuneration policies?	2	1.5-3.5
13. Does the company have a nomination committee and is it independently led?	4.5	2.5-5
14. Does the nomination committee have a female chair or at least one female director?	3	0-5

Source: ACGA research. Based on 15 large caps from a range of sectors.

Where Malaysia does poorly

Generous benefits are paid to some INEDs

Malaysian corporates performed poorly on independent director remuneration. Scores were polarised on this question: nine out of the 15 received a 1, while the rest earned a perfect 5. Although none of the independent directors (INED) at the 15 companies was paid in stock options or bonuses, many of them received generous "benefits-in-kind", including utility bills, telephone bills, mobile devices, company cars, insurance and medical coverage, and club memberships. At one telecoms company, INEDs received benefits worth between MYR 75,974 (US$16,160) to MYR 97,267 (US$ 20,700) in the financial year 2022, which made up 11-19% of their total remuneration.

Disclosure of remuneration policies remains opaque

There has not been any real progress on the disclosure of executive remuneration policies. Seven out of the 15 received a mediocre score of 1.5, and the two highest scorers just earned a 3.5. The vast majority of the 15 were vague about the structure of executive remuneration. One infrastructure company, for example, only mentioned that their senior executives received "basic salary, other emoluments and other customary benefits" without elaborating. Only five went further to give clear definitions of different remuneration components. Moreover, the link between remuneration and performance remains opaque. None of the 15 disclosed any individual KPIs. At best, they touched on broader aspects of KPIs. One issuer, for example, said that its KPIs covered risk, governance, and compliance without delving into details. On a more positive note, eleven out of the 15 claimed that they had incorporated ESG-related metrics into their KPIs.

ESG reporting improves, but is still below the regional average

Scores were also slightly below the regional average on the quality of ESG and sustainability reporting. There was an improvement, albeit from a low base, in addressing the issue of materiality. The majority of the 15 large caps provided more detailed disclosure of material issues compared to the last CG Watch. In terms of the use of reporting standards, one issuer still only used domestic sustainability guidelines whereas fourteen out of the 15 followed the GRI (14) and seven also adopted TCFD. Only one used the SASB indicators. Partial GRI reporting was still common, but most of the TCFD reporting covered four pillars with varying degrees of breadth and depth.

5. Investors

Malaysia scores 42% and ranks No. 5

Malaysia's score fell by one percentage point in the Investors section of our survey, to 42% from 43% in 2020, remaining in No.5 place overall. Our sense is one of a slight slippage in activity and enthusiasm among investors towards CG in Malaysia, not uncommon across Asia and possibly due to issues around the Covid-19 pandemic. Notably, all other markets expect for Japan and Korea failed to improve their scores materially, if at all.

Foreign endorsement of local stewardship code is lukewarm

After positive moves by large domestic institutions towards active promotion of higher CG standards, noticeably by Kumpulan Wang Persaraan (Diperbadankan) (KWAP) a government pension fund, Khazanah (Malaysia's sovereign wealth fund) with GLCs and the Institutional Investors Council, activity has slowed post-pandemic. We hope that activity will continue after what was a promising start. The same goes for foreign institutional investors. Around ten foreign institutional investors signed the 2022 Malaysian Code for Institutional Investors (MCII), out of 38 signatories in total. The code requires signatories to disclose voting policies and practices, though not on a per company basis. We would have hoped for a stronger endorsement of the code by foreign investors.

Investors attend AGMs and vote but usually with management while disclosure is patchy

As with CG promotion, so with voting: the sense is that voting activity has tailed off somewhat post-pandemic among both domestic and foreign institutional investors, although foreign investors will actively vote against resolutions with which they disagree. Attendance at general meetings among both domestic and foreign institutional investors is good however. KWAP actively engages companies via their AGMs. Foreign investors tend to do so on a fund by fund basis. Disclosure of voting at meetings by both domestic and foreign investors is patchy and varies widely. Generally, when disclosed, it is on a consolidated and not company-by-company basis.

No pure activist funds operate locally

Our research has not identified any pure domestic activist funds in Malaysia, although there are plenty of ESG-focused and Shariah-compliant funds. Like many markets in Asia, activism tends to have slightly unwelcome connotations for locals, including companies, regulators and domestic investors. Along with the lack of liquidity in Malaysia's equity market, this likely explains their absence.

Local asset owners are active in promoting RI and stewardship

Malaysian asset owners play an active role in promoting responsible investment and stewardship. The MCII stipulates the responsibilities expected of signatories, requiring them to play an active role in responsible investment and to demonstrate investor stewardship. KWAP plays a key role, but Employees Provident Fund (EPF) Khazanah Nasional, Permodalan Nasional Berhad (PNB), and the Social Security Organisation (SOCSO) all take responsible investment and stewardship seriously. All are signatories to MCII and are members of the IIC.

Local collective engagement has tailed off

In contrast, collective engagement by domestic institutional investors has reduced since our last survey, perhaps due to a leadership gap at IIC following the untimely passing of the founder and advisor, Lya Rahman in December 2022.

Proxy advice is dominated by major foreign players

There are no pure domestic proxy voting advisors: Like many markets in Asia, Glass Lewis and Institutional Shareholder Services (ISS) dominate. ISS issues Asia Pacific-wide (and not local) voting policies that do have some specific guidelines on a market-by-market basis for specific issues, including for Malaysia. Glass Lewis issues country-specific voting policies. The Minority Shareholder Watch Group (MSWG) plays a role on proxy voting and advocates on certain company specific issues.

Retail investors love physical AGMs, when companies hold them

Retail investors are a lively lot in Malaysia and regularly attended AGMs - or at least they were pre-Covid-19. Following the pandemic, companies have tended to move sharply towards holding virtual shareholder meetings. According to MSWG, which monitors more than 450 locally-listed companies, around 76% of last year's AGMs were held virtually.

MSWG continues its very active role in company monitoring

MSWG is very much the standard bearer for the retail investor in Malaysia and it regularly monitors financial statements and disclosures from local companies and publishes questions and critiques. It also attends shareholder meetings, raises questions and actively votes on shareholder resolutions. MSWG is funded by the SC's Capital Market Development Fund so we are uncertain as to their genuine independence. No other retail investor organizations exist in Malaysia. We haven't witnessed any retail organizations organising themselves to take on errant companies or collaborating on CG issues with institutional investors.

Asset managers need to get more active

We would like to see domestic and foreign asset managers be more active in engagement with companies, including a greater sign up of the stewardship code. More managers should develop and adopt policies to reflect their positions on CG and ESG. And more should proactively engage with companies and vote on

shareholder resolutions, including voting against resolutions with which they disagree. Ideally voting activity should be disclosed on managers' websites on a company-by-company basis.

Independent retail shareholder association needed

It would be encouraging to see a genuinely-independent retail shareholder organisation emerge. While MSWG does a great job in covering the market, it does so with regulator funding.

6. Auditors and audit regulators

Malaysia is Asia's No. 1 market in our Audit section with a score of 92%

Malaysia ranked first among all markets in this section, with a score of 92%, an increase of six percentage points over our last survey, a clear nine percentage points ahead of the next placed markets, Singapore, and Taiwan. Most markets in our survey already have high auditing standards. What sets Malaysia apart from most other markets, and explains its lead in our rankings, is Malaysia's scores for audit oversight, capacity building and enforcement.

It has the region's best audit standards

Malaysia leads the region in terms of audit standards. Local accounting and auditing standards are fully converged with International Financial Reporting Standards (IFRS) and International Standards of Auditing (ISAs) respectively.

Auditor rules and limits are strong

Audit independence is generally good: partner rotation in audit firms is seven years with sufficiently-long cooling off periods. There are clear rules governing audit and non-audit work performed by auditors. Whistle-blower protections are in place and they work: (see earlier box on the Serba Dinamik scandal, which began after auditor KPMG blew the whistle). We did note concerns around audit problems for a number of Malaysia companies, especially smaller ones and audit capacity continues to be challenging. Increased enforcement by the Audit Oversight Body (AOB) supports these concerns.

Disclosure rules for non-audit work should be tighter

Under BM listing rules, non-audit fees received by a company's external auditor are required to be separately disclosed from audit fees. However, details of any non-audit work undertaken are only required to be disclosed if the "non-audit fees incurred were significant", which seems open to subjective interpretation. We would prefer to see this detail mandatorily disclosed regardless of quantum.

Key Audit Matters are generally well disclosed

Audit reports for Malaysian companies must include Key Audit Matters and these are generally well disclosed and discussed by audit firms in their full audit reports.

AOB is the region's leading audit regulator . . .

Audit oversight in Malaysia is the responsibility of the AOB, which is a part of the SC and established under the Securities Commission Malaysia Act 1993 to regulate auditors over listed companies and other public interest entities. The AOB possesses full powers of registration, inspection and enforcement over the audit profession and uses its powers to the fullest extent independently of government and other interference. The AOB is a well-run and disciplined organisation that provides good disclosure of its activities, including regular inspections and enforcement data, descriptions and outcomes. The AOB's annual report includes detailed information on its monitoring and supervision of audit firms, stakeholder engagement and capacity-building initiatives and support provided for the adoption and implementation of audit standards, including Audit Quality Indicators, where Malaysia is a market leader.

. . . and it has much to do . . .

The AOB referred seven cases for enforcement proceedings in 2023, an increase of three over 2022.

Key issues identified by the AOB form its inspection and enforcement activities in 2023 include:

- ❑ Non-existent, incomplete or inadequate documentation
- ❑ Over-reliance on information provided by clients
- ❑ Failure to verify reliability of information provided by clients
- ❑ Failure to sufficiently review significant areas or judgements
- ❑ Absence of robust review

. . . especially with audit capacity

Capacity-building is a key area of focus of the AOB. Like many markets in Asia, Malaysia suffers from a shortage of qualified auditors and the AOB has expended material effort to increase local audit capacity and quality. In 2022, the AOB worked together with the Malaysian Institute of Certified Public Accountants (MICPA) to organise workshops on International Standard on Quality Management 1 (ISQM1). ISQM standards are set by the International Auditing and Assurance Standards Board. ISQM1 focuses on proactively identifying and responding to risks to ensure audit quality.

Still no revised Accountants' Act . . .

Less positive is the time it has taken for Malaysia to introduce a revised Accountants Act. The existing Act dates from 1967 and successive governments have been promising to revise and update it for years now. The government is expected to introduce the new Act sometime during 2024 (but they have promised progress before). Key to this will be to tighten legislation to permit the Malaysian Institute of Accountants (MIA), the body responsible for regulating the accounting profession, to take action against unlawful accounting practices.

. . . despite a clear need for tougher sanctions

The proposals aim to strengthen the MIA's enforcement powers over members by increasing sanctions for breaches of the Act. The revised Act is also expected to introduce criminal powers to allow the MIA to enforce against bogus accounting firms and non-members providing accounting or related services illegally. The MIA noted at its 2023 conference that the amendment to the Act is long overdue, since the existing Act is seriously outdated, especially in the areas of ESG standards. We will review progress on the revised Accountants Act in our next survey.

Capacity is key

Malaysia's auditing ecosystem is generally in good shape in terms of regulation and oversight. Capacity remains the key issue and the AOB is expending material effort in conjunction with the profession to try to improve that. We would expect to see the new Accountants Act enacted by the time of our next survey if Malaysia's score in this section is to remain as high as now.

7. Civil society and media

Malaysia ranks No. 6 with a score of 53%

Malaysia's score in this sector jumped to 53%, an increase of nine percentage points compared with our last survey, leaving Malaysia in sixth position. It is not a great result: just ahead of Hong Kong and Thailand and comfortably behind Singapore, Taiwan, and Japan.

CG training is of a high standard at some associations . . .

The overall score for this section hides some material variance in specific question scores, particularly between various CG ecosystem stakeholders. The Institute of Corporate Directors Malaysia (ICDM) scores full marks for its comprehensive training courses for new, intermediate and advanced directors. These courses cover the general duties of directors and basic knowledge required as well as specialist topics, including cybercrime, financial analysis, climate change and ESG. Likewise, the Malaysian Institute of Chartered Secretaries and Administrators (MAICSA)

offers a comprehensive set of training programmes, including ESG and CG-related programmes. The Iclif Executive Education Center, now part of the Asia Business School, is also notable for its CG-related board level training courses. The Malaysian Institute of Corporate Governance (MICG) also runs seminars and training on CG-related issues, including whistleblowing systems, related party transactions and anti-bribery and corruption, among others.

. . . while others barely bother

But among other professional associations, the picture is grimmer. CFA Malaysia offers a certificate in ESG investing but the courses offered are from the global website and priced in USD so are obviously run by the CFA global organization with minimal local input. The Malaysian Institute of Accountants (MIA) provides subject matter-focused training in a wide range of areas over and above accounting and audit, including ethics, digital economy etc. But nothing CG-related. It is a similar picture with the Malaysian Association of Asset Managers. Neither of the local business associations - the Malay Chamber of Commerce and Malaysia International Chamber of Commerce - offer any CG training.

Many local NGOs focus on public governance

Similarly, local non-profit organizations are not offering CG-related training programmes. Most are local branches of international institutions, such as Transparency International, the World Wildlife Fund, or the Roundtable on Sustainable Palm Oil, so they are not specifically Malaysian. They have a clear anti-corruption advocacy function, but here their focus is on public not corporate governance.

Free the media

Local media presents a mixed picture

Our scores for media and press freedom in Malaysia rose very slightly from our last survey. The Reporters without Borders (RSF) 2023 World Press Freedom Index ranked Malaysia at 73rd of 180 countries surveyed, but we note that in its latest 2024 survey, Malaysia has slipped back to 107th. As RSF notes: “On the surface, Malaysia seems to have a rich media landscape but the state media . . . exert a great deal of influence. Many mainstream media outlets are openly partisan.”

Government often pressures local media . . .

RSF says that online media are generally more open and a number of outlets provide more honest and free coverage. It also notes that successive Malaysian governments have exerted pressure on media from providing coverage of issues that are deemed to be politically sensitive or specifically criticize politicians and prominent government officials.

. . . but it doesn’t always work

Our assessment of domestic media in Malaysia overall is that while political pressure on the media remains and does act as a deterrent in some cases, Malaysia’s independent media are still capable of providing in-depth coverage of CG-related issues, including business and corruption scandals. It was the independent media in Malaysia after all that broke the story of Malaysia’s biggest corruption scandal, 1MDB.

Local NGOs and associations could do more to promote CG

While several prominent organisations - ICDM; MAICSA; IDEAS; Iclif - play an invaluable role in promoting better local CG standards, other NGOs and business associations could and should be more involved in promoting CG standards, via research, advocacy, and training.

Media freedoms are delicately balanced

We would obviously wish to see a more free and vibrant local media covering more issues around CG - there are many such issues in Malaysia after all. That is likely to be a function of greater political freedom and given the extraordinary political upheavals of recent years in Malaysia, it is impossible at this juncture to assess with any accuracy in which direction the political winds are blowing.

Downgrade watchlist

What to avoid

Factors that could force Malaysia's score to fall in 2025:

- Lack of progress on enforcement and disclosure around it.
- No revision to CG rules on share pledges, directors' cooling -off periods.
- No Revised Accountants Act.
- Further deterioration of media freedom.

Next steps

Greater disclosure on enforcement and capacity would be welcome

The CG code could do with a refresh

BM RegSub needs to happen, as does the revised Accountants Act

Our recommendations for the next stage of CG reform in Malaysia include the following:

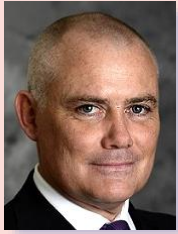
1. Greater enforcement activity and disclosure from SC and BM
2. More disclosure from regulators on IT and human resources allocated to enforcement activities
3. A revised CG Code with more compliance and less explaining: longer cooling-off periods for independent directors; share pledge rules, tighten takeovers code thresholds.
4. BM RegSub to be implemented.
5. Institutional investors to play a more active role in CG and disclose company voting.
6. Revised Accountants Act needs to be passed.

Company checklist

Actions companies could take to enhance CG practice and disclosure immediately

Actions companies could take over the short to medium term to enhance their governance practices and disclosure include the following:

1. **Independent director remuneration**: do not offer club memberships and other excessive benefits to INEDs. Overpaying INEDs would compromise their independence and is not in the best interests of the company.
2. **Disclosure of executive remuneration**: increased visibility on executive remuneration policies, particularly the link between remuneration and performance, would be a significant improvement.
3. **Board governance reporting**: more transparency on the topics discussed at the board would be welcome.
4. **ESG reporting**: keep pace with regional best practices and enhance the breadth and depth of ESG and sustainability reporting.
5. **Skills matrix**: disclose the skills and expertise of directors on a named basis.



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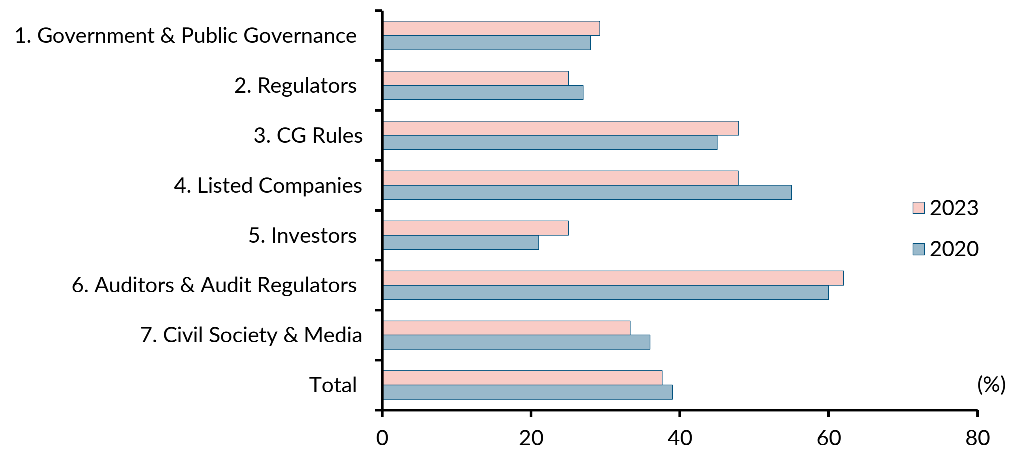
Philippines - In a holding pattern

- The Philippines scored 37.6% in our 2023 survey, landing second to last (again) to just outscore Indonesia, its perennial running mate for last place
- Although it maintains a holding pattern, the Philippines' absolute CG score fell from 39% in 2020 while Indonesia's rose, closing the gap between the two bottom-placed countries to just 1.9 percentage points
- CG reform seems to have stalled since the SEC's last round of regulatory zeal while the PSE appears equally inactive on this front
- Scores increased for government & public governance, CG rules, investors and audit and audit regulators . . .
- . . . But dropped for regulators, listed companies and civil society & media
- Poorly-funded regulators, particularly the SEC, the country's chief capital markets regulator, entrenched corporate self-interest and domestic and foreign investor inertia seem to have stymied further progress in CG reform

Click to rate this research

Figure 10

Philippines CG macro category scores (%), 2023 vs 2020



Source: ACGA

Introduction

Stuck at the departure gate

In our last CG Watch in 2020 we asked whether CG in the Philippines was about to take off. After years at the bottom of the CG Watch table, the country recorded a meaningful increase in score to separate itself from Indonesia, its perennial roommate in the CG Watch basement. Alas, it seems we were overly optimistic in our prognostication. Rather than take off, CG in the Philippines remains stuck at the departure gate, with little meaningful improvement since our last report.

Regulatory impetus seems to have stalled

Impetus from the SEC accounted for much of the improvement in the Philippines' scores last time around. This time that impetus appears to have stalled, with the local regulators offering few discernible improvements in rules and a worrying absence of CG strategy. If there is a discernible pattern or CG strategy, it seems to be one of catch up. Regional surveys of CG standards, including this one, but most obviously the Asean CG score card have, in the past, galvanized the regulators into action to "catch up" with regional standards. As a result of this inertia, the Philippines' overall score in CG Watch fell by 1.4 percentage points to 37.6%, unfortunately narrowing again the score it had earned in 2020 over Indonesia, whose score increased this time around.

CG: Corporate governance or complacent growth?

Too much of a good thing?

It is arguable that at least part of the blame for the lack of progress in CG in the Philippines lies with the continued economic success of the country. Save for the Covid-19 pandemic, which hit the country particularly hard, this progress has continued uninterrupted for nigh on two decades and across political administrations of varying hues. While Duterte's murderous war on drugs and the landslide presidential vote for the son of kleptocrat Ferdinand Marcos tend to grab the domestic and particularly the international headlines, what often goes unreported and unnoticed is the significant economic progress and socioeconomic transformation currently underway in the Philippines. According to World Economics, GDP in the Philippines has grown at a compound annual growth rate of 5.9% between 2013 and 2023[1]. It is a story ill-understood and under-appreciated outside its borders.

CG reform is eclipsed by an economic feel-good factor

While the economic growth and development of the country is to be celebrated, the Philippines remains one of the most internally focussed economies in the region. With a limited export sector, the country benefits from large and rapidly growing service and consumer sectors, significant inward dollar investment, notably via remittances from overseas Filipinos and more recently, a huge government-driven (and sorely needed) infrastructure programme. These all helped to shelter the economy from external shocks such as the Asian and Global financial crises and continue to drive economic growth. Combined with the fact that huge swathes of the economy are controlled by a small number of family-controlled corporate groups, (think property, infrastructure, telecoms, finance, consumer), arguably this has led to a complacency among policy makers and regulators. Why focus on CG reform? What needs to be improved when things are so good?

Market laggard

An insiders' market

The answer is perhaps because the growth in the local stock market has failed to reflect the economic growth of the country. Over the last five years, the PSEi, the main index of the Philippines Stock Exchange, returned just 2.12%[2], a dismal performance given consistent economic growth. Local ownership of the stock market remains concentrated in the hands of insiders and the privileged few wealthy enough to dabble. And while that will change as the emerging middle class in the Philippines continues to grow, it has not yet spurred the government and regulators to improve CG standards. Few constituencies in the Philippines are promoting CG reform as a way to improve returns: and the rich elite continue to make a very nice living, since they control the companies listed on the local exchange.

CG is grounded again

The Philippines scored higher in four out of our seven categories: Government & Public Governance, CG Rules, Investors and Audit and Audit Regulators. It fell in three categories: Regulators, Listed Companies and Civil Society & Media. In most cases, the changes in scores up and down were the result of changes in our scoring methodologies, most notably in the Listed Companies section which has been substantially overhauled. The fact is that little meaningful change has occurred from a CG perspective in the Philippines. Compared with 2020, the last time we undertook CG Watch, there has been a notable reduction in CG initiatives by regulators and it is difficult to escape the sense of a drift in standards. CG seems to be grounded again.

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[1] https://www.worldeconomics.com/Countries-With-Highest-Growth/Philippines.aspx
[2] https://alfm-backend-prod.magpie.ph/wp-content/uploads/2022/03/Philippine-Stock-Index-Fund-Corp._202201.pdf

No discernible progress towards CG reform

Recapping CG Watch 2020

In CG Watch 2020 we set out a list identifying a few CG changes that would help improve the Philippines' score. Some of these are quick fixes - easily undertaken internally. Admittedly, some are more fundamental, requiring regulatory changes. None of them has been implemented since our last report. The Philippines remains in stasis.

The Philippines: it is where it was . . .

Figure 11

Philippines: Recap of 2020 . . . and 2018!

	Recommendations	Outcomes
1.	PSE to include more than two years of company data on its EDGE website-easy!	No progress - PSE retains two years' rolling data.
2.	SEC and PSE to include detailed enforcement data on websites-easier!	No progress: data remain extremely limited
3.	Mandate key CG issues: term limits, poll voting, audit committee independence, directors' remuneration	No progress: all of these issues remain recommended best practice under a "comply or explain" regime
4.	Tighten definition of independence for INEDs, lengthen cooling-off periods and mandate split of Chair and CEO-and then police it!	As above
5.	Introduce a Takeovers Code-even a basic one!	No progress

Source: ACGA

The Philippines scores 29% and ranks No.12

1. Government and public governance

We scored the Philippines at 29% for government and public governance, an increase of just one percentage point, leaving it in last place, one point behind China and three points behind Indonesia. The change in administration from Rodrigo Duterte to Ferdinand "Bongbong" Marcos was a relatively straightforward one given the similarities in political philosophies (Duterte's daughter, Sara is currently Marcos' Vice President). Similarly, administrative structure followed a similar pattern with Marcos filling economically critical positions in the Finance and Treasury departments with capable and respected technocrats. The capable SEC chair, Emilio Aquino remained. However, as with the Duterte regime, there is no formal CG roadmap or obvious strategy to improve CG: the SEC drives what CG initiatives there are. There is no obvious political support from government.

Governance is not a political priority

The Marcos administration is not focused on CG reform specifically. The country is still recovering from the Covid-19 pandemic and is heavily focused on policies designed to alleviate poverty, improve infrastructure and promote agriculture. CG reform is not a must-have in the Philippines and there have been no coordinated efforts from the administration over the last two to three years to tackle the issue. It just is not a priority given the larger challenges facing the country.

CG reform tends to be reactive and piecemeal

What CG initiatives and improvements we have seen have been undertaken in isolation and are often reactive in nature - reacting to reforms elsewhere, especially Asean. Almost all of these initiatives come from the SEC; the PSE tends to follow.

As with CG reform, so with market enforcement. The SEC focusses heavily on shutting down scams, Ponzi/MLM schemes and unauthorised "securities" offerings, enforcement activity the government justifiably supports, given the

plethora of scams and the gullibility of a large and largely financially ill-educated population. While this enforcement action is very much at the grass roots and most basic levels, there is limited obvious support for securities markets enforcement from the government.

BSP continues to oversee CG for banks and NBFIs

The Philippines' central bank the Bangko Sentral ng Pilipinas (BSP) is an effective enforcer over local banks and related financial institutions. The BSP has led a concerted effort over the past 20 years to reduce the number of banks either by shuttering weak lenders or by encouraging mergers between incumbents. This policy has enjoyed some success although consolidation has slowed in recent years and the country remains heavily over-banked. The emergence of ubiquitous, efficient and powerful electronic payment platforms in this obsessively online country has begun to disintermediate the weaker banks, but progress will be slow given vested interests. The BSP also oversees CG of banks and non-bank financial institutions. It published its latest versions of the Manual of Regulations for Banks and the Manual of Regulations for Non-Bank Financial Institutions in 2020. Both publications include specific sections on CG requirements and reporting, as well as risk management, compliance, internal control and audit.

SEC independence is still an issue

The Securities and Exchange Commission (SEC) remains materially underfunded and is run as an arm of the national government with no real independence. All of the SEC's commissioners are appointed by the President with the consent of the Commission on Appointments, a committee of Congress. The SEC is also administered as a government regulatory agency under the Department of Finance. In addition to its securities market role, the SEC handles corporate registration and regulatory issues (accounts, filings windings-up etc) and earns material amounts of fees. These fees contribute meaningfully to the government budget so the SEC is a net funder to the government rather than having its own independent budget. The SEC does receive a grant from government.

The regulatory regime lacks cohesion

The Philippines' capital markets regulatory system lacks cohesion. Like many Asian markets, the exchange is a for-profit undertaking and tends to focus heavily on its profit-generating activities, arguably at the expense of its regulatory role. As a result, the SEC tends to assume the key regulatory function. The SEC is also very much the senior in this regulatory relationship with the PSE tending to take its lead from the SEC, issuing new listing rule guidance after the SEC has promulgated new rules.

Anti-corruption efforts appear to have stalled

Corruption is the number one problem

Corruption is the Philippines' most fundamental problem. It affects everyone and all aspects of the country's economic and political structure, from the smallest barangay to the corridors of Congress. Transparency International ranked the Philippines 116 out of 180 countries surveyed with a score of 33 in 2022. While that was unchanged from its 2021 score, the country has endured a gradual erosion in scores as successive administrations fail to get to grips with the single largest cost to the country's economy.

Graft is regarded as the cost of doing business

Despite widespread acknowledgement of the scale of the graft in the Philippines, there has been no progress made in setting up an independent anti-corruption commission, something Indonesia managed more than 20 years ago. For as long

as the country continues to accept a political system based on dynastic clans that encourages politicians to regard election as an investment, the return for which comes from bribes and kickbacks gleaned from public office, behaviour and mind sets will not change. For the business elite, graft is simply an economic cost of doing business.

There have been some improvements in GOCC governance

The Governance Commission for GOCCs (GCG) continues to press for improved performance of Government-Owned or Controlled Corporations (GOCCs), but with limited obvious progress. The most notable initiative has been the controversial decision to establish the Maharlika Investment Corporation (MIC), a sovereign wealth fund established with the assistance of foreign capital aimed at owning, managing and improving GOCCs. This model has been used with some success by Singapore (Temasek) and Malaysia (Khazanah). It remains to be seen whether MIC will make a meaningful impact on the financial returns of the GOCCs, or whether the problems will just be rehoused (see box, "Money for nothing'' below).

Legal system holds up

Political interference in the judiciary remains a risk

While in general the judiciary in the Philippines is reliable, albeit slow, evidence of political interference with the legal system of the country remains and corruption is present. The most blatant example of the political thumb on the scale of justice was the legal assault on media outlet Rappler by various branches of government, including the Bureau of Internal Revenue the Attorney General and the SEC, who succeeded in getting Rappler shut down over alleged tax violations. Rappler's founder and editor in chief, Maria Ressa, had openly criticized former President Duterte for the extra judicial slayings of putative drug offenders. Pleasingly, in January 2023, under the Marcos administration, Rappler won its tax evasion case on appeal. Perhaps there is hope after all.

Reality bites

The country needs a proper CG strategy . . .

As we wrote in CG Watch 2020, the Philippines ideally needs to develop a detailed CG strategy for its capital markets, embracing all stakeholders: SEC, BSP, PSE, GCG as well as NGOs and other interest groups. The ideal driver for that process would likely be the BSP and the SEC, assuming there is the political will to drive the project forward (which frankly seems doubtful). It is difficult to see meaningful progress towards improving CG standards in the country without a proper strategy and without the buy-in of all relevant stakeholders. Of course, the country has more pressing issues to address and political, human and financial capital in the Philippines are all limited. Meaningful progress towards an improvement in the country's CG score thus seems a long way away.

. . . but it has bigger issues

If there was one change that could be made that would have the biggest single impact on the country in almost every respect it would be tackling its endemic corruption. Establishing a properly constituted, adequately funded and demonstrably independent anti-corruption commission would represent a major step forward. The key question remains: does the political will exist to make that happen? Sadly, we very much doubt it.

Money for nothing

An investment arm of the sovereign wealth fund is established

Not to be outdone by many of its regional Asean cousins, the Marcos administration has launched the Maharlika Investment Corporation (MIC), a government-owned company that will oversee the Maharlika Investment Fund, the country's sovereign wealth fund, designed to "stimulate the country's economic growth" (as if further stimulus was required.)

Aims are laudable

As a Government-Owned or-Controlled Corporation (GOCC), MIC will be overseen by the Governance Commission for GOCCs (GCG), an office of the President. In a statement on 8 January 2024, the GCG stated, "Recognizing the pivotal role of a sovereign wealth fund in the Philippine economic landscape, the GCG . . . is committed to ensure that GOCCs are accountable, economically viable, and responsive to the needs of the Filipino people." That all sounds straightforward but as the GCG itself admits, managing GOCCs has proved to be anything but.

Not smooth sailing

On 25 July 2023, the GCG revealed that its attempts to liquidate assets held by 31 previously-abolished GOCCs had met with significant difficulties. According to the GCG, meetings with the abolished GOCCs became very challenging due to a lack of personnel and a quorum of the governing boards, who appear to have vanished. As GCG Chair, Justice Alex L. Quiroz (ret.) noted ominously, " . . . even though these abolished corporations have not been operating for years, the government in effect still continues to allocate millions for asset preservation."

A presidential order is required to rectify things

The GCG plans to expedite the putatively abolished companies via Presidential Executive Order. Quiroz estimates that "at least an initial P22bn" (~US$500 million) can be realized from the liquidation of assets still held by companies abolished 10 years ago! Whether the Philippines should be launching its own sovereign wealth fund overseen by the same governmental framework that has presided over zombie GOCCs losing hundreds of millions of dollars is debatable.

2. Regulators

The Philippines scores 25% and ranks last

Our score for local regulators in the Philippines fell by two percentage points from our last survey in 2020 to 25% in 2023. This puts it in 12th (last) place. The scores fell in both our Funding, Capacity and CG Reform category as well as our Enforcement category, in both cases, our scores dropped by two percentage points.

Limited reform and enforcement

Last time we undertook our survey, we detected some signs of a shift in approach from the SEC in particular towards CG and a genuine attempt to improve local standards towards at least regional (Asean) comparability. Those encouraging signs were absent this time with no obvious CG initiatives or material improvements evident. In addition, while the SEC's regulatory zeal appears to have evaporated, the regulator's perennial enforcement problems unfortunately remain: the Philippines' enforcement score is the second weakest after Indonesia.

2.1 Funding, capacity building, regulatory reform

The Philippines is in No.12 place with a score of 25%

The Philippines remains in last place in this category, but with a reduced score of 25%, a drop of two percentage points from 2020. Only two scores changed in this section, both reductions, providing a sense of how little has changed in the regulatory environment since we last undertook our survey.

The regulator is now in better digs

Much was made for years about the SEC moving into a purpose built office in the new business district of Fort Bonifacio, as the PSE did some years ago. That plan never materialized, but at least the SEC is now housed in a single, repurposed office building in Makati: an improvement from the prior position.

SEC still a source of revenue for the DoF

The SEC continues to be a material source of income for the Department of Finance (DoF), which oversees it. While the DoF agrees an annual budget with the SEC, which is insufficient to permit all of the SEC's regulatory duties to be executed adequately, the SEC remits significantly more to the DoF from the fees it generates on incorporation and company monitoring activities.

Small changes to budgets

Some small improvements to budget management have been made: in late 2020, the SEC was authorised under the Revised Corporation Code to retain fees and fines to form a fund for its modernization, including meeting operating expenses and increasing salaries. In 2022 the SEC allocated PHP2.6bn (US$46m) for a much-needed digital transformation, while PHP4.5bn (US$78m) was applied to the purchase and refit of the new headquarters. We will watch progress on SEC reform that arises from these new budget allocations with interest in our next survey.

Disclosure remains poor

Disclosure and transparency remain material problems for the SEC: it did not even produce an Annual Report between 2017 and 2022. The report finally issued in 2022 was an attempt to "catch up" with that period. Issued as an online brochure, it provided little improvement in disclosure.

Most SEC enforcement focuses on scams and Ponzi schemes

The SEC's enforcement activities remain heavily focussed on protection of the general public from countless Ponzi and multi-level marketing schemes that remain a real scourge. The SEC's latest Annual Report provides extremely limited disclosure on enforcement activities which consist largely of cease and desist orders issued against the above-mentioned scams and schemes as well as regulations to meet current international standards of AML/CFT regulations. There is very limited enforcement action disclosed against listed companies and directors.

Exchange remains far below best standards

PSE is better funded but disclosure still weak

As a self-funded self-regulatory organisation, the Philippine Stock Exchange (PSE) is a little better off funding-wise and disclosure is also a tad better than the SEC: but there is very limited disclosure of PSE action taken against listing rule violations. Its separately incorporated market surveillance operation, the Capital Markets Integrity Corporation (CMC) remains focused on market manipulation and related enforcement cases, principally against trading firms. Disclosure of activities remains rudimentary however and referrals to the SEC, which has ultimate jurisdiction over securities laws violations, were minimal. As our previous section discussed, SEC resources to pursue these cases remains limited.

Investment in surveillance and enforcement remains limited

As with our last survey, we found no evidence of any material investment in new technology to improve surveillance and no obvious increase in staffing levels focused on such activities.

SEC CG reform momentum slowed, but has not stopped

Our score for securities law reform undertaken by the SEC dropped a percentage point. After the previous increase from our last survey, due to an omnibus-style approach by the SEC to introduce new legislation, headlined by the Revised Corporation Code, perhaps the drop in score is not surprising. That said, we note that the SEC via Memoranda Circulars, introduced several useful regulations relating to CG, including tightened rules and sanctions on the removal of officers and directors, a much-needed revision of rules relating to the SEC's audit oversight inspection activities and a rule permitting minority shareholders collectively with at least 10% of shares (held for at least a year) to call a GSM.

PSE is much less active than SEC in CG rule changes

While the SEC introduced some useful rule changes, the PSE did very little over the period since our last survey, with no material rule changes related to CG. There were some rule changes to adjust for SEC regulations (notably for backdoor listings for REITs) and proposals for a new SME market (as if one was really needed).

SEC in the driving seat

The Philippines' securities markets are very much controlled via the SEC and the PSE tends to follow the SEC lead when it comes to material rule changes, including CG reform. Like most securities exchanges in Asia, the PSE places its commercial interests ahead of regulatory considerations.

Market consultations by regulators are weak

Disclosure from both regulators remains very much subpar, especially from the SEC. Written consultations on rule changes are made by both the SEC and PSE, and insufficient time is permitted for feedback - usually not more than a week, and the results of feedback are not disclosed.

Websites are still very poor

Regulatory websites remain very poor when compared with regional and international standards. The SEC's site has been revamped and improved from what was an awful site before, but it is still fiendishly difficult to navigate and does not disclose nearly enough information as it should do, in both depth and breadth. The PSE does a slightly better job (and with a lot more money) but basic disclosure is still lacking in many areas, and navigation is clunky and illogical. The PSE's company announcement system, EDGE, is easier to navigate than the PSE site itself and could easily be improved at minimal cost, by increasing the historic database of searchable announcements and circulars by more than the woefully inadequate two years. Simply by not removing the previous year's announcements as the PSE does, the database would easily expand by one more year annually. The only obvious additional costs involved in making that happen would be the data storage costs, a minimal expense in the context of running a national securities exchange. Adding IPO prospectuses to the database (curiously omitted) would be another easy fix.

Virtual voting - if the board says so

Still no e-voting platform

The SEC has made no effort to introduce a full e-voting platform for shareholders of Filipino companies, something Indonesia has achieved easily. Given technological advancements coupled with the ease with which the SEC introduced virtual general meetings during the pandemic, the omission is as egregious as it is inexplicable. Control of remote voting by shareholders is only permitted with the consent of a majority of the board of directors of a company. Like many governance related issues in the Philippines, far too much power continues to be vested in the hands of company boards.

CG starts after listing not before

Corporate governance tends to be an issue mandated by the SEC after a company lists on the PSE rather than an appropriate time before, which we would suggest is at least 12 months prior to listing. There is no meaningful CG preparation for boards of companies coming to the stock market other than some board training and ensuring that the company meets the listing rules. As with all other markets, listing sponsors and other advisors are not required to provide explicit assistance or advice with respect to governance preparation for a new company prior to listing.

SEC needs to be made independent of government, and independently funded

The funding problems around the SEC remain critical to improving its regulatory heft. An independent SEC (and an adequately funded one) will be far more effective and will help pave the way for more efficient transparent and ultimately deeper capital markets. An SEC funded by market levies would save the government significant sums of money while ensuring the SEC is funded independently, adequately and more efficiently. But we have made these arguments for many years.

Regulatory websites need an overhaul and more disclosure

Revamped regulatory websites are an easy and relatively quick win which require no complicated decision-making process or significant budget allocation. Improving the website's navigation, disclosure and depth of data are easy wins for both the SEC and the PSE.

2.2 Enforcement

The Philippines scores 24% and ranks No.11

The Philippines' score for enforcement fell two percentage points to just 24%, the lowest of any market in our survey except Indonesia, as it did in 2020. As mentioned above, the SEC's principal enforcement efforts for years, understandably, have been focused heavily on shutting down all manner of scams and Ponzi schemes which prey on a large and generally financially gullible populace with alarming frequency. That continues to be the case.

Ponzis and scams take priority over capital markets enforcement

We have some sympathy with this conundrum: limited resources mean that the regulator must prioritize its enforcement activities on where the need is greatest. And saving millions of gullible citizens from being fleeced of meagre savings from unscrupulous gangs and con artists is certainly a more pressing and immediate problem than protecting relatively affluent investors from unscrupulous board directors and insiders.

A job for the police not the SEC

But this excuse conveniently ignores the fact that the SEC should not be policing this unregulated activity at all. It is more appropriate to be carried out by law enforcement, as it is in most other countries. And the SEC, self-funded as it easily could be, would thus be free to focus on capital markets regulation, which is its true purpose and objective.

The SEC has the powers it needs . . .

The SEC holds reasonable powers to enforce market miscreants, principally but not exclusively, via the Securities Regulatory Code, although some of its powers have been transferred to the country's notoriously ponderous courts system, which can assist influential parties accused of securities violations to manipulate enforcement actions against them.

. . . but so rarely uses them

The SEC has almost no history of successful prosecution of serious market manipulation or insider trading, which remains a problem in local markets. The SEC's 2021-2023 Annual Report provides minimal disclosure, focusing on cease and desist orders and prosecutions against scams and Ponzi schemes while the Capital Markets Integrity Corporation (CMIC, a subsidiary of PSE) is taking action against market manipulation cases, it only has jurisdiction over trading participants, not individuals and can fine or suspend firms only. Market manipulation cases then get referred by CMIC to the SEC for further action, including (theoretically) prosecution, although this seldom (if ever) happens. The SEC publishes no detailed data on its enforcement capital market enforcement activities.

PSE enforcement disclosure is also poor

The same goes for the PSE: its latest Annual Report (2019!) - Published on its own website - provides only the most basic enforcement statistics covered in just a few short paragraphs in the report. Given enforcement is a key function of any stock exchange, this is clearly below best practice.

Business before enforcement

The PSE board structure raises conflict concerns

This apparent lack of emphasis on enforcement in favour of commercial interests is perhaps explained by an analysis of the PSE board. True, the PSE has introduced some new blood to the board in the past few years: five members have been appointed within the past four years, including three independent directors. However, the Chair, Jose Pardo, who is also cited as an independent director, has been the Chair since 2011, sits on the board of five other listed entities (including his own family-controlled entity) and retains close business connections with four very prominent business families, all with multiple companies listed on the PSE.

Similarly, recently-appointed independent director, Peter Favila is a former Director and Chair of the PSE. And nine of the 14-member board have direct affiliations to prominent business families with groups listed on the PSE, while seven have been political or government appointees in the past (see table below). These significant connections to key business groups and extensive government connections, might explain why the PSE promotes commercial interests ahead of regulatory resonsibilities.

Family favourites

Fear or favour?

An analysis of the business and political affiliations of non-executive board members of the PSE illustrates the extremely close relationship between business and politics in the Philippines and raises the issue of genuine independence:

Figure 12

Business and political affiliations of PSE non-executive board members

Name	Title	Year	Other PSE-listed board seats	Political affiliation/notes
Jose T. Pardo	C/ID	2011	Philippine Savings Bank (Ty); Bank of Commerce (San Miguel/Ang); Philippine Severn Corp. (Pardo); JG Summit (Gokongwei); Synergy Grid (Sy/Coyiuto)	Former Finance Secretary
Thomas L. Alcantara	D	2021	Holcim Philippines (Alsons/Alcantara)	Former Undersecretary of Trade
Diosdado M. Arroyo	D	Not stated	None - chairs local broking firm (Arroyo family company)	Former Congressman. Son of President Arroyo
Marilyn Victorio-Aquino	D	2023	PLDT/Metropacific/Philex Mining/PXP Energy/ Lepanto Consolidated Mining - all Manual. V,. Pangilinan companies	None
Ferdinand K. Constantino	D	2020	San Miguel Corporation (Ang/Top Frontier)	None
Teresita Leonardo-De Castro	ID	2020	San Miguel Corporation (Ang/Top Frontier)	Former Chief Justice
Peter B. Favila	ID	2023	None	Secretary of Department of Trade and Industry (Arroyo). Former Director and Chair of PSE
Andrew Jerome T. Gan	ID	2023	None	Director Maharlika Inv. Corp.Former Director CMIC (PSE subsidiary)
Eddie T. Gobing	D	2001	None - President of Lucky Securities - member firm	None
Vicente L. Panlilo	D	2017	None. Former director of Meralco (Pangilinan), Far East Bank (Ayala); PNB (Lucio Tan); EPCI (Metrobank/Ty); Bank of Commerce (San Miguel/Ang)	None
Wilson L. Sy	D	2016	Eastwest Banking (Filinvest/Gotianun)/Vantage Equities (Sy)	None. Former Chair of PSE. Chair of Wealth Securities (member firm)
Anthony M. Te	D	2022	Benguet Mining/MarcVentures (Romualdez/Marcos family)	President Marcos & family
Jose Arnulfo A. Veloso	D	2022	None	Head GSIS (government insurance fund)
Ma. Vivian Yuchengco	D	2004	None. Cousin of Helen Dee - (YGC/Yuchengco family)	None. Fmr. Chair of PSE

Source: ACGA analysis

3. CG rules

The Philippines is No.11 (again) with a score of 48%

The Philippines' score rose by three percentage points to 48% from our last survey in 2020, still placing it in No.11 place, but comfortably ahead of Indonesia on 40%. Just four scores changed from our list of 24 questions, highlighting just how little progress there has been in improving CG rules in the Philippines since our last survey.

In a league of its own

The next two lowest markets—China and Korea—are respectively 15 and 17 percentage points higher, a gap that has grown since our last survey. The Philippines and Indonesia are in a (poor) league of their own.

Good, but slow financial reporting

Financial reporting is comparable to international standards . . .

While financial reporting standards for listed companies in the Philippines remain adequate, financial reporting itself can be slow, even among some large listed companies. Financial reporting standards are comparable to international rules and the Big Four accounting and auditing firms, via local affiliates, dominate the local market for listed companies.

. . . but reporting deadlines are too long

Reporting deadlines are not up to international standards however: quarterly reports are required within 45 calendar days of the period end and companies are given a generous 105 calendar days to produce their audited financial statements and annual reports. This compares with most other markets in our survey that set a deadline of 90 days for audited financial statements.

Almost no changes to CG rules since our last survey

CG reporting standards in the Philippines are much weaker than international standards, due largely we believe, to a lack of appetite among listed company groups - generally family-dominated and interested in maintaining the status quo - and a lack of strategic desire and political will among regulators to improve standards. All too often in the Philippines, robust economic growth and strong financial results from local companies get parsed as evidence of good governance. In our experience, material CG reform in the Philippines tends to occur due to extraneous impetus, such as a regional forum that ranks markets - such as this survey - when the gap between regional and domestic standards starts to raise internal concerns. The most obvious and recent example of this was the SEC's introduction in 2019 of the revised Annual Corporate Governance Report (ACGR) that in one go, introduced a swathe of CG rules aimed at closing the gap on its Asean rivals. It proved to be effective in improving scores in our last survey. The problem is, precious little to improve CG rules and reporting has happened since.

SEC pulled its punches with the ACGR

Even giving credit, as we did in our last survey, for the ACGR initiative, the SEC pulled its punches somewhat by permitting the ACGR to operate on a "comply or explain" basis. That enabled many listed companies to cherry-pick their level of compliance. It has also led to a remarkable diversity in quality of reporting among different listed companies, a point that we address more fully in our section on listed companies.

CG status is in stasis

Since the 2019 ACGR initiative, there have been no material CG initiatives from the SEC or the PSE. Most locally-listed companies are keen to keep new regulation at bay for as long as possible and the absence of any obvious internal or external pressure on the SEC to undertake further reforms means the status of CG remains in stasis.

ESG reporting: slightly better

Local ESG reporting standards are improving

The SEC did tweak ESG reporting guidelines and this has helped improve reporting standards among listed companies, although standards vary widely. Most annual sustainability reports, which are mandatory under SEC rules, are prepared in line with recognized international standards (GRI, IR, SASB and TCFD, and often a combination) including detailed compliance matrices. The SEC rules require companies to report on seven key assessment criteria: materiality, stakeholder inclusiveness, balance, completeness, reliability, accuracy, and consistency and comparability.

SEC encourages disclosure on economic, environmental and social issues, as well as SDGs

Figure 13

Sustainability Reporting Guidelines for listed companies

	Key disclosure topics	Breakdown	
1.	Economic	• Performance • Practices • Anti-corruption	
2.	Environment	• Resource management • Ecosystem and biodiversity • Environmental impact & compliance	
3.	Social	• Employee management • Workplace conditions • Labour standards • Supply chain management	• Community relations • Customer management • Data security
4.	UN Sustainable Development Goals (SDGs)	• Company contribution to SDGs through products and services	

Source: SEC Sustainability Reporting Guidelines for listed companies, 2019

Wide range of reporting quality among companies

While the Sustainability Reporting Guidelines, like their CG counterpart, are issued on a "comply or explain" basis, early evidence suggests an unanticipated enthusiasm among certain large listed companies for ESG reporting. While many companies have predictably viewed the guidelines with suspicion and no more than a tedious and costly compliance process, a smaller number of larger listed companies have clearly embraced the new SEC guidelines as a much more meaningful undertaking and have produced thoughtful, cogent and helpful integrated reports. It is an encouraging start.

Sound quarterly reporting . . .

Financial reporting standards remain good

Quarterly reporting remains mandatory in the Philippines and like much financial reporting, disclosure is of a good standard. Local standards require full financial statements (profit & loss, balance sheet, cash flow, movements in equity) as well as accompanying notes on a quarterly basis. Most quarterly financial statements include business updates and often, helpful commentaries.

Substantial ownership rules are reasonable . . .

Rules on substantial ownership are reasonable, with the definition of "substantial" set at 5% (for a purchase or a sale). Changes must be disclosed within five business days, which would be shorter ideally. For reasons that are unclear, the notification of a sale by a substantial shareholder to below 5% must be disclosed within three business days.

. . . but curiously illogical

Any material increase in a substantial shareholding must be disclosed within three business days, but the definition of material is 5%, which we believe is far too high (1% would be more appropriate). Weirdly, a shareholding threshold of 10% and above must be disclosed within 10 calendar days, which seems illogical to say the least. The above rules do not apply to local banks however, who are required by the BSP to report at the much lower threshold of 2%.

Insider rules are far behind best practice

Insider dealing disclosures are weak

Directors' dealings in listed company shares must be announced within five business days, which is way behind best practice. The CG Code for listed companies requires dealings be disclosed within three business days, but the code is "comply or explain" so directors and companies can do as they please.

Blackout periods for insider trades need to be improved

Blackout periods for directors and key management are 30 days before each financial period end, which includes year end, where we would like to see around 60 days' ban on dealings. PSE rules still impose an immediate ban on dealing by insiders if they obtain inside information, which lasts for a further two days after disclosure of the information.

Still no rules on share pledges

The SEC and PSE still have not addressed disclosure of share pledges by the controlling shareholder of a listed company, again behind best practice. That said, such share pledges by controlling shareholders are rare in the Philippines so practically, it is not a major problem. In addition, the PSE has a rule that any change of control in a listed company must be disclosed immediately.

MNPI disclosure rules are strict

Strict rules on MNPI disclosure

Under PSE rules, disclosure of "material information", which includes price sensitive information (PSI), must be disclosed by a company to the PSE within 10 minutes of notification. An immediate suspension of trading is required if the announcement is made within trading hours and a full announcement is required to be made public via the PSE within 24 hours.

Connected transactions rules are woeful

There have been no changes to the existing rules on related-party transactions (RPTs) since our last report. These remain some of the weakest rules in the region. RPTs must be disclosed in the annual report, but there is no requirement for shareholder approval of a RPT: they are simply ratified post facto through a standard resolution at the AGM. There are also no requirements for a shareholder vote based on materiality or nature, no independent financial advisor opinion, and no specific content requirements for a RPT circular.

Insider laws are reasonable: but easy to circumvent

Insider trading rules are weak in practice . . .

Local insider trading rules remain behind best practice. The definition of an insider is adequate and the law clearly states that insider trading is a crime. However the focus of the legislation is focused on the person making the tip (passing on the MNPI) and less so on the person receiving the tip (the insider trader).

. . . and penalties are inadequate

Fines for insider trading are minimal, ranging from PHP50,000 to a maximum of PHP5m (around US$1,000 to US$100,000). Custodial sentences are possible but there is a two-year statute of limitations that renders the regime ineffective in practice. Perhaps it is no surprise that to date, no individual has ever been convicted of insider trading in the Philippines.

Voting by poll is almost non-existent

Most companies continue to resist poll voting

The Philippines still has no rules requiring voting by poll. Voting by a show of hands for all shareholder meetings remains a shibboleth of the Filipino corporate establishment. A small number of listed companies adopt poll voting voluntarily and the SEC has tried unsuccessfully, to introduce it on a wider basis: it is a recommended best practice in its 2016 CG Code. However the vast majority of listed companies maintain the status quo.

Shareholder voting result disclosure rules are weak

The results of shareholder meetings must be disclosed by the next business day, including a requirement to identify all votes cast for resolutions, (for, against and abstentions). However, disclosure is required only if "significant" votes against a specific resolution were cast, so in practice, disclosure is weaker than it should be.

A diluted CG Code and no stewardship code

CG Code needs updating

The SEC's latest CG Code was published in 2019, just before our last CG Watch. There has been no update since that date. As we noted in our last report: "It is doubtful, frankly, that further headway will be made in promoting better CG standards among most listed companies without more stringent regulation." We stand behind that comment.

No stewardship code

There are no obvious signs that the Philippines will adopt a stewardship code in the near future. Institutional ownership, especially foreign, is likely still too limited to generate sufficient will among that constituency. The regulators have more pressing problems to tackle.

Director independence rules have improved slightly

The Securities Regulation Code (SRC) Rule 38 states that independent directors must be free of management and substantial shareholders, while the CG Code 2019 introduced a clearer definition of independence, noting that an independent director must also be, "free from any business or other relationship which could, or could reasonably be perceived to, materially interfere with the exercise of independent judgment in carrying out his responsibilities as a director". There have been no changes since. Notably, cooling-off periods, at two years, are too short and lead to independent director appointments of recent advisors and auditors who are anything but independent in practice (see box in earlier section).

More boardroom issues

Board remuneration disclosure is weak

Another CG shortcoming among local boards is the disclosure of individual board remuneration. The SEC CG Guide requests companies to disclose remuneration on an individual basis, but that code is all "comply or explain". So almost all companies trot out the usual excuses relating to competition or security and report remuneration in bands or a simple total.

Audit committees are required but full independence is not

SEC guidelines recommend that audit committees comprise a minimum of three non-executive directors and an independent non-executive director as chairman. So they don't have to be fully independent, as we would expect to see. Audit committees are generally of a good standard however and there have been signs of some improvement recently in terms of candidate quality.

CG Committee replaces Nomination Committee

The Philippines does not require a Nomination Committee: they require that a CG committee is formed, comprising a majority of INEDs, (including the chairman) to deal with nomination and board performance. Most disclosure of board nomination activities and performance is boilerplate in nature, with some notable exceptions.

Errant directors can be banned

There are strict regulations that prohibit anyone convicted of offences, such as fraud, from acting as a director of a listed company. The 2019 CG Code prohibits persons acting as directors of listed companies, *inter alia*, if they have been convicted of an imprisonable offence of more than six years or if that person has violated the Securities Regulation Code within the preceding five years of their election or appointment.

Minorities can nominate board members . . . but it is not easy

Minority shareholders can nominate independent directors to Filipino companies, although it seldom happens. Rules have been tightened a little recently. The SEC (Memorandum Circular No. 14/2020) permits any shareholder with 5% or more of a company's shares to propose agenda items at GMS. In 2021, the SEC issued Memorandum Circular No. /2021 stipulating that any shareholder with 10% or more of a listed company's shares may call a shareholder meeting.

Pre-emption rights are essentially non-existent

Pre-emption rules remain hopelessly weak

Local rules on pre-emption rights for shareholders remain woefully poor and substantially behind best practice. There have been no changes to the regime since our last report. While the best practice adopted by the SEC in its 2019 CG Code stipulates that all shareholders should hold pre-emption rights, this principle does not apply if pre-emption rights are disapplied by a company's articles of incorporation. Of course, all companies then pass a resolution disapplying the rights.

AGM notices of 21 days

AGM notices at 21 days

The SEC requires companies to provide a minimum of 21 days' notice ahead of an AGM, below our view of best practice at 28 days. However, due to the requirement for companies to send out to shareholders a preliminary information sheet (and before the definitive notice) weeks in advance of AGMs, in practice, shareholders receive much earlier notice. The preliminary information sheet, while not finalized, generally contains detailed disclosures so as a practical matter, shareholders are provided with adequate disclosure and more than sufficient notice of a meeting.

Still no Takeovers Code

There is no Takeovers Code in the Philippines so protections for minorities in takeovers, major share acquisitions and delistings are below best practice. Securities law requires shareholders of 15% or more that wish to acquire 30% or more of a listed company over a 12-month period to make a tender offer to all shareholders on a pro rata basis. Boards of directors can vote to merge with another listed company but need to obtain two-thirds of shareholders' approval. The PSE tightened its listing rules in 2019 by requiring a mandatory exit offer, including a fairness opinion, neither of which was previously required. The practical reality is that hostile takeovers are essentially unheard of in the Philippines and even friendly mergers are rare. But when they do happen, there is limited recourse for minority shareholders who may feel aggrieved by the terms of a deal.

CG guidelines need to become rules

The CG Code needs to be updated and ideally converted into a set of regulations, including ditching the "comply or explain" loopholes. This lets off so many listed companies from disclosing or complying with many basic and important CG issues. Other specific areas of CG that regulators should take a long hard look at include:

- Mandating Board remuneration disclosure on an individual basis - some (very few) companies are already doing this - it should be mandatory
- Overhauling the RPT rules, introducing shareholder approval for larger and/or more specific RPTs - current rules benefit insiders far too much
- Introducing standard pre-emption rights for shareholders - the Philippines is far off best practice in this area
- Substantial shareholder disclosure rules need to be changed to be more consistent - a fairly simple tweak to the rules
- Tightening insider trading rules—and enforcing them!
- Mandating shareholder voting by poll - practically every other market we cover now does this

4. Listed companies

The Philippines ranks No.10 with a score of 48%

Our survey of listed companies was completely overhauled in CG Watch 2023, reducing the number of questions from 2020 and revising our scoring methodology. The survey looks at CG disclosure, at the quality and breadth of sustainability reporting, at the quality of a company's investor relations activities and board diversity. We surveyed a total of 15 major listed companies, selecting across sectors and doing our best to avoid, as best we could, selecting more than one company from major family-controlled groups (no easy task in the Philippines!) As a result of the new survey approach and scoring methodology, scores for almost all markets fell, and the Philippines was no exception. The Philippines scored 48% in our revised survey (from 55% in 2020), landing in tenth position (a fall of one place from 2020) ahead of China and Indonesia and just a single percentage point behind Japan and Korea.

Wide variance among selected companies . . .

As with our last survey in 2020, individual company scores varied significantly between companies: The Filipino corporations we selected, all significant businesses in their own right, displayed a wide range in quality of both CG and sustainability reporting. Eleven of the 15 companies scored at or below 50% on our survey questions.

. . . promoter approach to CG is critical

Predictably, controlling shareholders really matter in the Philippines when it comes to governance: just two companies Globe Telecom (Ayala) and Union Bank of the Philippines (Aboitiz) scored 70% or more. Lowest scoring companies were LTG (Lucio Tan family), Universal Robina Corporation (Gokongwei) and Jollibee Foods Corporation (Tony Tan).

Where the Philippines does well

Financial reporting and IR remain good

The quality of financial reporting in the Philippines is generally high and compares favourably with international standards. In addition, the Philippines has well-established rules around the timely release of announcements. Investor relations activities are generally very good.

Boards are paid with fixed fees

Remuneration of INEDs is almost always via the payment of fixed fees and not via stock options or grants. Some companies pay bonuses and maximum amounts of INED remuneration is often expressed as a fixed percentage of revenues.

Board training is good, evaluations less so

Board training, as opposed to board evaluation which is less comprehensive, is generally of a credible standard, and most of the companies in our survey included induction training for new board appointees as well as annual training. While this is mandated via a SEC code, nonetheless, the disclosure around board training was in most cases, more than simple boilerplate.

Audit committees and internal audit are sound

Generally, audit committees are well constituted and comprise INEDs, albeit not exclusively. Generally, audit chairs are INEDs, although not in every instance. Internal audit functions are generally sophisticated and report into the audit committee. Given the lack of genuine independence of many INEDs on boards of Filipino companies however, the integrity of that reporting line is unclear.

Where the Philippines performs averagely

CG reporting standards remain formulaic . . .

As with many markets in our survey, CG reporting standards tend to be formulaic and below best practice. Feet-dragging Filipino corporations tend to require bullying and cajoling to adopt new CG reporting standards, usually by the SEC. Many of the annual reports reviewed in our survey contain significant amounts of formulaic boilerplate drafting that varies little, if at all, from year to year.

. . . with some notable exceptions

However, as with the overall scores, there are exceptions to this rule. CG disclosure from Bank of the Philippine Islands (an Ayala Group company), Globe Telecom (also an Ayala Group company), First Gen (A Lopez Group Company) and Union Bank of the Philippines (an Aboitiz Group company) were all of a materially higher standard than their peer group.

Sustainability reporting, while mediocre, is markedly better than CG

As with CG reporting, so with sustainability reporting, although, as is the case with other markets, the standards of reporting in this category were noticeably higher than CG reporting. Overall, our survey scored Filipino corporations at 42.5% for sustainability reporting versus 37.5% for CG reporting.

The score would have been much higher save for laggards

What explains this discrepancy? Likely the material presence of stakeholders (shareholders, employees, NGOs) promoting better sustainability reporting rather than simply regulators. It is impossible to prove empirically of course, but that seems

to us to be the most likely explanation. Not all the companies surveyed scored well on this question (Globe Telecom, Bank of the Philippine Islands, Metro Pacific (Salim/Pangilinan) and First Gen were the top scorers): if it were not for some truly abysmal reporting among several companies, the score would have been much higher.

CG Committees replace Nomination Committees

The Philippines does not have nomination committees per se: its equivalent is the CG Committee, mandated by the SEC and these are generally properly constituted and deal, inter alia, with board nominations. Just three companies in our survey had a CG committee with a female chair; most others had a female member, although generally these were not INEDs. One third of the companies had no female member on the CG Committee.

Where the Philippines does poorly

Board independence is practically non-existent . . .

Predictably, the Philippines scored worst in this section of our survey on the issues of board independence (having an independent chair/lead INED) and in respect of disclosure of board remuneration, both specific amounts and policies. Most of the companies we surveyed lacked credible policies on diversity.

. . . as is detailed disclosure of board remuneration

Unlike sustainability reporting, there were almost no exceptions to the appalling level of disclosure on board remuneration. Of the companies we surveyed, only Globe Telecom made any meaningful effort on disclosure, although this was still far from best practice.

A lack of independence on boards is the single biggest problem

Still worse was the issue of an independent chair/INED. This was the Philippines' lowest scoring area and underscores the lack of genuine independence on the boards of Filipino companies. That is not to say that there are not INEDs or putative independent chairs cited on these boards: there are plenty. The issue is that in almost all cases, the independence of these appointees is in serious doubt, usually easily evident from a review of their resumes.

5. Investors

The Philippines ranks No.10 with a score of 25%

The Philippines ranked No.10 out of 12 markets in this section, beating Indonesia and China with a total score of 25%, an increase from 2020 of four percentage points. We increased our scores for domestic institutional voting, where we have detected some increase in activity and for engagement by both domestic and foreign institutional shareholders in company engagement, particularly around corporate actions or votes with which they disagreed.

Domestic institutions in their infancy

Most local institutions are affiliates of international institutions

Many of the domestic institutions are local affiliates of international firms, such as life insurance companies and asset managers. The domestic institutional market is still in its infancy given most Filipinos do not have direct access to the stock market. The local institutions that do manage public monies via domestic pension schemes and/or health insurance, such as the Government Service Insurance System and Philhealth (see domestic section below), need both modernisation and professionalisation and have been embroiled in investment scandals and corporate mismanagement in the past. Public confidence in these institutions remains justifiably low.

Foreign investors lack interest

Foreign appetite is limited by liquidity and reputation

While the domestic institutional market is small, albeit growing, the foreign institutional market is tiny. Few foreign institutional investors have meaningful allocations to the Philippines market, given its small index allocation relative to other markets, especially North Asian markets like Hong Kong, China, Korea, and Japan. The Philippine market is illiquid and dominated by a small number of very

large family-controlled groups, most of which control several listed companies. Most foreign institutional investors will tell you that only a few of these family "names" are investable from a reputation point of view, a position with which it is difficult to argue. That, plus the lack of liquidity makes the Philippine stock market difficult for many institutional investors to invest.

Closed shop

The Philippines needs foreign equity investment . . .

It should not be like this. The Philippine economy has grown very strongly for the last decade and is likely to continue for the foreseeable future, given the favourable structure of its economy and its very positive demographic. And with a population of some 130 million, it is by no means an Asian minnow. An economy of such a size, growing at one of the fastest paces in Asia Pacific, should be desperate for equity and debt capital to finance further growth, both in the public and private sectors.

. . . but vested interests keep it out

What is preventing the country from attracting a significant influx of foreign capital is a complex mix of vested political interests (significant restrictions on foreign investment within key sectors, administrative red tape and corruption, enforceability of contracts) and vested domestic corporate interests. With huge swathes of the economy under the control of a limited number of family-controlled groups and cartel-like pricing in many sectors (real estate, transport, telecoms, consumer goods, the list goes on) there is very limited political will to open the economy to meaningful foreign competition.

The domestic dimension

International life insurers have JVs with local families

The domestic institutional investors in the Philippines are a mixture of state-controlled pension and insurance schemes - Social Security System (SSS), Government Service Insurance Scheme (GSIS) and Philippine Health Insurance Corporation (PhilHealth) - as well as life insurance firms, mostly joint ventures between wealthy family business groups and international firms. These include Sun Life of Canada Philippines (Yuchengco family - RCBC/YGC), Manulife (Sy family - SM Investments), AXA Philippines (Ty family - GT Holdings) and Philam Life (Ayala family - Bank of the Philippine Islands).

State institutions are flawed

The state-run institutions are poorly funded and run as cumbersome civil service-like entities. CG advocacy is not on the agenda of these institutions and none has published a comprehensive CG investment philosophy. PhilHealth and GSIS have been mired in controversy in the past relating to misuse of funds.

Domestic investors do a bit better . . .

Privately-owned domestic affiliates do have internal CG statements and some ESG data, although most of the documentation links back to the foreign affiliate's website, so it isn't tailored to the local market. None of these investors has published a Responsible Investment strategy and none provides data covering company engagement and advocacy.

. . . but don't disclose voting data

Domestic institutional investors generally publish codes of ethics and statements of fiduciary including some discussion of management of conflicts of interest. But none provides information on voting activity at a company level. There are still no domestic proxy advisors in the Philippines.

6. Auditors and audit regulators

Philippines ranks No.11 with a score of 62%

The Philippines' score increased by two percentage points to 62% in our 2023 survey, although it slipped one place to rank No.11 behind Indonesia but comfortably ahead of regional laggard China.

Local standards almost fully aligned with IFRS

Philippine Financial Reporting Standards (PFRS) are almost fully converged with International Financial Reporting Standards (IFRS). The Philippines Financial Reporting Standards Council has a stated policy of adopting IFRS as PFRS. However, the main exception to this is IFRS15, which covers timing of revenue recognition. Convergence with this standard has long been a bone of contention with the local accounting association and no progress has been made. All large and publicly accountable entities, which includes all listed companies, are required by the SEC to publish accounts in accordance with IFRS/PFRS.

Audit standards are fully converged with ISAs

Philippine auditing standards are fully converged with International Standards on Auditing (ISAs). The Auditing and Assurance Standards Council has adopted Philippine Standards on Auditing (PSA). The PSA incorporates ISAs and rulings from the International Auditing and Assurance Standards Board (IAASB). The PSA also includes certain country-specific issues not covered by IAASB.

Audit independence, fraud reporting and whistleblowing weak

Auditor independence rules are weaker . . .

The Philippines rules on auditor independence are below international standards. The Philippine Institute of Certified Public Accountants (PICPA) adopted the International Ethics Standards Board for Accountants 2013 Code and submitted a board resolution to the Board of Accountancy, a government agency operating under the Philippines Professional Regulation Commission (PRC), recommending the adoption of the 2016 IESBA Code of Ethics. The 2016 IESBA Code was adopted in 2018.

Term limits for audit partners adequate

Term limits for audit engagement partners remain at seven years with a cooling-off period of two years. The term limit drops to five years for public interest entities, which includes listed companies.

Fraud discovery and whistleblowing rules are weak

There are restrictions on audit firms undertaking non-assurance work, and the rules include the exclusion of audit personnel on such work. The adopted code also cites rules for auditors when encountering fraud at audit clients, although the rules don't provide an explicit obligation on auditors to report any fraud, which seems odd. Notably, the code provides no whistle blower protections.

Many companies disclose non-audit work despite comply/explain regime

Audit committees of listed companies are required by the SEC's CG Code rules to evaluate and determine any non-audit work undertaken by the External Auditor, including a review of non-audit fees paid. The code states that the Audit Committee should disallow any non-audit work that will conflict with the duties of an External Auditor or that may pose a threat to the auditor's independence. Non-audit work must also be disclosed in the annual report, although the code does not explicitly state that non-audit fees must be disclosed separately and the rules are on a comply or explain basis, so companies can choose not to disclose if they so choose. In practice, many local companies do make separate audit and non-audit fee disclosures.

Audit report quality is good

Large cap audit reports are good . . .

Local auditing standards require extended auditor reports, including the discussion of Key Audit Matters. These are found in most Philippine financial statements and are of a good standard. Among large-cap companies, audit standards are generally high and companies are well prepared for audits. The local auditing practice in the Philippines is dominated by local affiliates of the Big Four and standards are therefore in line with international best practice, especially for large-cap companies.

. . . but mid-caps are weaker

Audits of mid-cap companies tend to be weaker in terms of disclosure and detail and are often overseen by smaller auditing firms. Finance and accounting resources at mid-caps are notably lower and audits generally take longer. That said, material issues from audits of mid-caps are generally rare.

Auditor regulation is a major problem

Audit oversight remains behind best practice

There is no independent audit oversight authority in the Philippines. Audit firms are regulated by the government via the Professional Regulation Commission and the Professional Regulatory Board of Accountancy. The professional regulator is the Philippine Institute of Certified Public Accountants (PICPA). In September 2023 PICPA was designated by the BoA as the implementing body for oversight of the audit profession via the Quality Assurance Review Program (QARP). However, in March 2024, PICPA announced that it was deferring implementation of the QARP, "After review and discussions of the issues and concerns raised by stakeholders." PICPA has asked the Solicitor General to opine on the matter.

A SEC registration system for auditors is in place

Audit firms and auditors of listed companies also require SEC registration, which operates a quality assurance review system. The SEC also operates the Office of General Accountant (OGA), which was established in 2017. The OGA conducts periodic inspections under its SEC Audit Oversight Review (SOAR) programme. The OGA is not independent and is underfunded. The BSP (for auditors of banks) and the Insurance Commission (for auditors of insurers) impose additional requirements and oversight.

The OGA does not provide any material data

The OGA provides no public data on its enforcement activities. There is no comprehensive separate annual report of its inspection programme or a review of audit capacity and quality.

Audit oversight needs to improve . . .

The domestic audit profession requires far stricter oversight with significantly enhanced disclosure by the OGA. While the SEC's SOAR programme is helpful, the regulatory authorities need to improve audit inspections. Ideally this would be overseen by a well-funded and independent oversight body, although the chances of that happening are very slim.

. . . as do audit disclosures

Basic disclosure needs to improve also, both by listed companies and audit firms themselves. Audit fees and non-audit work by auditors should be disclosed more fully by listed companies. The OGA should provide details of auditor inspections, results, sanctions and a credible assessment of capacity issues.

7. Civil society & media

The Philippines scores 33%, ranking No.11

The Philippines' score dropped by three percentage points to 33%, putting it in No.11 place ahead only of China. The score dropped principally as a result of a continued lack of progress and activity among most CG stakeholders for much-needed reform, with one or two notable exceptions.

ICD and SharePHIL lead CG among NGOs

As with our last survey, the highest score in this section was awarded for the depth and quality of professional CG training provided by the local Institute of Corporate Directors (ICD). With the Shareholders' Association of the Philippines (SharePHIL) ICD continues to lead the CG efforts among Philippine NGOs, although we noticed a reduced activity level at SharePHIL since our last survey, likely due to issues related to the Covid-19 pandemic. ICD remains very active with comprehensive training programmes for company boards, with a strong focus on CG. ICD also offers bespoke consulting and board services for CG, strategic planning and sustainability.

Still no corporate secretaries institute

Bizarrely, there is still no institute for corporate secretaries in the Philippines and consequently no specific training for what is a key supporting role for the board. There is little else by way of active CG training other than ICD and SharePHIL: accountants, banks or financial analysts seem disinterested. The Philippine Institute of Certified Public Accountants (PICPA) as the accredited accountancy training body, provides some training, but none of it relates to CG. Similarly, the Management Association of the Philippines provides some training and advocacy work, but will little obvious focus on CG.

Business associations are not prioritizing CG

Plenty of NGOs . . . but little CG focus

Indeed, while there are plenty of NGOs and business associations, many are "clubby" in nature with overlapping membership. Some actively resist material CG reform for companies. The exception other than ICD remains SharePHIL, which continues its CG advocacy and research platform, although at a markedly reduced pace. There is also precious little academic or professional research on CG and ESG among local institutions and other professional associations.

Journalism: chaotic and occasionally dangerous

Media coverage of CG is extremely limited

While media in the Philippines are generally free and vocal, there is a shortage of serious financial journalism. The only real exceptions to that are Rappler and The Inquirer, who do run more serious articles and investigations from time to time. But generally, journalistic standards are low, business and financial reporting is superficial and CG coverage very limited.

Media can be bought and bullied

Intimidation of the media remains a serious problem in the Philippines. Journalists can be threatened and stories spiked, either via threat or sometimes by payment. Reporters Without Borders, a NGO that surveys media freedom, ranked the Philippines 132nd out of 180 countries analysed in 2023, noting: "The Philippine media are extremely vibrant despite the government's targeted attacks and constant harassment, since 2016, of journalists and media outlets that are too critical." According to the Committee to Protect Journalists, 90 journalists were killed in the Philippines between 2000 and 2023.

The quality of media coverage of CG is sliding

The quality of media coverage of CG continues to deteriorate. The 2023 Freedom House survey of the Philippines notes: "media outlets have faced intense political pressure, including the use of regulatory and law enforcement tools to punish critical coverage."

Ressa and Rappler acquitted

One bright spot is the acquittal on appeal in September 2023 of local journalist and Nobel Prize Winner, Maria Ressa, and her news website Rappler from trumped up tax evasion charges. Ressa and Rappler were targeted by former President Duterte after critical coverage in Rappler.

Media will remain a target

The landslide Presidential win for Ferdinand "Bongbong" Marcos has marked a sharper turn in political direction than many expected after the controversial presidency of Duterte. In the main, that change has been positive although the increasingly acrimonious relationship between Marcos and Vice President Sara Duterte (daughter of Rodrigo Duterte) threatens to spark damaging in-fighting. In such a politically charged atmosphere, media will likely remain a target of political ire and influence.

No proactive CG debate among business elites

With the economy continuing to grow at a respectable clip and the cosy relationship between business elites and local politicians intact, there is little obvious internal stimulus for the reform of GC standards in the Philippines. CG reform is regarded with suspicion and irritation among entrenched business groups who rail at regulators for increased "cost and compliance".

Outside pressure is required for higher CG standards

As we wrote in our last survey, reform in the Philippines often happens because of pressure applied from an external source. The last effective stimulus for internal CG reform was probably the Asean CG Scorecard that exposed a material gap in local standards when measured against regional peers. That gap was quickly albeit not entirely closed by the SEC after some effective arm twisting of recalcitrant corporations. While that is not necessarily the best catalyst for higher local CG standards, given the gap between the Philippines and its regional peers is again widening, it is likely the best that we can hope for.

Downgrade watchlist

What to avoid

Factors that could force the Philippines' market score to fall in our next survey:

- Continued stasis in CG reform: if things do not change soon, it is difficult to see The Philippines ranking anywhere in our next survey but last.
- Continued lack of sufficient budget allocation to the SEC in particular and to market enforcement especially.
- Continued disinterest by the PSE towards meaningful CG reform. The SEC could use some support from its frontline regulator!
- Any erosion of key CG protections, such as rules relating to RPTs, Board rules, and disclosure obligations
- Continued self-delusion fuelled by a misplaced belief that if the economy grows and stock prices climb, everything must be OK.

Next steps

Our recommendations for the next stage of CG reform in the Philippines include the following:

Regulators need to disclose more on enforcement

1. Enforcement disclosure: The SEC and PSE need to provide much more disclosure (especially on regulation and enforcement) and much faster. One quick way to do that would be to focus on improving disclosure via their websites which remain sub-par.

CG rules really need a refresh

2. CG rules: these would include addressing the split of chairman/CEO; clear term limits; mandatory voting by poll; full audit committee independence; mandatory disclosure of individual director remuneration. These should be mandated by the SEC, perhaps with a 12-month cure period to assist companies with adoption. No more comply or explain for issues that are core to good CG! The Philippines also needs to address woeful rules on related-party transactions and takeovers. Tighter rules on board committee structures would be helpful.

SEC funding could use an injection

3. Regulatory funding: the SEC in particular would benefit from better resources.

Company checklist

Actions companies could take to enhance CG practice and disclosure immediately

Actions companies could take over the short to medium term to enhance their governance practices and disclosure include the following:

1. Board composition: there is nothing wrong with family-controlled corporations, but genuine independence is a must. Disclosure around board remuneration, committees and dealings would also be beneficial. Stricter definitions on board independence and longer cooling-off periods would be welcome.
2. AGM practices: there needs to be an introduction of mandatory poll voting, as well as detailed and timely disclosure of voting results. Detailed minutes of AGMs are also signs of good corporate governance.

3. Related-party transactions: leading companies should focus on better disclosure around related party transactions. Some of these companies have gone further than minimum requirements on sustainability reporting already. Surely, the other large cap companies can go the extra mile on self-imposed best practice on RPTs?
4. Directors' remuneration: a few companies are doing it, and others can.
5. Director training and board diversity: more disclosure on director training on an individual basis, and disclosure around board diversity and skill matrices would be an improvement.
6. Whistleblower policies and anti-bribery codes: companies should ensure that the reach extends to suppliers.

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Singapore - On an even keel

- The market slips a place to rank equal third with Taiwan on a slightly lower score of 62.9%, a 0.3% decline on its 2020 performance
- Market reforms put a cap on INED tenure at nine years and require disclosure of remuneration on a named basis, but a new regime for SPACs underwhelms
- Blockbuster corporate scandals fail to elicit blockbuster regulatory outcomes
- SGX RegCo gets wider enforcement powers but private warnings remain a popular sanctioning tool
- Listed companies do well where disclosure is simple but struggle to provide a narrative on board governance and diversity
- Retail investors remain a bright spot on the CG landscape, well ahead of their institutional peers
- Auditor regime gets a boost with ACRA disciplinary powers extended to CPA firms
- Director training remains solid and civil society and the press continue to sink their teeth into CG

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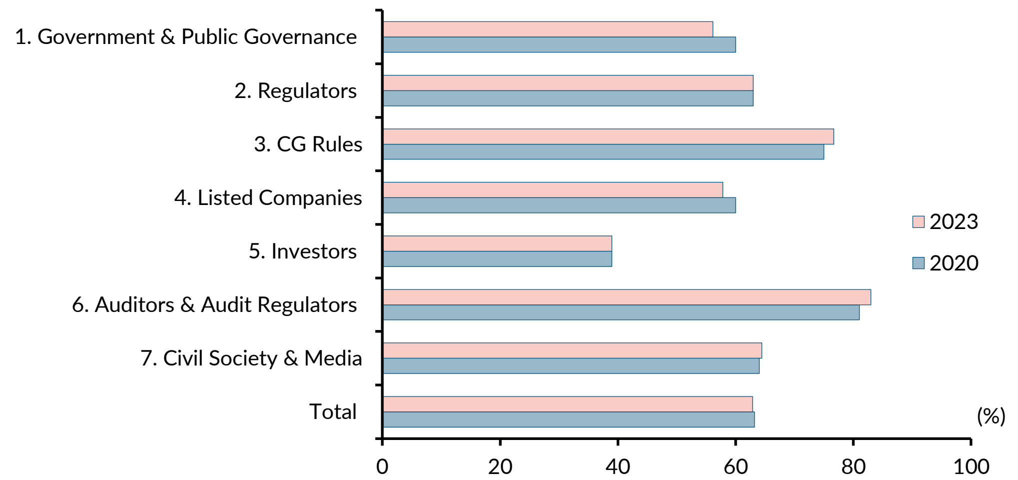
Figure 14

Singapore CG macro category scores: 2023 vs 2020



Source: ACGA

Introduction

Singapore falls a place to rank joint No.3 with Taiwan on a score of 62.9%

Although Singapore fell one place to rank third equal with Taiwan, it was on a score of 62.9%, just 0.3% shy of its 2020 performance in our survey. While it lost points on a few of the government & public governance questions, it made marginal gains on CG rules and auditors & audit regulation, and maintained its scores in most other categories. It is now three places ahead of Hong Kong, but by a small margin percentage-wise and its rivals' drop in the league table comes against the backdrop of a huge political upheaval. The two markets have few points between them in key areas: most notably, Hong Kong is still a better market enforcer.

A hands-off approach to influencing boardroom culture misses the mark

The overall story for Singapore is that it keeps its head above water with a plausible CG framework but reform has been sporadic rather than consistently resolute, and intermittent cajoling of issuers does not seem to be influencing boardroom culture to the extent that investors would like. This is perhaps best

reflected in the quality of disclosure listed companies make, which rarely stretches beyond the boundaries of what regulators require of them. It is still a persistent mantra in both Hong Kong and Singapore among regulators and listed companies that issuers are simply 'not ready' for bolder reform. Their investors certainly are, and the disconnect between what they expect and what companies and regulators deliver is growing, as seen by the prolific and increasingly compelling grievances of retail shareholders in Singapore.

Some market reform has been sensible, but Singapore introduced SPACs

Market reform in recent years has vacillated between the sensible—an omnibus upgrade to regulation of financial institutions, a boost to audit regulation, and new rules on INED tenure and remuneration disclosure—and SPACs (a new framework was introduced in September 2021 and to date has had three takers). An early mover on TCFD-based reporting, Singapore is also currently mapping out the way forward on climate disclosure which would see a staggered approach require some issuers to move faster than others.

Singapore suffered from a lack of appetite on big corporate scandals

Regulation and enforcement meanwhile is a mixed picture. On the one hand, Singapore opted not to throw the book at the myriad actors involved in the demise of Noble Group. The spectacular wipeout of the commodities trader and the accusations which surrounded it were effectively given short shrift in the form of a S$12.6m fine. There was no digging deep on what was possibly the biggest scandal to rock the capital market in decades. Arguably Singapore's reputation is the worse for it. Similarly, the decision to give "stern warnings" to executives at Keppel Offshore & Marine for their part in a Brazilian US$55m bribery scandal did not suggest a steely resolve on corruption. On the other hand, Singapore showed it can play a long game on market misconduct, doggedly pursuing the duo behind the 2013 penny stock crash and in December 2022 for a combined 56 years.

Where does the market go next?

Singapore is at an interesting juncture. As an international financial centre, it has certainly benefited from a Hong Kong exodus. But as a capital-raising centre it saw just seven IPOs during 2023, and one wonders what direction the market goes in next as prospective issuers opt to tap funds elsewhere. Hong Kong has opted to lower standards: the hope is that Singapore does the reverse.

Recapping CG Watch 2020

Some ACGA recommendations have been adopted

On a positive note, there were a number of recommendations we made in our last CG Watch which appear to have made an impact, most notably on disclosure of director remuneration and giving ACRA disciplinary powers over CPA firms.

CG hits and misses since 2020

Figure 15

Singapore: recap of 2020

	Recommendations	Outcomes
1.	Denounce dual class shares	No change—and Singapore introduced SPACs
2.	MAS to give details of resources devoted to securities regulation	No change
3.	Introduce longer consultation periods	No change
4.	SGX to revamp its website and provide a user-friendly section on Enforcement	A new section on Enforcement has been introduced
5.	Stronger powers for SGX RegCo	Powers have been widened
6.	Disclosure of top-five executive remuneration by name	Disclosure of directors and CEOs required for annual reports for FY ending 31 December 2024
7.	Give ACRA the power to discipline audit firms	The Accountants Act accordingly amended

Source: ACGA

1. Government & public governance

Singapore stays in No.4 place but on a lower score of 56%

Singapore lost the most ground in this category with a reduced score of 56%, four percentage points lower than 2020, but it remains in No.4 place, just one percentage point ahead of Hong Kong.

Progress on some CG aspects but systemic issues remain

The lower score reflects the approach taken by policymakers on high-profile corporate and corruption scandals, and for introducing SPACs into the market. There was also no progress on a whistleblower law and ombudsman, or in providing a class action framework and the market continues to be held back by the lack of a securities commission independent of government. Singapore still performs well in several questions in this category, including strong bank governance, a competent judiciary and for upgrading its securities-related laws.

CG strategy

No CG roadmap but policy upgrades are evident

Like its neighbour Hong Kong, Singapore lacks a tangible CG roadmap. Yet unlike Hong Kong, CG appears with greater frequency on the policymaking agenda and arguably has a strategic edge in this respect. The past few years have seen a few rule upgrades, an enhanced toolkit for SGX RegCo, a wider remit for ACRA and a recognition of the challenges posed by climate reporting (and an early move to at least get issuers TCFD-ready). CG topics appear on the lips of policymakers with greater frequency than they do in Hong Kong (thanks in part to invitations by the Securities Institute of Directors (SIAS)), albeit perhaps with an aspirational tenor.

Shame about the SPACs

But despite the lukewarm reception of dual class shares in the market, Singapore in September 2021 further lowered the bar for issuers and joined the SPAC bandwagon, netting three listings to date. In our last CG Watch we suggested a rollback of dual class shares: perhaps Singapore can add SPACs to the list. An interesting fact about Singapore is that a significant portion of issuers are incorporated there, making it easier in theory for investors to seek recourse. The likelihood of jurisdictional arbitrage is less of an issue than in other markets such as Hong Kong where most issuers are incorporated in the Cayman Islands or BVI. It could be a key selling point if Singapore was to address the weak remedies that exist for minority shareholders in the market.

An omnibus act

Regulation of financial institutions is made simpler

Regulation of financial institutions was beefed up in the omnibus Financial Services and Markets Act 2022, which passed on 5 April 2022. Being implemented in phases, it tidied up what had been a piecemeal approach to regulation of financial institutions, instead adopting a sector-wide approach. One of the key aspects is the extension of prohibition orders (POs) to cover any person deemed not to be fit and proper, rather than certain persons specified in MAS-administered legislation. The scope of POs was also widened to cover functions relevant to the integrity and functioning of financial institutions. Among other things, the Act also regulates all virtual asset service providers (VASPs) to keep Singapore in line with Financial Action Task Force (FATF) requirements.

Crimes, corruption and misdemeanours

Outcomes on Noble Group and Keppel scandals underwhelm

One question we ask in this category is the extent to which there is political support for the policy and enforcement work of financial regulators. A significant test for Singapore came as commodities trader Noble Group hit the rocks and unravelled in an exceptionally high-profile manner. The regulatory outcome was less spectacular: in August 2022, the company received a S$12.6m fine (see section on Enforcement) and left the impression that there was not much political appetite to toil over the corporate spoils. Similarly, the Singaporean response to a US$55m corruption scandal involving Keppel Offshore & Marine executives found to have bribed officials at Brazilian state-owned oil giant Petrobras, was less than convincing. In 2017, Keppel agreed to pay the US Department of Justice a penalty of more than

US$442m to resolve charges over a decade-long scheme to pay bribes in Brazil. In response, Singapore's Corrupt Practices Investigation Bureau (CPIB) in January 2023 issued "stern warnings" to six members of former management at the firm after an investigation. It cited "evidentiary difficulties" in cases of this nature, noting that documents and witnesses are located outside Singapore. It thanked its international partners for their assistance in the case. Singapore's Prevention of Corruption Act allows for extra-territorial jurisdiction over acts committed by Singapore citizens. It seems reticent to exercise it.

A 99% conviction rate on corruption

At home, Singapore has a reputation of being clean: the 2023 Transparency International Corruption Perceptions Index ranked it as the 5th least corrupt country out of 180, and is the only Asian market to rank in the top 10. The CPIB calls itself an "independent agency" but still comes under the Prime Minister's Office: the bureau is headed by a director who is directly responsible to the PM. It is also funded by the PMO, with an operating budget of S$59.46m allocated for the FY 2024, 9.6% of the PMO's total operating expenditure. Corruption in Singapore, it insists, is "firmly under control,'' and it releases annual statistics—just not ones that are terribly up to date, with its latest update in April 2023 revealing figures for 2022. There were 234 corruption-related reports in that year, a decrease of 6%. Of these, 83 resulted in new corruption cases for investigation, meaning just over one in three reports are pursuable. Similar to Hong Kong, most cases (86%) are to be found in the private sector and during 2022 there were 152 individuals prosecuted for offences investigated by the CPIB. The conviction rate was 99%, a "slight improvement" from the preceding two years (in 2020, it dipped as low as 97%!). The concern here is that this reflects a tendency to pursue low-hanging fruit, or that the courts are not functioning as they should (it would be helpful to see the percentage of cases where defendants plead guilty).

A high profile graft case is causing a stir

As we wrote last year, run of the mill corruption cases in Singapore tend to focus on low-level cadres and business people: a crude kickback here, a dubious bank loan there. High profile cases have been rare. The system is currently being put to the test with the graft probe into transport minister S. Iswaran. In January, Iswaran was charged with two counts of corruption and 24 counts of obtaining "valuable things" and another charge of obstructing justice. He has denied the charges.

Wither the lawsuits?

Still not class actions in Singapore . . .

Singapore has been of Hong Kong in enabling litigation funding (although Hong Kong has moved toward more creative fee structures), but only in the realms of arbitration. There is still no class action framework for securities litigants and debate on reforming the system seems to have ebbed away. There are some "representative actions," where one person begins proceedings on behalf of a group who have the same interest. Similarly, other lawsuits can be consolidated into one where it involves the same transaction or questions of fact or law. But Singapore, like Hong Kong, still observes the doctrines of maintenance and champerty, meaning third party funding for litigation, or taking a cut of the proceeds in lieu of a fee, is prohibited.

. . . but litigants are getting creative

There has recently been some legal creativity to get around this, which featured in the case of POA Recovery PTE v Yau Kwok Seng [2022]. A group of investors who believed they had been defrauded of returns from a Canadian oil company investment scheme decided to incorporate a S$1 company in Singapore as a special purpose vehicle to sue the Canadian firm. The trial judge in Singapore dismissed the action, dubbing the entity a shell company. Structuring the action in such a way was moreover contrary to public policy. An appeals court disagreed. It paved the way for litigants to consider using such a vehicle to get around procedural hurdles and more efficiently organise themselves. The appeal court noted that such a structure would obviate the need to file hundreds, if not thousands, of separate writs.

2. Regulators

Singapore remains in No.4 place with a score of 63%

Singapore scored 63% in this category, as it did in 2020. It once again ranks No.4 behind Australia which scored 66%, and Japan and Taiwan, who both scored 65%. It is one percentage point ahead of Hong Kong. This score is an average of two sub-categories: Funding-Capacity Building—Regulatory Reform, and Enforcement. Singapore scores higher in the latter category, and made an incremental gain in 2023.

We look at whether regulators have sufficient resources

The first part of this category considers the extent to which securities commissions and stock exchanges have sufficient resources (both in terms of funding and manpower) to carry out their regulatory role. It is one area where scant progress is being made in Singapore, given the lack of granular detail provided by the Monetary Authority of Singapore (MAS). MAS is a combined central bank and regulator of the banking, insurance, asset management and securities sectors. It lacks criminal investigatory or disciplinary powers and works with the Commercial Affairs Department (CAD) of the police to enforce criminal offences of market misconduct, such as insider trading. The Singapore Exchange (SGX) is the frontline regulator of the listing rules and since 2017 a subsidiary of SGX called SGX Regulation (SGX RegCo) has undertaken enforcement to address conflicts of interest the regulator facers as a dual regulator and commercial business.

The narrative they present on their work is also measured

The second part of this category focusses on the progress being made by regulators in enforcing rules and regulations, as well as how they present their work (in statistical and narrative form) and explain their actions. Being able to draw comparisons based on past years' figures is a key element of this.

2.1 Funding, capacity building, regulatory reform

Singapore retains a score of 56% and moves up one place to rank No.4

Singapore stayed steady in this category, with no change in score (56%) compared to 2020, but it moved up one place to rank No.4. Japan leapt up the league table here, taking the top slot on a score of 67% (it ranked No.4 on a score of 58% in 2020) as Australia slipped to No.2 place after losing a percengage point to score 61%. Hong Kong meanwhile tumbled to No.6 place (from joint No.1) on a score of 54%.

It is still difficult to gauge the proportion of funding that goes into market regulation

There is still limited information available in Singapore to properly answer the question as to its regulatory funding and investment, accounting for its flat score in this category. MAS releases annual financial statements, which gives a helicopter view on staffing—overall, spending on personnel in 2022 was S$294m, up from S$271m in 2021 of which S$254m accounted for salaries (S$236m in 2021), with a further S$27m (2021: S$24m) paid as contributions to the Central Provident Fund and S$10m (2021: S$8m) spent on staff benefits and training. However, there is no breakdown of these figures by regulatory sector. MAS invested S$55m on information technology in 2022, a significant uptick from 2021 when it spent S$39m. While there was no change in the quality of disclosure made, we credited Singapore with a half point in this question for its investment in technology and to better align it with other markets in the region who report along similar veins.

SGX annual report provides more insight into staffing and funding

Singapore scores much better for disclosure of funding by the stock exchange, given its status as a listed company which produces an audited annual report (and more granularity on staffing and expenses). Still, no regulatory budget is for surveillance and enforcement is revealed. We know that net profit at SGX was up 1% to S$451m in 2022 on revenue of more than S$1bn. Operating expenses meanwhile were S$465m against S$431m in 2021.

Nearly half the SGX workforce is female but only 17% female directors

There are 1,126 employees across the SGX Group as a whole (which includes wholly-owned subsidiaries the Baltic Exchange and the Energy Market Company) and on average each person received 45 hours of training (down from 55 hours in 2021), of which there were a cumulative 890 hours of sustainability training. There

was also an annual refresher training on general compliance, staff dealing, regulatory conflicts, IT security, procurement policies and anti-discrimination. Diversity at SGX is a mixed picture: while 45% of the workforce is female (it was a similar story in 2021, but notably down from 49% in 2020) female directors accounted for only 17% on the board. This is down from 27% in 2021. SGX does say that it the nomination committee specifically asked external search candidates to focus on identifying female candidates for the board, and that of those it considered for an appointment, 77% were female. For various reasons however, female candidates were unable to take up a board appointment. SGX aims to have 25-30% of its board as female over the next three to five years. Staff expenditure was S$136m in 2022 at the "Company" which operates the Singapore Stock Exchange, down slightly from S$139m in 2021. Spending on technology showed a marginal increase to S$48m compared to S$46m in 2021.

MAS-led reforms

An omnibus piece of legislation for financial institutions is passed

We mentioned in the section on Government & Public Governance the omnibus tidying up which took place in amendments of the Financial Services and Markets Act 2022 passed in April that year, notably in relation to financial institutions. It also extended prohibition orders to cover more people (rather than specified ones in other legislation) and brought all virtual asset service providers (VASPs) into the orbit of regulation to honour Financial Action Task Force (FATF) obligations.

Changes to the Companies Act put virtual AGMs on a permanent footing

Singapore also passed changes to the Companies Act in May 2023. There were a few elements: firstly, the revised law put fully virtual AGMs on a permanent footing. Companies could choose to opt out by amending their Articles of Association (AoA) on or after 1 July 2023, but otherwise companies are allowed to hold fully virtual or hybrid meetings. It is mandatory for companies to accept an appointment of a proxy that is made via electronic means, regardless of the company's AoA.

The one proxy rule for schemes of arrangement is removed

In the same piece of legislation (the Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Bill, Singapore removed the one proxy rule for schemes of arrangement. While multiple proxies had been allowed for shareholders' meetings, the same was not applied to Scheme Meetings, with each member only allowed to appoint one proxy to attend and vote. The bill removed this requirement for scheme of arrangement meetings and all other company meetings.

Disqualification periods for directors are revised

The bill also tweaked disqualification periods for directors. Those facing their first ban had the time reduced from a maximum of five to three years, but the period for repeat offenders was kept at five years.

More exclusions in computing the 90% threshold for compulsory buyouts

The treatment afforded to minority shareholders was also improved in the bill by excluding certain people connected with an offeror in computing the 90% threshold for compulsory acquisitions. Section 215 of the Companies Act allows for a compulsory acquisition in a takeover if approved by shareholders holding at least 90% of the shares in the target but previously only excluded shares held bby the acquirer, its related corporations and their respective nominees (and any treasury shares) in the computation. Additional categories are now excluded from the 90% computation, including bodies corporate who are controlled by the offeror; persons who are controlled or can be influenced by the offeror to approve his offer, ie his close relatives, and bodies corporate controlled by such persons; persons who control the offeror and the bodies corporate controlled by such persons.

MAS says it will look at investor recourse

MAS announced in its 2020-2021 Enforcement Report (released at the end of December 2021) that it has 'embarked on a study' of options to enhance investor recourse for losses suffered due to market misconduct. The report said it plans to

consult relevant stakeholders in due course (no timeline was given) and as yet we have heard nothing further. In many ways this is a missing piece of the regulatory puzzle and one that would be welcome if it was to emulate the securities regulator in Hong Kong by taking action to recoup funds from bad actors where there has been a fraud or serious misconduct by an issuer and its officers.

SGX-led reforms

SGX tweaks the rules but introduces a SPAC regime

On the upside, SGX brought in new reforms on INED tenure, director remuneration and climate. On the downside, it also introduced a listing regime for SPACs. Much like its regime on weighted voting rights (WVR) it has yet to open the floodgates to new capital raising. In our last CG Watch we bumped Singapore up a point on our question of the extent to which the exchange is modernising the rules and best practice codes to improve corporate governance. This time around, the shadow cast by WVR and SPACs saw it lose this point, the negatives not counterbalanced by gains made to the rules and regulations (see our chapter on CG Rules): while these were welcome, they did not go far enough to outweigh the backward steps. In September 2021 new rules on SPACs were introduced in Singapore and three listings took place in January 2022: Temasek-backed Vertex Technology Acquisition Corporation (VTAC) SPAC, Pegasus Asia SPAC and Novo Tellus Alpha Acquisition (NTAA) SPAC. To date, they remain the only three SPACs to list and in December 2023 Pegasus announced it had given up on finding a merger target and would shut down.

2.2 Enforcement

Singapore scores a higher 71% but falls one place to rank No.3

Singapore gained one percentage point to score 71%, although it moved down a place to No.3 as part of a reshuffle within very narrow range which saw Australia jump three places to rank joint No.1 with Hong Kong on a score of 72%. Taiwan is just behind Singapore with 70%. The slight gain in Singapore was primarily due to technical improvements in how its stock exchange discloses, and explains its enforcement activities; and credit was given to MAS for providing a better narrative on how cases progress over time.

Outcome on Noble Group tests limits of enforcement

Our scoring in this category looks at whether financial regulators have a reputation for vigorously and consistently enforcing securities laws and regulations, and on this point we deducted half a point. We wrote in our last CG Watch that Singapore was talking and acting tougher on enforcement, and this remained a consistent theme in our 2023 findings. But the elephant in the room—the regulatory outcome on Noble Group—tested the limits of this resolve. The commodity trader which once boasted a market value of US$10bn left investors empty-handed when it collapsed amid hefty losses and accusations of grossly inflating assets. Given the scale of losses investors suffered, the regulatory response handed down in August 2022—a S$12.6m fine for putting out misleading information in its financial statements and a slap on the wrist for its auditors and a couple of directors—fell somewhat flat. The ex-Noble employee whistleblower Arnaud Vagner, who heads up Iceberg Research, spoke of conference calls with MAS and SGX where he discussed his concerns of misconduct at Noble: "my interlocutors showed little enthusiasm for digging into the nitty-gritty."

Singapore has impressive powers on paper

Otherwise there was no change in score for the other questions in this category. Singapore has a wide range of powers at its disposal to investigate, prosecute or otherwise deal with bad actors in its market. The test is always going to be whether it uses these to take on the difficult, messy cases. Few regulators like to lose, or face costly and complicated legal battles, but the reputational cost of not grasping the nettle is often much greater.

MAS enforcement actions

MAS seeks to expand its investigative powers

On its own, MAS cannot initiate a criminal investigation which leads to the jailing of suspects. Since 2015 it has had a joint enforcement arrangement with the Commercial Affairs Department (CAD) of the Singapore Police. Initially these investigations focussed on market misconduct such as insider trading and market manipulation, and in March 2018, the arrangement was broadened to all capital markets offences under the the Securities and Futures Act (SFA) and Financial Advisers Act (FAA). MAS officers who take part in these investigations are known as Commercial Affairs Officers, and have the same powers of investigation as those from CAD. These include the ability to search premises, seize items and order financial institutions to monitor customer accounts. In 2021, MAS consulted the market on proposed enhancements to its investigative powers, and the consultation feedback was released in February 2024 (after our CG Watch scoring). There was some pushback on certain elements of the proposals, notably the ability for an MAS investigator to enter premises without a warrant and without prior notice. MAS noted that it will keep the two days' notice it gives under the FSA. Otherwise, the proposals seek to make it easier to obtain a warrant for electronic evidence, and to transfer evidence between MAS and other agencies.

A clearer picture could be gleaned from a more regular enforcement round-up

MAS has since 2019 published an Enforcement Report, which details the work it has undertaken on market-related misconduct, often in tandem with the Accounting and Corporate Regulatory Authority (ACRA) and the Attorney General's Chambers (AGC) as well as highlighting investigations under the MAS-CAD Joint Investigation Arrangement. The latest one (its fourth) covers the period from January 2022 to June 2023, during which time there were 39 criminal convictions (13 people were jailed and a further 10 were given terms of imprisonment plus a fine or disgorgement of profits order), while 16 received only fines. There were 14 convictions for false trading, 6 for insider trading, deception or fraud, three for disclosure-related breaches and nine for unlicensed activity. In all, S$12.96m in civil penalties were given out for false trading, insider trading and disclosure breaches. Note that the insider trading, false trading, deception/fraud and unregulated activities actions included those under the MAS-CAD joint investigation arrangement. While the report is welcome, an annual report card would be even more so, giving readers the ability to compare figures (with links to the actual cases) on a tidy 12-month basis to get a comparative picture of outcomes. Giving a list of cases and an indication of guilty and not guilty pleas in the criminal ones would also be of interest: from a scan of convictions in the past year, it seems few people opt to challenge the charges against them.

Criminal convictions for creating false market, insider trading

Going through the MAS enforcement page, recent criminal outcomes have included the July 2023 convictions of four individuals for their part in a scheme to create a false market in the shares of Catalist-trading Koyo International. The trades took place between August 2014 and January 2016. After pleading guilty, the culprits received jail terms ranging from 11 weeks to 42 months. In April 2023, Tang Boon Hai was sentenced to 30 months in jail for conspiring to conduct false trading in the shares of KTL Global, by unauthorised use of other peoples' brokerage accounts. He also pleaded guilty. And in April 2023, Tay Yew Khem and Hui Choy Leng were given 12 weeks and four months' imprisonment terms respectively for insider trading in the shares of Broadway Industrial Group. Both pleaded guilty.

Penny stocks scandal finally claims two scalps

One case that did make it to trial was "Singapore's largest stock market manipulation," in which Soh Chee Wen (aka John Soh) and Quah Su-Ling were jailed in December 2022 for a substantial 36 and 20 years respectively after being convicted of 180 and 169 charges respectively relating to the manipulation of

shares in Blumont Group, Asiasons Capital and LionGold between August 2012 and October 2013 (it did not help that they deceived Goldman Sachs International and Interactive Brokers into providing S$142m and S$815m respectively to finance their trading). Dubbed the "masterminds" behind Singapore's 2013 penny stock crash (a collapse in the shares of the three companies wiped S$8bn in market cap), the duo are reported to be appealing their convictions.

A prosecution of Hyflux CEO is currently ongoing

A case currently on the boil is the prosecution of former CEO of Hyflux Lum Ooi Lin for disclosure-related offences, as well as failing to ensure compliance with accounting standards at the Singapore water treatment company. In May 2023, additional offences were levied on Ms Lum, relating to her duties as a director. The "Hyflux saga," as it is referred to in the press, has been bubbling away since the company ran into financial difficulties in February 2018 and filed for bankruptcy. A court ordered the company be put into liquidation in July 2021 amid S$2.8bn in claims. Ms Lum and Hyflux auditors KPMG are also facing civil lawsuits.

SGX enforcement

SGX RegCo gets beefed up sanctions to reprimand . . .

In our last CG Watch we wrote of a regulatory impasse which had emerged as a result of challenges finding suitably independent members for the Listing Disciplinary Committee (LDC) which was set up in 2015 as part of a move to strengthen enforcement powers. At the time of writing, a consultation mooted a widening of SGX RegCo's powers to enable it to issue public reprimands, deny access to the market and impose conditions on issuers. SGX released its response to the consultation in June 2021, which set out a recalibration of the enforcement framework. There was market consensus that swifter enforcement outcomes were needed and the net result was an enhanced range of powers and sanctions for SGX RegCo: public reprimand, denial of facilities to issuers (and requiring companies to comply with conditions on their activities), requiring the resignation of a director or executive officer, and prohibiting an issuer from appointing or reappointing a director or executive officer (or both) for up to three years. Initially these would not be appealable, but after taking market views into account, orders on denial of facilities, requiring directors and executive officers to resign and banning directors for serving for up to three years can be appealed to the Listing Appeals Committee (which was the designated forum for LDC appeals). These 'Direct Enforcement Actions' which came into effect on 1 August 2021 supplemented existing sanctions, which included a warning letter and bringing bad actors before the Disciplinary Committee, which hears the more egregious cases which may result in fines (and appeals are made to the Appeals Committee.)

. . . but still issues a lot of private warnings

Armed with these new set of powers, SGX RegCo issued 17 public reprimands in 2023 and 13 in the first half of 2024. Yet there were significantly more private warnings given out in the same period: 27 in 2023 and six so far for the first half of the 2024 financial year. In all, 23 cases were heard before the Disciplinary Committee in 2023, with 13 in the first half of 2024. Private warnings also remained prolific in 2021 and 2022, the figures totalling 31 and 41 respectively. Meanwhile public reprimands during these years numbered 10 and 8 respectively.

Directors and issuers receive rebukes for a range of bad behaviour

So what were individuals and issuers being disciplined for? The LDC has seen some action in the past few years: it handed out a reprimand for a CEO at Eneco Energy for paying vendors without board approval in March 2024. In January 2024 the LDC also reprimanded a former CEO of Tee International for failing to disclose claims of a combined S$7.7m which had been served on the company. Catalist-listed Y Ventures Group was meanwhile reprimanded by the LDC in October 2023 for errors in its unaudited statements (and for failing to disclose its 2018 interim results were false and misleading). The LDC also gave a reprimand to 8Telecom International Holdings' current and former directors for failing to ensure the accuracy of true

beneficial owners of target companies in a proposed acquisition. SGX RegCo keeps a watchlist of directors and executives who are the subject of enforcement action (or who failed to cooperate with the Exchange in an investigation): the list currently stands at 116 individuals.

The regulator is quizzing fewer companies

An interesting feature of Singapore's enforcement regime has been the dressing down companies receive via the back door, in the form of continuous disclosure queries by SGX RegCo. This served to perhaps effectively do the same job as a public reprimand, at least putting companies on the spot. There has been quite a significant drop in these queries: in 2023, there were 578 continuous disclosure queries issued to listed companies and 28 public queries on unusual trading activities. Three 'trade with caution' alerts were issued and six notices of compliance. In 2022, the figure for continuous disclosure queries was a much higher 836 (and 660 in 2021), while public queries numbered 72 (and 57 the previous year). A drop of more than 250 continuous disclosure queries in a year is a palpable decline, given the number of public reprimands to date could hardly be considered voluminous.

SGX RegCo still passes the most serious cases to MAS

At the top end of the scale, the most serious cases of market misconduct continue to be referred to MAS: in 2023, 13 insider trading cases and 10 cases of market manipulation were passed along by SGX RegCo. Again, this is down on the 2022 figures when 27 insider dealing and 14 market manipulation cases were passed to MAS.

Singapore and Hong Kong team up over social media scams

Pump it up

Both Hong Kong and Singapore have been no strangers to pump and dump (or 'ramp' and dump) schemes in the past few years, particularly those using social media to inflate share prices prior to insiders cashing out. In December 2021, MAS and CAD in Singapore announced they were launching a joint investigation into such scams listed on the Hong Kong Stock Exchange. The probe was coordinated with Hong Kong's Securities and Futures Commission (SFC) and the Hong Kong Police. It was hailed as the 'first of its kind' joint operation to tackle cross-border pump and dumps.

The cross border nature of the crime poses interesting challenges

To date, the investigation led to the arrest of 10 people, with S$4.4m in cash seized after raids on 33 premises in Hong Kong and Singapore by more than 190 officers from the SFC, Hong Kong and Singapore police, and MAS. Two and a half years is not a long time in the grand scheme of legal procedings but we wait with interest to see the outcome—and how law enforcers on both side deal with the cross-border challenges in taking culprits to court.

3. CG rules

Singapore moves up one place to rank No.3 on a score of 77%

Singapore moved up a place to rank No.3 on a score of 77%, a two percentage point improvement on 2020. It is just ahead of Hong Kong which ranked equal No.4 with Thailand on a score of 75% and was two percentage points behind Malaysia. Singapore remains a good five percentage points behind the top scorer, Australia. Singapore lags its peers Australia and Malaysia in areas such as AGM notice (only requiring 14 days unless there is a special resolution, in which case it is 21) and in having a stewardship code based on a comply or explain standard. The ability to easily nominate directors is much easier in Australia than it is in Singapore, and the decision to drop quarterly reporting in January 2020 is in contrast with Malaysia which scores top marks on this question. There have been a number of improvements to Singapore's rule books in the past few years and it was an early mover in gearing issuers up for more demanding sustainability reporting:

- In December 2021, SGX RegCo amended the listing rules to require Task Force on Climate-related Financial Disclosures (TCFD)-related disclosure on a comply or explain basis in sustainability reports for financial years starting in 2022.

Mandatory climate reporting would then be phased in from 2023, starting with the financial, agriculture, food and forest products, and energy industries. The materials and buildings, and transportation industries, would then follow for FY2024. MAS had already expected banks, insurers and asset managers to make climate-related disclosures in accordance with global frameworks such as TCFD since June 2022.

- SGX RegCo in March 2024 further consulted the market on how the International Sustainability Standards Board (ISSB) standards would be incorporated into its sustainability reporting rules for climate-related disclosures. It has proposed that from FY 2025 listed companies should refer to ISSB's IFRS S1 and IFRS S2 in preparing climate-related disclosures, including any transition reliefs. Scope 1 and 2 GHG emissions should also be disclosed, along with the measurement approach, with issuers disclosing Scope 3 applicable categories from FY 2026. The consultation closed on 5 April 2024.
- Mandatory disclosure on the remuneration of directors and the CEO on a named basis: this will take effect for annual reports ending on or after 31 December 2024. Categories to disclose include base or fixed salary, variable performance-linked income or bonuses, benefits in kind, stock options and share based incentives. It does not require disclosure on components of incentive plans or an explanation of how this relates to the business model and strategy.
- INED tenure: in January 2023, Singapore amended its listing rules to scrap a two-tier vote of shareholders required when INEDs reached nine years, imposing a hard stop instead. Transitional arrangements were put in place but the nine-year limit has applied for issuers with financial years ending on or after 31 December 2023. This puts Singapore ahead of rival Hong Kong on imposing a formal cap on INED tenure.
- Diversity: Singapore has opted to attempt to change behaviour, rather than adopting quotas, to improve board diversity performance at issuers. An August 2020 consultation resulted in a new requirement for issuers from 1 January 2022 to publish a board diversity policy and set out targets, plans and a timetable for achieving these. Progress appears to be slow: in 2023 only 41% of issuers were disclosing targets, while one in five gave details of plans and timetables for achieving the targets. Only 11% described the progress they were making.

Singapore's stewardship code gets a refresh

We also credited Singapore with an extra (somewhat technical) point on its stewardship code, which it updated in March 2022. The Singapore Stewardsip Principles for Responsible Investors (SSP) is still only voluntary, and at last count had 73 signatories. But unlike some other markets (Hong Kong) it has at least evolved in form to take account of a shifting investor landscape.

Quarterly reporting

Most issuers releasing quarterly reports do so because of audit concerns

In what ACGA viewed as a backward step at the time, in January 2020 after 17 years Singapore removed quarterly reporting for most issuers, adopting a 'risk-based approach' instead where only those viewed as high risk must report their financials on a quarterly basis. Companies with disclaimed, adverse or qualified audits, as well as those with going concern issues or where SGX RegCo flags regulatory concerns, fall into this category. We took the view that quarterly reporting is now used as a tool of punishment rather than a more positive platform for keeping investors informed about company performance. As of 31 January 2023, SGX RegCo listed 76 issuers required to issue quarterly reports, with 60 having to do so because of audit concerns.

4. Listed companies

Singapore moves up one place to rank No.4 with a lower score of 58%

Singapore gained ground in this category in terms of its ranking, moving up a place to No.4 but on a lower score of 58%, two percentage points down from its 2020 performance. It is just ahead of Taiwan, which scored 55% and Hong Kong which came in with 53%. India is just ahead of Singapore with 60%, while Malaysia scored 66% to rank second. There is a significant percentage gap between these markets and Australia, which scored 76%. Legacy issues that continue at Singapore listed companies are the lack of true independence on boards (although we did find more lead INED appointments), mediocre board evaluations and disclosure (and efforts) on diversity.

Where Singapore does well

Most issuers have an independent chair or lead INED

Singapore may not have an abundance of independent chairs (we found only four among the 15 issuers surveyed) but it does follow the spirit of the CG Code by appointing lead INEDs as proxies: nine issuers had done so, and those who had neither were required to justify why this is the case (somewhat generic reasons were given, notably that the other INEDs are able to 'function effectively' and give objective feedback to the chair.) The market also scored its highest marks in this category for keeping it simple when it comes to INED remuneration. Most INEDs were paid a flat directors' fee, with no other bells and whistles in the form of stock options which could undermine their independence. There was one outlier here: an unusual one-off "special fee" paid to INEDs which was not elaborated on.

Listed companies have internal audit departments who report to the audit committee

Another positive among listed companies in Singapore is the existence of an internal audit department that reports to the audit committee. This typically comes with unfettered access, with some issuers more granular than others on how this relationship works in practice. Singapore Exchange gave a compelling description. The audit committees themselves are independently led and tend to be composed of financial-savvy members. Singapore quite possibly had the highest ratio of MBA graduates sitting on the audit committees of these 15 issuers, and perhaps broader business and management experience than you tend to get in Hong Kong. Several issuers had retired big four auditors as chairs, and there were a few former politicians, lawyers and government hires.

Where Singapore does averagely

Only one issuer gave the name, email and phone number of its investor relations officer

Issuers do a reasonable job in ESG/sustainability reporting, and in keeping investors informed in general through timely and comprehensive reports and AGM materials. One caveat here is that Singapore listed companies do not provide investor relations names and typically opt for a generic email instead. The only issuers to actually offer up a human being were ComfortDelGro Corporation and OUE Commercial REIT, the latter going so far as to give a name, personal email and a phone number!

ESG reports could do better on materiality

Sustainability or ESG reports are a fairly mixed offering in terms of the breadth and depth of their reporting. Most follow GRI and TCFD but there is a tendency to scrimp on a full report with details on the four pillars in favour of an index which links the reader to the TCFD-relevant sections in the report. Then there is the other extreme where reports are packed with data, which becomes somewhat unwieldy to follow. The top scorer here was transport firm ComfortDelGro. A general area of improvement would be for issuers to address materiality in greater detail (at at least one issuer, an external consultant was conducting a review with findings pending) and with prioritisation clearly identified. Companies tended to rely on a table or matrix to map out material issues, but with little narrative to embellish on their findings, and how it was relevant to the business.

More details emerge on director remuneration ahead of rule change

Disclosure on remuneration is either there in full, or fairly unhelpful. Ten of the 15 issuers gave a detailed account of directors' fees, with breakdowns in cash and share-based components on a named basis. Presumably issuers are getting ahead of the SGX rule change which comes into effect for financial years ending 31 December this year which will require them to disclose on a named basis the remuneration paid to directors and the CEO.

Most issuers have nomination committees

The presence and composition of nomination committees is also an area where Singapore is a bit hit and miss. One issuer, Suntec REIT, deviated from the CG Code in not having a nomination committee at all, with the board taking the view that it can "achieve the objectives" of such a committee itself. At 12 of the companies, the NC was chaired by an INED, and typically the committees met between two to five times during a year (twice being the average).

Evaluations take place but only generic details are shared

Most of the issuers surveyed do annual board evaluations, but underwhelm in the way they conduct these appraisals and report on them. Only four companies reported using external consultants for these evaluations, the majority opting for the ubiquitous questionnaire which lists fairly broad questions (board composition, risk, strategy and so on) and few qualitative results. All too often the net result is that the director diligently discharged their duties and has contributed meaningfully to the company. Three issuers mentioned that there are areas for improvement—but alas, they did not disclose them.

Directors receive training but few details are provided

The issue of training is an interesting one: Singapore scores well for its capacity to train directors and company secretaries, yet it appears issuers neglect to take advantage of this. Details on what directors receive in the way of tangible training, hours spent and the frequency of this upskilling are fairly sparse. Specific programmes are not mentioned, with issuers tending to default to woolly descriptions of 'live presentations' as well as written papers. But companies do seem to offer induction training and ongoing courses, as well as some site visits. Perhaps they need some training on making better disclosure on this.

Where Singapore does poorly

Annual reports do not give much insight into what the board does in a given year

Board governance reporting leaves much to be desired among the issuers we surveyed. Most follow the same template, with a long list of bullet points setting out in the most general terms what the function of the board is, and the roles and duties of the committees. No narrative is given on tangible topics discussed by the board in a given year (the fact that the board scrutinizes financial reports is something we do not need to be told) leaving the impression that there was little on the agenda beyond compliance. Director bios are the standard description of qualifications and experience, and fail to make a connection as to why this person is a particular fit for the role.

Diversity policies are boilerplate and lack targets and timelines

Diversity is another area where Singapore disappoints. Board policies are woefully formulaic and offer little insight into how issuers plan to address their lack of female directors. Many of the companies adopted the Council for board Diversity's 2030 target of having 30% representation but fall short of setting out how they plan to achieve this by way of a timeline and specific measures being taken. Singapore Telecommunications was one of the more ambitious companies here, perhaps because 43% of its board is female. On the other hand, a handful of issuers are happy to stop at their target of one female director. Singapore has since January 2022 required companies to disclose a diversity policy with targets, along with any progress made: one year after the rule came into place, SGX has been somewhat disappointed by the progress being made as just 41% of issuers disclose targets.

A third of the issuers have no women on the nomination committee

It is thus perhaps no surprise that Singapore issuers do not receive much credit for our final question of the survey, which asks whether the nomination committee has a female chair or atleast one female director. This was the worst-scoring question, a third of the issuers receiving zero points and just one—Genting Singapore—bucking the trend with top marks. It was the only issuer to have a woman chairing its nomination committee. Nine companies had female directors sitting on the committee.

5. Investors

Singapore stays steady with 39% but drops one place to rank No.7 compared to 2020

Singapore stayed steady in this category, scoring 39%, which was identical to its performance percentage-wise in 2020, although it slipped a place to rank No.7. Retail investors in Singapore continue to buoy the market in this category, in contrast to their institutional peers who remain a more muted bunch. Retail shareholders are more visible at AGMs and in their voting, with participation generally higher across the board thanks to organised efforts. While we commend their actions, Singapore would score even higher if shareholders were more able to hit directors in their pockets through the courts.

Domestic investors still disclose little

There has been no change in how domestic institutions communicate on CG

There was no substantial change in the way domestic investors communicate their efforts on voting, stewardship and company engagement, as well as their CG or ESG policies generally. Information remains fairly generic and still well behind the quality of reports we see in markets such as Australia and Japan. Generally they give little away in terms of specific action they have taken during the year.

General, rather than specific, is the predominant tone of reports

Big names in the limited domestic space such as Temasek tend to describe their activities in general terms, and to list out accomplishments rather than a gritty narrative on where the main challenges lay. Fullerton, a Temasek subsidiary, is slightly more granular with its active ownership policy in setting out how it approaches active engagement and what it expects of companies. GIC did make mention of a wind farm it voted against—without giving names. In many respects, reporting on CG and stewardship among the large domestic set largely reflects the tenor of disclosure by listed companies in Singapore, who tend to skate across the surface. There was thus no change in our score for how domestic asset owners and managers promote CG, how they exercise their voting rights, attend AGMs and the extent and depth of engagement they do with companies.

Stewardship could do with a rocket booster

As we wrote in our last CG Watch, one factor we see behind this relative silence is the voluntary-only Singapore Stewardship Principles (SSP) which traditionally focussed more on listed company and family business governance than on shoring up the influence of institutional investors: this leave little incentive for domestic actors to act with the same enthusiasm as their peers in other markets. The SSP come under the umbrella of Stewardship Asia Centre, a non-profit set up by Temasek Holdings in 2017 with its ethos of "replacing singular shareholder-centricity with a stewardship approach to business leadership and governance." It emphasises "stewardship leadership:" a "genuine desire and persistence to create a collective better future'' using a "steward leadership compass.''

Being aspirational has limits

Rather than taking the form of an action-oriented stewardship code, the SSP are a voluntary-only set of principles for responsible investors. These were updated in March 2022 "to reflect and incorporate evolving developments in expectations, market practices and regulations'' notably in other markets where stewardship codes are in place. The revised principles now encompass the importance of good

organisational structures and governance of institutional investors, as well as the integration of ESG considerations into investment decision-making and stewardship. It also now gives a nod to outcomes: stewardship should show what action is being taken and outcomes achieved. Yet it is still a voluntary set of aspirations, and as of August 2023, there were 74 signatories.

Activist funds occasionally ruffle feathers

Some activists are agitating for change

There was slight bump in score to reflect the presence of at least some activist funds, notably Black Crane and Quarz Capital, who took Singapore's Sabana REIT to task during the best part of 2020 and 2021. Their efforts started with an attempt to block a merger with another REIT on the basis that it was undervalued: the funds won a rare victory after a sustained campaign.

Singapore REITs have been a target

Quarz Capital was also notably active during 2023 in respect of the proposed merger between Mapletree Commercial Trust and Mapletree North Asia Commercial Trust, who are both run by Temasek's property arm Mapletree Investments. The proposed formation of a mega S$10.5bn real estate fund was criticised by Quarz Capital as significantly undervaluing the property portfolio of Mapletree North Asia. The offer was sweetened and the deal went through, in what was seen as a rare example of a government-linked entity linked bowing to activist demands.

Retail shareholders

Singapore retail investor association is in its 25th year

The story with retail shareholders in Singapore serves as an example of what can be achieved if groups get organised: while the institutions remain largely in the background, the retail segment is vocal, active and visible. The Securities Investors Association (Singapore) (SIAS) is one of the most longstanding and prolific retail shareholder associations in the region, now in its 25th year, and is still led by its lawyer founder, David Gerald. The organisation wears several hats: it organises a corporate governance week, Investors' Choice Awards, and offers educational programmes and workshops which cover the basics of investing to crypto, market updates and retirement planning. But it is its work championing investor rights at Singapore's listed companies which ups the ante for other investor associations in the region.

A recent theme has been low ball privatisations

Themes typically emerge from the work SIAS does: an area of focus in 2022 was privatisations, in particular "low ball" offers. It exerted pressure publicly and yielded a couple of results, with construction and engineering firm Lian Beng and engineering services group Boustead Resources both revising their offers upwards. During the 2023 financial year, SIAS facilitated 23 shareholder engagement activities, a figure it said was down slightly as Singapore emerged from the pandemic. These included fireside chats with Sembcorp Marine, as well as pre-AGM activities. The Q&A on Annual Reports is worth a look in (the annual reports of 261 listed companies were covered during the 2023 financial year) as investors can at times be refreshingly acerbic with some of their questions.

A new non-profit will focus on CG of issuers

We are also hearing of the establishment of a new non-profit, Corporate Monitor Limited (CML) which will, similar to SIAS, focus on the governance of Singapore listed issuers. It is our understanding that the group is in the early stages of formation but it would be a welcome addition to the retail scene.

Shareholders should be able to get financial outcomes

An interesting feature of Singapore's investment community is that few investors in publicly listed companies sue to enforce their rights and seek compensation for breaches of fiduciary duty, or similar malfeasance. They do litigate when it comes to the conduct of shareholder meetings, or disputes involving entitlements. But overall there is a lot more legal action taking place among private companies—there

is a wealth of case law on shareholder disputes and litigation for breaches of fiduciary duties within these companies. Singapore lacks a class action framework, like many markets in the region, and taking action is not cheap. Still, it would be good to see some of the public spats involving minority shareholders spilling into the courts, even if just to occasionally test the legal boundaries of corporate behaviour within the capital markets and eke out a bit of compensation for downtrodden investors. The exception appears to be where the litigant has deep pockets: tycoon Oei Hong Leong did pursue action against listed private school operator Raffles Education during the course of 2021, claiming the company packed the board with family members and gave them high salaries and other perks at the firm's expense.

Shareholder meetings: who is in charge?

Losses at Asti Holdings lead to boardroom coup

One public company did keep judges somewhat busy in 2023, a semiconductor firm Asti Holdings. The company was put on Singapore Exchange's watchlist in June 2019 after three years of pre-tax losses and daily market cap of less than S$40m. It then failed to meet criteria to exit the watchlist and was put into the delisting process. The Exchange required the company to make a general takeover offer to shareholders and on 5 July 2022 trading was suspended until this was complete. By March 2023, shareholders tried to hold an EGM to oust three of the company's five directors, and appoint five new directors.

A court rules the EGM is not properly conducted

The proposed conduct of the EGM became a thorny issue, but eventually took place on 22 August 2023. More than 95% of shareholders voted to remove the three directors and appoint five new ones. The original directors disputed the validity of the EGM, prompting the convening shareholders to seek a declaration otherwise and the case spilled into the courts. In December 2023, the Singapore High Court deemed the EGM invalid as the meeting was not properly conducted, given it was the requisitioners, rather than the incumbent directors, who conducted the meeting.

6. Auditors & audit regulators

Singapore moves up from No.3 to No.2 place on a score of 83%

Singapore moved up a place to rank joint No.2 with Taiwan in this category on a slightly higher score of 83%, a two percentage point increase on 2020. It moved ahead of Hong Kong, but just barely: its rival scored 82% and ranked joint 5th with Australia. This category is a close race, with Malaysia leading the way with 86%.

A law change expands the remit of audit regulator

A positive step took place in October 2022 with legislation amending the Accountants Act to finally expand the inspection and sanction regime to include CPA firms, rather than just individual accountants.

Minor subheading

Singapore standards are in line with international ones

Singapore's auditing standards are largely in line with international standards but in our last CG Watch we shaved off a point because of a tighter criteria we imposed for top marks, notably that standards are fully converged with International Standards on Auditing and efficiently updated. Singapore has traditionally taken longer to amend auditing and related standards compared to other markets. We did however revise the score upwards by half a point this year to level the playing field somewhat and take account of the pace of change in other markets.

ACRA can how discipline CPA firms

There was also a half point credited to Singapore for our question on the establishment of an independent oversight audit body, with powers of registration, inspection, investigation, sanction (over both auditors and audit firms), as well as

standard setting. Singapore finally passed changes to the Accountants Act in October 2022, the governing statue for registration and oversight of Public Accounting Entities (PAEs) and Public Accountants (Pas). The key change was the introduction (finally) of statutory inspections on PAEs by the Accounting and Corporate Regulatory Authority (ACRA) to ensure compliance with professional standards, with the ability to impose sanctions for lapses discovered during inspections. ACGA for many years saw this as Singapore's key weakness: the limited powers ACRA had with regard to CPA firms. While it could sanction individual auditors, the Authority did not have the power to discipline firms, unlike most markets in the region. The legislative changes came into effect on 1 July 2023 and will also require PAs to disclose to audit clients if have been subject to a "not satisfactory" inspection outcome.

The Big Four account for 49% of audits

ACRA regulates 720 accounting entities or audit firms and 1,210 public accountants, with the Big Four audit firms collectively auditing 49% of companies listed on the Singapore Exchange. Overall, there are just 17 firms auditing listed companies (and 408 accountants).

ACRA's website could be more detailed

Singapore lost half a point on our question involving disclosure of the audit regulators' enforcement work—namely, whether this is timely and detailed. We took the view that we had been too generous in the past in scoring Singapore so well on this point, as a deeper look at ACRA's website suggests the narrative is not as detailed as we had hoped. There are details of enforcement actions going back to 2003 which is a positive, but they are not terribly granular. At the time of scoring (mid-2023), we also had to rely on ACRA's 2021-22 annual report for information on disciplinary cases as there appears to be a lag in updating their website with details: for example, the annual report referred to four disciplinary actions for non-compliance with audit standards, but the website listed just three cases (we see now there are three cases, it may be that there was one carried over from the previous year in the annual report). Details of cases are in the form of official notices, rather than an explanatory narrative. Similarly, the orders issued on public accountants which arose from practice reviews simply state the name of the accountant, the firms he audited and the result of the review, rather than what transpired to lead the regulator to their conclusions.

No disciplinary proceedings in two years

Generally Singapore does not score well for its track record on enforcement. There were no disciplinary proceedings undertaken by the Public Accountants Oversight Committee (PAOC) in 2022 or 2023. There were three in 2021: two censures (one of which was 'strong') and one suspension. The latter saw accountant Doraisamy Arumugan suspended for a year and ordered to pay ACRA S$14,038 in costs after he failed to exercise adequate professional competence and due care in the audit of a charity. The other two accountants received censures for failing to comply with standards on audit evidence and for being convicted in court of 'voluntarily causing hurt.'

Inspections and reviews

ACRA begins inspections of audit firms

As mentioned above, with amendments passed to the Accountants Act taking effect from 1 July 2023, ACRA began quality control inspections of accounting firms (rather than just accountants). ACRA also runs the Financial Reporting Surveillance Programme (FRSP), where it reviews selected financial statements to make sure they align with accounting standards. It releases a report of its findings every few years. The 2022 report (covering the period from 1 April 2020 to 31 March 2022) was published in January 2023 and considers four issues: cases indicating a knowledge

gap, insufficient due diligence, a lack of action taken on issues raised by auditors and impact from climate reporting. In all, 63 statements from directors, auditors and officers were reviewed and 33 annual financial statements reviews conducted. It discovered material non-compliance in 12 annual financial statements.

Higher-risk financial statements are reviewed

It should be noted that the financial statements appear not to be chosen at random: higher-risk ones are identified to review. Still, some of the adjustments that had to be made to consolidated pre-tax profits or losses and net assets are quite significant, with a range of 13% to 576% and 3% to 32% respectively. Issuers also had their operating cash flows changed from positive to negative (or vice versa). The most prolific area of material non-compliance was business valuations or impairment assessments, followed by presentations in cash flow statements. The role played by audit committees was in the spotlight in two reviews, in particular what action it takes on issues raised by the statutory auditor. In one case, an issuer invested in a joint venture and performed an in-house value in use (VIU) computation, concluding that no impairment allowance was needed. The auditor issued a disclaimer, stating that the assumptions used by the company were not adequately supported. ACRA found that the discount rate was too low, bearing in mind the high-risk nature of the JV.

Non-audit fees in the spotlight

No commentary on non-audit fees is less than ideal

We have written in CG Watch reports of past about the lack of a specific requirement for commentary on non-audit fees. While the listing rules require disclosure of both audit and non-audit fees, and stipulates that audit committees must confirm they undertook a review of all non-audit services and that they "would not, in the audit committee's opinion, affect the independence of auditors," we deducted a point in our last ranking on this discrepancy, as information provided by companies is limited.

These fees can exceed 50% of total to firm

Non-audit fees have been somewhat of a topic in Singapore recently. ACRA's Code of Professional Conduct and Ethics for Public Accountants does not prohibit non-audit fees from exceeding 50% of the total fees to a firm, but if the threshold is breached, the auditor needs to discuss this with the relevant governance official at the firm.

Shareholders voted against the reappointment of Deloitte at ComfortDelGro

It became somewhat of an issue at transport conglomerate ComfortDelGro in 2022 when shareholders voted against the re-appointment of auditor Deloitte for breaching the 50% threshold. In fact, investors holding more than 74% voted against. The board expressed disappointment at the outcome but said they would respect the decision of shareholders, albeit with a warning that having to find a new auditor at short notice (they appointed EY) would likely result in a "significant increase in audit fees."

7. Civil society & media

Singapore's score remains 64% but it drops one place to rank No.4

Singapore retained a score of 64%, just as it did in 2020 for this category, although it slipped one place to rank No.4 behind Australia and India. There is a significant gap between Singapore and the other two markets, Australia scoring 80% and India a close 78%.

Director training in Singapore is solid

Singapore maintains a high score for the provision of director and chartered secretary training. We score them just above average for the efforts of other professional associations, such as accountants and financial analysts, in helping to raise CG awareness, and just below average for the role played by business

associations, chambers of commerce and investment industry bodies. To date, there has been limited input from other non-profit organisations in promoting CG, although we have great hope for the newly-incorporated non-profit Corporate Monitor (CML) which, similar to SIAS, appears to be aimed at enhancing best practice among Singapore's issuers.

Training Singapore's board members

Courses are available for directors at different stages of their careers

Singapore continues to score top marks for training, with both the Singapore Institute of Directors (SID) and the Chartered Secretaries Institute of Singapore (CSIS) running regular training and courses. SID has 4,425 individual and corporate members and tailors courses for directors at different stages—from new and aspiring to experienced—with programmes on offer for startup founders and directors, and non-profits. CSIS offers more fundamental training for corporate secretaries, plus workshops on topical issues, including anti money-laundering. SID also publishes an annual board of directors survey—which unfortunately can only be purchased—and the Singapore Directorship Report (again, not free, but members can view a flipbook).

Participation in public consultations

CG proposals attract a range of submissions

Singapore maintained an average score on this question. The SGX consultation on enhancing its enforcement framework in August 2020 was responded to by 16 entities in total, including the Asia Securities Industry & Financial Markets Association (ASIFMA), the CFA Society Singapore, the Chartered Secretaries Institute of Singapore, Mak Yuen Teen and the Securities Investors Association (Singapore). Its consultation on SPACs saw 80 respondents and was heavily dominated by several law firms, banks, asset managers, audit firms, but also saw submissions from the Law Society, the Alternative Investment Management Association and SID. The August 2021 consultation on climate and diversity meanwhile attracted 79 submissions (22 chose to remain anonymous). As one might expect there was a mix of climate-related groups such as WWF and GRI, a few women's groups and a fair showing of other civil groups. The October 2022 consultation on board renewal and remuneration disclosure meanwhile solicited 43 responses, including the Association of Singapore Listed Companies (SGListCos), which was launched in May 2022 and represents companies listed on the mainboard and Catalist bourses: it has 60 members. In October 2022 it signed an MoU with the Institute of Singapore Chartered Accountants (ISCA) to collaborate on advocacy, thought leadership, professional development and events. Recent events appear to be focussed on 'non-deal' roadshows, and a REITs corporate day.

Original research

There is solid academic research on CG in the region

In stark contrast to rival Hong Kong, Singapore is a wealth of research on CG not just on its home turf, but in the region as a whole. In fact, you are more likely to read about Hong Kong's capital market in journals and articles penned by Singapore authors than Hong Kong ones. Academics at the faculty of law and the NUS Business School remain prolific, while the business school spearheads the Centre for Governance and Sustainability (CGIO) which produces a Singapore Governance and Transparency Index (SGTI); and the ASEAN Corporate Governance Scorecard (ACGS) which was jointly developed with SID in 2012. The latest SGTI is for 2023, in which the score increased slightly, with the biggest gains seen in the areas of engagement of stakeholders and disclosure and transparency. It also noted an increase in ESG-related disclosures by issuers. The ASEAN scorecard is hot off the press, released at least in powerpoint form in a January 2024 forum.

New research centre offers hope for insight into investor protection

The Centre for Investor Protection (CIP) being set up at NUS (circa January 2024) is also poised to enhance research in the extent to which shareholders are able to have their rights protected. Spearheaded by accounting professor Mak Yuen Teen, the purported goal is to examine how policies and practices relating to investor protection can be improved.

Media

The press gives a decent show within limits

The press in Singapore operate within certain constraints: you will never see acerbic criticism of the government or Singapore Inc, but local journalists are an adept bunch at playing within the rules and occasionally pushing boundaries. If a politician decides to take aim at a policy, they will run with it. On the business side, coverage is diligent, if at times a bit ploddy, and there is a sense of old fashioned journalistic competition at play which always gives an edge to those seeking to deliver the scoop of the day. Business Times and the Edge put out solid reports and CG angles are well covered. What is lacking is the investigative stuff which delves into the nitty gritty, dubious deals and awkward relationships. We live in hope.

Downgrade watchlist

What to avoid

Factors that could force Singapore's market score to fall in 2025:

- ❑ A loss of momentum on CG reform. INED tenure and named director remuneration were welcome steps but there is more work to be done on CG rules
- ❑ Any evidence of shying away from difficult, expensive and controversial corporate enforcement cases.
- ❑ A less than robust outcome on the Hyflux 'saga' and political corruption scandals
- ❑ Dropping the ball on revisions to the Companies Act and securities-related legislation to ensure statutes are regularly reviewed and refreshed

Next steps

Our recommendations for the next stage of CG reform in Singapore include the following:

Zero tolerance for single gender boards

1. **A greater regulatory push on board diversity**: capping INED tenure at nine years is a welcome step and it is hoped that more female directors fill the gaps created by these vacancies as they arise. However with Hong Kong mandating no single gender boards by 2025 it might be time for Singapore to consider a similar move. Singapore could also consider encouraging issuers to appoint women to nomination committees, ideally as chair. It would be good if SGX could publish on its website details of the number of women sitting on boards of all listed companies in Singapore, not just the top 100, on a regular basis.

Adopt the moral high ground on SPACs

2. **Take the high road on DCS and SPACs**: we suggested in our last CG Watch that Singapore consider scrapping its regime on dual class shares, given the paucity of issuers opting to list there with this structure. This year we would make a similar argument for SPACs. Singapore would set itself apart as having higher requirements for issuers to tap funds in its market compared to a significant number of its peers.

A greater disparity in corruption outcomes would be welcome

3. **Bring down the conviction rate on corruption**: this may seem perverse to some but we view a conviction rate of around 60-70% as one that indicates enforcers are willing to take on the difficult, thorny cases which may sap their funds and ultimately yield a bad result, but show they are not solely driven by the certainty of an outcome.

Take or finance action on behalf of downtrodden minority shareholders

4. **Put some money behind retail activism**: Singapore could think about setting up an organisation which will litigate on shareholders' behalf for corporate breaches and fraud. Hong Kong's SFC will take legal action on behalf of investors where minority shareholders have been victims of the most egregious corporate misbehaviour: either MAS could follow suit, or a separate organisation be set up to champion the legal rights of minority shareholders. This could ease the market into a wider discussion on a class action regime and litigation funding which stretches beyond arbitration. We see it as a strong selling point that Singapore, unlike Hong Kong, has a high number of issuers who are incorporated in Singapore and the ability of shareholders to seek recourse when things go awry should, in theory, be easier.

Company checklist

Actions companies could take to enhance CG practice and disclosure immediately

Actions companies could take over the short to medium term to enhance their governance practices and disclosure include the following:

1. **Board governance**: investors would like to know what the board has done, how it organises itself and some of the key issues it considers, and votes on, in a given year. More detail and less gloss about terms of reference, responsibilities and duties are well overdue.
2. **Board refreshment**: companies need to show that they have a plan of action to address long-tenured INEDs and the low number of women serving on their boards. Diversity policies should go beyond stating lofty goals and should have tangible targets, timelines and progress reports. A narrative on how candidates are fielded and filtered would be beneficial, as would an indication of the potential pipeline for candidates within the organisation.
3. **Director training**: there is ample training out there but issuers are reluctant to share who received what and when. Greater visibility on the nature of training, the frequency and who received it would be refreshing.
4. **Investor relations**: cover the basics. Give investors the name and number, as well as personal email, of an actual person they can get in touch with to find out more about the organisation and engage with them.
5. **Board independence**: a discussion with investors on why they view truly independent chairs as beneficial, with examples from best practice, might be a first step in helping to understand why this is a significant issue.
6. **Quarterly reporting**: companies did it in the past, and would earn significant kudos with investors if they continued this practice—and not just when they are on the naughty step.

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Thailand - Marking time

- The market slips one place to rank No.9 on a lower score of 53.9%, shedding 2.7 percentage points from its 2020 performance
- Political upheaval has left little room for significant reform on CG to enable the market to keep pace with its regional peers
- Corruption remains a key challenge and Thailand continues to suffer in global graft rankings
- Thailand benefits from a solid CG rulebook but could benefit from simple upgrades, particularly in relation to disclosure on substantial shareholders, director holdings and share pledges
- Regulators pivot to deal with popularity of virtual assets but few insider dealing or market manipulation cases attract significant penalties
- Gender diversity on boards is a weak spot among issuers despite a high level of women in the corporate workforce - regulatory statistics and initiatives on female directors could be improved
- Thailand scores well on director training and civil society initiatives to improve CG, but there have been no improvements in press freedom and journalists are still regularly in the dock for defamation
- Audit regulators are addressing capacity in the industry but disciplinary action is still rare

Click to rate this research

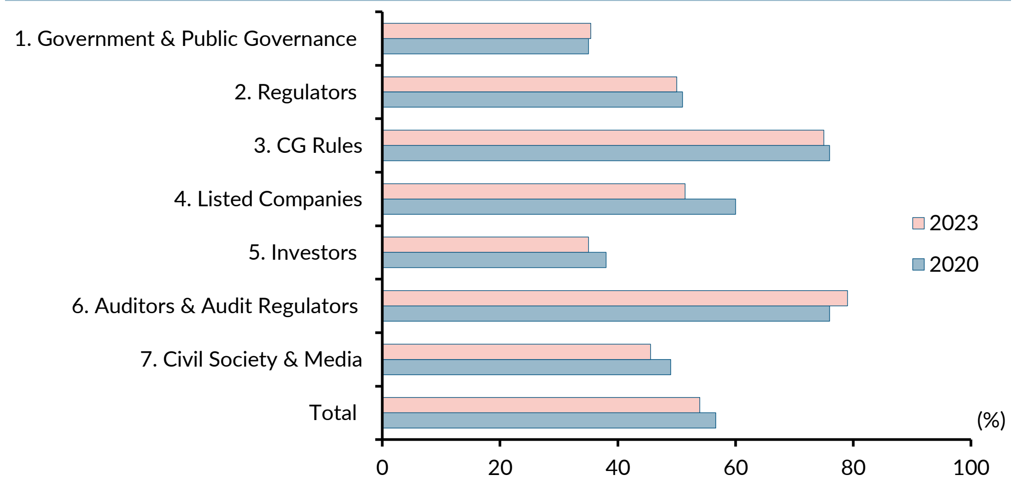
Great

Solid

Meh

Figure 16

Thailand CG macro category scores: 2023 vs 2020



Source: ACGA

Introduction

Thailand falls to No.9 with a score of 53.9%

Thailand fell one place, as Japan and India moved ahead. This is becoming a familiar theme, one that played out in our 2020 CG Watch survey. Thailand is now in No.9 place on a score of 53.9%. The price of staying still while others evolve has now left Thailand in the bottom quartile, and the pain has been most acute in the categories of listed companies and investors, as well as that of civil society and media.

Some small gains are made but overall there has been little change

Some gains were to be had in the auditors & audit regulators category but overall the picture is of little change. This has been against the backdrop of significant political upheaval, a brutal experience during the Covid pandemic, and perhaps a

degree of treading water is to be expected. There are a few areas where Thailand remains strong: it has an independent (and independently funded) securities regulator which stands the market in decent stead. Together with the Stock Exchange, it keeps investors informed with English translations of its laws and regulations. The securities commission moreover has robust powers to enforce the rules and laws that exist. Its corporate and financial reporting rules are up to international standards, and the CG rulebook is reasonably solid (complete with quarterly reporting). But listed companies show little imagination in disclosure, and investors could do better in executing their stewardship responsibilities. The bright spot we had hoped for on shareholder class actions has not materialised, with only one suit of note (a planned class action for shareholders in Stark Corporation) yet to play out.

Press freedom remains a major concern

Meanwhile some corners of civil society push for better governance and director training, it is not an area which has flourished in recent years and the ability of the press to freely report without fears of reprisal remains a major concern.

Recapping CG Watch 2020

Some longstanding issues are being addressed

There have been some improvements on our last CG Watch, with some areas of concern being addressed. It may seem like a small thing but the ability of listed companies to provide basic IR information is a constant ACGA bugbear—and Thailand was one of the best markets to show improvement in this respect. Thai auditing regulators may not be prolific in taking disciplinary action, but they do have industry consolidation front of mind. And while enforcers still seem reticent to give a narrative on their strategy and challenges, they are getting better at disclosing case details. The data is all there, but it would be greatly beneficial if regulators could paint a fuller picture of what it all means.

Progress since 2020

Figure 17

Thailand: recap of 2020

	Recommendations	Outcomes
1.	Remove the criminal element of defamation	No change
2.	A better narrative to explain enforcement statistics and more details on cases	There has been a slight improvement in the details provided on cases
3.	Better listed company disclosure on IR contacts, board and committee reports, skills matrices	Companies are much better at providing IR contacts but still lack granularity elsewhere
4.	Enhance the disciplinary process for auditors	Few auditors still face disciplinary action
5.	Greater participation by business and investment groups in promoting CG	The Thai Investors Association is doing solid work in scrutinizing AGMs

Source: ACGA

1. Government and public governance

Thailand drops one place to No.9 on identical score of 35% compared to 2020

Thailand dropped one place to rank No.9 in this category on a flat score of 35%. It has been overtaken by Malaysia, which moved up five percentage points to 37%, giving it the eighth position in this category. Since our last CG Watch the political situation remains turbulent: there has been a general election (in May 2023) but despite winning the largest number of seats, the reformist Move Forward Party (MFP) was effectively blocked by the military-appointed Senate from forming a government. A coalition government was formed by combining members of the runner-up Pheu Thai Party (led by property tycoon Srettha Thavisin) with pro-military parties and other establishment forces. The summer of 2023 also saw the return of former Prime Minister Thaksin Shinawatra after 15 years overseas. His 37-year-old daughter Paetongtarn leads the Pheu Thai Party.

Incremental gains but nothing bold emerges

Against such political turbulence, progress on CG in Thailand has been thin. Small gains have been made on certain fronts but the market lacks a systemic drive by the state to keep pace with CG developments in other markets. There is also a concern that corruption efforts become increasingly politicized.

Strategic realities

The national agenda has presented limited options for CG reform

During our trip to Thailand in the summer of 2023 we asked several stakeholders about the anticipated replacement for Securities and Exchange Commission (SEC) secretary-general Ruenvadee Suwanmongkok, the first woman to hold the post whose term had ended in April that year. The resounding reply was "does it matter?" Therein perhaps lies the limits of what can be expected in terms of regulatory headway within the existing political framework. The SEC's strategic plan is aligned with national ones and in terms of CG, there has been little of note to compare with the reforms we saw in the two-year period up to CG Watch 2018 when there was a new CG Code, an investment governance code, new civil sanctions for securities law breaches and an upgrade to the audit regime for state-owned entities. The lack of political capital to keep the reform wheel going has stalled momentum in the CG space, with little in the way of tangible progress in the past few years.

The stock exchange seeks to reverse its fortunes

The Stock Exchange of Thailand (SET) released its three-year plan in January 2023, which sought to "steer towards mutual growth for businesses, industries, the capital market, society and the country for the greater opportunity for all,'' and thereby enhance investment. There have been a few upgrades in terms of infrastructure and regulations, which we will look at in more detail in other sections, but these fall short of bold governance reforms. Geopolitical risk remains a real one for investors, and as few fresh growth drivers emerge in the economy, Thailand's capital market was one of the region's worst performers in 2023.

Corruption remains a sapper

Graft still looms large

Thailand currently ranks 108th in the Transparency International Corruption Perceptions Index, scoring 35 out of 100. It is a significant departure from its high point of ranking 76th in 2015. The Political & Economic Risk Consultancy (PERC) index on corruption ranks Thailand at 6.91, which it describes (along with the Philippines, Indonesia and Malaysia) as "moderate-to-poor" and cites difficulties in changing the structural features of corruption where a relatively small elite retains control of political power "in ways that have given themselves, their families, and friends certain economic advantages, including preferential treatment in business and legal matters.''

Corruption probes take on political slants

Indeed there is no shortage of cases at the National Anti-Corruption Commission (NACC), which is tasked with combatting graft among high-ranking government officials and politicians. However, discerning the ones which are not politically motivated is somewhat of a challenge. Nor is there any guarantee a conviction will have longevity: for example, in March 2024, former Thai Prime Minister Yingluck Shinawatra was cleared by Thailand's Supreme Court of corruption in awarding a government contract during her time of office (she ruled from 2011 until she was ousted in a 2014 military coup). It was another turnaround for the powerful Shinawatra family after her brother, the abovementioned Thaksin, was freed on parole in February 2024, six months into a supposed eight-year sentence. Yingluck had been accused of a sham bidding process for the "Roadshow to Build the Future of Thailand" campaign to promote infrastructure projects.

The political elite in Thailand like their cars and wristwatches

Plots of land, Louis Vuittons, guns and bicycles

Like many markets, the assets of public officials are of great interest to the general public: Thailand's National Anti-Corruption Commission publishes the declared assets (and debts) of political post holders, which makes intriguing reading. Some of the highlights:

- ❑ Former prime minister Praytut Chan-o-cha and his wife Naraporn left office with assets of THB98.6m, a modest increase of THB27.9m since taking office in 2014. These were mostly bank deposits and investments but also included two land plots, four cars valued at THB10.7m (including a Porsche Panamera), nine wristwatches, nine guns and two bicycles.
- ❑ Current prime minister Sretta Thavisin and his wife Dr Pakpilai, are meanwhile reportedly worth THB1.02bn, including bank deposits, investments, a land plot, a Hua Hin condo, and an Astin Martin Model DB5 sports car worth THB50m. The politician is also the owner of 38 wrist watches worth THB121.9m and a Louis Vuitton suitcase valued at THB6m. His wife has 31 wrist watches worth THB84m, 48 luxury bags valued at THB37m—including a THB2m Hermes Birkin.

A former high-ranking official was literally on borrowed time

It is worth noting that watches have been a flashpoint in political scandals: in December 2017 the NACC launched an investigation into then Deputy Prime Minister Prawit Wongsuwan's asset disclosures and in particular why he omitted to list 18 watches in his mandatory asset declarations. The NACC cleared him of wrongdoing in December 2018, concluding he had "borrowed" the timepieces.

A high-profile class action suit raises hopes

Class actions and stark realities

Changes to Thailand's Civil Procedure Code in 2015 set the groundwork for investor class actions, but we are still largely holding our breath. To date, most class actions have focussed on consumer cases and we have not seen investors group together to seek justice in the case of errant listed companies. The one exception is the high-profile scandal involving investors in Stark Corporation, with a group of shareholders launching a case against former directors at the financially-embattled wire maker. In March 2024 the Bangkok South Civil Court ruled that the action taken by 4,500 shareholders in the company for breaches of the Securities Act could go ahead as a class action. With this initial hurdle overcome, the litigants can push ahead with their action. It is hoped that there is something for them to recover once the case weaves its way through the courts: the state's attorney in Thailand has also commenced a lawsuit against former executives involved in the Stark fiasco, including its CEO, which is estimated to have cost shareholders nearly THB15bn (US$409m).

2. Regulators

Thailand stays at No.10 with reduced score of 50%

There was a small dip in Thailand's score in this category, with a one percentage point drop to 50%. The market remains in No.10 place as it did in 2020, behind India with 53% and China with 56%. The score is comprised of two parts, the first looking at funding, capacity building and regulatory reform. Here Thailand dropped two percentage points to score 45% and similarly it lost two points in the category of enforcement, with a score of 54%.

The securities regulator takes the lead on enforcement

The Securities Exchange Commission (SEC) as the capital markets regulator has the prime responsibility of enforcement: the Stock Exchange of Thailand (SET), while a non-profit company (and not conflicted per se by commercial incentives as many of its regional peers are, although it does sell data for profit) has comparatively fewer powers and assumes a much lesser regulatory role.

An upgrade to RPT rules is expected but no word yet on ISSB standards

In terms of CG reform, there are small revisions to rules on major and related-party transactions in the pipeline (public hearings were held in 2023), as outlined in our section on CG Rules. While Thailand required issuers from 2021 to make disclosure on sustainability in the One Report, there is no date yet on adoption of the ISSB S1 and S2 standards. In February 2024 the SEC said at the Association of Future Markets Conference in Bangkok that it is working on aligning sustainability disclosure practices with the ISSB standards. Previously the SEC in October 2023 did issue a Thai translation of the Task Force on Climate-related Financial Disclosures (TCFD) recommendations (with support from TCFD), noting that this would help companies as they "make a smooth transition towards adopting sustainability standards, eg, ISSB, IFRS S1 and S2, in the coming years to support sustainable growth." Thailand aims to be carbon neutral by 2050 and net zero GHG emissions by 2065.

2.1 Funding, capacity building, regulatory reform

Thailand drops one place to No.9 on score of 45%

Thailand's score in this sub-category, which looks at whether securities regulators and stock exchanges are sufficiently funded, resourced and responsive to the need for market reform, shed two percentage points to score 45%, placing it in No.9 in the region, down from No.8 in 2020. It trails Korea in No.8 place with 51% and India, which ranks No.7 on a score of 52%.

The securities regulator does not break down its funding by division

At the time of scoring, the SEC had yet to release its annual report in English, and we relied on their 2021 disclosure, which was less than ideal. When we spoke to them in the summer of 2023 we were told it was imminent. The organisation takes a fairly broad brush approach to its disclosure on resources: unfortunately there is still no visibility on the money earmarked for particular divisions, notably enforcement.

The regulator has steady income and its headcount is growing

But we know the regulator is not short of funds, recording revenue of THB2.39bn in 2021, with expenses totalling THB1.54bn. The SEC had total assets of THB9.8bn (US$267m), and headcount has grown steadily: total employees in 2021 numbered 698, up from 645 at the time of writing our last CG Watch. Human capital seems to be fairly evenly spread out through divisions, with 156 in fundraising and accounting, 153 in business operations, 154 in law and enforcement, 70 in communications and technology and 69 in digital technology. In the annual report, the SEC noted that it was accelerating recruitment of digital technology functions such as IT, data management and analytics, as well as digital assets business supervision.

Virtual assets keep regulators busy

During 2023 the SEC set up a specific section to supervise crypto assets, including fundraising, which was part of the enforcement division. Around 70 people worked on these virtual asset issues. Otherwise, the enforcement division is split between investigating unfair trading practices, such as insider dealing, and fraud and dishonesty matters: these two departments have different teams.

Funding market development

A fund for capital market development suffers investment loss

We wrote in our last CG Watch about the Thailand Capital Market Development Fund (CMDF), an initiative set up under changes to the Securities and Exchange Act (SEA) in 2019 with a mandate to enhance Thailand's capital market by improving infrastructure, competency and knowledge. It is overseen by a nine-member Fund Committee and had an initial grant of THB57bn. There was some controversy when it was suggested that 90% of the Stock Exchange's net income after deductions for expenses, tax and reserves be put into the fund, causing a clash of opinions between the Stock Exchange and the Finance Ministry. Eventually the proposal on

utilising 90% of SET's income went through, and in 2022 SET remitted THB539m (US$14.7m) to CMDF, and THB583m (US$15.9m) in 2021. The year 2022 was not a great one for the fund: it made a THB302m (US$8.2m) loss on its investments during the year—a staggering drop compared to the THB508m (US$13.8m) gain it made in 2021. The reason given was market volatility.

Projects to date are numerous but piecemeal

What has it delivered so far? We know that between 2020 and 2023 it approved 131 grants for projects worth more than THB2.7bn (US$73.7m), and in 2023 alone there were 47 projects with a value of more than THB680m (US$18.5m). These ranged from projects such as competitions for students, professional development for academics and the establishment of an assistance centre for class actions. In 2022, CMDF commissioned a McKinsey report on the state of the Thai market, its potential and priorities for the next five years (among them included sustainability, virtual assets, nurturing SMEs, improving investor education and leveraging technology).

Steady as she goes at the SEC

The securities regulator responds to market issues

As a securities regulator, the SEC is guided by overarching national policy: part of its remit is thus to aid growth in capital markets, support fledgling businesses, keep Thailand digitally competitive and ensure trust and confidence in the financial markets. Beyond these worthy goals is a pragmatic organisation whose focus remains consistent but able to evolve over time, and when we visited in the summer of 2023 this was very much honing in on sustainability and cryptocurrency. An interesting comment which perhaps exemplified this practical modus operandi was in discussing the replacement for outgoing SEC Secretary General Ruenvadee Suwanmongkol, a former lawyer whose term ended in April 2023. Posing the question of whether a new appointee would signal a change in direction or strategy was met with some humour at the regulator. "The SEC is permanent, the Secretary General is temporary: many come, and many go." Her replacement was a lecturer in finance and banking, Pornanong Budsaratragoon. The long-term plans of the regulator remain unchanged, as does its ability to pivot when needs must.

Thai investors love crypto assets

Covid presented an interesting challenge for regulators: constrained from socialising (and perhaps starved of more exciting investment returns), punters increasingly took to cryptocurrency during the pandemic. The sheer number of crypto investors, and those losing their shirts in Thailand, made it impossible to ignore and regulators shifted a gear to increase surveillance of virtual assets and initial coin offerings. There were nearly three million crypto accounts opened by Thai nationals on digital asset exchanges by the second half of 2022, a near 15-fold increase compared to 2020. To put it in context, there were at the time 5.5m trading accounts registered with the Stock Exchange. For regulators, the multi-jurisdictional nature of crypto trading poses particular difficulties and the SEC was required to develop its technological response accordingly at a significant cost.

A corporate scandal rocks Thailand

In terms of strategy, a theme which has emerged in recent months has been a need to instil confidence in the capital market, partly as a result of a few corporate scandals and no doubt in the hope of turning around the fortunes of the stock market. There was genuine shock surrounding an accounting scandal at Stark Corporation when we visited Thailand in 2023. The company was a top 100 performer among all Thai listed companies, a fast-growing supplier of high-voltage wires and cables. It allegedly used bogus sales and invoices to recycle cash back into the company, a familiar playbook in other markets but not in Thailand—and the scale of the damage is expected to pass the US$1bn (THB36bn) mark. The case is currently playing out as a high-level political

campaign on the part of Prime Minister Sretta Thavisin to improve investor confidence and has seen major figures at the company have their assets frozen and the subject of criminal action. Stark's largest shareholder Vonnarat Tangkaravakoon has been in the dock for allegedly conspiring to manipulate the company's accounts, contrary to the Securities and Exchange Act. He is a well-connected figure, the eldest son of TOA Paint chairman Prachak Tangkaravakoon.

Take my advice

The securities regulator gives fair warning to investors

As as a regulator the SEC plays a crucial role as corporate enforcer, and its outcomes are discussed further below in this section. Before corporate and individual misdeeds get to this stage however the SEC also polices company behaviour, and wades in with requests for clarification, and advice to shareholders, where warranted. The SEC news section is peppered with words of caution: for example, the 3 May 2024 release it published on a related-party deal at World Corporation, where the independent financial adviser (IFA) has rebuked an offer price and terms. The real estate company was seeking shareholder approval to sell 48.99% of a World subsidiary to NAUTIC, a Catalist-listed company in Singapore. Both companies have mutual shareholders, and the deal would be a related-party transaction. The IFA saw the fair price as THB427m, rather than the proposed THB274m. And there were concerns that World had neglected to conduct due diligence on NAUTIC's finances. The IFA was of the opinion that the deal best benefitted NAUTIC rather than World. The SEC asked shareholders of World to carefully study the information and encouraged them to make sure they were properly informed ahead of an EGM.

SEC asks issuers to make clarifications and urges shareholders to vote wisely

On 26 April the SEC ordered software firm News Network Corporation to clarify why it failed to disclose dilution effects for sale of warrants and the underlying shares in an AGM notice. And on 10 April 2024 the SEC advised shareholders of transport company NCL International Logistics to think carefully about a proposed shareholder vote at an AGM to approve the THB38m payout for a major shareholder and senior executive who was retiring early. The payout to the executive was not supported by the IFA, which deemed it unreasonable and excessive, preferring a more modest THB19m payment instead.

Business as usual at the bourse

The stock exchange also suffers investment losses

SET had operating expenses of THB5.1bn (US$139m) in 2022, and employee expenses accounted for THB2.1bn (US$57.3m). It spent THB337m (US$9.2m) on technology. Similar to the CMDF the SET took a huge hit on its investments during 2022, when it suffered a net loss of THB365m (US$9.9m), a staggering 199% decrease compared to the previous year. It attributed this to the sale of investments and unrealized losses from the valuation of investments in the global equities and bonds markets.

There are more women than men at SET but few have top-level appointments

The organisation has 787 full time employees, of which 68% are female and 32% are men. Disproportionately at the top level of management, only 12 are women compared to 15 men, but things even out more at the mid-level where 47 are women and 30 are men. There is no breakdown by division of employees to give insight into how many work on the supervisory and surveillance side.

A new digital assets exchange kicks off

Digital assets have been an area of focus: in March 2022 Thai Digital Assets Exchange Co., Ltd. (TDX) received a license to operate a digital token exchange business from the Ministry of Finance. It was granted permission to operate from the Securities and Exchange Commission (SEC) in September 2022.

SET has also taken a few other initiatives

In terms of other recent initiatives of SET:

- It developed the end-to-end e-Meeting system for organizing shareholders' meetings. In 2022, 80 listed companies used the service.
- The SMART Marketplace has added ESG information and financial information of listed companies to provide information via APIs to more than 50 companies.
- SET has launched ESG Data Platform, a database on ESG aspects of listed companies.
- A new trading sign in relation to market surveillance was introduced in May 2023: a SP (suspension) sign which indicates trading abnormalities and suspension, has been replaced with a P (pause) sign.

Consulting the market

Public consultations could be improved

One of the questions we ask in CG Watch is the professionalism and organisation of public consultations on regulatory matters. Thailand consistently scores two out of five on this question. While it does seek views from the market on proposed reforms, consultations by the SEC do not go into great depth. The typical consultation document runs to one or two pages at most and does not detail a rigorous 'pros and cons' exercise in deciding to seek opinions on a proposed path. Consultations also become somewhat of a black hole once the typical one-month window (too short in our view) to comment is closed. Matters progress to the public hearings stage and there is no visibility on who responded, or how. Nor what opinions or feedback has been taken on board (or not, as the case may be, with an explanation why).

2.2 Enforcement

Thailand drops one place to No.9 on a score of 54%

Thailand moved in lockstep with India in this category, with both markets losing two percentage points to score 54%, taking them down the league table from joint No.8 place in 2020 to the joint No.9 slot in 2023.

The market's performance on enforcement is steady

There was one question where Thailand lost ground—an assessment of how robust the securities regulators' powers are on paper—but otherwise its performance held steady. However there are still a number of weak areas, including how regulators explain their work and priorities, which could be improved.

Where the efforts are

There has been a strong focus on digital assets

As we have mentioned in our section on funding, virtual assets have been a core issue of focus for the securities regulator. Case in point is the action taken by the Securities and Exchange Commission (SEC) against crypto exchange Zipmex to suspend its business in February 2024 amid concerns that it was not financially solid. It has since asked the Finance Ministry to revoke Zipmex's license to operate. The company remains under SEC supervision.

Only four criminal cases for market manipulation filed in 2023

In terms of criminal action, 2022 and 2023 were devoid of any fines being levied on individuals for unfair trading activity, with the exception of one case in 2022 involving a takeover. However there were 4 cases involving market manipulation where criminal complaints were filed in 2023, involving 68 people. Another 4 criminal complaint cases were filed in 2022, three involving fraud (and 14 people) and another relating to disclosure of false or misleading information (involving one person). However in the realms of securities issuance, regulators have been slapping fines on individuals: 39 people in 2023 for disclosure in reports, with a further 28 criminal complaints filed. The figure was much higher in 2022 when 114 people were subject to fines on disclosure, with a further 51 complaints filed during the year. In a nutshell, criminal action for fraud, market manipulation and insider dealing has yielded no scalps during 2023 or 2022. When we spoke with regulators they noted the difficulties (as most regulators have) in dealing with sophisticated

syndicates taking part in market manipulation, where identities are easily concealed. The nature of this crime is borderless, and regulators require strong international coordination. Some of its neighbours have been less than forthcoming.

The SEC is poised for greater investigation powers

We have written in the past about some of the constraints faced by the SEC in pursuing criminal cases, most notably the lack of investigative authority: the best the SEC could do is gather evidence, request documents, take statements and conduct interviews with witnesses, and then pass its findings to the police. Mooted changes to the Securities and Exchange Act were expected to address this in 2021 and during our discussions with the regulator in 2023 they were confident it would come into effect soon. But having gained Cabinet approval, the amendments would then enter a "long drafting process," involving senior experts, we were informed. Once the drafting is complete, it would go back to the Cabinet before being put in front of Parliament. It would go through three readings, then to receive royal assent from the King. The legislative rewriting process in Thailand is far from swift.

There have been few administrative sanctions

Administrative sanctions for market misbehaviour meanwhile are on the wane. There was one case of an investment consultant having a license revoked in 2023, otherwise there were no cases at all of public reprimands or suspensions. In 2022 there was one suspension for an auditor. There has been more action with civil sanctions, although even compared to previous years the penalties faced by offenders has been muted. In 2023, there were six cases involving 18 people where THB92m in civil penalties were handed down. The busiest segment was market manipulation, with three cases involving six people: landing them fines of a combined THB83m. But in these cases all protagonists signed a letter of consent: only three cases involving six people actually went to the civil courts. Two were for market manipulation, involving 15 people.

Civil fines for insider dealing are few

Civil penalties for insider dealing have yielded a handful of results: in 2023, four individuals were fined THB4m, and seven people went to court. In 2022, 36 people faced civil fines for insider dealing (reaping a combined THB37m fine) and there were no civil court cases. A frustration of the way the SEC presents its statistics is that it is impossible to work out the cases, or people involved. To do this, you have to scroll through their running list of enforcement cases. There is no narrative on the figures they present annually, leading to a disconnect between the case numbers and the outcomes. We see this as a missed opportunity: the data is all there and with a bit more granularity on the write-ups of individual cases, rather than presenting a long unwieldy list by year, an annual round-up with links to the cases would be of great benefit.

The picture on civil fines is mixed

Overall, civil penalties tend to fluctuate year to year:

Figure 18

SEC Civil monetary penalties, 2021-2023

Offence	2023		2022		2021	
	Persons	Penalty	Persons	Penalty	Persons	Penalty
Director failure to exercise duty of care	-	-	-	-	-	-
Director presenting false statement/facts	-	-	-	-	2	THB1m
Unfair securities trading—false/misleading statement	5	THB5m	-	-	4	THB5.5m
Market manipulation	6	THB83m	5	THB36m	16	THB127.6m
Insider trading/disclosure of inside information	4	THB4.1m	36	THB37.7m	15	THB44.5m
Using another person's securities account	3	THB150,000	1	THB300,000	-	-
Total	18	THB92.3m	42	THB74.03m	37	THB178.7m

Source: SEC 2023 Enforcement statistics. Note 1 Thai baht=approximately USD0.027

Notably 2019 was a bumper year, with THB802m (US$21.9m) in penalties handed out, although in 2020 it was a significantly more modest THB35m (US$956,364).

Securities provisions could do with a refresh

Upgrading securities law

Thailand in 2020 scored top marks in CG Watch for having robust powers of surveillance, investigation, sanction and compensation. We downgraded it by one point after taking a closer look at the Securities and Exchange Act (SEA), in particularly making a comparison with Hong Kong's Securities and Futures Ordinance (SFO). The SEA, while comprehensive, is not as exhaustive as the SFO and penalties for insider dealing seem to be on the low side (a maximum two year jail term but five years if a director or management is involved) and a fine of up to THB2m (US$54,600) (a maximum THB5m (US$27,322) fine for directors). Gaining property by deception and making unlawful gains attracts a stiffer penalty of up to 10 years in jail. We also have some concern around the Civil Sanction Committee, which considers penalties on the recommendations of the SEC. This committee includes the attorney general, permanent secretary of the Ministry of Finance, as well as the governor of the Bank of Thailand, and we would prefer to see lay people, or industry experts, rather than just political appointees, to balance out the process.

SET has limited enforcement powers

Trade with caution

As mentioned above, the SET has surveillance powers and uses a set of alerts where there are dubious transactions. Its website has a limited section on enforcement but it does not provide much information, such as the number of referrals made to the SEC. It does limited enforcement of SET rules and regulations, which lead to few disciplinary outcomes. Its latest figures are only for 2021, when there was one disciplinary action (a penalty of THB20,000, equivalent to US$546) levied on a securities company for failing to disclose a conflict of interest to a consumer. The focus is more on warning investors than punishing bad actors, with its series of call alerts drawing attention to red flags and queries to issuers being made public: in 2023, the Stock Exchange made 278 such inquiries, ranging from clarifications needed on trading or information provided by issuers and the appointment of certain executives. The system does however act as an implicit criticism, similar to Singapore's disclosure of questions and clarifications sought from issuers. In 2023, the SET ordered two halting notices at two issuers, and 50 suspensions at 22 listed companies. In 2022, there were fewer (195) enquiries, with the same number of suspensions (two at two companies) and 55 suspensions at 23 issuers.

3. CG rules

Thailand drops one place to rank a joint No.4 with Hong Kong on a score of 75%

Thailand dropped one percentage point and one place to score 75% and rank joint No.4 with Hong Kong. Thailand is two percentage points ahead of India and just two behind Singapore, which scored 77%. Still, Thailand remains significantly behind Australia which ranks No.1 with 83% and Malaysia, which held on to No.2 place for the second year running with a score of 79%.

The CG Code could do with a refresh

Thailand has historically scored well in this category, having a solid set of rules on financial reporting (and it gets bonus marks for requiring quarterly reports from issuers), as well as disclosure on continuous and related-party transactions, voting by poll, and for enabling collective engagement. We revised our scoring on blackout rules and insider dealing (giving an additional point for the former but taking one away on the latter) and docked a further point for the failure to upgrade its CG Code. Thailand earned points for introducing the "Form 56-1 One Report" streamlined corporate reporting in our last CG Watch, but it was well back in 2018 that we bumped its score for introducing a CG Code. Since 2017, it has not seen a significant upgrade, questioning its ability to stay up to date as fundamental CG issues arise in the market. Elsewhere, Thailand remained more or less steady, although there remain a number of areas where easy gains could be made, including disclosure of share pledges, changes on substantial shareholdings and director holdings.

Blackouts, insiders and substantial owners

An informal blackout period is better than nothing

In our scoring, we look for a closed period of at least 60 days before the release of annual results (and 30 days before interims or quarterly reports are released) during which directors cannot trade their shares. Thailand has previously scored zero points on this question, as 2016 disclosure guidelines for listed companies released by the Stock Exchange only recommended that a blackout be in effect for a few days prior to the release of results. However, since 2020 the Securities Exchange Commission (SEC) has recommended the period be a month. We credited Thailand with one point for this: while not ideal, we recognise that companies may feel it wise to follow the regulator's recommendation in this regard.

Insider dealing law carries a five year maximum jail term

On the other hand, we docked a point for Thailand's rules on insider dealing, which we regard as potent only where there are sufficient deterrent penalties. We felt the market did not deserve full marks for provisions on insider dealing in the Securities and Exchange Act, which incurs a maximum 5 year jail term for errant directors (in Hong Kong, the maximum is 10 years) and does not set out clearly investigation powers of SEC officials.

Better disclosure on substantial ownership would be welcome

There was also no progress on the issue of changes in substantial shareholders. Disclosure must be made when holdings reach 5% of the total voting rights, and when it moves through a multiple of 5%. Disclosure must be made three business days after the change, which in our view, falls short: we only give top marks when disclosure is required each time voting rights cross a 1% increment above the initial 5% and require reporting at least three days from the trade date, not the settlement date. Changes in director holdings meanwhile must still only be disclosed within seven working days, which falls well short of our preference for three working days.

There is still poor visibility on share pledges

Disclosure on share pledges likewise saw no progress: we did ask Thai regulators whether there was any chance of requiring disclosure when shares are pledged as collateral for a debt obligation, stressing that if a shareholder defaulted with banks it could lead to a change of control or stock overhang if the new owner then opts to sell the shares. Alas, it still only remains the case that pledges be registered with the Thailand Securities Depository after an IPO for one year. Thailand still scores no points on this issue.

Related party transactions

There are plans afoot to amend related-party provisions

In March 2023 the SEC held public hearings on a consultation to amend certain provisions on material and related-party transactions:

- ❑ For material transactions, the size of transactions requiring shareholder approval would be reduced from 50% to 25%;
- ❑ The size of transactions (for both material and related-party transactions) would be calculated on the basis of the value of the net asset instead of the net tangible assets;
- ❑ There would be an aggregation of transactions where related deals were part of the same project;
- ❑ For related-party transactions, a discretionary power by the regulator in considering 'fair and reasonable' transactions by listed companies would be abolished.

The public hearings ended on 23 March 2023. To date, we are unaware of the conclusions of the hearings.

Connected deals at Everland raises eyebrows

The issue of connected transactions became a pertinent one in the recent case of property developer Everland Public Company (EVER), where the issuer proposed buying three plots of land from a connected person, which in the opinion of the

independent financial advisor (IFA) was at an inappropriate price. The securities regulator in April 2024 made the point of urging shareholders to exercise their voting rights in respect of the proposed deal (without explicitly suggesting they vote it down!) EVER would pay THB167m for the land, where it would build a 33-unit residential development, "33 Residence." The IFA however deemed the purchase price to be paid as being inflated by THB25m and said there was no guarantee the proposed project would go ahead. The proposal would require at least three-quarters of shareholder votes for approval.

4. Listed companies

Thailand falls two places to No.5 on a score of 51%

Thailand dropped two places to rank No.5 in this category on a score of 51%, a nine percentage point slide on its 2020 performance. To put it in context, our survey was completely overhauled in CG Watch 2023, reducing the number of questions we asked from 2020 and changing our scoring methodology. Most markets fell in this category by up to 12 points largely due to the change in scoring methodology, with the exception of Malaysia, which retained the same score of 66%, Korea, which moved up one percentage point to 49%, and Japan which jumped five percentage points to score 49%. Australia is well ahead in No.1 place with 76% (although it dropped by three percentage points): no other market makes it into a similar percentile range, with a ten percentage point gap between it and Malaysia, which ranks No.2.

The Philippines ranks No.10 with a score of 48%

Our survey of listed companies was completely overhauled in CG Watch 2023, reducing the number of questions from 2020 and revising our scoring methodology. The survey looks at CG disclosure, at the quality and breadth of sustainability reporting, at the quality of a company's investor relations activities and board diversity. We surveyed a total of 15 major listed companies, selecting across sectors and doing our best to avoid, as best we could, selecting more than one company from major family-controlled groups (no easy task in the Philippines!) As a result of the new survey approach and scoring methodology, scores for almost all markets fell, and the Philippines was no exception.

Companies struggle to provide a decent narrative

This is an interesting category for Thailand, where it does well on some questions, and very badly on others, with just a few questions yielding average results. Overall, companies struggle to provide a decent narrative of their work, board dynamics and other efforts, including gender diversity and how they train and evaluate their directors. Where the activity is relatively straightforward—such as INED pay and disclosure of remuneration—Thai companies fare better. But there are structural issues where there has been little improvement, such as the lack of independent chairs and long tenure (and questionable autonomy) of the INEDs on their boards.

Where Thailand does well

Thai issuers adopt simple pay structures for INEDs

There is a lot to be said about keeping it simple. In Thailand, listed companies tend to pay its INEDs a monthly fee, sometimes with a meeting allowance, and where profits allow, a share of earnings. Of the 15 companies we surveyed, none paid their INEDs via stock options or RSUs. Companies strike a pragmatic balance: INEDs get paid regularly each month and are incentivised enough to make sure the company turns a profit, but not to the extent that their financial interests are too closely aligned with those of management.

Remuneration disclosure is solid

Thai listed companies also score very well on our question about remuneration disclosure. Of the 15 companies we surveyed, twelve scored top marks for listing remuneration figures for each director, with sub-categories breaking these figures down. The exception was a company which only disclosed remuneration in AGM minutes, rather than a table in the annual report, and one that listed out all the remuneration but gave out gratuities to directors without explanation.

Investors can easily find reports and AGM materials

Where Thailand also does well is providing basic and timely information to investors. Four of the fifteen companies scored top marks on this question, providing the full package of investor relations names, emails and phone contacts, easily navigatable IR home pages with all the materials you would hope for, including those relating to the AGM.

Audit committees are independently led and have solid qualifications

Audit committees and internal audit are also areas where Thai listed companies score well. A third of the surveyed issuers managed to get full marks here, having audit committees which are independently led, with requisite competence in accounting, auditing or financial management (at least one company had all audit committee members with auditing or accounting credentials). But this was again a question of contrasts: we found one company where members of the audit committee had no financial credentials whatsoever. Meanwhile while all 15 companies had an internal audit department, they did not disclose much in the way of the interaction with the audit committee beyond noting that it plays a supervisory role and reviews findings. Greater detail here could yield a higher result.

Where Thailand performs averagely

Details on director training are selective

Training is an area where Thai companies are on middle ground: at several issuers, only some directors were offered training and there was no disclosure of whether this includes induction courses. Like other markets, there is patchy disclosure on what training directors actually get, with issuers being selective on what they highlight. Only a handful mention whether there have been site visits.

Remuneration policies are not informative

And while issuers may be good at listing the remuneration they pay out, they struggle to communicate the policy on which this is based. At best, companies may describe the institutional process they adopt in deciding remuneration, and make mention of KPIs but fail to elaborate. Disclosure is pretty boilerplate across the board and offers minimal insight. It is a similar story with board evaluations. All of the 15 issuers do board evaluations, the majority opting for self-evaluations. The only external evaluations we found were at Siam Commercial Bank and Kasikornbank, the former doing so every three years ‘or when appropriate,’ and the latter every three years. No consultants were named. Evaluation topics are not disclosed, nor the results of the evaluation or any areas for improvement. Perhaps not surprisingly, issuers who only opted for self-evaluations tended to come out of the process with shining colours.

Where Thailand does poorly

Annual reports do not provide a decent narrative of what the board does

Thai listed companies leave much to be desired in how they communicate the basics of what they do, how they manage themselves, how the board operates and what is on their agenda in any given year. Instead, annual reports are packed with descriptions of the roles, duties and responsibilities that boards and committees have: what they *should* do, rather than what they *actually* do. Some go to great length in embellishing the practices, principles and procedures they adopt, without giving working examples. Duties to shareholders are outlined. Bios are predictably factual, with no narrative on why these people were appointed, the particular skills they bring to the table or their relevance to the company (one instead listed the club memberships of directors.) The best case narrative is that the directors ‘reviewed’ what they should have. As we mention below, INEDs stick around for many years and suggest refreshment is not the name of the game. Judging by their annual reports, companies have little that is either new, never mind original, to say to their shareholders.

Thai issuers lack independent chairs

The lack of independent chairs at Thai listed companies is also a sapper on the overall score in this category. Ten of the fifteen companies scored zero points here. The outlier was Kasikornbank who has an independent chair, Kobkarn Wattanavruangkul, former Minister of Tourism and Sports. Four issuers have

adopted lead independent directors: Minor International, Berli Jucker, Electricity Generating and Indorama Ventures. But for the main part, independent directors are a tenacious bunch and long tenure (not to mention the age of some of these appointees) is definitely an issue. A good example of this is found in the appointment of Chu Chih-yuan, an INED at Delta Electronics, who has held this position since 1988.

Gender diversity targets are scant and few women chair nomination committees

Another weak spot is on gender diversity policies: either these are limited in what they aspire to and boilerplate in nature, or there is not one at all. Kasikornbank is one of two issuers out of the 15 to disclose an actual diversity target of at least 30% female representation on the board, which it has met with eight out of eighteen directors female, including a female chair and CEO. EGCO also has a 30% target which it has not met (only three out of fifteen board members are female). Timelines and progress reports are not mentioned at any of the issuers. Perhaps not surprisingly, Thai companies also receive a low score in the question we ask about women chairing the nomination committee (or at least having a woman sit on this committee). Seven of the 15 companies had neither.

That stubborn glass ceiling

Thai companies are not great communicators on gender diversity

Thailand is a market of some contradictions and this is evident when considering its track record on board diversity. From our own research we know that Thai listed companies are low scorers when it comes to devising a strategy for more female directors, and communicating their plans. And at the top of the company ranks, there are few female leaders.

Women participation in companies and the reguators is high but not at senior level

Yet Thailand scores well globally as having woman at CEO and CFO level. As the Stock Exchange of Thailand (SET) likes to point out, it ranks No.5 globally in having the most female CEOs, and second for CFOs. And as we noted in our section on enforcement, women make up 68% of SET's workforce: it is just in the higher echelons that they are much reduced in numbers. This is a phenomenon we see in several markets.

Updated figures on gender diversity would be welcome

Thailand's data on women on boards is getting a bit stale (the latest figures it has are relevant as of the end of December 2020) but shows minor progress in having more female chairs: 8.4% in 2020 compared to 6.7% the previous year. Less impressive progress is seen in overall board appointments, where 21.02% were female in 2020, up slightly from 20.72 in 2019.

Gender diversity on boards is being measured but no rules are imminent

The SET pointed us to the Thai Institute of Directors' annual Corporate Governance Report (CGR) criteria (the Institute does an annual report card on the CG practices of Thai listed companies with support from SET): in October 2023, it updated its CGR criteria to score companies on whether they have at least two female directors. Sadly it is only scoring criteria, and the SET said there are no plans to put it into the CG Code in the near term.

5. Investors

Thailand drops one place to rank No.8 on a score of 35%

Thailand's score fell three percentage points to 35% in this category, which leaves it in No.8 place, down from equal No.7 in 2020. It is ahead of Hong Kong, which scored 33% and sits just one spot behind Singapore with its score of 39%. But Taiwan, with whom it ranked equally in 2020, has nudged five percentage points ahead to rank No.6. In part this was due to a revision of previous scores, but it also took into account a perception that as stewards, domestic investors could benefit from greater granularity on disclosure, and retail investors still have some way to go as a collective group.

Voting disclosure can be short on detail

Despite the adoption of Thailand's local stewardship code since 2017 (the Investment Governance Code for Institutional Investors, or the "I Code") by domestic investors, disclosure of policies and voting has not been as impressive as we had hoped in terms of the quality of content investors provide, and largely anything public beyond endorsement of the Code is only in the Thai language. All entities regulated by the Securities and Exchange Commission (SEC) are required to sign the I Code (or explain why they have not): there are currently 77 signatories compared to 71 when we wrote CG Watch 2020. But while signatories must report on how they have applied the principles of the code, they are only required to disclose voting policy and voting results to their clients, not the wider public. Some do—including the Government Pension Fund (GPF), and asset managers such as Land and Houses Fund Management, One Asset Management, SCB Asset Management and Eastspring Asset Management—disclose both in the public domain. But by large disclosure on how both owners and managers vote tends to be in generic terms, and identifies broad issues (such as INED tenure), rather than getting into the nitty gritty of named company-level outcomes.

Asset owners

GPF continues to lead the way on responsible ownership

GPF continues to be a driving force on CG and responsible ownership in Thailand's investment industry. While it sets a high bar, it would be good to see the asset owner dig deeper into the reasons for its voting practices, notably bringing more granularity into the reasons why it voted against certain companies. On our question about how domestic institutional investors actively work to promote better CG through policies and by exercising their voting rights, GPF keeps the market above average: it would be good to see more asset owners and managers follow suit in terms of the quality of disclosure they make in this respect. In its 2022 Attribution Report, it sets out ESG-related criteria in the selection of external managers, and describes its process as a domestic responsible shareholder, which includes attending AGMs and arranging company visits. In the first three quarters of 2022, GPF representatives attended and exercised voting rights at 88 domestic AGMs (an 100% attendance rate). Of 614 voting agendas, GPF voted against 33 (or 5% of the total). Among these were transactions which it said were inconsistent with good CG principles and mostly related to director appointments, such as entrenched tenure of more than nine years, or for more than three consecutive terms. Its external fund managers voting overseas cast 3,302 votes in 28 countries, of which 313 (or 9%) were votes against. Similarly, most related to the appointment of directors. Examples of why this was the case at individual named companies would be beneficial. In the report, GPF did give a case study of engagement it did with PTT Exploration and Production Public Company (PTTEP), but this was centred on a visit made to PTTEP's business partner in Japan.

Asset managers

Kasikhorn is active in disclosing its stewardship activity

There are 30 asset manager signatories to the I Code, notably among them Kasikorn Asset Management (KAsset) which produces an annual compliance report on the Code (in 2022 this ran to 60 pages). In 2022, the equity team had 1,462 meetings with 411 listed companies (251 of these were in Thailand) and formally engaged with 42 issuers. It summarises the engagement cases by topic (environmental, social and governance) and highlights a few concerns in each—although without naming names. In all, it was satisfied with its engagement in 32 cases. A further seven were being monitored while just three were of concern (again, no names mentioned). In terms of voting, KAsset voted for 2,200 resolutions at 253 listed companies, and against 112. It abstained on 145 resolutions. Interestingly, only four of these at Thai listed companies, the majority of abstentions involving foreign securities. Most 'against' votes were related to board matters, notably INEDs with tenure longer than nine years, or directors significantly absent from meetings. It did disclose voting against the appointment of auditors at three Thai firms (although it did not

say whothese were). In terms of collective action, KAsset disclosed participating in several cases with other asset managers through the Association of Investment Management Companies (AIMC), the Thai Listed Companies Association (TLCA) and Thai Institute of Directors (IOD) and says it actively participates in public hearings, focus groups and provides feedback to regulators. It does also give examples of engagements with companies.

Active AGMs?

Attending AGMs in person would be welcome

During Covid, we understand that around half of AGMs moved online (the law allows them to do so unless the Articles of Association state otherwise) and this is a trend which continues. ACGA has long argued that AGMs provide a guaranteed opportunity for investors to face management in person and (where they are given time to) pose difficult questions. From our discussions with investor groups in Thailand, the impression is that physical attendance is not a popular practice among either institutional or retail investors—the concern is that increasingly more AGMs are going online, where questions are more easily controlled and awkward exchanges avoided. Interestingly, the Thai Investors Associaiton (TIA) 'rates' AGMs and actively tries to send members to attend. They have an AGM checklist for issuers, which the listed company is expected to complete, to make sure best practice is adhered to. But we went through a few companies' AGM minutes and the picture gleaned was not that of shareholders grasping the opportunity to challenge management. Global seafood giant Thai Union for example on 9 April 2024 held its general meeting online. It lasted just one hour and forty minutes and there were no questions or comments from shareholders on any of the agenda items, with the exception of two written questions which were answered in an appendix. But the event was a pretty soulless affair, more of a videocast where a long line of executives sat at a table being filmed as they went through the agenda items and occasionally dispersed the proceedings with instructions on how to vote. There was no visibility on other attendees, no 'raise hand' function, just allocated slots of time to use the 'ask question' function via attendees' laptop or mobile phone. Kudos to Thai Union for uploading the video and minutes of the AGM, but it did little to convince ACGA that virtual meetings are good for shareholders.

Retail shareholders

Shareholders in the retail space do club together

Latest data from the Stock Exchange of Thailand (SET) puts the number of retail shareholders in Thailand at 1.8m with average trading value of THB46m (roughly half of all trading value). Foreign investors account for 52% of all trades. With retail shareholders increasingly in the minority, the SET is trying to recalibrate the landscape as overseas traders leverage technology to execute a high volume of trades at a high frequency. Quite how it does this remains to be seen. Most retail investors trade via online accounts, and as per our observations above, few seem organised in the sense of collective action or a united front at AGMs. That is not to say there are no groups bringing investors together, although these seem more focussed on finding diamonds in the rough and upskilling on investing fundamentals than agitating for better governance. Still, we gave Thailand a credible above average score for our question on whether retail shareholders have formed their own (ie, self-funded) associations to promote improved CG. The Thai Investors Association (previously known as the Thai Investors Club) has been going since 1983 with a mission of enhancing knowledge around investing, as well as promoting CG. Other organisations and value investing groups may be laser focussed on spotlighting certain stocks, trends and training on executing certain trades, but over time may find value in looking at how issuers govern themselves. It was also noteworthy that 1,759 retail investors signed up for a THB4bn class action suit against Stark Corporation, according to the TIA, which could lay the groundwork for a collective outcome.

6. Auditors and audit regulators

Thailand's score improves to 79% but it drops one place to rank No.7

This is one of Thailand's best-performing categories in 2023 as it gained three percentage points to score 79%. But it fell one place in the rankings to No.7 as several of its peers also posted significant gains, including Singapore, Taiwan, Korea and Japan. Thailand is just behind Australia and Hong Kong, who both scored 82% to rank joint No.5.

Standards align with international ones

The main body responsible for ensuring the quality of listed company audits in Thailand is the Securities and Exchange Commission (SEC), which does so via its Accounting and Auditing Supervision Department, along with the Thailand Federation of Accounting Professions (TFAC), the accounting professional body. While Thailand scores well for converging standards with international ones, it is less convincing in its auditor oversight role, with disciplinary cases still rare. On the issue of auditing oversight, it would be particularly helpful for greater transparency on the SEC's resources, both financial and in terms of skills and headcount, that are dedicated to inspecting audit firms in Thailand. For an oversight system to be meaningful, there needs to be a well-trained and consistent team able to dedicate sufficient time and resources to the task. If there is high turnover and fledgling officers assigned to an oversight role, there is less confidence in rigorous outcomes.

Accounting and audit standards

The SEC plays the auditor oversight role

Thailand scores top marks for our two questions on whether local accounting standards are fully converged with International Financial Reporting Standards (IFRS), and International Standards on Auditing (ISAs). Thailand has adopted all effective IFRS standards, known locally as the Thai Financial Reporting Standards (TFRS) which are usually a year behind IFRS. TFRSs are required for Publicly Accountable Entities (PAEs), including listed companies. Meanwhile, under the Accounting Professions Act, the professional body TFAC (formerly known as the Federation of Accounting Professions, or FAP) develops and issues accounting standards but these must have ultimate approval from the Accounting Professional Regulatory Commission. TFAC's Auditing Profession Committee also develops the Thai Standards on Auditing (TSA), which align with the latest ISAs.

Be (generally) suspicious

More detail on what should be flagged as suspicious is forthcoming

One of the questions we ask is the extent to which the government or accounting regulator has enacted effective rules on the independence of external auditors, notably by putting limits on the non-audit work they can do, partner rotation, whistleblower protection and a positive duty to report fraud. An auditor has a duty to report to the Audit Committee of a listed company where there are any suspicious circumstances indicating a director, manager or other relevant person has committed an offence under the Securities and Exchange Act. In February 2021 the SEC proposed a draft regulation to define these 'suspicious circumstances' but we have heard nothing since.

The great resignation

Audit firms struggle to attract and retain staff

One area where Thailand received a bump in its score is in proactively promoting capacity, quality and governance improvements within firms, which can include encouraging smaller firms to consolidate. When Thailand came out of Covid it, like many markets, faced a high turnover rate of auditors. Regulators told us of some of the Big Four going so far as to visit high schools to offer contracts. Fewer students are studying accountancy at university: growth is simply not being sustained. Firms we spoke with confirmed that after Covid, to recruit and retain was a challenge. But

there was a sense that the SEC is taking active steps to encourage smaller firms to consolidate, and in January 2023 the regulator sought public comments on a proposal to require audit firms to maintain a minimum of four auditors in the capital market to ensure sufficiency of personnel. The rule would come into effect in March 2026. Public comments on the proposal were being sought as of January 2024.

The big four dominate on listed company audits

There are around 30 audit firms in the capital market (the SEC's latest official figure was 29 in 2021) and the Big Four dominate: while there are around 21 local firms, they number 122 in terms of auditors compared to 159 at the Big Four. In 2021, the Big Four audited 482 listed companies compared to 294 by local players.

Audit industry oversight

SEC disclosure on audit oversight is not up to date

Thailand scores below average on the question of whether the audit regulator exercises effective and independent disciplinary control over the audit profession. Disclosure on this front is not particularly timely: the latest inspection report deals with the SEC's activities in 2021. During this time there were 32 audit firms inspected, with 53% receiving a good to very good evaluation for their quality control systems. This was up from 48% in 2019 and 51% in 2020. Seven audit firms received very good results, three of which were small firms. On overall audit quality, 96% of auditors approved by the SEC received good to very good evaluation results, up from 90% in 2019 and 93% in 2020.

Quality and auditor issues are broached in general terms

In the fourth inspection cycle which ran between 2019 and 2021, the SEC gave a generic impression on quality control (not naming names) in infographics, rather than a narrative. Similarly on the issue of audit quality it offers insight on a broad brush approach: for example, on the subject of deficiencies it found, it broke these down in a pie chart. The main cause of deficiencies was in the adequacy of gathering audit evidence (69%), followed by non-compliance with the audit manual and audit programme (23%) and not having an audit programme and manual which is clear enough (8%). In the cycle, the SEC said it focussed on reviewing the audit quality of listed companies in 'high risk' industries, particularly where there are significant and complex accounting transactions or matters requiring 'high judgment.' It used examples on an anonymous basis to highlight a few issues, including that of a listed company which did not disclose a THB600m loan from a hedge fund. The auditor did not, it seems, take steps to find out why there were bank accounts not included in the company's chart of accounts—nor did they ask management to provide any other documents aside from their statements.

Few auditors face disciplinary action

In terms of disciplinary action against auditors however, there is not much in the way of action. In 2021, there was one warning given (and disclosure made on the SEC website) for failing to fulfil an auditors' duties, no cases in 2020 and one suspension in 2019. The inspection report gives an update as of December 2021, when the SEC was in the process of considering another case. It was completed in January 2022 and resulted in the auditor being suspended for six months, beginning 19 January 2022.

How the SEC responds to the Stark case will be interesting

It will be interesting to see how the Stark Corporation accounting scandal unfolds in Thailand and the ultimate response of regulators: in 2023 the company was required to conduct an "extended scope special audit" at the behest of the SEC (the first time the regulator had ordered such an audit since 2017) and in September the industrial cable maker disclosed that it had found THB15.6bn worth of irregular transactions.

7. Civil society and media

Thailand drops one place to rank No.8 on a score of 46%

Thailand ranks eighth in this category, down one place from 2020 on a lower score of 46%. It shed three percentage points, trailing Hong Kong by a small margin: the former bastion of free press now ranks No.7 on a score of 50%. Thailand is ahead of Indonesia (which scored 44% to rank No.9) and Korea, which ranks No.10 with a score of 43%.

The market does well on certain aspects of improving governance

In this category we consider the provision of training for directors and company secretaries, the role played by professional and investor associations, as well as business groups in elevating CG. On this front, Thailand well for the training aspect, less so on the extent to which civil society gets involved with public policy discussions. Thailand is also fairly weak on providing academic research into local CG practices, and scores badly on the question on whether the media is able to actively and impartially report on CG policy developments and corporate abuses.

Thailand scores relatively well for civil society but not for press freedom

There is a lot of credible work in Thailand to improve director training, encourage issuers to adopt best practice in their dealings with shareholders (particularly at AGMs) and corporate governance is high on the agenda of several civil society groups, benchmarked annually in a survey by the Thai Institute of Directors and upgraded annually to take evolving issues into account. But where Thailand falls short is in the lack of freedom afforded to journalists to report on the corporate landscape, policy and of course, politics. Criminal defamation and strict lese-majeste laws pose an oppressive operating environment for the press and dampen the ability to speak freely on issues relating to corporate accountability.

The role of the Thai IOD

Thai directors have ample training at their fingertips

Thailand scores top marks for its efforts on director training due to the efforts of the Thai Institute of Directors (IOD) which in addition to a range of courses, research and other initiatives also spearheads the annual Corporate Governance Report (CGR) with help from the Stock Exchange of Thailand (SET) which provides investors with a baseline scoring system for listed companies.

An annual CG report puts the spotlight on best practice

The report has three core areas of focus: rights and equitable treatment of shareholders, role of stakeholders and business sustainability, disclosure and transparency, and board responsibilities. The IOD started doing this in 2001 with the aim of monitoring and measuring the development of CG in Thailand. Its 2022 report surveyed 750 Thai listed companies using 241 assessment criteria.

There is also training in the private sector on anti-corruption

The IOD also runs programmes on anti-corruption as part of its role as secretariat for the private sector Collective Action Against Corruption (CAC), set up in 2010 by business groups to raise awareness in the private sector. SME companies can apply for online certification and take advantage of standardized corruption risk assessments. CAC now has 1,214 signatory members, and offers practical training on corruption.

Company secretary training is on offer

There is also solid training for company secretaries provided by the Thai Listed Companies Association (TLCA) and the IOD. TLCA also runs seminars on other topics, including best practices for IR communication and sustainable reporting, and organises workshops and study tours.

General meetings are subject to scrutiny by an investor association

Meanwhile the Thai Investors Association (TIA) runs the Annual General Shareholders' Meeting (AGM) Assessment Project, which aims to keep issuers up to standard in terms of preparing for, and conducting, general meetings.

Listed companies are expected to complete a self-assessment form and submit it to TIA, which then assigns a volunteer to go along and observe the proceedings—and rate the issuer on the quality of the AGM. A summary of scores is then provided by TIA.

No improvements in press freedom

Press freedom became a political flashpoint

As noted by the Reuters Institute in June 2023, the general elections in May that year were seen as a potential watershed for press freedom in Thailand. It was the first election since the protests of 2020 where the powers of the monarchy became a flashpoint: Thailand has some of the world's strictest lese-majeste laws to prohibit insulting the monarchy. Self-censorship is heavily practiced amid threats of imprisonment of up to 15 years. Defamation, sedition and cybercrime laws are also used to silence dissent. The media is also subject to a code of conduct imposed by the government, with a breach liable to see an outlet have its license suspended if they are deemed to have threatened 'public decency.'

Thailand still fares badly in global rankings

Reporters without Borders (RSF) ranked Thailand as 106th out of 180 countries in terms of press freedom in 2023, up 34 places from 2020. Still, there are a number of cases going through the courts of significant concern, including the decision to prosecute Thai journalists Nutthaphol Meksobhon, a reporter at news site Prachatai, and Natthaphon Phanphongsanon, a freelance photographer, for documenting graffiti protesting the lese-majeste law which was painted on a temple in Bangkok in March 2023. The pair are accused of violating the Cleanliness Act and the Ancient Monuments Act and face a maximum seven years in jail. RSF criticised the move as charging journalists with vandalism when they were simply reporting on facts.

The Clooney Foundation is taking up the case of a Thai journalist

The Clooney Foundation for Justice, via its TrialWatch initiative, is currently monitoring the trial of Thai journalist Chutima Sidasathian, who has been charged with defamation for investigative reporting on corruption. The case involves the use of a strategic lawsuit against public participation (SLAPP) which is commonly used to thwart media from covering sensitive issues (according to human rights group Article 19, there have been at least 25,000 criminal defamation cases filed in Thailand since 2015). According to the Clooney Foundation, Sidasathian was investigating legal action being taken by a bank in the Nakhon Ratchasima province against village residents to recoup money for loans the inhabitants claimed they had never received. She uncovered allegations of misappropriated funds and other irregularities among the bank officials, including the Mayor of the Banlang sub-district. When she shared her findings on Facebook in May 2022, the mayor claimed she had criminally defamed him. She has been charged with three counts of defamation and her case comes as the mayor himself faces criminal charges for misappropriating funds.

Reporting by numbers

Reports on the Stark scandal were user friendly

We did give Thailand a half point boost for the question we ask on whether the media is sufficiently skilled to report on corporate governance. Notwithstanding the restraints faced by the press in reporting freely, where they are allowed to run with a story the results can be thorough. We were impressed by some of the reporting on the Stark Corporation scandal: although it perhaps did not go so far as to take the issues to the next level and dig deeper into the business interests and connections of those involved, the reporting was efficient in documenting what had happened in a crisp and clear way.

Downgrade watchlist

What to avoid

Factors that could force the market score to fall in 2025:

- Any loss of momentum on reforming the CG ecosystem, and any erosion of SEC powers or funding/capacity
- A less than rigorous investigation and regulatory outcome on the Stark Corporation financial fraud
- Further delay in clarifying and outlining in legislation the investigation powers of the SEC
- Further erosion of the ability of journalists to report without fear of legal reprisal through lese majeste and other laws

Next steps

Our recommendations for the next stage of CG reform in Thailand include the following:

A breakdown of how the regulator is funded would be helpful

1. **Regulatory disclosure**: a clearer picture on the SEC's funding breakdown would be a welcome move. While overall it is evident the regulator has sufficient funding, how this is distributed between divisions is unclear and leads to speculation that in certain areas, such as audit supervision, capacity may be lacking. Similarly, the need to pivot to virtual assets supervision and enforcement may leave a sense that resources are being stretched in policing more traditional forms of market misconduct.

Securities law needs to be kept up-to-date

2. **A fresh look at the Securities and Exchange Act**: while the law is subject to revision, it could be time to look at a more vigorous overhaul to bring it up to date with comparable laws in other jurisdictions. While the Act covers most areas of market misbehaviour it is distinctly less prescriptive and creative than Hong Kong's Securities and Futures Ordinance. Some offences, such as insider dealing, could be due for tougher penalties which could act as a greater deterrent.

The CG Code should evolve over time

3. **An overhaul of the CG Code**: it has been seven years since the Code was introduced and it could do with a refresh to take stock of developments in the market.

Insight into market feedback would be welcome

4. **Greater visibility on consultations**: Thailand could take a leaf out of Hong Kong or Singapore's book here by providing greater insight into the market feedback received on consultations, and to provide progress reports on how proposed changes to rules and laws are proceeding. A timeline on projected outcomes would also be welcome, as would a longer consulting period.

Shareholder-friendly rule changes could be introduced

5. **CG rules**: there are a few easy wins for Thailand here. Formalising blackout rules with a 60-day closed period before the release of annual results, and 30 days before interim/quarterly would dissolve any ambiguity around insider trades. Better disclosure on substantial ownership would bring the market in line with other jurisdictions. Disclosure on share pledges by controlling shareholders would enable investors to gain insight into the potential risk of a change in control.
6. **Attend AGMs**: go back to in-person AGMs! Investors and boards could benefit from actual face-to-face interaction.
7. **Board diversity**: it would be beneficial for the SET to keep up-to-date figures on the number of female directors serving on boards and to disclose them on a regular basis. This might provide a degree of peer pressure for boards to improve their diversity figures. It would also help if there was a statement or even a listing rule from SET that single gender boards are not acceptable.

Steps issuers could take to improve their disclosure

Core questions for companies

Actions companies could take over the short to medium term to enhance their governance practices and disclosure include the following:

1. **Board refreshment**: what steps is the issuer taking to find replacements for long-tenured independent directors, including the process for finding candidates, shortlisting individuals and vetting suitable appointees. Where an INED has served for a long time on the board, describe the plan of action to find a replacement, with a timeline.
2. **Director training**: a definitive list of which director received what training, over which time period and the frequency of this training. Describe any policy for induction and ongoing training, and which service providers are used.
3. **Independent chairs**: if there is not an independent chair, issuers should describe why this is the case and if there is not a lead independent director in this scenario, why such a decision has been taken. Describe any situations where the chair recused him/herself from the board decision-making process because of conflicts of interest.
4. **Board evaluations**: disclose the evaluation process, the methodology used and whether it has been an in-house endeavour or by utilising a third-party provider. Disclose the results of the evaluation in detail and describe any areas where it was assessed that a director needed to take remedial action in respect of his/her performance.
5. **Board diversity**: disclose a gender diversity policy which states clearly the targets the issuer has to increase female directors on the board, the timeframe of doing so, and what progress has been made to date. Appoint at least one female director to the nomination committee, ideally as chair.
6. **Board and committee activity**: set out a descriptive narrative on issues, key points of discussion and decisions which have been taken during the course of the year by the board and committees. Identify any areas where board/committee members were in disagreement and how these were resolved.

Click to rate this research

Great

Solid

Meh

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Rising from grassroots to greatness

CLSA's bottom-up CG scores indicate a 3ppt improvement in Asean corporate governance compared to 2020, driven by the responsibility and fairness pillars. Indonesia and Malaysia saw the largest improvement versus 2020. Having said that, aggregate Asean CG scores are still well below the rest of Asia, Indonesia and the Philippines in particular.

Examining our CG scores by key thematic characteristics of ownership and gender diversity, we found that gender-diverse (over 30% female management or board composition or have a female CEO) firms have the highest CG scores, whereas founder-run companies score the lowest. We provide the top scorers and improvers within CLSA Asean coverage; Alliance and ACSM appear in both lists.

Over in Indonesia, analyst Chelene Indriani analysed the market's almost 9ppt improvement in bottom-up CG scores, driven by the fairness and responsibility pillars. In terms of sectors, while financial services ranks the highest, the property sector has improved the most and is now the second-highest-ranked sector. Indonesia still lags other Asian markets in independence, OJK's regulation stipulates that at least 30% of commissioner members should be independent, with no specific requirement for independent directors. Nearly half (47%) of board of commissioners in our coverage are independent. Finally, in terms of board diversity, there is room for improvement as 28% of companies under our coverage do not have a single woman on the board.

Malaysia leads in CG rules and board diversity

The nation where board diversity has progressed significantly is Malaysia. Head of research *Sue Lin Lim* highlights how strong regulatory enforcement led to Malaysia achieving a 22% female directorship in the entire pool of publicly listed companies. This makes Malaysia one of just four emerging markets globally to have achieved such a level. Malaysia's Code of Corporate Governance (MCCG), introduced in early 2022, also stipulated a 12-year limit for independent directors and the requirement that the chairman not be allowed to sit on the audit, nominations or remunerations committees. As a result, Genting remains the only company within the FBM100 that has a dual CEO/Chairman role.

In the Philippines, recent CG cases highlight challenges in improving rankings, but some companies stand out

In the Philippines, head of research *Alfred Dy* and his team run through key ESG issues in major corporations, such as Ayala Corp's questionable stock dividend payout policy, which raised corporate governance concerns, especially among ESG-minded investors. Also, Bloomberry's settlement of a 10-year legal dispute, as well as Megaworld's share placement, were singled out as major CG issues in the market. Alfred highlights companies with good ESG scores and fundamentally positive outlooks. These are Ayala Corp, SM Prime, ICTSI, BPI.

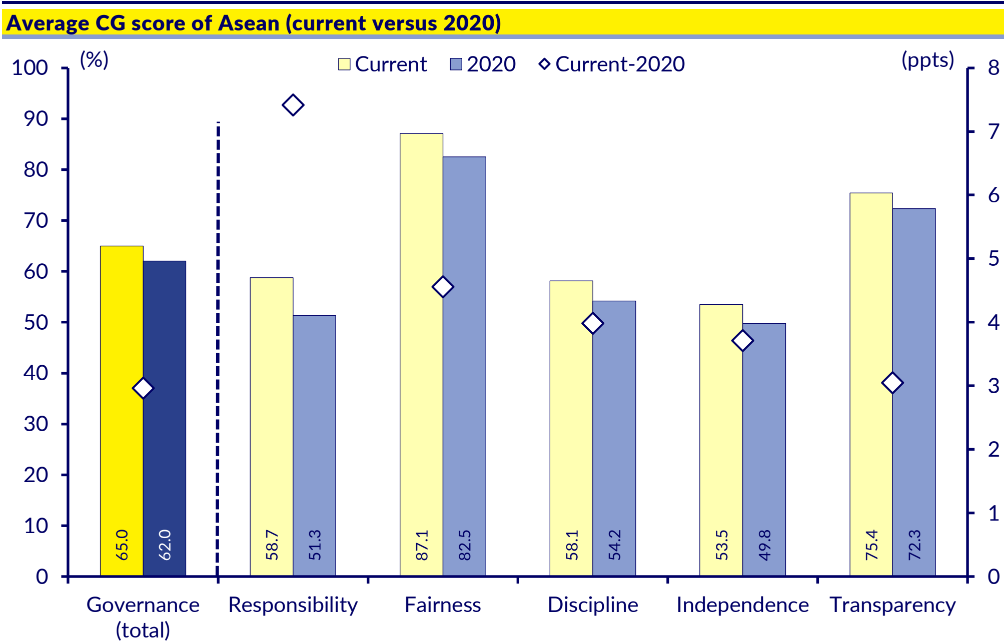
CLSA bottom up scoring shows CG improvement in Asean

Compared to 2020, CLSA's bottom up score shows a 3.0ppt improvement, driven by the responsibility and fairness pillars.

CLSA bottom up score shows 3.0ppts improvement

Figure 19

Average CG score of Asean (current versus 2020)



Source: CLSA

Indonesia saw the largest improvement versus 2020 . . .

In particular, our analysts see an overall improvement in the effectiveness and independence of the audit committee (CGQ13); few proportions of companies show evidence of engaging in related-party transactions that harm the interests of non-controlling shareholders (CGQ19). They are also more confident overall with Asean companies' capital allocation decisions (CGQ02) while seeing improvement in the timeliness of disclosing price-sensitive or major information (CG10). Among Asean markets, Indonesia saw the largest improvement versus 2020, followed by Malaysia.

. . . followed by Malaysia

Figure 20

CG Score improvement by Asean market

vs 2020	Governance	ACGA Market Score	Discipline	Transparency	Independence	Responsibility	Fairness
Indonesia	8.9	35.7	11.5	12.4	10.3	12.1	13.0
Asean	3.0	50.7	4.0	3.0	3.7	7.4	4.6
Malaysia	2.4	61.5	3.7	4.5	4.5	4.5	0.8
Thailand	1.5	53.9	3.5	1.0	0.5	11.0	(0.5)
Singapore	0.2	63.0	6.2	(0.9)	(2.4)	3.8	(1.2)
Philippines	(0.5)	37.6	(6.7)	(4.4)	3.1	4.6	8.1

Source: CLSA

Indonesia saw most improvement in fairness and transparency pillars

Indonesia saw the largest improvement in fairness and transparency pillars. In particular, our analysts saw improvement in Indonesian companies' timeliness in disclosing audited financial results (CGQ07) and sensitive information (CGQ10), as well as efforts in bringing diverse talent to the board (CGQ17). Overall, they also find less evidence of related party translations that harm the interests of non-controlling shareholders (CGQ19) and conflicts of interest among the board or senior management (CGQ21).

Malaysia's improvement driven by transparency, independence and responsibility

Malaysia's improvement was driven by Transparency, Independence and Responsibility pillars. In particular, our analysts saw overall improvement in voting practices (CGQ16), interest alignment between controlling shareholder's financial interest with ordinary shareholders (CGQ20), independence and effectiveness of audit committee. They are also more confident in management capital allocation decisions (CGQ02).

We published our latest CG Watch in 2023, with new CG scoring

CLSA CG Scoring framework. In our CG scoring framework, we have 24 questions on the five principles of corporate governance: transparency, fairness, responsibility, independence and discipline, which comprise 90% of the total CG score. We give a 10% weighting to ACGA's market score as regulators and policies, civil society and media play a critical role in defining corporate governance.

10% weighting for ACGA market score

Figure 21

CLSA CG watch questionnaires and design

Sections	Weighting (%)	Number of questions	Core issues addressed
Discipline	18	6	Management sticks to clearly defined core businesses with discipline, does not harm the interests of shareholders and is free from government interference.
Transparency	18	5	Management provides timely disclosures without controversial accounting and provides good access to senior management.
Independence	18	6	Board acts in an independent way, with proper checks and balance mechanisms through independent audit committees including board diversity measures.
Responsibility	18	3	Management's interests are aligned with the listed company and there has been no misconduct by management or related party transactions which harmed the interests of minority shareholders.
Fairness	18	4	There has been no conflict of interests between board and senior members and the company does not have a weighted vote structure, with fair compensation.
ACGA market score	10	1	Market scores provided by ACGA through Biennial CG Watch, which assesses markets on different stakeholder and thematic categories including 1) government and public governance, 2) the regulatory environment, 3) domestic corporate governance rules, 4) listed companies, 5) investors, 6) auditors & audit regulators and 7) civil society and the media.
Total	**100**	**25**	

Source: CLSA

CLSA Asia ESG
Special report
Sharpening tools
Asia Pacific
ESG
Manifesto

For detailed description of our scoring framework, please refer to our *Sharpening Tools* report.

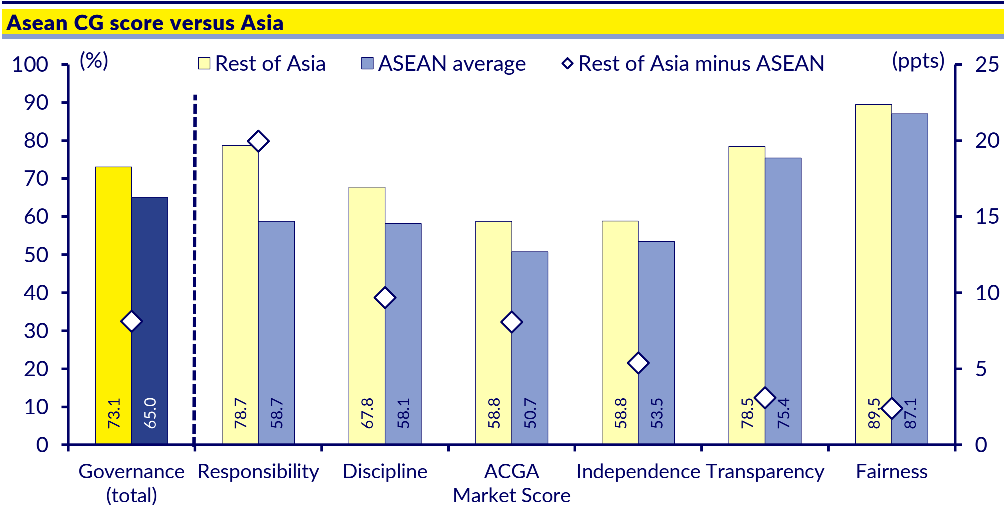
Still well below rest of Asia

However, when we compare to rest of Asia markets, Asean still lags, by 8ppts, especially in responsibility and discipline.

Aggregate Asean CG scores still well below rest of Asia

Figure 22

Asean CG score versus Asia



Source: CLSA

In particular, compared to the rest of Asia, our analysts generally think Asean companies lack interest alignment between controlling and ordinary shareholders (CGQ20), have government interference that could harm shareholder interests (CGQ05), and the timeliness (CGQ10) and clarity of financial reports (CGQ08).

Indonesia and the Philippines in particular

Figure 23

Asia CG Score by market

By market	Governance	ACGA Market Score	Discipline	Transparency	Independence	Responsibility	Fairness
Australia	87.3	75.2	79.1	94.9	80.8	92.6	96.0
India	75.6	59.4	69.3	90.5	63.8	67.6	94.9
Japan	75.5	64.6	77.1	80.9	49.5	86.4	89.9
Taiwan	73.2	62.8	79.3	65.8	56.0	84.4	86.3
Malaysia	72.4	61.5	65.8	83.2	60.7	67.6	90.9
Asia all	71.6	57.3	66.0	77.9	57.8	74.9	89.0
Singapore	70.8	62.9	56.8	82.9	62.2	61.7	94.6
Hong Kong	70.3	55.9	61.0	76.3	64.0	68.7	89.8
Thailand	68.0	53.9	60.1	83.4	58.9	65.4	79.9
China	66.7	43.7	58.5	67.6	59.8	73.7	86.6
Indonesia	62.3	35.7	59.6	70.1	49.6	57.2	89.7
Korea	59.5	57.1	47.1	64.5	36.3	72.3	78.5
Philippines	50.0	37.6	45.5	57.1	35.7	40.0	78.8

Source: CLSA

Among various Asean markets, Malaysia has the highest governance score, which is even above the Asia averages. However, the Philippines is weak, scoring the lowest in Asia.

Philippines aggregate CG score lags Asia average by 21ppts, especially in responsibility and independence

The Philippines aggregate CG score lags Asia average substantially by 21ppts, especially in the responsibility and independence pillar. In particular, our analysts think a relatively large proportion of Philippines companies did not disclose financial results (CGQ07) and sensitive information (CGQ10) timely enough, and they, in

general, are relatively worried about the effectiveness of the audit committee (CGQ13), controlling shareholder interest alignment with ordinary shareholders (CGQ20) and government intervention that may harm shareholder interests (CGQ05).

Indonesia is below Asia particularly in responsibility and independence

Indonesia is another laggard, with an average CG score of 9.3ppts lower than Asia, particularly in Responsibility and Independence. CLSA analysts think Indonesia companies are weaker in terms of voting practices (CGQ16), clarity of financial reports (CGQ08), interest alignment between controlling shareholders and ordinary shareholders (CGQ20), as well as related party transactions that could harm the interests of non-controlling shareholders (CGQ19).

Malaysia is above Asia in transparency and independence pillar

Malaysia's aggregate CG score is higher than the Asia average by 0.9ppts, particularly in the transparency and independence pillar. Compared to Asia, CLSA analysts think a relatively higher proportion of Malaysian companies publish financial results timely (CGQ07) and provide good access to management (CGQ11). They are also more confident in Malaysian companies' chairman independence (CGQ12) and the effectiveness of audit committees (CGQ13).

Top scorers and improvers

We highlight top-four CG improvers

We make use of CLSA proprietary CG scores and list our top scorers and improvers in the Asean markets reflecting companies that have shown a willingness to improve corporate governance. Alliance, and ACSM appear in both lists.

Top improvers include Metrobank from the Philippines, as well as Malaysian Financial names Alliance, ACSM and Power name Tenaga.

Figure 24

Top CG improvers

Ticker	Name	Market	Sector	Analyst	CG Score	2020 CG Score	Change vs 2020
MBT PM	Metrobank	Philippines	Financial services	Alfred Dy	55.4	32.3	23.0
ABMB MK	Alliance	Malaysia	Financial services	Peter Kong, CFA	93.1	72.0	21.1
ACSM MK	ACSM	Malaysia	Financial services	Peter Kong, CFA	89.2	78.7	10.6
TNB MK	Tenaga	Malaysia	Power	Abdul Hadi Manaf	66.5	56.3	10.1

Source: CLSA

Metrobank (MBT PM) - Alfred Dy

A huge improvement in terms of transparency and disclosure standards. The company has been more responsive to queries. Quarterly earnings calls are well conducted wherein senior officers of the company are in attendance including company President.

Tenaga (TNB MK) - Abdul Hadi Manaf

Tenaga has improved considerably following the launch of the National Energy Transition Roadmap in 2023, whereby the company is taking the driver's seat in executing most catalytic projects under the new framework. The company has clearly outlined its plan to ramp up RE generation in the country and put in place resources to monitor the development of planned projects. In addition to that, Tenaga has also earmarked capex required over the next six years to upgrade the national grid and transmission infrastructures in order to achieve the national aspiration of 70% RE capacity mix by 2050.

We highlight nine top CG scorers

Top CG scorers include BCP from Thailand, Alliance, ACSM and Press Metal from Malaysia and UOB from Singapore.

Figure 25

Top CG scorers

Ticker	Name	Market	Sector	Analyst	CG Score
BCP TB	Bangchak Corporation PCL	Thailand	Energy	Naphat Chantaraserekul	95.4
ABMB MK	Alliance	Malaysia	Financial services	Peter Kong, CFA	93.1
ACSM MK	ACSM	Malaysia	Financial services	Peter Kong, CFA	89.2
UOB SP	UOB	Singapore	Financial services	Neel Sinha	87.3
PMAH MK	Press Metal	Malaysia	Materials	Sue Lin Lim	86.5
CAB MK	Carlsberg Malaysia	Malaysia	Consumer	Sue Lin Lim	85.0
WPRTS MK	Westports	Malaysia	Transport	Peter Kong, CFA	83.2
ST SP	Singtel	Singapore	Telecoms	Neel Sinha	82.8
MTC TB	Muangthai Capital	Thailand	Financial services	Sue Lin Lim	82.5

Source: CLSA

Bangchak Corporation PCL (BCP TB) - Naphat Chan

BCP's board and management stand out from the rest. BCP's chairman is an outsider but has been in the energy industry for most of his career. He has just been appointed to be the Finance Minister. BCP is in the process of appointing a new chairman. CEO has been in the position since 2015 and has made successful major acquisitions, including expanding into the E&P business in Norway (OKEA) and acquiring the ESSO refinery in 2023. BCP still keeps its balance sheet healthy, although gearing is higher.

The most important improvement is transparency and efficiency, reflected in the company's higher valuations/metrics (PE, ROE). BCP has disclosed detailed and clear information about each business segment that is easy to read. There has not been any controversial issue relating to their operations or financial reporting.

UOB (UOB SP) - Neel Sinha

UOB has delivered major improvements to our ESG scoring framework over the past two to three years, most notably in disclosure, guidance and clarity on capital management strategy - a conservative bank in DNA and historically fair with minorities. The senior management team has also seen increasing diversity in representation. Board independence is high, with just 30% of the board non-independent.

Press Metal (PMAH MK) - Sue Lin Lim

The founding family remains the company's major shareholder, with CEO Tan Sri Paul Koon actively managing the business. The chairperson is independent of the board and management. Over the years, the company has remained steadfast in its business focus on aluminium, with vertical expansion to ensure supply (alumina and carbon anodes) and downstream expansion to raise margins.

Carlsberg Malaysia (CAB MK) - Sue Lin Lim

Clearly defined business with strong board composition. The chairman is rotated every 3-4 years, and the decision is made by the parent company. Any RPTs are directly related to the procurement of its operations to ensure operating costs are optimised.

Singtel (ST SP) - Neel Sinha

Consistently one of the highest scorers in Singapore for governance among our coverage universe, generally well ahead of market and sector averages. Disclosure levels, guidance and management access are among the market's best. ESG targets hard-wired senior management KPIs and compensation. It has one of the most independent boards in the Singapore large-cap universe. Key differentiators are its clearly defined ROIC targets and disclosed direction for returning excess capital to shareholders.

Muangthai Capital (MTC TB) - Sue Lin Lim

The chairman and CEO are independent directors, and the management has a good reputation for managing the business with no scandals involving the management team.

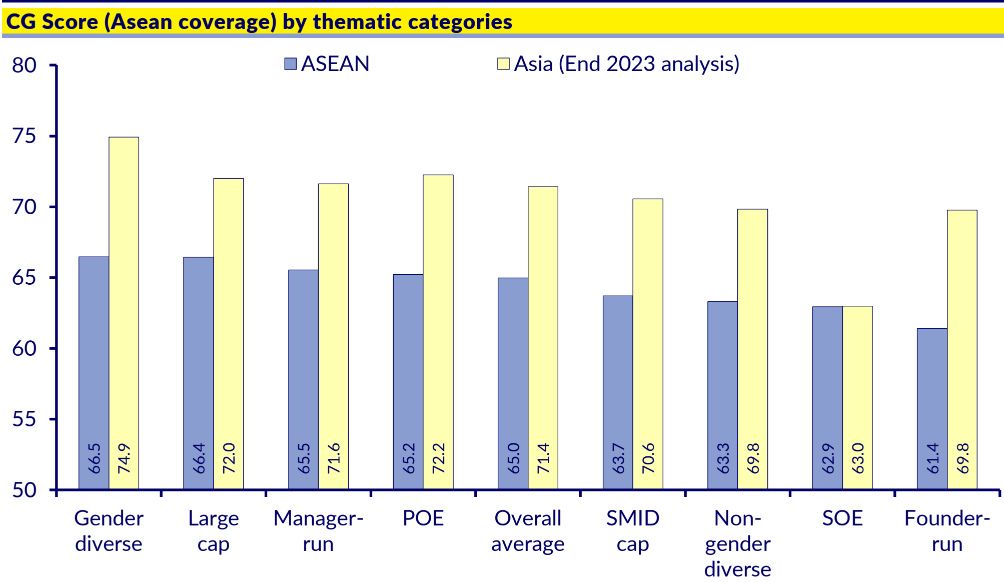
Diversity matters: CG scores by thematic categories

What specific corporate characteristics contribute to better corporate governance in Asia? In this edition of CG Watch, we have cross-examined CG scores by key thematic characteristics of ownership. We specifically break the characteristics from four different angles. 1) Government-owned (SOE) versus privately owned (POE), 2) founder versus manager-run, 3) gender diversity, 4) large- versus small-mid market capitalisation. Overall, we analyse that gender diverse (over 30% female management or board composition or have a female CEO) firms have the highest CG scores, whereas Founder-run companies score the lowest.

Gender-diverse firms have the highest scores while founder-run are the lowest

Figure 26

CG Score (Asean coverage) by thematic categories



Source: CLSA

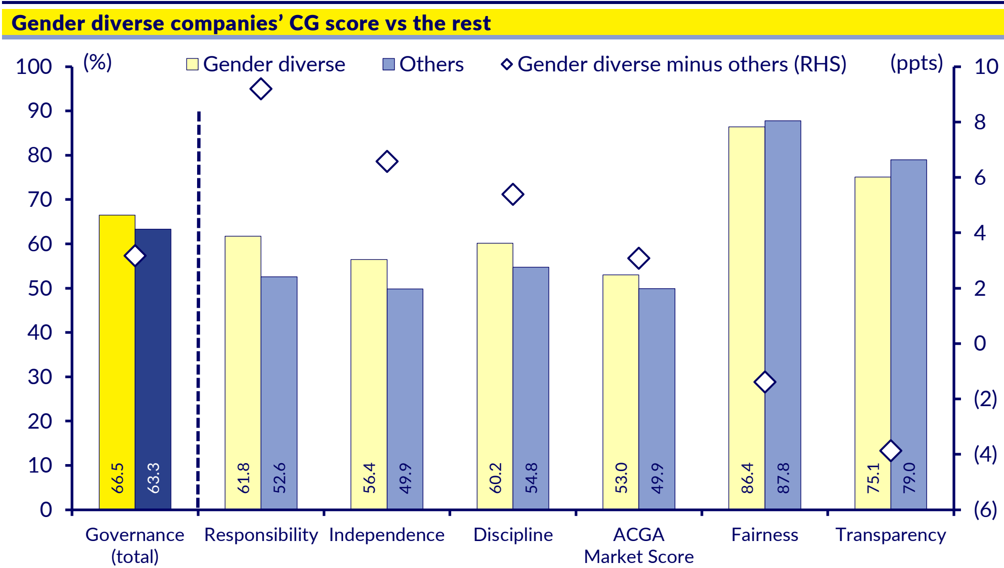
Gender diverse companies outperform

Companies with a fair share of females in management or on the board would tick the box for diversity, but do they differ in CG performance? We define gender-diverse companies as those that meet one of these three criteria: 1) the CEO is female, 2) the female accounts for more than 30% of board members or 3) the female accounts for more than 30% of management. Among 211 companies with data available on Bloomberg, there are 125 companies (59% of the total) that meet this criteria. Overall, it shows that gender diverse companies outperform the rest by 3ppts especially on responsibility, independence and discipline pillars.

Gender-diverse firms outperform in responsibility, independence and discipline

Figure 27

Gender diverse companies' CG score vs the rest



Note: Gender diverse companies n=211. Diff equals Gender diverse minus the rest. Source: CLSA

Apart from showing more effort to bring diverse talent and backgrounds to the board (CGQ17), our analysts see relatively less evidence of related-party transactions that harm non-controlling shareholders (CGQ19), and they are, in general, more confident in gender-diverse companies' controlling shareholders primary financial interest alignment in ordinary shareholder (CGQ20) as well as in the effectiveness and independence of audit committee (CGQ13)

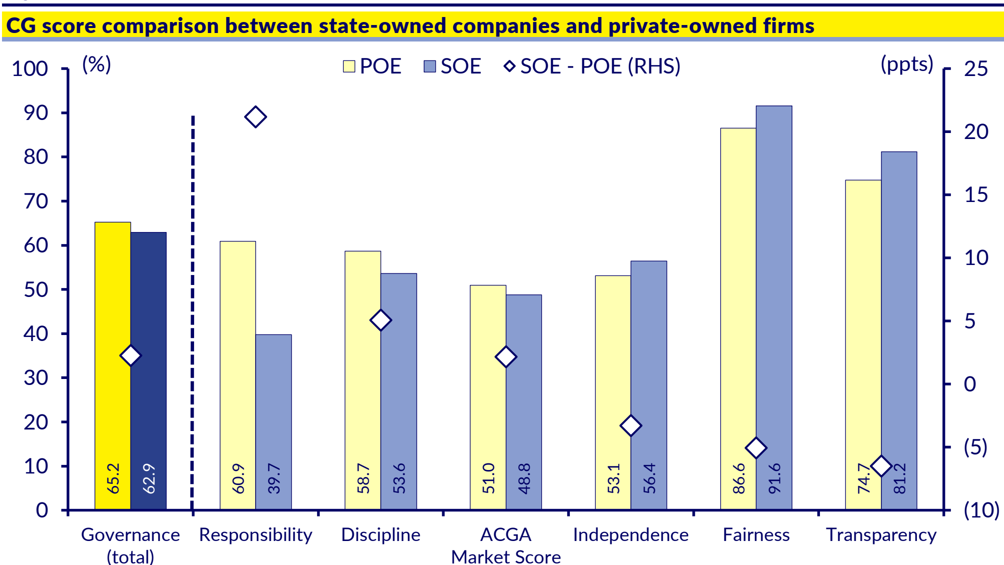
State-owned companies have poorer CG than privately held firms due to shareholder interests worry

Ownership and political intervention in corporate decision-making can significantly affect corporate governance. Under the definition of SOE as a government having 50% or more of shares outstanding, we observe that SOEs generally have lower governance scores than privately held companies (POE) and lag particularly in the responsibility and discipline pillar.

SOEs lag POEs, particularly in responsibility and discipline pillars

Figure 28

CG score comparison between state-owned companies and private-owned firms



Note: SOE=25, POE=213 Source: CLSA

Apart from the obvious worry that SOEs are more likely to face government interference that could potentially hurt shareholder interests to support government goals (CGQ05), our analysts are generally more concerned about the interest alignment between controlling shareholders and ordinary shareholders (CGQ20).

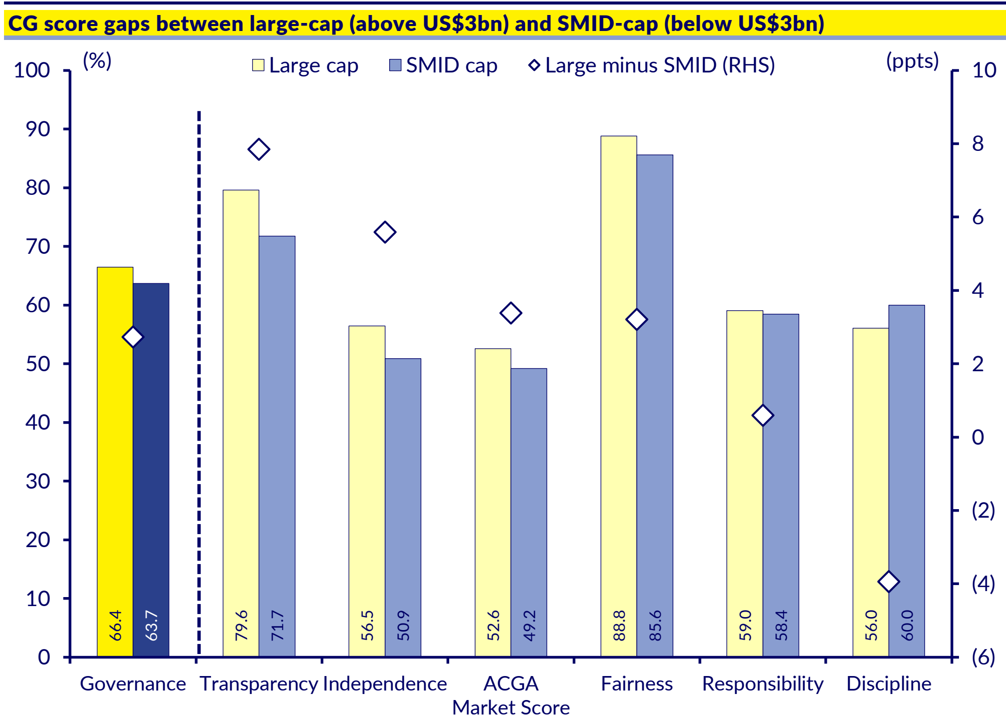
Larger caps have better disclosure

We also compare the CG score of large caps versus SMID caps. Overall, we observe that the average score for large-cap (>=US$3bn) is 2.7ppts lower than the average of SMID cap (<US$3bn). When we look into pillars, we see large caps outperform in transparency and independence pillars. In particular, our analysts see a larger proportion of large caps disclosing reasonable return on capital (CGQ06), disclosing price sensitive information (CGQ10) as well as audited full-year results (CGQ07) punctually and having better voting mechanism (CGQ16).

Large caps outperform in transparency and independence pillars

Figure 29

CG score gaps between large-cap (above US$3bn) and SMID-cap (below US$3bn)



Source: CLSA. Note SMID cap = 129, large cap = 112

CLSA Thematic baskets
Introducing the Founders Portfolio

Manager-run companies see more timely disclosure and better chairman independence

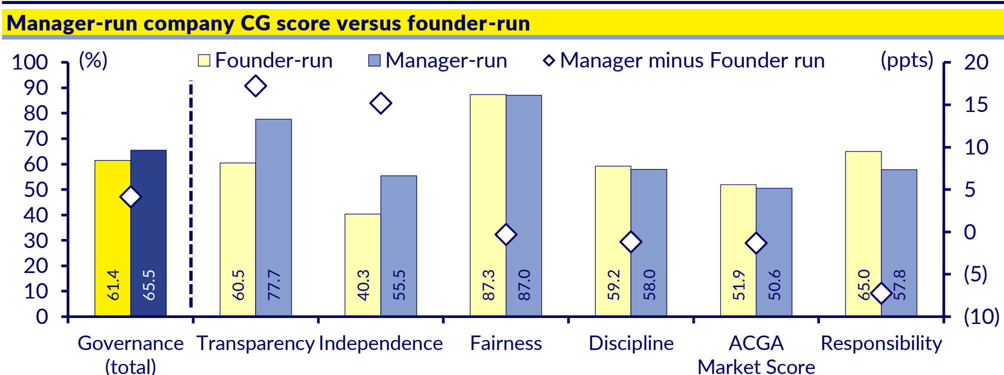
Some argue that founder-run companies could empower management to carry out a longer-term vision and with greater incentive for the company to succeed sustainably, but how would this affect corporate governance?

We define founder-run companies as those with founders undertaking leadership roles, including chairman, CEO, president, and some other similar positions. Overall, manager-run companies outperform founder-run companies by 4.1ppts in CG. Manager-run companies generally score higher in the transparency and independence pillars.

Manager-run companies generally score higher in transparency and independence pillar

Figure 30

Manager-run company CG score versus founder-run



Source: CLSA> Note Founder-run=32. Manager-run=209

Our analysts see a slightly higher proportion of manager-run companies publishing audited full-year results and price-sensitive information timely (CGQ07 and CGQ10), as well as with clear and informative financial reporting (CGQ08). Analysts generally are less concerned over chairman independence for manager-run companies (CGQ12).

Indonesia

Overall, we see progress in the country-wide CG scores in all aspects of discipline, transparency, independence, responsibility and fairness. The most notable gains are from the fairness aspect, particularly less conflict of interest on related party transactions. However, we still need to catch up with our Asia peers in almost all aspects except for fairness. The biggest room for improvement is in the aspect of responsibility.

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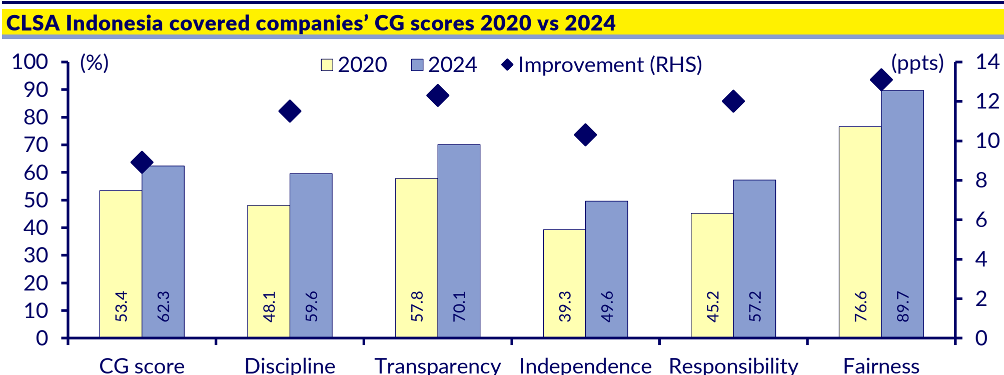
Figure 31

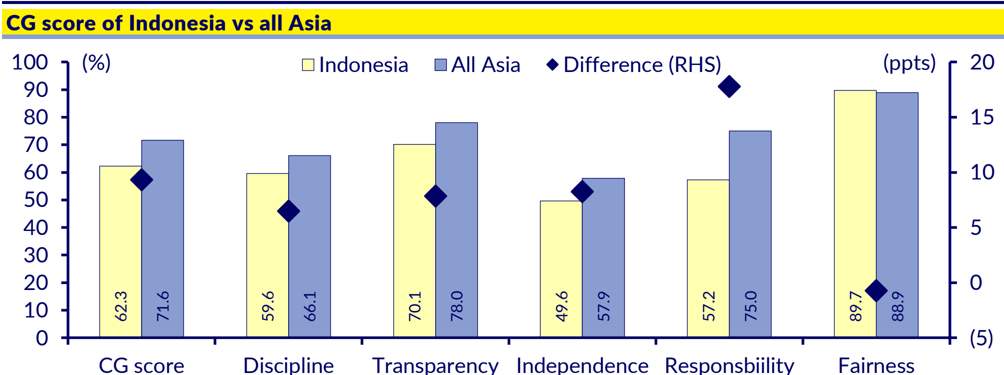
CLSA Indonesia covered companies' CG scores 2020 vs 2024



Source: CLSA

Figure 32

CG score of Indonesia vs all Asia



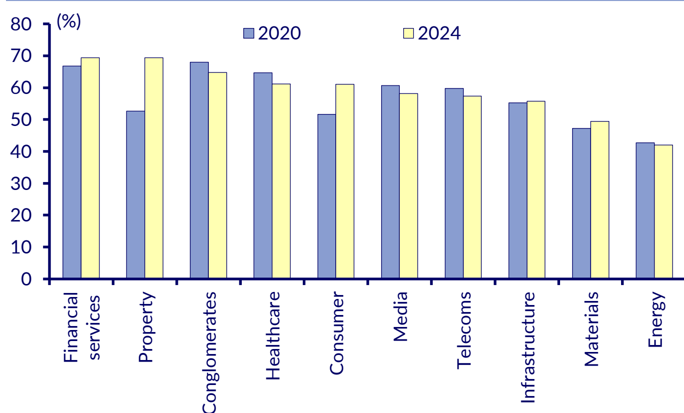
Source: CLSA

Financial services maintains the highest CG score

Sector-wise, financial services have the highest CG score in both 2020 and 2024. It improved in the past four years, as it is generally more regulated than other sectors, large caps, sizeable liquidity and solid fundamentals. Meanwhile, the property sector improved the most. Some sectors, however, saw a declining CG score, including healthcare, conglomerates, media, telecoms and energy.

Figure 33

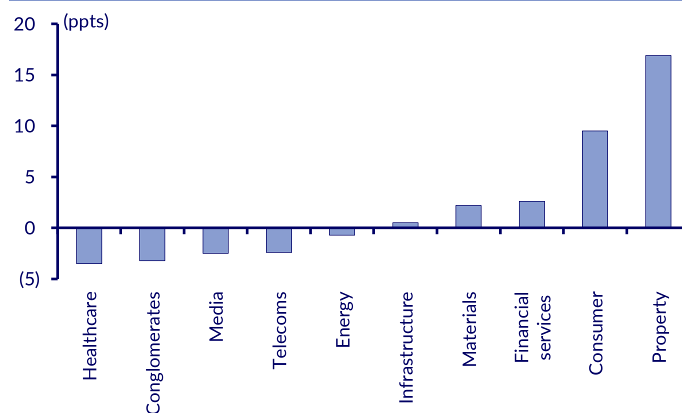
CLSA CG score by sector



Source: CLSA

Figure 34

CLSA CG score improvement (deterioration) over 2020-24



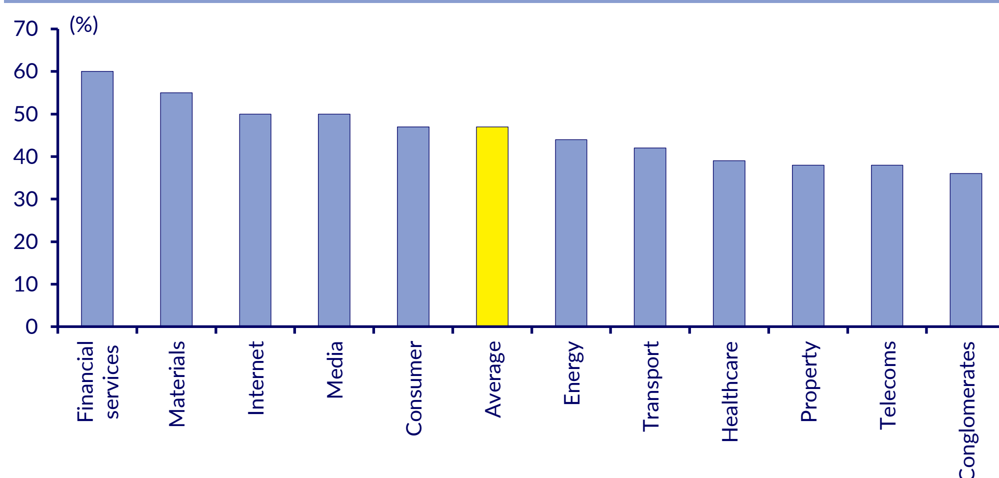
Source: CLSA

Independence - the lowest scoring aspect

Indonesia's CG scores, particularly in the aspect of independence, are the lowest. However, all companies in our coverage have met the OJK's regulation, which stipulates that at least 30% of commissioner members should be independent, with no specific requirement for independent directors. On average, 47% of the board of commissioners are independent, well above the minimum threshold. The appointment of board members is a decision made by shareholders during the general meeting.

Figure 35

Percentage of independent commissioners in CLSA Indonesia covered companies



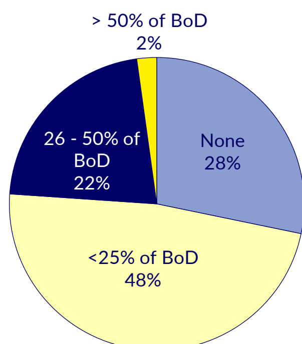
Source: CLSA

Increasing board diversity

We also observed that the number of female directors has been increasing over time in Indonesia, implying the companies are encouraging more board diversity. Among the stocks covered by CLSA Indonesia, 28% of companies do not have female directors. However, the majority of the companies do have at least one female seated on the board of directors, while 11% of CLSA Indonesia-covered companies have females as their presidential director.

Figure 36

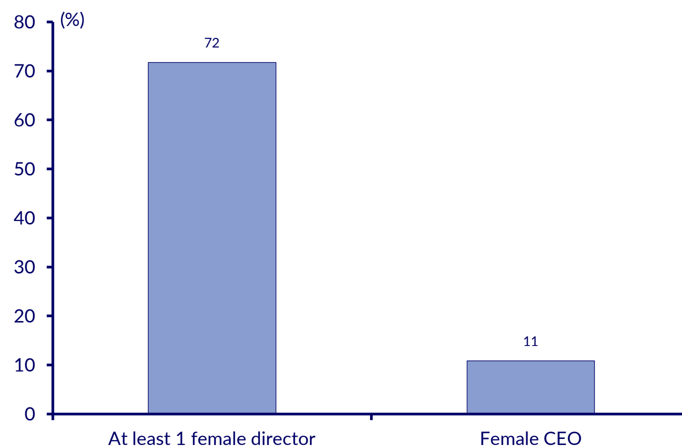
Women BoD composition in the covered companies



Source: CLSA

Figure 37

Companies with at least 1 female director and female CEO

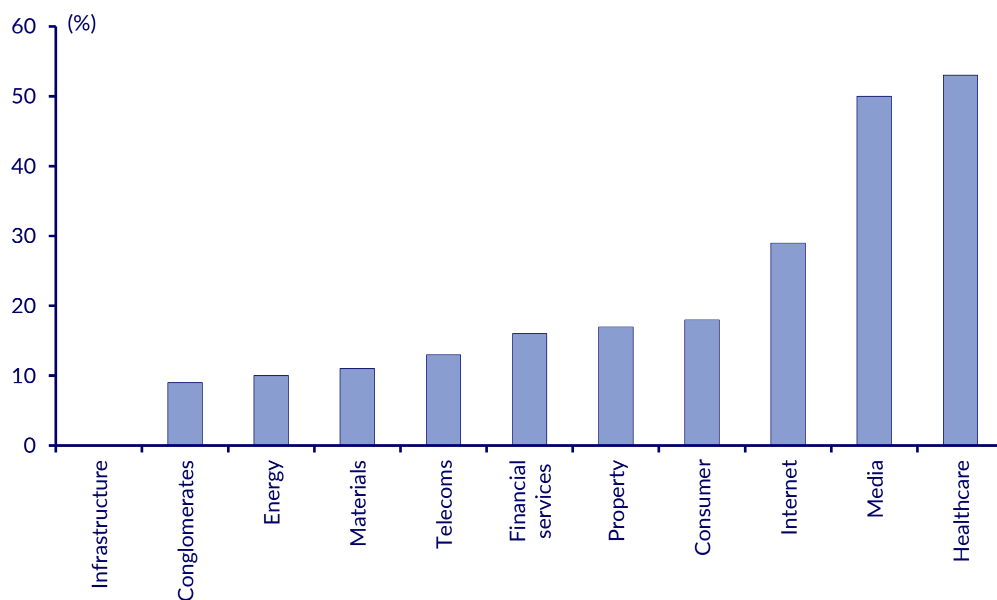


Source: CLSA

Among stocks covered by CLSA Indonesia, 28% of companies do not have female directors

Figure 38

Composition of female BoD by sector



Source: CLSA

There is still substantial room for improvement in Indonesia's CG score in all sectors. The Financial Services Authority (*Otoritas Jasa Keuangan*, OJK) is currently overseeing ESG implementation in Indonesia. Note that currently OJK main focus is to regulate the financial services.

More regulation to improve the disclosure, hence transparency

In the past five years, we have seen several regulations that aim to improve corporate governance, mainly on transparency. Corporates need to publish an annual sustainability report starting in 2020, with the sets of disclosure being regulated by OJK. In addition, OJK regulates the form and content of annual reports to set reporting standards. Recently, the OJK also issued regulation to change the reporting of share ownership, wherein shareholders will now calculate their ownership percentage based on valid voting rights rather than number of shares held.

However, we also noticed some relaxation of reporting, mainly for small and medium scale companies with market cap below Rp250bn (US$150k). Since 2020, OJK removed the requirement for at least 30% independent commissioners to at least one independent commissioner. In addition, they do not need to have an audit committee, as it can be carried out by the independent commissioner. The regulation is aimed to encourage more company to publicly list their shares.

In all, we have seen improvement for Indonesian companies' CG over the years from companies' goodwill, a regulatory push and investor demand. However, there is still a gap between Indonesia CG to its Asian peers, which needs to be addressed.

Malaysia

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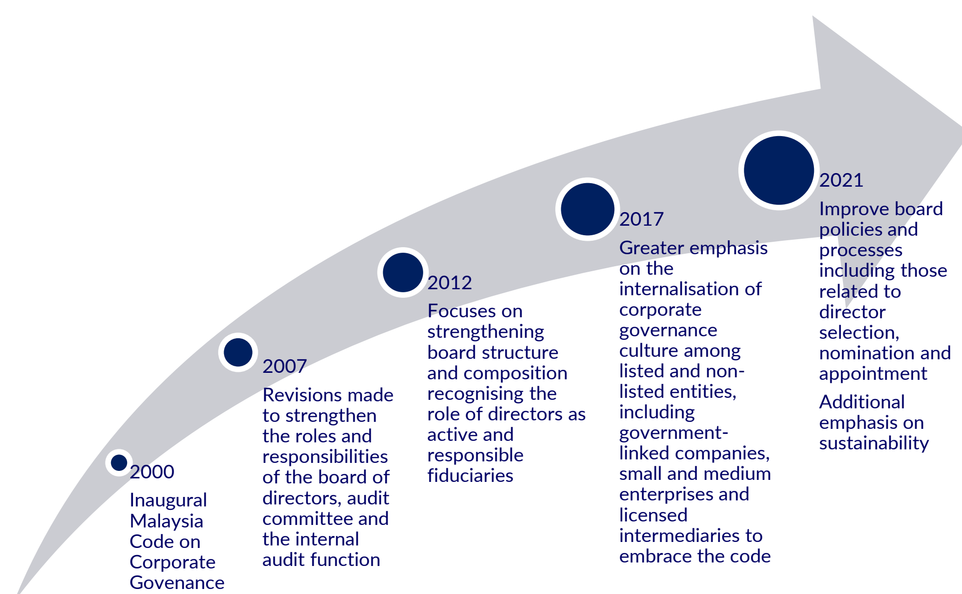
Malaysia introduced its inaugural Code on Corporate Governance - The Malaysia Code of Corporate Governance (MCCG) - in 2000. This was built upon the High-Level Finance Committee Report on Corporate Governance in 1999. Over the years, enhancements were made, and in 2007, the Code was revised to incorporate whistleblowing provisions and, more importantly, the responsibilities of boards and audit committees were amplified. Further reviews were made in 2012 on strengthening the board structure and composition. Some semblance of ESG was gradually infused in this revision. By 2017, the MCCG edition promoted greater internalisation of corporate governance, which sought to improve the quality of corporate governance disclosures.

Malaysia's corporate governance framework started since 2000

Enhancements made to board matters over the years

Figure 39

Evolution of the Malaysia code of corporate governance for board matters



Source: CLSA, Securities Commission

Malaysia No.2 in regional rankings for CG Rule on a score of 79%

Malaysia's score increased slightly by two percentage points in this category to 79% from an already high 77% in 2020. Malaysia now sits at No.2 in the rankings; only Australia has a higher score. Notably, Malaysia now bests Hong Kong in this category (75%) and Singapore (77%). That is quite an achievement, and credit must go to both the SC and BM in significantly improving Malaysia's scores in the CG Rules sector. Just eight years ago, we ranked Malaysia's CG Rules score at 54%.

Significant progress in diversity and board composition

Malaysia has made quite significant progress in the area of diversity in its board, not to mention the board composition, which has seen criteria tighten since the last MCCG update in 2021 (see ***Boardroom nectar: Malaysia (Combing through annual report disclosures for corporate governance progress)***).

At least 30% of the board should be female in 2017

In the MCCG April 2017 version of diversity, companies must disclose their gender diversity policy, targets and measures. In addition, Large Companies, as defined in the MCCG, are also expected to have at least 30% women directors on their board. In this regard, promoting gender diversity on boards of listed companies remains a priority of the SC. The SC had set a target to have no all-male boards on the top 100 companies by the end of 2018.

Bursa Malaysia spearheaded initiatives to champion diversity agenda

Similarly, Bursa Malaysia has spearheaded numerous initiatives to champion the diversity agenda - from putting regulatory measures in place, to conducting varied and tailored advocacy programmes. The revised MCCG 2021 by the SC recommended that all boards should comprise at least 30% women directors across all company boards.

Implementing relevant policies, processes and initiatives to promote diversity

Specifically, starting from the financial year ending 31 December 2023, Main market PLCs are required to effectively manage diversity within their respective organisations - by implementing relevant policies, processes and initiatives to promote diversity - and making corresponding disclosures within their Sustainability Statement or Report. ACE Market PLCs will be subject to these requirements from the financial year ending 31 December 2025.

Large institutional investors lay expectations for investee companies

The Institutional Investors Council Malaysia (IIC)—comprising large institutional investors such as EPF, PNB, KWAP, and Khazanah—clearly laid expectations for investee companies to have at least 30% women representation on their boards within three years in their Malaysian Code for Institutional Investors 2022. The IIC's stance is in line with that of large global institutional investors, who have started voting against companies with all-male boards.

Malaysia is one of only four emerging markets where more than 20% of the top-100 PLCs' board seats are held by women

Across the entire population of PLCs listed on Bursa Malaysia, the average percentage of women directors stood at approximately 22% as of 1 May 2023. In fact, according to the Gender Equality in Corporate Leadership: Regional Analysis Report by the United Nations Sustainable Stock Exchange Initiative (UNSSE), in partnership with the International Finance Corporation (IFC) (a member of the World Bank Group) and UN Women in December 2022, Malaysia is one of only four emerging markets where women hold more than 20% of the top 100 PLCs' board seats. It is worth noting that the report covered 3,246 PLCs on 35 stock exchanges across seven regions around the world.

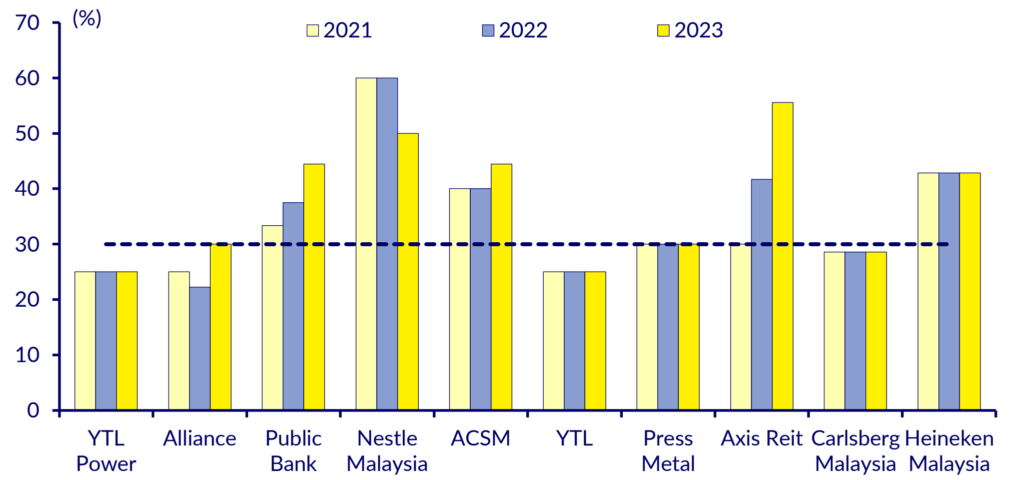
As at Sep-21, a quarter of the 100 companies we researched have boards staffed 30% by women

In ***Boardroom nectar: Malaysia (Combing through annual report disclosures for corporate governance progress)***, we found that a quarter of the 100 companies we researched have boards staffed 30% by women, with construction and financials showing the highest proportion now (>40%). In our current top 10 CG scorers, we found that over the past three years, eight out of 10 meet the diversity criteria, with notable increases in Public Bank, Aeon Credit (ACSM) and Axis Reit.

Among our top-10 CG scorers, two firms do not meet diversity criteria

Figure 40

Women on the board - composition over the years - among the top 10 CG score companies



Source: CLSA, Companies

YTL Corp and YTL Power did not meet the board diversity criteria

YTL Power and YTL Corp both disclosed in their Corporate Governance statement for the departure of its diversity criteria in its Board that whilst the Board has not met the target of 30% women directors set out in the Code; it will continue to seek diverse Board members of the highest calibre with the necessary strength, experience and skills to meet the needs of the company. The Board recognises the importance of encouraging and developing female talent at all levels and has a strong complement of female divisional heads and chief executive officers.

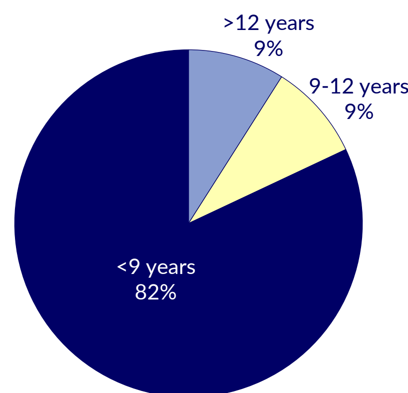
Tenure limit with no further extension

The MCCG 2021 version also came with a 12-year limit for independent directors (introduced in early 2022) without further extension. At the time this initiative was recommended, based on the FBM100 dataset up to Sept 2021, there are 469 independent directors in total, of which 9% have been independent directors for more than 12 years, the longest being KL Kepong chairman Raja Muhammad Alias Bin Raja Muhammad Ali, who was appointed on the board since 1978; he is 89 years old.

As at Sep-21, 82% of independent directors have been in the position for less than nine years

Figure 41

FBM100 companies have majority of directors below 9Y tenure (as at Sep 2021)

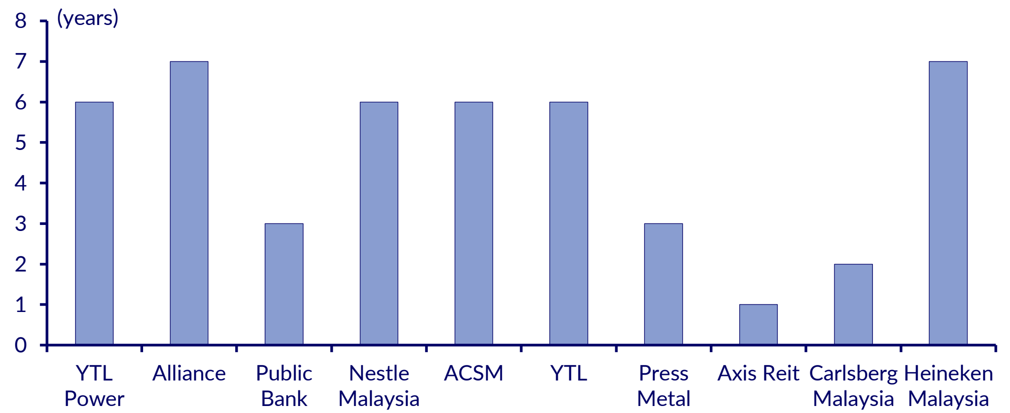


Source: CLSA, DIBots, Bursa Malaysia

All chairmans who are also independent directors have not exceeded 12 years tenure

Figure 42

Chairman tenure among the top 10 CG score companies



Source: CLSA, Company

Separation of role for chairman and CEO

One clear role distinction is the positions of Chairman and Chief Executive Officer (CEO) should be held by different individuals. This practice has been instilled since 2012. When the MCCG 2000 was launched, it only required an explanation if the roles of chairman and CEO were held by the same person, that there should be a strong independent element on the board. The 2021 edition further reinforces the independence of the chairman stipulating that a chairman may not sit on the audit, nominations or remuneration committees. Of the FBM100 companies, only Genting still had Tan Sri Lim Kok Thay holding both chairman and CEO roles. The departure from this practice is detailed in Genting's CG Report. For Genting Malaysia, he was redesignated as deputy chairman in 2019.

Philippines

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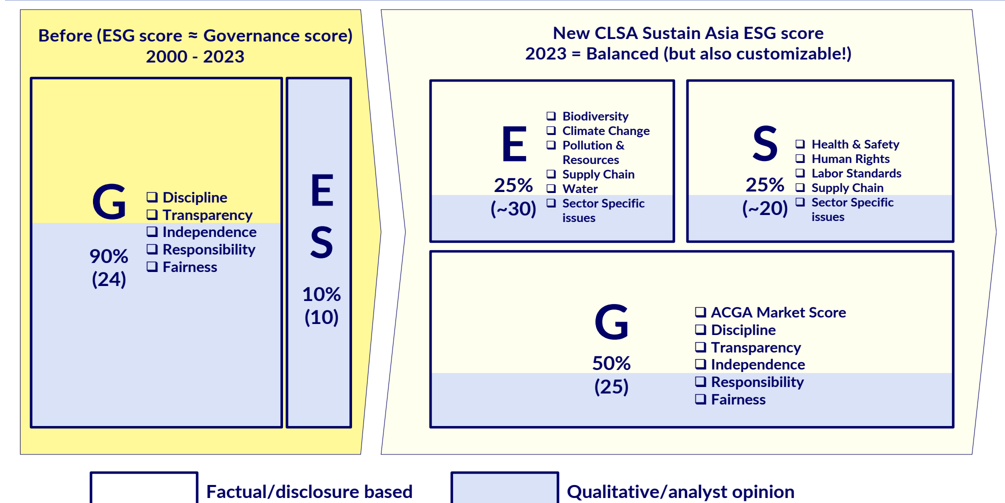
Based on CLSA's latest ESG market scores, the Philippines came in last out of the 13 markets, with an average score of 40.1 vis-à-vis the mean score of 57.2. Australia, Japan and Taiwan are the top-three countries in terms of average ESG score. Joining the Philippines in the last quartile are Indonesia and Korea. The ESG scores are split into three sections as follows:

Figure 43

CLSA's new ESG scoring



Source: CLSA

Note that prior to our new methodology, Governance had a 90% weight while environment and social had a combined weight of 10%.

Market average ESG scores

Figure 44

Summary of ESG scores

	Average ESG
Australia	64.1
Japan	62.9
Taiwan	60.7
India	59.5
Thailand	59.0
Hong Kong	57.7
Singapore	57.1
Malaysia	56.8
China	52.4
Korea	51.1
Indonesia	48.8
Philippines	40.1
Average	**57.2**

Source: CLSA

Philippines ESG score average by sector

Figure 45

PH ESG sector average scores (sorted from highest to lowest)

Philippine Average	**40.1**
Telecoms	49.7
Power	47.9
Transport/Infrastructure	45.8
Materials	42.7
Financial services	40.0
Consumer	38.0
REITs	36.6
Hotel and Leisure	36.4
Conglomerates	34.4
Property	38.0

Source: CLSA

But, there are ESG stars along the way . . .

Globe's and Manila Water's ESG scores are higher than the regional mean

In our coverage of 47 companies, we note Globe's and Manila Water's ESG scores of 63.9 and 57.3 respectively are higher than the regional mean score of 55.9. Not too far behind from the regional mean score are the ESG scores of Ayala Land, Ayala Corporation and Shakey's Pizza at 54.2, 52.1, and 50.9 respectively. Other companies in the top quartile are Nickel Asia, BPI, D&L, Manila Electric, First Gen, ICTSI, SM Prime, AC Energy. The companies part of the second quartile are BDO Unibank, Coverge ICT, Monde Nissin, Aboitiz Power, PLDT, Century Pacific, Semirara, Bloomberry, Robinsons Retail, Universal Robina, and Emperador.

Not too far behind from the regional mean score are the ESG scores of Ayala Land, Ayala Corporation and Shakey's Pizza

Figure 46

Philippine companies' ESG scores - Top 2 quartiles

Company Name	Total ESG score
Quartile 1	
Globe	63.9
Manila Water	57.3
Ayala Land	54.2
Ayala Corporation	52.1
Shakey's Pizza	50.9
Nickel Asia	49.8
BPI	48.0
D&L	47.8
Manila Electric	47.0
First Gen	46.6
ICTSI	45.8
SM Prime	45.7
AC Energy	45.7
Quartile 2	
BDO Unibank	43.8
Converge ICT	43.0
Monde Nissin	42.8
Aboitiz Power	42.7
PLDT	42.3
Century Pacific	41.8
Semirara	41.4
Bloomberry	40.8
Robinsons Retail	40.7
Universal Robina	39.4
Emperador	39.3

Source: CLSA

Latest ESG issues

In the last 24 months or so, there have been a couple of ESG issues among the companies in our coverage, which include the following:

Ayala Corporation (AC PM) – Joyce Anne Ramos

Issue with dividend plan led to overhang in share price

In May 2022, Ayala Corporation announced a property dividend of three ACEN (ACEN PM) shares for every Ayala Corp share owned. This move aimed to help ACEN comply with PSE's 20% minimum public ownership requirement. However, this decision led to a few issues despite its initial good intentions. Shareholders of AC PM with strict ESG requirements were compelled to have a larger exposure to thermal assets, regardless of their comfort level. Additionally, these shareholders faced challenges in planning their share-unloading strategy due to delays and insufficient disclosures regarding the payout. Consequently, this situation created an overhang on the share price. Management attributed the delayed and staggered dividend payout to the Bureau of Internal Revenue issues. Unfortunately, the optics were not favourable when Mermac Inc, the holding firm of the Zobel Family, sold their ACEN PM shares ahead of other shareholders. Overall, it took Ayala Corporation more than a year from the time of the announcement to the completion of the dividend payout.

Bloomberry (BLOOM PM) – Amos Ong

Decadal legal dispute finally resolved

Bloomberry and Global Gaming Asset Management (GGAM) ended its 10-year legal dispute and agreed to a settlement of US$300m, requiring the former to purchase 921m shares held by GGAM at a purchase price of P18.22/share. Bloomberry entered into a Management Services Agreement with GGAM in 2011 to develop Solaire integrated resort casino in Entertainment City. A few months after the property opened in 2013, Bloomberry terminated the MSA because of a material breach of the MSA by GGAM after prior notice and failure of discussions to settle the dispute. Meanwhile, GGAM denies it breached the MSA and alleges that the other party was in violation. This legal dispute went on for a decade, and now that it has been resolved, we think this opens a new chapter for Bloomberry to move on and focus on its growth and expansion plans, the latest being Solaire Resort North.

Apex Mining (APX PM) – Amos Ong

Apex's response following landslide was proper

In February of this year, a massive landslide occurred in a bus terminal servicing Apex Mining employees in Maco, Davao de Oro. The incident claimed nearly 100 lives (nine of which were Apex employees) and affected more than 7,000 residents in the community. The area in Davao de Oro has been battered by heavy rains and floods since late January, which triggered the landslide. The regional government and Mines and Geosciences Bureau found no grounds to sanction Apex or suspend operations as the landslide occurred outside the mine site. Nonetheless, we think it is a positive response for Apex to voluntarily cease mining operations and deploy relevant manpower and necessary supplies to help relief and rescue during the period. Apex has also conducted safety measures and checks both inside and near the mine camp to prevent any similar incidents from occurring.

Nickel Asia (NIKL PM) – Amos Ong

Nickel Asia's new tailings storage facility has made a significant impact on its equity earnings

Nickel Asia's (NIKL) construction of a new tailings storage facility for its Coral Bay HPAL plant in Palawan has significantly impacted its equity earnings amid a challenging LME nickel price environment. The management of the HPAL plant and tailings is primarily overseen by Sumitomo Metal Mining, the majority owner and foreign partner of NIKL in HPAL nickel processing.

Megaworld (MEG PM) – Renz Alvarado

Increase in authorised capital shares is CG issue for Megaworld

Another corporate governance issue is Megaworld's increase in authorised capital shares (ACS). In March 2024, the company raised its ACS to P45.7bn (from P40.2bn). With a par value of P1.00/share, authorised shares increase by 5.5bn. This corporate action allows the company to issue more equity and increase its shares outstanding by as much as 18%. In May 2024, Megaworld used a portion of the authorised shares and issued an additional 1.375bn common shares to its parent, Alliance Global (AGI), at a transaction price of P1.90 per share. This transaction increased AGI's ownership in MEG from 48.68% to 53.09% and diluted minority shareholders by 4% (in terms of EPS, BVPS and NAVPS).

Converge (CNVRG PM) – Derrick Guarin

Share sale of Coherent Cloud is unfair towards the minority shareholders

In 2022, Coherent Cloud, Warburg Pincus's affiliate, sold its remaining shares in Converge to the company's founders at a cheaper than market price. We viewed the transaction as unfair for the minority shareholders who bought the stock at significantly higher prices than the share sale.

PLDT hit with a significant budget overrun incident in 2022

PLDT (TEL PM) – Derrick Guarin

In late 2022, PLDT was hit by a significant budget overrun incident. Recall that the company announced in December 2022 that it had over-procured network materials mostly for the construction of its 5G sites, exceeding its capex budget for the last five years by P33bn. This was due to poor monitoring of procurement. Due to this issue, several key executives were forced to retire or resign in the succeeding months. The final remaining overrun costs will be booked in 2025.

Actionable ESG plays

We have compiled our top large- and mid-cap ESG plays using the following criteria: the stock has to (1) be in the first quartile; (2) have a BUY rating and (3) have a market cap of at least US$2bn. Our top ESG plays are Ayala Corporation, Bank of the Philippine Islands, SM Prime, Ayala Land, ICTSI and Globe.

Figure 47

Valuation Table

Company	Code	Rec	Price	Target	Upside (%)	Mkt cap (US$m)	ADTO (US$m)	PE (x)		PB (x)		Div yield (%)	
								24CL	25CL	24CL	25CL	24CL	25CL
SM Prime	SMPH PM	BUY	27.35	41.50	51.7	13,864	5.4	18.0	17.0	1.8	1.7	1.2	1.3
ICTSI	ICT PM	BUY	350.00	430.00	22.9	12,494	8.9	15.8	14.5	9.2	7.2	3.2	3.7
BPI	BPI PM	BUY	119.00	147.30	23.8	11,012	4.4	11.0	10.3	1.5	1.4	3.3	3.5
Ayala Land	ALI PM	BUY	27.15	41.80	54.0	7,053	7.9	14.0	12.2	1.4	1.3	1.5	1.8
Ayala Corp	AC PM	BUY	588.50	969.00	64.7	6,410	3.7	8.5	7.0	0.8	0.7	1.7	1.9
Globe Telecom	GLO PM	BUY	1,994.00	2,470.00	23.9	5,053	1.6	12.1	10.7	1.6	1.5	4.3	5.8

Source: CLSA

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Companies mentioned

8Telecom (N-R)
Aboitiz Power (AP PM - P34.00 - BUY)[1]
AC Energy (N-R)
ACSM (ACSM MK - RM7.24 - BUY)[1]
Aeon Credit Service (N-R)
Alliance (ABMB MK - RM3.87 - BUY)[1]
Apex Mining (APX PM - P4.04 - U-PF)[1]
Asiasons Capital (N-R)
Asti (N-R)
Asuransi Jiwasraya (N-R)
Asuransi Sosial Angkatan (N-R)
AXA Philippines (N-R)
Axis Reit (AXRB MK - RM1.83 - O-PF)[1]
Ayala Corp (AC PM - P594.50 - BUY)[1]
Ayala Group (N-R)
Ayala Land (ALI PM - P27.50 - BUY)[1]
Bangchak Corporation PCL (BCP TB - BT38.2 - BUY)[1]
Bangko Sentral ng Pilipinas (N-R)
Bank Negara (N-R)
BDO Unibank (BDO PM - P138.00 - BUY)[1]
Benguet Mining (N-R)
Berli Jucker (BJC TB - BT21.5 - O-PF)[1]
Bersenjata Republik Indonesia (N-R)
Bloomberry (BLOOM PM - P10.30 - BUY)[1]
Blumont Group (N-R)
BPI (BPI PM - P121.00 - BUY)[1]
Broadway Industrial Group (N-R)
Business Times (N-R)
Carlsberg Malaysia (CAB MK - RM19.80 - BUY)[1]
Century Pacific (CNPF PM - P36.10 - BUY)[1]
Ciputra Dev (CTRA IJ - RP1,115 - BUY)[1]
Coherent Cloud (N-R)
ComfortDelGro (CD SP - S$1.37 - O-PF)[1]
Converge ICT (CNVRG PM - P11.08 - BUY)[1]
Corporate Monitor (N-R)
D&L (DNL PM - P6.37 - BUY)[1]
Deloitte (N-R)
Delta Electronics (2308 TT - NT$340.5 - O-PF)[2]
Eastwest Banking (N-R)
Emperador (EMI PM - P18.78 - O-PF)[1]
Eneco Energy (N-R)
Energy Market Company (N-R)
Everland Public Company (N-R)
Export–Import (N-R)
First Gen (FGEN PM - P18.10 - BUY)[1]
Fullerton Healthcare (N-R)
Genting Singapore (GENS SP - S$0.88 - BUY)[1]
GGAM (N-R)
Global Gaming Asset Management (N-R)
Globe Telecom (GLO PM - P1,941.00 - BUY)[1]
Hana (HANA TB - BT40.5 - BUY)[1]
Heineken Malaysia (HEIM MK - RM23.88 - O-PF)[1]

Holcim Phils (N-R)
Hyflux Lum Ooi Lin (N-R)
ICTSI (ICT PM - P338.00 - BUY)[1]
Indorama (N-R)
Jollibee (JFC PM - P228.60 - BUY)[1]
Kasikorn Asset Management (N-R)
Kasikornbank (KBANK TB - BT127.5 - BUY)[1]
Keppel (N-R)
Khazanah Nasional (N-R)
Koyo International (N-R)
KPMG (N-R)
KTL Global (N-R)
LionGold (N-R)
Lopez Group (N-R)
LTG (LTG PM - P10.00 - SELL)[1]
Lucky Securities (N-R)
Maharlika Investment Corporation (N-R)
Mak Yuen Teen (N-R)
Manila Electric (MER PM - P362.60 - O-PF)[1]
Manila Water (MWC PM - P26.90 - BUY)[1]
Manual Pangilinan (N-R)
Manulife Financial (N-R)
Mapletree (N-R)
Mapletree Pan Asia Commercial (MPACT SP - S$1.23 - O-PF)[1]
MarcVentures (N-R)
Megaworld (MEG PM - P1.81 - BUY)[1]
Meralco (Pangilinan) (N-R)
Mermac (N-R)
Mermac Inc (N-R)
Metro Pacific Hospital (MPHHI PH - P182.00 - N-R)
Metrobank (MBT PM - P65.90 - BUY)[1]
MNACT (N-R)
Monde Nissin (MONDE PM - P11.22 - BUY)[1]
Muangthai Capital (MTC TB - BT44.5 - BUY)[1]
NAUTIC (N-R)
Nestle Malaysia (NESZ MK - RM124.00 - O-PF)[1]
News Network Corporation (N-R)
Nickel Asia (NIKL PM - P4.13 - U-PF)[1]
Noble Group (N-R)
Novo Tellus Alpha (N-R)
OUE Commercial REIT (N-R)
Pakuwon (PWON IJ - RP390 - BUY)[1]
Pegasus Asia (N-R)
Permodalan (N-R)
Petronas Phil (N-R)
Philam Life (N-R)
PLDT (TEL PM - P1,410.00 - BUY)[1]
POA Recovery PTE (N-R)
Press Metal (PMAH MK - RM5.60 - BUY)[1]
Public Bank (PBK MK - RM4.13 - O-PF)[1]
Quarz Capital (N-R)
Robina Corporation (N-R)
Robinsons Retail (RRHI PM - P37.00 - BUY)[1]

Sabana Reit (N-R)
San Miguel Corporation (N-R)
Semirara (SCC PM - P33.20 - O-PF)[1]
Serba Dinamiks (N-R)
SGX Group (N-R)
Shakey's Pizza (PIZZA PM - P9.73 - BUY)[1]
Siam Commercial Bank (N-R)
Singapore Telecommunications (N-R)
Singtel (ST SP - S$2.48 - BUY)[1]
SM Prime (SMPH PM - P27.35 - BUY)[1]
Social Security Organisation (N-R)
Stark Corporation (N-R)
Sumitomo Metal Mining (N-R)
Summarecon (SMRA IJ - RP520 - BUY)[1]
Sun Life of Canada Philippines (N-R)
Suntec Reit (SUN SP - S$1.07 - SELL)[1]
Surya Semesta (SSIA IJ - RP1,185 - BUY)[1]
Temasek (N-R)
Tenaga (TNB MK - RM13.04 - BUY)[1]
The Baltic Exchange (N-R)
The Edge (N-R)
The Energy Market Company (N-R)
UnionBank (UBP PM - P38.00 - BUY)[1]
Universal Robina (URC PM - P106.00 - O-PF)[1]
UOB (UOB SP - S$30.88 - BUY)[1]
Vertex Technology Acquisition Corporation (N-R)
Warburg Pincus (N-R)
Westports (WPRTS MK - RM4.05 - BUY)[1]
World (N-R)
Y Ventures Group (N-R)
Yau Kwok Seng (N-R)
YTL (YTL MK - RM3.59 - SELL)[1]
YTL Power (YTLP MK - RM4.99 - O-PF)[1]

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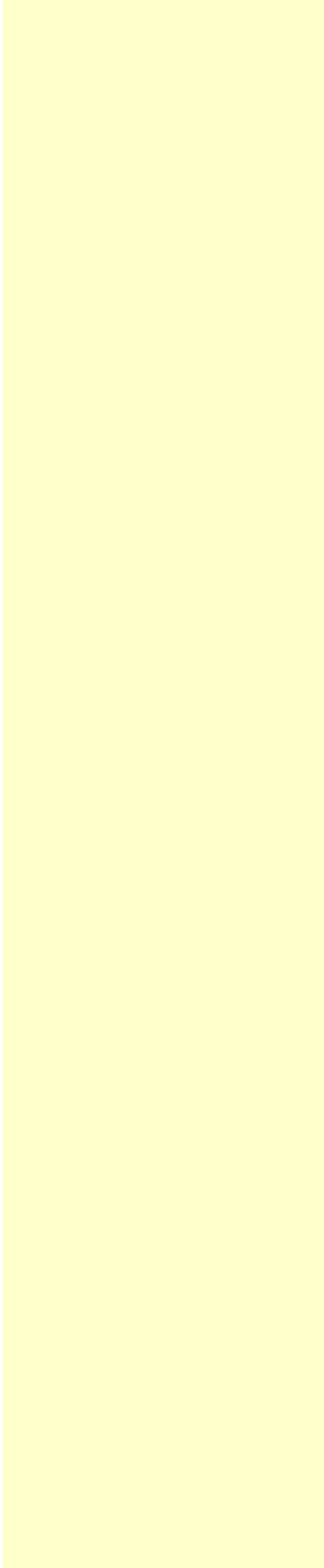

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