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Corporate Governance in the WTO Era

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Preliminary Remarks



- **Our Topic – The rationale and design of Corporate Governance.**
- **The design for Corporate Governance is influenced by the special talents, charter, history, culture, business, size, environment, and strategy of the Corporation.**
- **“One design does not fit all countries, all cities, nor, even, all Companies.”**

Today's Agenda



- **WTO puts Corporate Governance as a top China priority**
- **What, Why, and How of Corporate Governance**
- **The Contents and Scope of the Corporate By-Laws**
- **The Membership of the Board of Directors**
- **Contrasting the Board of Directors and the Management Group**
- **Committees: Risk Mgmt., Audit, Compensation, Personnel**
- **Committees (Cont'd): Statutory, Communications, Supervisory**
- **Operation: Selection and Decision Process**
- **Concluding Remarks**

WTO and Corporate Governance



- **WTO interest in Corporate Governance**
 - Trade requires trust and transparency
 - Trade is facilitated by standardization
 - Corporate Governance goes beyond the Corporation
 - Laws, Culture, and Enforcement must “reform”
 - Beliefs must also change – “Good guys do win”.
- **Chinese interest in Corporate Governance**
 - Investment requires trust, transparency and liquidity
 - Investment is facilitated by standardization
 - Good Governance has proven to help growth and success.

What, Why, and How



- **Definition of Governance:** The “Government” of your institution; its rules and enforcement.
 - The process and structure used to direct and manage the business and affairs of the company towards enhancing business prosperity and corporate accountability with the ultimate objective of realizing long term shareholder value, while taking into account the interests of other stakeholders.
- **Why have Governance:** (each contributes to sustained prosperity and efficiency)
 - **Enforce Responsibility** to Shareholders, Institution, Employees, Public, Community, Governments, Partners, Customers, and Vendors.
 - **Enhance Trust:** to get the benefits of “managed information symmetry” and avoid the costs of “information asymmetry” and to clarify accountability and its means in all dealings.
 - **Balance Perspectives** by recognizing that two tensions drive all major decisions, Short Term versus Long Term and Self-interests versus Others-interests.
- **How to “institute” Governance:**
 - Create a system of by-laws, charters, and structures with competency, balance, tensions, and insulations as appropriate. “Design a government for your institution.”
 - Use examples, education, policies, pronouncements, and culture which are consistent.
 - Have clear means for auditing, appeal, and adjustment.

The Corporate By-Laws



➤ Corporate By-Laws

- Preliminaries: Name, Charter, Registration, Law, Stipulations, and Definitions.
- Meetings: Annual, Special, Place, Notice, Quorum, Scope, Actions, Consent/Proxy, and Eligibility.
- Directors: Number, Eligibility, Tenure, Removal, Vacancies, Duties, Power, Meetings, Vacancies, Committees, Notices, Quorum, Actions, Consent, Compensation, Self-interests, and Reports.
- Officers and Agents: Enumeration, Eligibility, Tenure, Removal, Vacancies, Duties, Power, Compensation, Self-interests, and Reports.
- Stocks and Bonds: Establishment, Retirement, Classes, Certificates, Loss, Transfer, Records, Date, Disputes, and Reports.
- Seal and Amendments: Corporate Seal, Responsibility, Loss, Reports, Fiscal Year, and Amendments.

The Board of Directors



- **Duties of the Board of Directors:** (in a word, “govern”)
 - **Oversee compliance with the Laws and auditing of performance.**
 - **Promote Leadership and keep all governance active, effective, and vibrant.**
 - **Balance all “stakeholders” interests and the Long Term.**
 - **Install and remove all executives and approve succession.**
 - **Call directors’ and shareholders’ meetings and nominate slates.**
 - **Oversee all litigation, policy, positioning, and image issues.**
- **Qualifications of Membership:**
 - **Able to protect and further shareholders’ value.**
 - **Knowledgeable of Customers, Industry, Technology, Employees, ...**
 - **Advances Reputation, Mission, Strategy, Status, and/or Image of Company.**
 - **Contributes to Solidarity and Stability of Leadership and Direction.**
 - **Understands Accounting, Regulation, Law, Securities, ...**
 - **Seasoned Executive who can signal useful information.**

Board vs. Management



| | <u>Board</u> | <u>Management</u> |
|--------------------|--------------|-------------------|
| ➤ Time Horizon | 1-5+ years | 3-6 months |
| ➤ Report Frequency | Quarterly | Monthly |
| ➤ Reports To | Shareholders | Board |
| ➤ Job (Offensive) | Direction | Performance |
| ➤ Job (Defensive) | Oversight | Compliance |
| ➤ Qualifications | Minimal | Maximal |
| ➤ Measurement | Subjective | Quasi-Objective |
| ➤ Structure | “Ad-hoc” | Hierarchical |
| ➤ Membership | 5-15 | 100-300 |

Possible Committees of a Bank Board



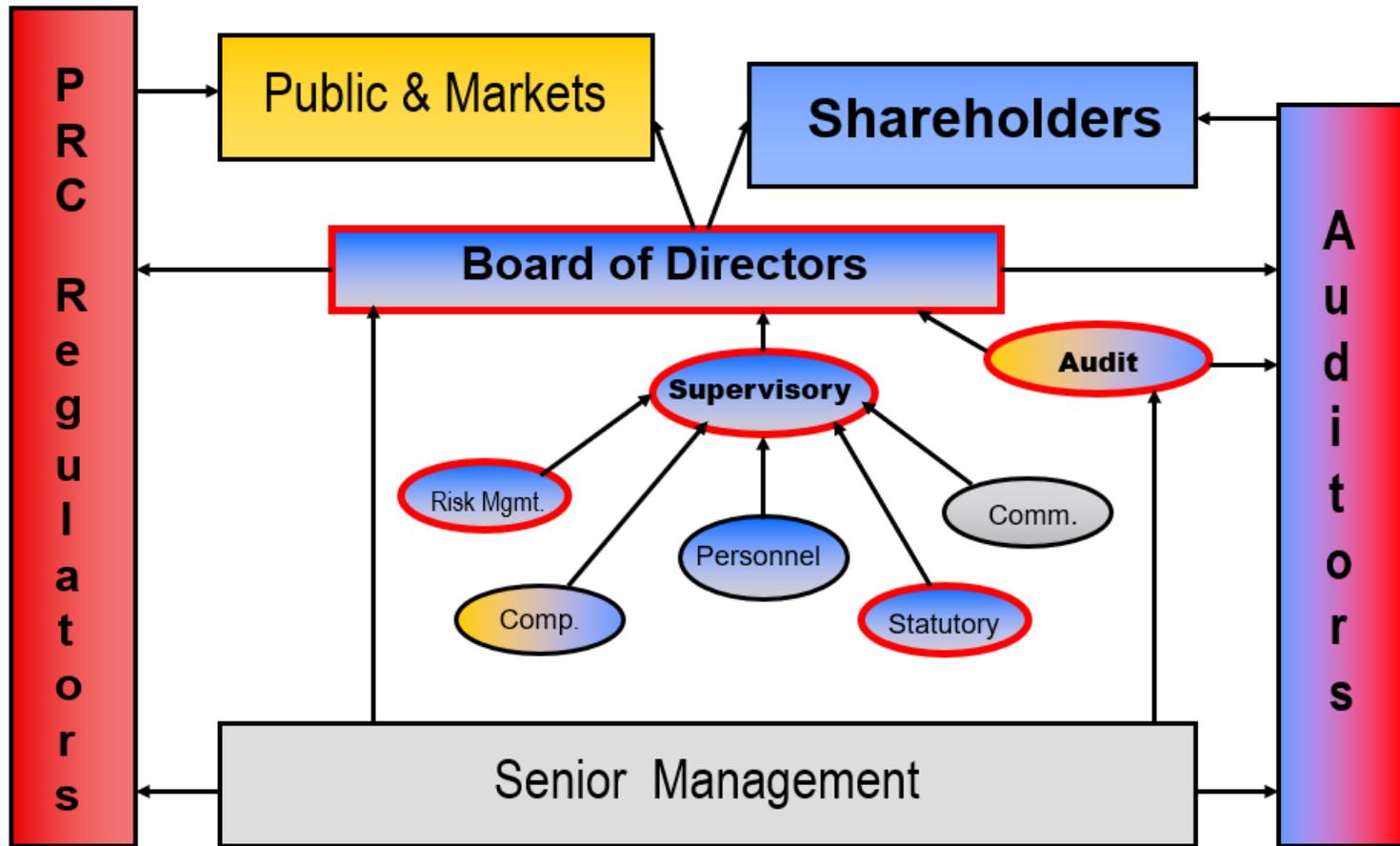
- **Risk Management Committee - Chair: Chairman (5+5)**
 - Assess the Bank's Portfolio of Loans.
 - Approve all major lending and exceptional terms.
 - Insure major control systems are adequate.
- **Audit Committee – Chair: Vice Chairman (“outsiders” only)**
 - Must have fluency in accounting, reporting, leverage, and risks.
- **Compensation Committee - Chair: Outside Director (1+1)**
 - Approve compensation of senior management and other key personnel.
 - Make consistent with the culture, strategy, and control environment.
- **Personnel Committee - Chair: Any Director incl. Chairman (1+1)**
 - Approve performance, responsibilities, succession, and structure.
 - Submit an annual slate of directors for the Board seats.

Committees of a Bank Board (Cont'd)



- **Statutory Committee - Chair: Chairman or Secretary (1+1)**
 - Legal Affairs, Government Affairs, Transparency, Reporting.
 - Recommendations for Proxy and By-laws notices and changes.
 - Keeper of the Governance Structure, Rules, and Guidelines.
- **Communications Committee - Chair: Secretary (1 official member)**
 - Draft (for Board) all Organization Wide Communications & Notices.
 - Keep all Board and all major Organization documents and licenses.
- **Supervisory Committee – Chair: Chairman (4+1)**
 - Supervises all of the above committees, except the Audit Committee.
 - Reports all findings and recommendations of its committees.
 - Reviews and approves Organizational Structure and Partnerships.
 - Measures and proposes Strategic Direction, Objectives and Goals.

GOVERNANCE CHART FOR A BANK



Selection and Decision Process

➤ Selection

- Board: Each share gets one vote to choose a slate among nominees.
- Committee Chair: Board Member (or Secretary) selected by Board.
- Committee Members: Assigned by relevant qualification and suitability.

➤ Decision Process

- Source: Any “Board issue” is dispatched by the Supervisory Committee to the appropriate Committee or to the Board, directly, plus each Committee has a Charter which is an “ongoing Board issue.”
- Resources: Supervisory Committee has Board set budget which is allocated by “Board issue” with “exceptional” funding by Board action.
- Resolution: Reports and recommendations are voted on by permanent members (with “opposition” views included) and sent to the Supervisory Committee for transmittal (without editing) to the Board at the next meeting where they will be brought up as business; emergency measures can be acted on by the Chairman with immediate notice to all Board members, subject to ratification by the Board.

Let's Test Ourselves



- **The President of the Bank of China, Liu MingKang, has said (June 2000) Bank Governance must have:**
 - **A set of clearly defined and far-sighted goals and strategies with a broad vision.**
 - **A transparent and sound decision making process.**
 - **Timely, accurate information disclosure arrangement and exercise of prudent accounting norms and practices.**
 - **Well-defined accountability, responsibility with strict and explicit targets, relevant effective motivation schemes and checking mechanisms.**
 - **Mechanism ensuring Board members act independently on a fully informed basis, in good faith, with due diligence and care, and in the best interests of all shareholders and protect minority shareholders' interests fairly.**
 - **Last but not least, future-oriented re-education and cultivation program of staffs at all levels.**

Concluding Remarks



- Questions and Answers
- Thank you, again.

You can find a copy of this lecture (160 KB) on the Internet at:

<http://globatech.com/governance.pdf>