MALAYSIA

KEY POINTS

- Before the crisis, Malaysian corporate governance standards exceeded practices in most regional economies; Malaysia continues to lead much of the region.

- The Malaysian Government takes a very proactive role in initiating and financing major private sector corporations, driving industrial development. This may shelter some corporations from market discipline and incentives and in some cases, make regulatory enforcement more difficult. Government support for large corporate players also can discourage small investors and new market entrants.

- The Government is gradually reducing its role in the corporate sector, especially by re-privatising banks and outsourcing pension fund management, furthering Malaysia's progress in moving to a rules and disclosure based system of doing business.

- The financial crisis also prompted new corporate governance initiatives. Malaysian regulations now rival those of Hong Kong and Singapore; the Government revamped Kuala Lumpur Stock Exchange listing rules, strengthened financial reporting and insider trading laws, and revised the Securities Commission Act.

- Unlike many other economies in the region, Malaysia's banking sector is independent of other business interests; its equity market is well developed; and increasingly active institutional investors force firms to compete for funds. Except in the financial and infrastructure sectors, trade and investment regimes are relatively open, increasing corporate discipline.

After Singapore, Malaysia leads South East Asia in corporate governance, with excellent regulations, open, flexible markets and an active community of relevant non-government organisations.[1] The financial crisis prompted new corporate governance initiatives and Malaysia now enjoys regulations rivalling those of Hong Kong and Singapore; the Government revamped Kuala Lumpur Stock Exchange Listing Rules, strengthened accounting standards and insider trading laws and revised the Securities Commission Act.[2] Large financial markets promote a dynamic business culture; eventually, this should reduce relationship based lending that produced poor pre-crisis investments.

However, the Government's leadership in the corporate sector, both as investor and producer, may weaken the market incentives managers face, reducing investment quality.

CORPORATE SECTOR STRUCTURE

Unlike many other regional economies, Malaysia's independent banking sector and well developed equity market make firms compete for funds. Although families are an important source of ownership, their reliance on pyramid ownership structures to concentrate control is less than elsewhere (Naughton, 2001). Nevertheless, family owned conglomerates built on extensive cross-shareholdings, and the Government's large corporate presence, can discourage small investors and new market entrants.

Deep Capital Markets

Malaysia's equity markets are more developed than in most other East Asian economies. In 2000, the total market capitalisation of the 809 listed companies equalled 124 per cent of GDP (CEIC, 2002). However, market liquidity is modest, even by regional standards, possibly because families and the state prefer to hold, rather than trade, shares (Claessens et al., 1999). With a relatively large share market, firms rely less on bank lending; at around 1.3, the average debt-to-equity ratio resembles many developed countries' ratios (Naughton, 2001). Hence, outside equity owners discipline management more than in most regional economies and investor risks generally are somewhat lower. Despite a thriving government bond market, the Malaysian corporate bond market remains underdeveloped (Naughton, 2001).[3]

[1] These include the Malaysian Institute of Corporate Governance, the Malaysian Institute of Accountants and the Federation of Public Listed Companies.

[2] In April 2001, a survey of East Asian corporate governance, *Saints and Sinners–Who's Got Religion?* scored Malaysia highly on its rules and regulations. In June 2001, a survey of expatriate business people ranked Malaysia first amongst East Asian economies, scoring 3 on a scale of zero to 10, with zero being the best grade (CLSA Emerging Markets, 2001; PricewaterhouseCoopers, 2001).

[3] The long term market, excluding bank issues, includes securities ranging from straight bonds to bonds with warrants, convertibles and Islamic bonds.

Banks Independent of Corporations

Strict central bank rules cover bank ownership, so Malaysia's banking sector is relatively independent, with most bank shareholders holding few other interests (Backman, 1999).[4] Furthermore, banks cannot hold controlling shares in other companies or sit on their boards of directors (Institutional Analysis, 2001). Hence, banks generally hold little equity, usually not over 10 per cent, in any one company (Institutional Analysis, 2001).[5] This may reduce firms' ability to use bank relationships to obtain finance.

Family Ownership Significant

Although outside investors are prominent, families still control over 40 per cent of Malaysia's publicly listed companies (Claessens et al., 1999).[6] However, the top ten families control only around 25 per cent of market capitalisation, well below that of Thailand, Indonesia and the Philippines. Malaysian family owners commonly appoint relatives to management and use cross-shareholdings to enhance control, making less use of multi-layered pyramid structures and reducing outside investor risk (Claessens et al., 1999).

Conglomerates Important

Many Malaysian conglomerates have close links with the Government through their national service obligations. These conglomerates can access low cost finance, often through state development bodies and pension funds, have exclusive business relationships with state owned enterprises, SOEs, and enjoy preferential access to major government contracts (*Far Eastern Economic Review*, www.feer.com, 9 August 2001).

However, many conglomerates amassed substantial non performing loans from the financial crisis, often owed to the state. For example, Malaysian Resources now owes loans of Ringgit 600 million to Ringgit 700 million (US$158 million to US$184 million) mainly to the Employees Provident Fund. Following the crisis, government financial assistance to some struggling privately owned conglomerates, including Malaysia Airlines and Renong, highlighted their special position in the corporate sector; the Government has since moved away from this strategy (*Far Eastern Economic Review*, www.feer.com, 23 August 2001).

Government Role Important

With a significant presence in corporate Malaysia, the Government holds 35 per cent of total market capitalisation, and SOEs produce about 10 per cent of total national output (Claessens et al., 1999).[7]

4 However, exceptions include the Hong Leong and Ban Hin Lee banks, which are part of the large Hong Leong Group conglomerate (Backman, 1999).

5 Commercial banks cannot obtain a share in other commercial banks, but may do so in merchant banks, and vice versa. Investors cannot acquire 5 or more per cent of a bank if they already hold shares in another licensed financial institution (Institutional Analysis, 2001).

6 Most private companies also are family owned.

7 The Government holds at least 10 per cent of the equity in 18 per cent of Malaysian public companies (World Trade Organization, 1999).

Furthermore, the state invests directly in publicly listed private companies through its investment trust, Khazanah Nasional, various pension funds and the state owned oil company, Petronas.[8] Excluding China and Vietnam, after Singapore, Malaysia has the second highest number of government-controlled listed firms of economies surveyed (Claessens et al., 2000). Post-crisis restructuring has given government bodies, including Danaharta and Danamodal, equity in various banks and corporations (Danamodal, 2001; East Asian Analytical Unit, 1999).

Government ownership can have negative effects on market disciplines. First, SOEs often must buy from other state firms, regardless of price or quality.[9] Second, in the past, government affiliated business groups readily obtained loans from government-controlled banks (Asian Development Bank, 2001). Third, state ownership protects many SOEs from insolvency, weakening the penalties on managers using funds poorly (World Trade Organization, 2000). Finally, corporate governance, particularly transparency, needs improving in many SOEs. For example, Petronas releases only abbreviated financial reports to the public, although this is regarded as superior to many other SOEs (*Far Eastern Economic Review*, www.feer.com, 12 August 2001).

MARKETS CONTINUE TO STRENGTHEN

Since the crisis, capital market reforms, trade and investment liberalisation, and market opening due to bank and corporate restructuring have strengthened incentives for sound corporate behaviour. Market reforms support the Government's goal of moving to disclosure based corporate governance. The Government is reviewing its role in the corporate sector and this may help lower barriers to new market entrants and increase outside investor confidence.

FINANCE MARKETS

The crisis provided an opportunity to further develop financial markets and boost incentives for better corporate behaviour. Sales of government equity in restructured banks, particularly to strategic investors, should improve lending quality and preserve bank independence. Furthermore, sales of substantial government equity in listed companies would increase share market liquidity and turnover, reducing price volatility and investor risk. Finally, the Government's positive steps to gradually privatise government pension funds and outsource their management will help develop institutional investor activism, boosting compliance with new corporate regulations.

8 Two major funds are the Employees Provident Fund and the public service pension fund Kumpulan Wang Amanah Pencen (Institutional Analysis, 2001).

9 These public procurement requirements extend to 58 statutory bodies and the three largest non-farm public enterprises, Petronas, Tenaga Nasional and Telekom Malaysia Berhad (World Trade Organization, 1999).

Capital Markets Strengthening

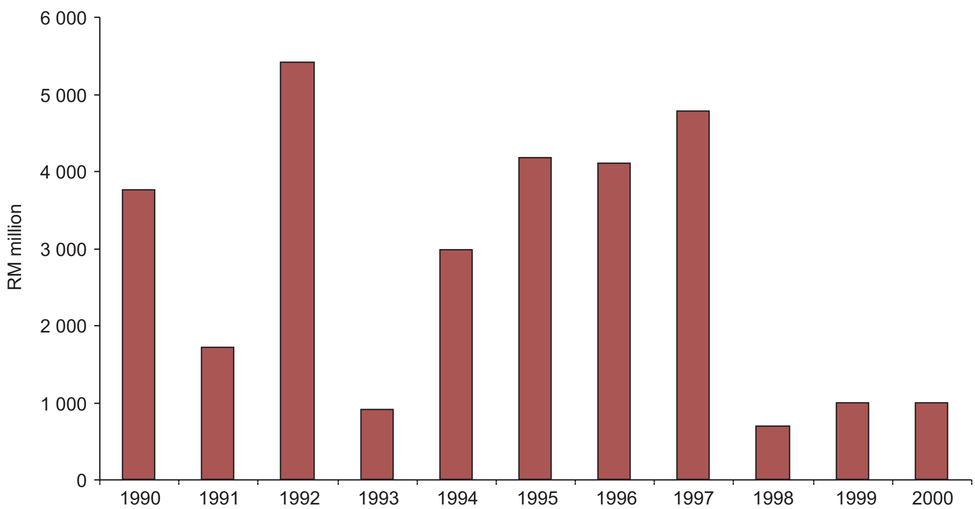
Since the crisis, with Malaysian banks' lending capacity weaker, more firms have sought direct financing. In the share and bond markets, new capital market strengthening rules expose companies to stronger corporate governance standards. Given remaining problems in the banking sector, firms increasingly may use equity finance to fund new investment, boosting market size and liquidity. Far reaching banking sector reforms should improve bank lending quality, so well connected businesses will find it more difficult to obtain banking finance, also encouraging them to use the equity market. However, reduced liquidity due to foreign capital flow controls and controversy about the Time.Dot.Com initial public offer in early 2001 probably deterred new issues; in 2000, new floats remained well below pre-crisis levels (Figure 13.1) (Naughton, 2001).[10]

Government support for post-crisis financial market restructuring has left state owned Danaharta, established to manage banks' bad assets and collateral, holding equity of around Ringgit 11 billion in various listed companies. Sales of this equity, including to new owners, should boost investor participation and share market capitalisation (Danaharta, 2001).[11]

Figure 13.1

Initial Public Offers Yet to Recover

Initial Public Offerings, Ringgit millions, 1990-2000



Source: Naughton, 2001.

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10 The Time.dot.com initial public offer was 74 per cent undersubscribed, and the share price dropped 40 per cent soon after listing.

11 However, most of the Ringgit 32 billion in assets it has disposed of so far have returned to their original owners.

Danamodal, established to dispose of bank assets, is selling its equity in banks it acquired in post-crisis bank restructuring. By September 2001, through initial public offers and strategic sales, Danamodal halved its initial investment in banks; now it holds equity in only three banks (Table 13.1).[12] These sales, some to new owners, also bolster banking sector independence from family owned conglomerates. In addition, Bank Negara Malaysia intends to reduce to ten the number of domestically controlled banks, to improve their commercial viability.

Table 13.1

State Ownership of Banks Unwinding

Danamodal's Equity Holdings in Key Banks, Ringgit Million

	Original Investment	Investment at 30 September 2001
MBF Finance Berhad	2 280	2 280
RHB Bank Berhad	1 500	1 000
Arab-Malaysian Bank Berhad	800	460
Oriental Bank	700	0
BSN Commercial Bank	420	0
Arab-Malaysian Finance	500	0
Arab-Malaysian Merchant	400	0
Sabah Bank	140	0
United Merchant Finance	800	0
Perdana Merchant	50	0
Total	7 590	3 740

Source: Danaharta, 2001.

Despite Malaysia's deep share market, mergers and acquisitions are rare, removing an important source of corporate discipline. Since the crisis, most new acquisitions have involved government led bank and corporate restructuring rather than hostile takeovers (Naughton, 2001). However, a new takeover code provides minority shareholders an opportunity to consider takeover offers, possibly boosting activity. From 2001, improved regulation of insider trading and market manipulation, requiring directors and CEOs to disclose interests in listed companies' securities, also should assist in building market confidence.

Institutional Investors Increasingly Active

More active institutional investors scrutinise firm behaviour, increasing share market effectiveness in disciplining corporates. Large government pension funds invest in companies, then press them to improve their corporate governance standards. The Employees Provident Fund, EPF, manages

12 Danamodal agreed to dispose of its holdings, in line with Malaysia's WTO commitment to liberalise the banking sector.

90 per cent of Malaysia's pension funds and holds 5 per cent of market capitalisation in almost 70 companies; it leads institutional investor activism (Figure 13.2). The fund is active in company annual general meetings, sometimes imposing better management practices. The EPF holds shares in about 300 companies, with equity of more than 5 per cent in 100 of these. The EPF established a Corporate Surveillance Unit to scrutinise firm behaviour in which it is invested (Bushon, 2002). However, the fund can invest only up to 25 per cent of its assets in equities, limiting its role.

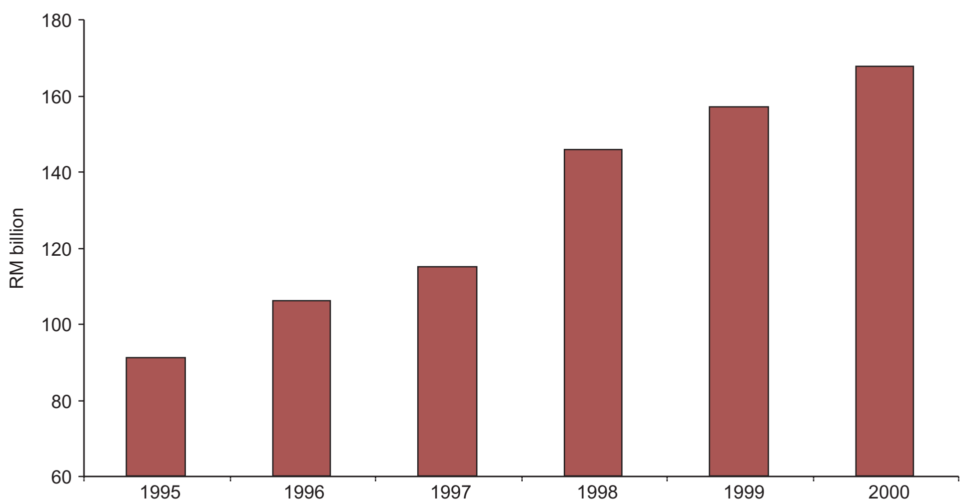
Other state run institutional investors lobby for better corporate governance. These include Permodalan Nasional Bhd, which holds considerable stakes in listed companies for the *bumiputera,* indigenous Malays, the Ministry of Finance, Khazanah Holdings and Danaharta.[13] When it rehabilitates indebted firms, Danaharta replaces their board and management with special administrators (Shimomoto, 1999).

Furthermore, large pension funds formed a minority shareholders' watchdog group, providing institutional investors with research and direction on governance issues. The group, led by the Employees Provident Fund and involving all Malaysia's main unit trust and superannuation organisations, has approached several major companies, including Malaysia Airlines, and in some cases, improved management practices (Institutional Analysis, 2001).[14]

Figure 13.2

Employee Provident Funds Increasing

EPF Funds under Management, Ringgit billions



Source: CEIC, 2002.

[13] *Bumiputera* is also the broad term for Malaysia's indigenous people. Government plans to allocate 30 per cent of corporate ownership to the *bumiputera* by 1990 largely succeeded, although the crisis partially unwound this. *Bumiputera* now hold around 20 per cent of corporate assets, but critics argue a handful of families own these.

[14] The Ministry of Finance agreed to this group in June 2000. Participating funds include EPF, PNB, LTAT, LUTH and PERKESO.

Over time, as large state owned institutional investors are privatised, a more independent institutional investor community may focus on investor returns. Until then, private institutional investors probably will remain weak, with 34 companies managing less than 8 per cent of market capitalisation in 2001, well below Singaporean, Japanese and US private participation levels of 20 to 40 per cent (*Far Eastern Economic Review*, www.feer.com, 1 March 2001). Encouragingly, from 2003, authorities will allow foreign equity participation in domestic stockbroking companies beyond 49 per cent, possibly boosting funds management (*Far Eastern Economic Review*, www.feer.com, 1 March 2001).

CAPITAL MARKET MASTERPLAN

In 2001, authorities released its Capital Market Masterplan to develop comprehensively Malaysia's capital markets, under the auspices of the Securities Commission. The plan sequences further market liberalisation and identifies Malaysia's potential as a regional financial centre.

Its implementation over ten years should:

- promote an effective investment management industry and a more conducive environment for investors
- enhance the competitive position and efficiency of market institutions
- develop a strong and competitive environment for intermediation services
- ensure a stronger and more facilitative regulatory regime
- establish Malaysia as an international Islamic capital market centre
- liberalise the foreign shareholding limit in stages from 2003.

Authorities also released their Financial Sector Masterplan to prepare domestic financial institutions for financial services sector liberalisation and a Code of Conduct for Market Institutions to introduce best practice in corporate governance and accountability.

Source: Institutional Analysis, 2001.

Conglomerates under Pressure

The Government's Corporate Debt Restructuring Committee, CDRC presses large conglomerates to reduce debt and sell non-core businesses; already it is restructuring Malaysian Resources, United Engineers and Renong. This may boost equity issues and financial market development. Although these conglomerates received some public capital injections during restructuring, shareholders and creditors also incurred major losses, reducing the potential for moral hazard.[15] For example, the Government purchased shares in Renong at a price lower than expected, alleviating concerns of a

[15] In August 2001, the CDRC announced new guidelines to accelerate the restructuring of Ringgit 29 billion in debts 32 firms owe, stressing management overhauls and operation rationalisation (*Far Eastern Economic Review*, www.feer.com, 23 August 2001). Moral hazard refers to a situation where efforts to protect a firm or individual from the consequences of their actions weakens their incentive for cautious behaviour in future.

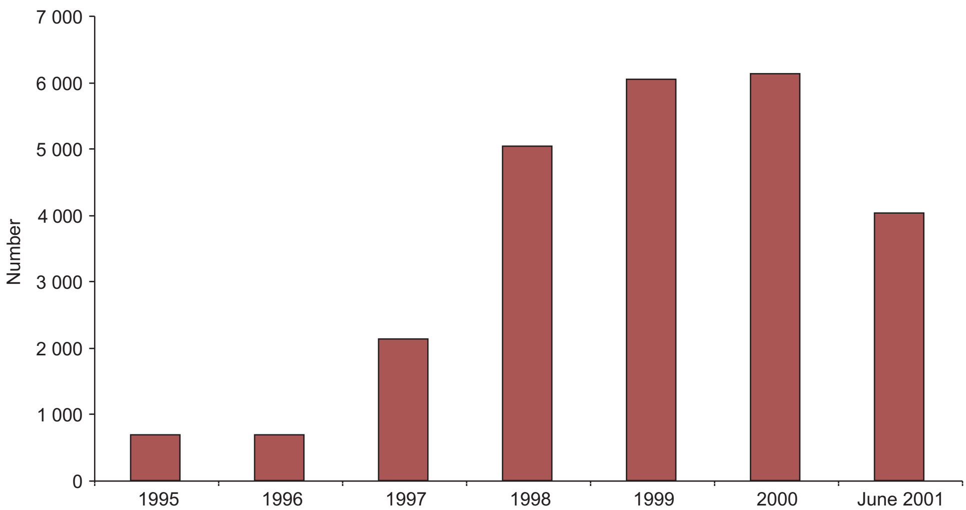
bailout (*Far Eastern Economic Review*, www.feer.com, 18 October 2001). Selling this equity should disperse ownership and increase share market size and liquidity. In addition, the committee replaces family management with private sector professionals, improving corporate behaviour; for example, Malaysian Resources' controlling shareholder had to resign as CEO. In Malaysia Airlines, the original owners lost their assets, diluting market concentration and the influence of major family interests (*Far Eastern Economic Review*, www.feer.com, 23 August 2001). Many conglomerates also had to sell non-core businesses; for example, Renong expects to retain only its core businesses, including infrastructure activities, and sell the remainder on the share market (*Far Eastern Economic Review*, www.feer.com, 18 October 2001). Corporate bankruptcy escalated after the financial crisis, presumably increasing discipline on remaining firms (Figure 13.3).

Nevertheless, government equity injections forestalling bankruptcy may reduce incentives for corporates to restructure or liquidate and more efficiently use invested funds.

Figure 13.3

Threat of Bankruptcy Increases Firm Discipline

Number of Malaysian Corporations Declaring Bankruptcy



Source: CEIC, 2002.

PRODUCT MARKETS MORE COMPETITIVE

Malaysia's long history of relatively open trade, and to a lesser extent, investment regimes exposes firms in most sectors to global market discipline; the Government also is gradually privatising state owned firms. Nevertheless, in some markets, regulations prevent new local entrants and in several sectors, foreign investment restrictions limit participation. Furthermore, to boost competition, especially in protected services sectors, comprehensive anti-monopoly laws would be beneficial.

Privatisation and Deregulation

While SOE privatisation has slowed in recent years, the Government gradually is selling off substantial SOEs (Naughton, 2001).[16] Investment in public non-farm enterprises fell from an average of almost 18 per cent of gross domestic product in the early 1990s to 11.5 per cent in the late 1990s (World Trade Organization, 1999).

The Government also is easing barriers to firms entering many previously reserved public sector areas, boosting competition.[17] Foreigners often invest in privatisations, despite the 25 per cent ceiling on their ownership of former SOEs (World Trade Organization, 1999). Records indicate foreigners invested in five of the 15 companies sold between 1993 and 1997 for which records are available, although generally, they acquired well below 10 per cent of stock.

The Government also is improving SOE corporate governance standards by separating the CEO and chairman positions, including in Telekom and Tenaga (Hadzar, 2000). The Ministry of Finance also encourages board members to undertake regular training.

Trade Reforms

During the last decade, Malaysian trade has opened with its average applied most favoured nation tariff rate falling from 15.2 per cent in 1993 to 9.7 per cent in 1999. In 1993, only 13 per cent of all items attracted zero tariffs; now more than 50 per cent do (World Trade Organization, 1999).[18] Import licensing affects under 25 per cent of tariff lines, and authorities generally grant licences within three days. The only remaining state trading enterprise, BERNAS, procures, mills and trades rice; however, over the next few years, authorities plan to phase out its role. While local content requirements outside the auto industry do not exist formally, manufacturers using local inputs can receive government investment incentives.[19]

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[16] Privatisation proceeds reached US$2.5 billion in 1995, but dwindled to US$130 million by 1999.

[17] For example, under the 1994 National Telecommunications Policy, the Malaysian Telecommunications Department should encourage competition and ensure orderly and efficient development of the telecoms industry. In the transport sector, all airports are scheduled for privatisation, although foreign ownership of airlines is restricted to 30 per cent.

[18] Malaysia ratified WTO Agreements on 6 September 1994, and was a founding WTO member in 1995.

[19] The Government also promotes locally produced goods and service inputs through the Industrial Linkage Program which supports small and medium enterprises.

Investment Reforms

Although foreign ownership caps are common, in recent decades, relatively open foreign direct investment has boosted Malaysia's industrial growth. All manufacturing sectors are open to FDI, but caps depend on the firm's export output, regional location and technological sophistication of the sector in which it operates. For example, full foreign ownership occurs in totally export-oriented and high technology manufacturing, such as in the Multimedia Super Corridor, and in mining. However, all investments must comply with national and social objectives (World Trade Organization, 1999).[20]

Foreign investors in the services sector require a licence and investment limits vary by sector, but generally investment is capped at 30 per cent. The Government offers foreign investors considerable incentives, including lower direct and indirect tax rates and government sponsored loans.

Foreigners may hold only up to 30 per cent equity in banks.[21] However, the insurance sector is open to foreigners, with six foreign firms accounting for around 55 per cent of all life premium business (World Trade Organization, 1999).

Competition Policy

Although no comprehensive competition law exists, in some key sectors, regulations attempt to control prices in uncompetitive markets. For example, price controls on refined sugar, wheat flour, rice, bread, chicken, petroleum and some cement products inhibit large producers exploiting their dominant market position. Nevertheless, cartels are not formally monitored (World Trade Organization, 1999).

REGULATIONS GOOD AND IMPROVING

Malaysia was well advanced in upgrading its corporate regulatory environment when the crisis hit. In the 1980s, authorities required listed companies to appoint independent directors to their boards and establish audit committees.[22] In 1996, Malaysia committed to move from a merit based to a disclosure based regulatory regime for listed companies.[23] Since the crisis, key reforms include incorporating the Code of Corporate Governance into listing rules, and improving overall compliance (PricewaterhouseCoopers, 2001).

[20] Companies must apply for a manufacturing licence unless the investment is less than Ringgit 2.5 million or employs fewer than 75 full time workers.

[21] Foreign banks seeking to acquire more than 5 per cent of a Malaysian bank must contribute to Malaysia's financial and economic development, and the country of origin must have significant trade and investment interests in Malaysia.

[22] Gary Yk Lee, Dato'Jahan Raslan, Raymond Corray, Edward Chien and Anna Guthleben, PricewaterhouseCoopers and Pricewaterhouse Coopers Legal, contributed to this section.

[23] A merit based disclosure system allows authorities to regulate securities offerings by assessing the investment merits and pricing of the offering.

TRANSPARENCY

Since the crisis, authorities introduced several measures, building on an already sound corporate reporting framework. These include strengthening accounting standards, enhancing disclosure of related party transactions and beneficial ownership of shares, and refining the role of the audit committee (PricewaterhouseCoopers, 2001).

Corporate Reporting

In 1996, authorities began moving to a disclosure-based system of regulation for all firms offering securities to the public. In 1997, the Government established the Financial Reporting Foundation with regulatory, corporation and accounting profession representatives, to oversee corporate reporting standards (PricewaterhouseCoopers, 2001). In 1998, the amended Securities Industry Central Depositories Act required beneficial owners of securities to declare their status.[24] In 1999, amended listing rules required quarterly reporting of financial information. Also, annual reports to shareholders must include the director's report, income statement, balance sheet, cash flow statement and detail equity changes.[25] Companies must report shareholder approval of all related party transactions to the Kuala Lumpur Stock Exchange, KLSE.[26]

In July 2000, new laws imposed stringent disclosure standards for prospectuses and heavy sanctions for false or misleading statements or material omission. However, these are the only statutory provisions against poor disclosure, weakening adherence (International Monetary Fund, 2000).

Accounting Standards

Malaysian accounting standards are among the highest in East Asia, and some exceed US standards. (See Figure 3.1.) Once the Malaysian Accounting Standards Board, MASB, approves them, Malaysian accounting standards automatically become law, unlike in many other economies (Zain, 2000). The MASB reviews international standards to ensure they suit local conditions, modifying them if necessary.[27] KLSE listing requirements also have been refined to ensure listed companies prepare their annual audited accounts in line with MASB standards.

The Securities Commission is responsible for enforcing compliance with Malaysia's accountancy standards, Bank Negara Malaysia is responsible for public listed companies and licensed financial institutions, and the Register of Companies is responsible for all other public and private companies (PricewaterhouseCoopers, 2001). Each institution's task force investigates compliance with board standards (PricewaterhouseCoopers, 2001).

[24] The Government also introduced laws to name beneficial owners of a company's 20 largest shareholders below the nominee's name; compliance is high (PricewaterhouseCoopers, 2001).

[25] Annual reports must also include an audit committee report, a statement on corporate governance and internal control and other items.

[26] Section 132E of the Companies Act forbids substantial property transactions between the company and its directors or people connected with directors without prior shareholder approval.

[27] Malaysian Accounting Standards 17 and 18 are examples of standards issued in the absence of international standards.

Auditing

Auditing standards comply with international standards. Before the crisis, the KLSE required all listed companies' audit committees to include an independent chair and at least one member of the Malaysian Institute of Accountants, MIA.[28] All committee members must undertake formal training on the Malaysian Code of Corporate Governance.[29] Listed firms' annual reports should detail the internal audit and name the audit committee.[30]

MINORITY SHAREHOLDERS' RIGHTS

Since the financial crisis, Malaysian authorities also have sought to strengthen minority shareholder rights.

Listing Rules

In January 2001, the Kuala Lumpur Stock Exchange became the region's first to require disclosure of compliance with the Corporate Governance Code via its listing requirements, enhancing the protection of minority shareholders (PricewaterhouseCoopers, 2001). Listing requirements are amongst the best in East Asia, and similar to London Stock Exchange rules. For example, all listed companies must report on corporate governance in their annual reports.[31] Company directors also must report separately on internal control in the annual report (PricewaterhouseCoopers, 2001).

The Kuala Lumpur Stock Exchange can act against individual directors, as well as the listed company, for not complying with listing rules. As at 30 June 2001, the Exchange had a total of 481 investigations, and of these had taken 119 enforcement actions, including 26 public reprimands and 37 fines.

Representation

Under Malaysian law, shareholders have a proprietary right to vote, with one vote per share. Shareholders can register ownership to convey or transfer shares, participate and vote at general shareholder meetings and elect members of the board (PricewaterhouseCoopers, 2001). Under the Companies Act the appointment of voting proxies overrides articles of association provisions and shareholders, who together hold at least 10 per cent of equity, may call a meeting.[32] Shareholders also may submit proposals to the general meeting (PricewaterhouseCoopers, 2001).[33] Finally, the Securities Commission is examining ways to allow shareholders cumulative voting rights (Rasiah et al., 2000).

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28 Or, if not a member of the MIA, the person shall normally have at least 3 years experience and have passed examinations the Accountants Act 1967 defines; or, be a member of one of the associations specified in the Act.

29 A listed company's finance director and head of internal audit must attend audit committee meetings. Audit committees should meet with external auditors at least annually, without the executive being present.

30 To achieve a quorum, the majority of audit committee members present must be independent.

31 Companies such as Tanjong Plc, Commerce Asset Holdings Berhad, Malayan Banking Berhad and Utama Banking Group Berhad, voluntarily reported on their corporate governance before the amendments.

32 If the directors decline to convene a meeting within 21 days after receiving such a request, those requesting a meeting may convene it themselves.

33 However, in practice, as shareholders must bear the cost of circulating shareholder resolutions, these are rare.

Board Structure and Duties

Under new listing rules, one third of listed companies' directors or two directors, whichever is higher, must be independent.[34] A 1998 survey showed Malaysian companies average eight directors: 2.6 are independent; 2.6 are non-executives; and 2.9 are executive directors. Only 20 per cent of companies formally selected independent non-executive directors. Also, in many small companies, non-executive directors are not independent (World Bank, 2000).

Directors can sit on up to ten listed company boards or 15 non-listed company boards. All directors must attend a Research Institute of Investment Analysts, Malaysia accreditation program (Rasiah et al., 2000).

While shareholders may appoint directors at the annual general meeting, in practice, boards select directors, except where a significant shareholder controls the company.[35] Shareholders may remove directors at any time. Under the Companies Act, directors must discharge their duties honestly and diligently. The Kuala Lumpur Stock Exchange may sanction companies for failing to appoint independent directors, although this has yet to occur (PricewaterhouseCoopers, 2001).

Legal Action against Directors

The 1965 Companies Act and Securities Commission Act provide several statutory remedies for dissatisfied shareholders. Investors may sue companies including false or misleading statements in their prospectus, and class actions are allowed (Rasiah et al., 2000). High costs and procedural complexities deter derivative actions. Hence, the Securities Commission may introduce derivative actions similar to those in Australia (Rasiah et al., 2000).[36]

CREDITORS' RIGHTS

By regional standards, Malaysia's creditor protection is reasonably good.

Bankruptcy

Even before the financial crisis, Malaysian bankruptcy laws were sound by international standards, and since the crisis, three reforms should expedite the resolution of banking system non performing loans. The first post crisis reform allows Danaharta to sell non performing loans it acquired from distressed banks and appoint special administrators to manage and restructure these assets; Danaharta's out-of-court approaches achieve an average recovery rate of 60 per cent of loans' face value. Second, authorities reduced companies' ability to impose restraining orders on creditors under

[34] The revamped rules further require directors' remuneration and backgrounds to be disclosed and the audit committee to summarise the discharging of its duties.

[35] Under best practice, a nominations committee comprising a majority of independent non-executive directors selects non-executive directors.

[36] A derivative action usually involves a person, often a shareholder, suing company directors or its subsidiary's directors for wrongdoing.

Section 176 of the Bankruptcy Act.[37] Third, the Government introduced informal debt workouts. The Corporate Debt Restructuring Committee uses out-of-court approaches to restructure debts over Ringgit 50 million viable companies owe (PricewaterhouseCoopers, 2001).

Despite reforms, under Section 176 creditors cannot take action against debtors for up to two years (Nathan, 2000). In addition, moves are underway to increase the judiciary's commercial expertise to appropriately adjudicate complex cases (PricewtarehouseCoopers, 2001).

Issuing Debentures

Under Guidelines on the Offering of Private Debt Securities issued in July 2000, corporate bond issuers must disclose accurately all information relevant to investors. However, the new guidelines do not require debtors to have a minimum credit rating; they assume markets will accurately price securities given available information.

Bank Supervision

Since the crisis, Bank Negara Malaysia has tightened already high standards of bank supervision. It gave domestic banks until December 2001 to comply with increased minimum capital requirements. Insurance companies also had to raise their paid up capital to Ringgit 100 million by 30 June 2001, forcing some firms to merge or exit (Institutional Analysis, 2001). Bank Negara liaises closely with banks, ensuring proper internal risk management systems are in place once mergers occur (Yunus, 2001). Bank Negara also requires at least two thirds of bank board members be non-executive directors, approved by Bank Negara. Bank officers must be trained in prudential standards and banks must spend 2.5 per cent of their salary budget on training (Yunus, 2001).

COMPLIANCE

Malaysia's Securities Commission is the main regulator governing fundraising activities, registering prospectuses issued for all securities. The Securities Commission meets with boards of directors wanting to issue securities to ensure compliance. Since the financial crisis, the commission has issued significantly more fines and reprimands (PricewaterhouseCoopers, 2001). The Kuala Lumpur Stock Exchange also enforces listing rules, systematically reviewing financial reports, providing avenues for investors to request actions and observing selected annual general meetings.

In 1998, the Securities Commission and Kuala Lumpur Stock Exchange set up a Financial Review and Surveillance Department to ensure listed companies meet disclosure standards (Rasiah et al., 2000). The Registrar of Companies monitors unlisted companies (Asian Development Bank, 2001). Companies cautioned or fined over Ringgit 1 million for failing to comply with listing rules must disclose this in their annual reports.

[37] S176 follows Chapter 11 in the United States.

In the first half of 2001, the Securities Commission charged ten people for listing offences, including seven company directors and two ex-chairmen. The Kuala Lumpur Stock Exchange also publicly reprimanded several listed companies for failing to observe listing requirements.

Several non-government bodies also support corporate governance enforcement. The Malaysia Institute of Corporate Governance runs extensive awareness programs targeting directors, and discourages companies from adopting a 'tick-box' approach to complying with new corporate governance laws (Khas et al., 2000).

As in many Asian economies, strengthening the legal system is key to improving regulatory enforcement. The appointment of a new, highly regarded Chief Justice should help achieve this.

Media's Role

Malaysia's financial and commercial media often uncover examples of corporate misconduct. With government controls relaxed since the crisis, new entrants can enter the media sector. Large conglomerates own some newspapers, raising concerns about press independence when reporting on related commercial cases. For example, the Malaysian Resources group owns the *New Straits Times, Business Times* and *Malay Mail* (Backman, 1999).

IMPLICATIONS

Malaysia's generally strong laws and regulations can support highly developed markets. The Government increasingly is reviewing its large and active presence in the corporate sector and how this may affect incentives facing business. Malaysia's new corporate governance regulations provide a rules and market based framework for its corporate sector; government efforts to review its role in the economy would assist this process.

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