

Corporate Governance/Transparency in the Asia Pacific Region

PANEL DISCUSSION

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WSG ASIA PACIFIC REGIONAL MEETING 2014

**Panel Discussion:
Corporate Governance/Transparency in the
Asia Pacific Region**

4th April 2014

- **29 September 2011:** Amendments to the Listing Manual became effective
- **10 August 2012:** Changes to SGX admission criteria for Mainboard listing
- **1 November 2012:** Revised Code of Corporate Governance will generally take effect in respect of annual reports in relation to financial years commencing from this date
- **2 April 2013:** SGX issues Practice Note providing guidance on 2011 amendments to Listing Manual requirements on risk management and internal controls
- **27 September 2013:** new SGX Mainboard admission rules and continuing listing obligations for mineral, oil and gas companies came into effect
- **1 May 2016:** Requirement for independent directors to make up half the board to apply to annual general meetings following the end of financial years commencing from this date

True test of an effective board

- 1) No financial/governance scandal
- 2) No lapse in risk oversight
- 3) No breach in regulatory compliance
- 4) No leadership crisis
- 5) Revenue/Earnings growth
- 6) Share price growth
- 7) Protection of minority interest
- 8) CSR & corporate sustainability

23.1

18.5

20.5

10.2

11.8

3.4

4.8

7.6

100.0

N = 166

The Board's role

- The Board is to be responsible for the risk governance of the company
- The Board should:
 - determine the company's levels of risk tolerance and risk policy
 - oversee Management in the design, implementation and monitoring of the risk management and internal control system; and
 - annually review the adequacy and effectiveness of the internal controls, including **financial, operational, compliance** and **information technology controls**, and **risk management** systems.

The Board's role

- In the Annual Report, the Board should comment on:
 - the adequacy and effectiveness of such internal controls; and
 - whether it has **received assurance from the CEO and the CFO:**
 - that the financial records have been properly maintained and the financial statements give a true and fair view of the company's operations and finances; and
 - regarding the effectiveness of the company's risk management and internal control systems.
- Cross-reference to SGX Listing Rule 1207(10), which requires an issuer to disclose in its annual report, the **opinion** of the Board, with the concurrence of the AC, on the adequacy of the internal controls, addressing **financial, operational and compliance** risks

Proposed areas of enhancement

- **(A) Enhance public query process**
 - Providing further guidance and details in the public query
 - Requiring the company's board of directors to endorse the company's reply to SGX's query
- **(B) Introduce a "Trade with Caution" announcement when companies are unable to explain the trading activities which SGX is querying**

Proposed areas of enhancement

- **(C) Require companies to notify SGX of specific transactions and to maintain a list of privy persons.***
- In addition, SGX has clarified its powers to suspend and delist stock



Trends in Corporate Governance in the Philippines


Simeon Ken R. Ferrer


The Institute of Corporate Directors

The Institute of Corporate Directors (ICD) is a non-stock, non-profit organization dedicated to the study and professionalization of Philippine corporate directorship. It also seeks to raise the level of the country's corporate governance policy and practice to world class standards.



**INSTITUTE OF
CORPORATE
DIRECTORS**

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- Participation by Listed Companies in the CG Scorecard conducted by the ICD was mandated by the SEC through SEC Memorandum Circular No. 8, Series of 2008.
 - Meanwhile, participation in the ASEAN CG Scorecard was advised by the SEC in a Notice dated March 22, 2013.

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- In 2005, ICD pioneered the use of a proprietary Corporate Governance Scorecard (CGS) in the Philippines to monitor the corporate governance practices of over 200 publicly-listed companies (PLCs).
 - In 2012, the ICD adopted the ASEAN CG Scorecard.



- Meralco is the Philippine's largest and oldest electric distribution utility.
- Corporate Governance is an integral component in Meralco's management framework since its framework is anchored on the principles of fairness, accountability, integrity and transparency.
- It was recently awarded the Silver Award by the ICD – a recognition that its corporate governance policies and efforts improved remarkably.

2013 CG AWARDS & RECOGNITIONS



1 of the **Top 5** Philippine Publicly Listed Companies at the 2013 PSE Bell Awards



INSTITUTE OF
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DIRECTORS

Top 50 Philippine Publicly Listed Companies in terms of CG Practices

**INTEGRITY
INITIATIVE**

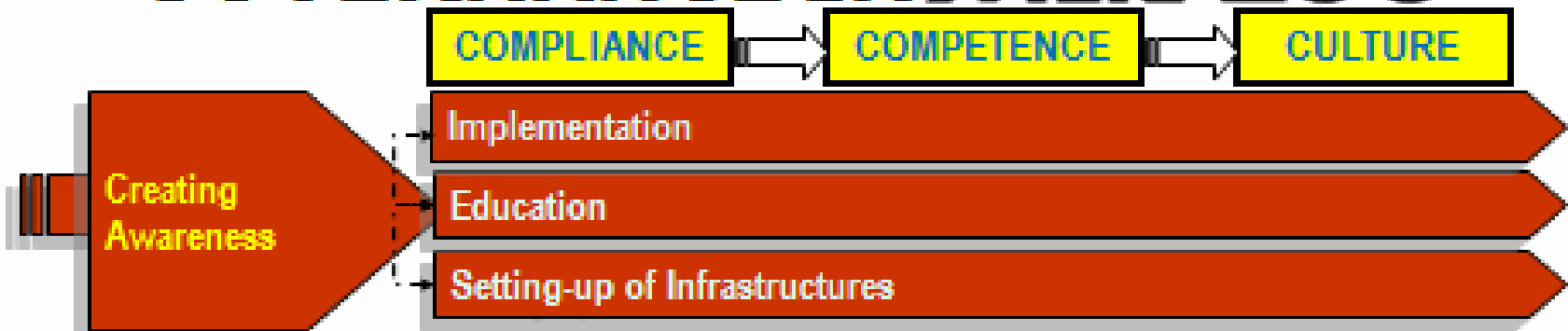
1 of 7 **Advanced** (mainstreamed integrity practices and best practices) companies

Corporate Governance Asia

Asia's **Icon** on Corporate Governance

Source: Meralco

GOVERNANCE IN MERALCO



	<u>INFRASTRUCTURE</u>	<u>EDUCATION</u>	<u>IMPLEMENTATION</u>	
Scope	<ul style="list-style-type: none"> • Governing principles • CG Framework • CG Manual • Code of Ethics • Policies & IRRs 	<ul style="list-style-type: none"> • Policies/ Codes/ IRR • Governance Architecture • CG Indicators • Monitoring Systems • Controls in Operating Processes • Rewards & Sanctions 	<ul style="list-style-type: none"> • Education Program • Information Campaign • Wide reaching competence build up involving BOD, Mgmt up to 1st line Team heads 	<ul style="list-style-type: none"> • Enforcement • Support the Thought Leadership in Regulatory Framework
Process/ Activity	<ul style="list-style-type: none"> • Inventory & consolidation of all existing Laws/Rules & Manuals/Codes • Mgt. Workshops • Communication planning and deployment 	<ul style="list-style-type: none"> • External/Internal Assessment <ul style="list-style-type: none"> • vs. compliance requirements • vs. best practices • Prioritization • Revision/ changes in CG Infrastructures 	<ul style="list-style-type: none"> • Education/Training needs analysis • Program development • Program deployment 	<ul style="list-style-type: none"> • <u>Institutionalization</u> <ul style="list-style-type: none"> • Role-modelling • Monitoring • Rewards and sanctions • Maximize employee engagement by deputizing heads as CG movers
Resp	TASK FORCE	CORPORATE GOVERNANCE OFFICE		

I. Corporate Governance Regulatory Framework in the Philippines

- A. Who are required to submit a Manual of Corporate Governance
- B. Definition of Corporate Governance under Philippine Law
- C. Other requirements and Penalties

II. Trends and Developments In Corporate Governance Practices in the Philippines

ADB ASEAN Corporate Governance
Scorecard Country Reports and
Assessments

Key Issues

Creation of the GCG

I. Corporate Governance Regulatory Framework

A. Definition of Corporate Governance

Framework of rules, systems and processes in the corporation that governs the performance by the Board of Directors and Management of their respective duties and responsibilities to the stockholders (*Revised Code of Corporate Governance*)

B. Who are required to submit a Manual of Corporate Governance

1. Corporations that sell equity and/or debt securities to the public that are required to be registered with the SEC
2. Corporations that have assets in excess of Fifty Million Pesos and at least 200 stockholders who own at least 100 shares each of equity securities
3. Corporations whose equity securities are listed on an Exchange
4. Corporations who are grantees of secondary licenses from the SEC

C. Other requirements in relation to CG Manual

(i) Posting of ACGR in Company Website

All publicly listed companies must post their Annual Corporate Governance Report (AGCR) in their respective websites.

Penalties for Non-compliance

- Under the RCCG, a fine of not more than P200,000 shall, after due notice and hearing, be imposed for every year that a covered corporation violates the provisions of thereof. This includes the failure to submit a Manual.
- A penalty of P10,000 shall be imposed for non-compliance with directive to post the ACGR in their respective websites
 - Continuous failure of the company to comply shall subject it to a month penalty of P1,000 until the said report is posted.

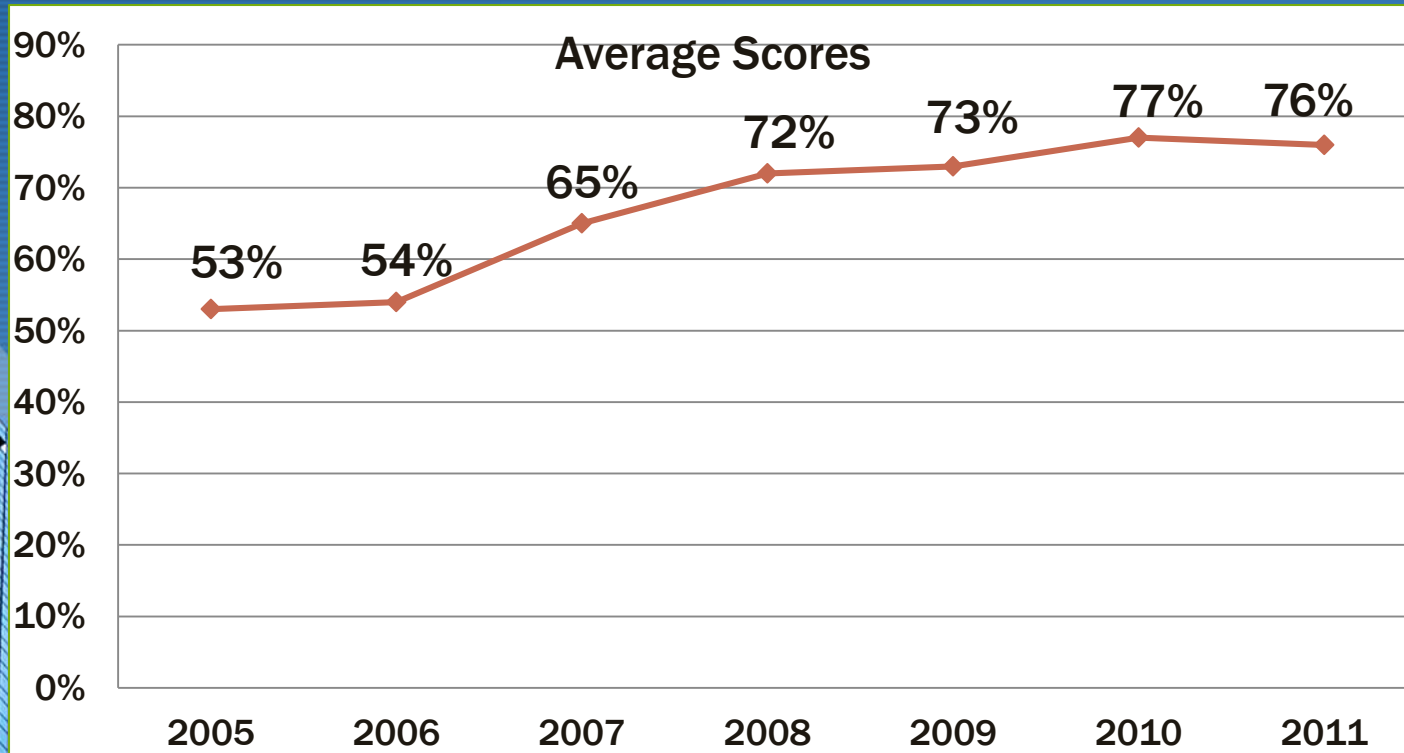
(ii) Submission of ACGR every 5 years

- The SEC issued a new rule in January of 2014 requiring listed companies to submit its ACGR to the Commission every five years from its initial submission and every five years thereafter.
- Any change that occurs within the 2nd to 4th year shall be disclosed through Form 17-C (if covered under Section 17 of the SRC) or through an advisement letter (if not covered under Section 17 of the SRC) five days from the occurrence of the reportable change

(iii) CG manual for all Listed Companies (PSE Rules on Disclosure of Corporate Governance)

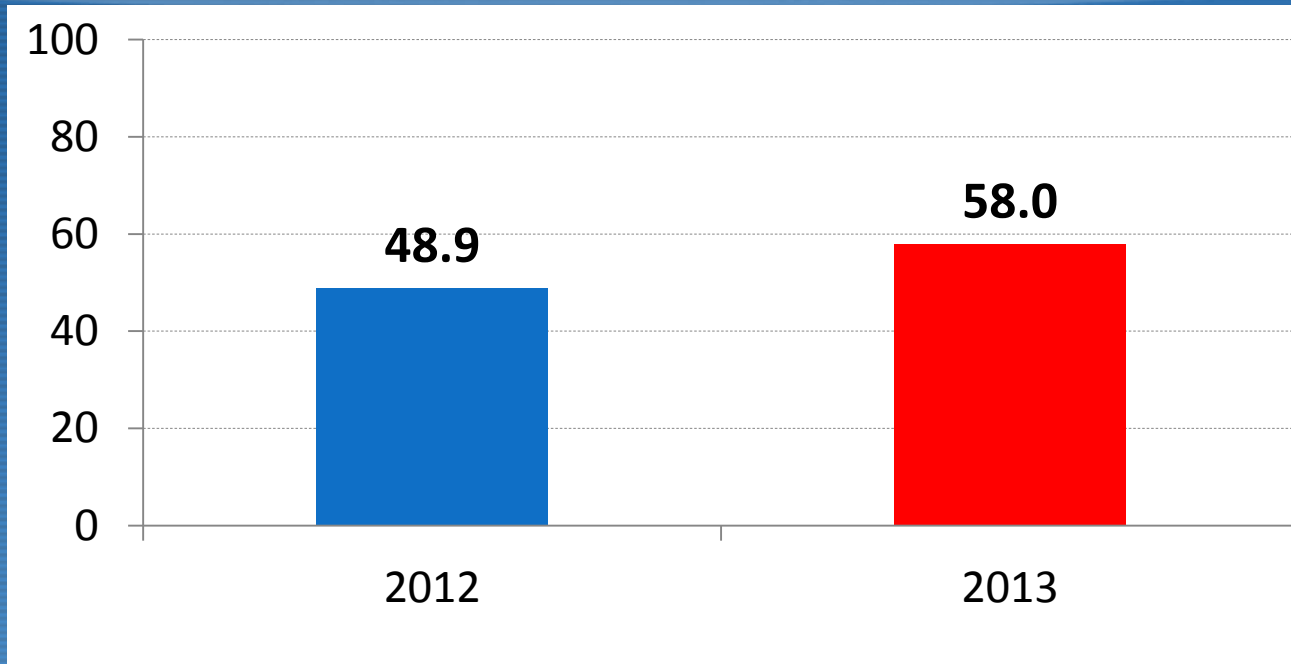
- The Philippine Stock Exchange, through PSE Memorandum dated November 5, 2007 requires all listed companies to provide disclosures regarding their corporate governance policies.

II. Trends and Developments in Corporate Governance Practices in the Philippines



Average Scores of Philippine PLCs
under the ICD CG Scorecard

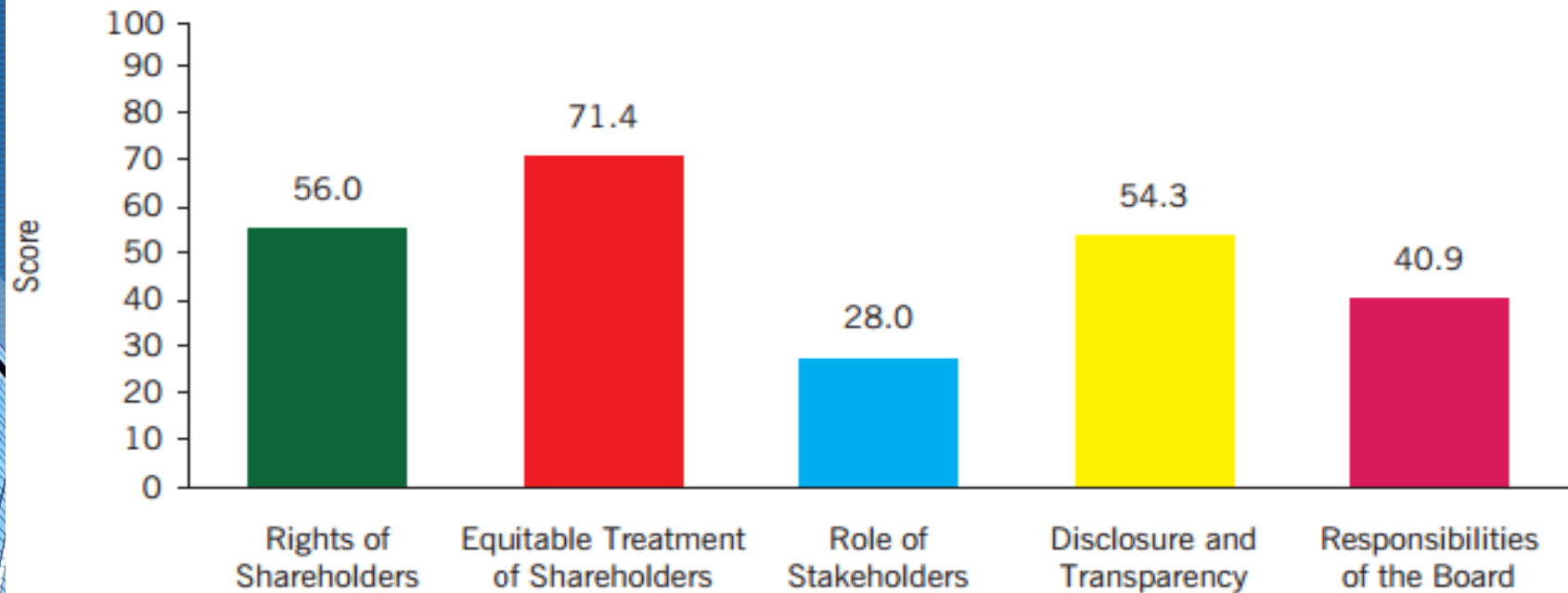
Source: Institute of Corporate Directors



Average Scores of Philippine PLCs under the ASEAN CG Scorecard

Source: Institute of Corporate Directors

Figure 16 Scores in the Various Corporate Governance Categories



Source: ADB ASEAN Corporate Governance Scorecard Country Reports and Assessment 2012-2013

Rights of Shareholders

Average: **56.0%**



STRENGTHS

- Shareholders can participate in amending the company's articles of incorporation.
- Shareholders are allowed to participate in the transfer of all or substantially all assets, effectively resulting in the sale of the company.
- Shareholders are allowed to elect directors individually.



AREAS FOR IMPROVEMENT

- The minutes of the most recent annual general meetings (AGMs) do not record questions and answers.
- There is a lack of policies to encourage shareholders, including institutional shareholders, to attend the AGM.
- There is insufficient disclosure of the attendance of the board at the AGM.

Source: ADB ASEAN Corporate Governance Scorecard Country Reports and Assessment 2012-2013

Equitable Treatment of Shareholders

Average: **71.4%**



STRENGTHS

- Annual general meeting notices remain in the English language.
- Companies disclose having a policy requiring board members (directors and commissioners) to abstain from participating in board discussions of matters where they have a conflict of interest.
- Companies have policies that either forbid the granting of loans to directors and commissioners or ensure that such transactions are conducted at arm's length and at market rates.



AREAS FOR IMPROVEMENT

- Directors and commissioners are to report their dealings in company shares within 3 business days, instead of the 5 business days required under Philippine law.
- The annual general meeting notice does not explain the dividend policy.
- Voting rights attached to each class of shares ought to be published if the company has more than one class of shares.

Source: ADB ASEAN Corporate Governance Scorecard Country Reports and Assessment 2012-2013

Role of Stakeholders

Average: **28.0%**



STRENGTHS

- An increasing number of Philippine publicly listed companies (PLCs) now recognize the need to report, as part of their governance compliance program, on their long-term sustainability by including specific references to care for employees, service to customers, respect for rights of creditors, and contribution to the overall environment. This is a change: previously, references to these sustainability issues were excluded from their governance reporting.
- More Philippine PLCs have signed the integrity pledge and now include their anticorruption policies in their annual report.
- Philippine PLCs that are part of Philippine Business for Social Progress include their corporate social responsibility programs in their annual report.

AREAS FOR IMPROVEMENT

- Most companies fail to provide contact details via the company's website or annual report for stakeholders (e.g., customers, suppliers, and the general public) to use to voice their concerns and complaints about possible violations of their rights.
- Data on training and development programs for employees are rarely published.
- There is no company policy or procedures to protect an employee or other person who reveals illegal or unethical behavior.
- There are no company procedures for dealing with complaints by employees concerning illegal (including corrupt) or unethical behavior.
- Data relating to the health, safety, and welfare of employees are not published.



Source: ADB ASEAN Corporate Governance Scorecard Country Reports and Assessment 2012-2013

Disclosure and Transparency

Average: **54.3%**



STRENGTHS

- Publicly listed companies (PLCs) are able to faithfully disclose financial performance indicators in the annual report.
- PLCs are also able to provide up-to-date information about their business operations on their websites.
- The majority of PLCs disclose details of the parent or holding company, subsidiaries, associates, joint ventures, and special-purpose enterprises.



AREAS FOR IMPROVEMENT

- PLCs seldom give details of their whistle-blower policies in their annual reports.
- Training and continuing education programs for directors of the company are usually not indicated in the annual report even if Philippine law requires training for company directors.
- Audited annual reports are usually not disclosed within 60 days from the financial year-end.

Source: ADB ASEAN Corporate Governance Scorecard Country Reports and Assessment 2012-2013

Responsibilities of the Board

Average: **40.9%**



STRENGTHS

- Publicly listed companies (PLCs) take having an audit committee seriously and, along with that, having an independent director as chair of the committee.
- PLCs do not neglect to compose a nomination committee in the board.
- All the directors or commissioners are subject to reelection at least once every 3 years.
- Most corporate secretaries have legal or accountancy training.



AREAS FOR IMPROVEMENT

- PLC chairs are usually not independent directors.
- PLCs do not disclose whether nonexecutive directors meet at least once a year without any executive directors present.
- Remuneration committees usually do not comprise a majority of the independent directors.
- Most often, PLCs do not disclose their succession plans for the chief executive officer, managing director, or president, and key management.
- PLCs seldom disclose how many times the remuneration committee meets during the year.

Source: ADB ASEAN Corporate Governance Scorecard Country Reports and Assessment 2012-2013

Key Issues in CG in the Philippines

1. Issues on Control
2. Related Party Transactions
3. Treatment of Stakeholders
(Customers, Community, Employees and Environment)
4. Independent Directors

Source: Interview with the ICD

Creation of the GCG



- The Governance Commission for Government Owned and Controlled Corporations (GCG) is a central advisory, monitoring, and oversight body with authority to formulate, implement and coordinate policies to govern Government-Owned or-Controlled Corporations, which shall be attached to the Office of the President.

THANK YOU!



WSG Asia Pacific Regional Meeting

SHANGHAI, CHINA



大成律师事务所

4 April 2014