

COMPARATIVE CHINA CORPORATE GOVERNANCE STANDARDS AFTER FINANCIAL
CRISIS, CORPORATE SCANDALS AND MANIPULATION

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Abstract. Modern corporate governance standards and principles is becoming vital issues in developing countries such as Vietnam, China, India, Indonesia, Myanmar, Bangladesh, etc. The 2006 Taiwan Conference on Corporate Governance showed current company system needs not only back-end CG solution such as “golden parachute” but also internal mechanisms. There are also a few researches which have been done in the field of international corporate governance standards. This paper chooses a different analytical analysis style and among its aims is to give some certain systematic conclusions on China corporate governance (CG) system. First, it separates China standards into two (2) groups: China 2001 and Taiwan 2002 CG principles covered in group 1 and, group 2, including corporate governance principles from Hong Kong conclusion paper and KPMG guides, while it uses OECD principles as reference. Next, it separated independent contents with analysis and identified differences between these above set of standards which are and have been encouraged to use as reference principles for many organizations. In addition to, it aims to build a selected China comparative set of standards for corporate governance system in the post-crisis and scandal time. Last but not least, this paper illustrates some ideas and policy suggestions in order to overcome obstacles in China corporate governance system such as: insider trading, false financial reporting and concentration of state ownership.

Keywords: corporate governance standards; board structure; code of best practice; financial crisis; corporate scandals; market manipulation; internal audit

Reference to this paper should be made as follows: Dat, P.M., Mau, N.D., Loan, B.T.T., Dinh Huy, T.N. 2020. Comparative China corporate governance standards after financial crisis, corporate scandals and manipulation. *Journal of Security and Sustainability Issues*, 9(3), 931-941. [https://doi.org/10.9770/jssi.2020.9.3\(18\)](https://doi.org/10.9770/jssi.2020.9.3(18))

JEL Classifications: G00, G390

ABBREVIATIONS

CG : Corporate governance

BD : Board of Director

CSR : Corporate Social Responsibility

IA : Internal Audit

EA : External Audit

CEO : Chief Executive Officer

SOA : Sarbanes Oxley Act

OECD : Organization for Economic Cooperation and Development

ICGN : International Corporate Governance Network

NYSE : New York Stock Exchange

1. Introduction

A 2003 study by the World Economic Forum ranked China 44th out of 49 countries surveyed in terms of quality of corporate governance. Therefore, Chinese companies need to enhance their corporate governance structure by applying Western and international corporate governance best practices. This is one of main goals of this paper.

After Asia crisis 1997-1999, Taiwan Securities and Future Commission began to enhance importance of corporate governance in public companies. Therefore, here, we try to make a comparative analysis on different Corporate Governance approaches in China region. Despite of trying to select an easy-reading writing style, there is still some academic words need to be explained in further.

This paper is organized as following. Research literature and theories are put in the first two sessions. Then, it followed by introduction of our research methodology in session 3 (3rd). Next, session four (4) illustrates our familiar four (4) groups of empirical findings. After that, Fifth (5th) session turns to our conclusion and policy suggestion. Additionally, there are exhibit session which covers some summary of this paper's analysis and models from international organizations such as auditing firm. Besides, a glossary note is provided with information for reference and because of reducing repeating terminology.

2. Research literature review

During the post crisis and post scandals time, there are lots of researches and surveys on importance of corporate governance and its reasonable structure and participants such as shareholders.

Johnson et al. (2000) stated that the "Asian Crisis" of 1997–98 affected all the "emerging markets" open to capital flows. Measures of corporate governance, particularly the effectiveness of protection for minority shareholders, explain the extent of exchange rate depreciation and stock market decline better than do standard macroeconomic measures. A possible explanation is that in countries with weak corporate governance, worse economic prospects result in more expropriation by managers and thus a larger fall in asset prices.

Next, The Taiwan CG Best Practice Code (2002) stated all directors, supervisors, employee and shareholders must perform their functions to enhance corporate governance. Then, Horn (2011) focused on the transformation of company law and corporate governance in the last decade. Here, the article illustrates how company law has become increasingly focused on the rights of shareholders, while worker rights have been relegated to the area of social policies and labour law. The study also traces the shift from a legislative programme centred on company law harmonisation towards a regulatory approach based on minimum requirements and mutual recognition, increasingly geared at adjusting the governance of corporations to the demands of liberalised capital markets. Also, Kumar and Singh (2013) mentioned that literature highlights that risk management, board practices, remuneration system, transparency and disclosure norms were found lacking in different aspects. Brian (2014) pointed that while the "imperial" CEO who surged to prominence in the 1980s became outmoded for the most part after corporate scandals at the start of the 2000s, this was not the case with large financial companies. The continued boldness of "star" CEOs in the financial services industry plausibly contributed to the market turmoil of 2008 but the financial crisis emphatically ended this corporate governance "free pass" banks had enjoyed. Dobre et al. (2015) and Arniati et al. (2019) provided evidence that the existence of corporate governance elements do positively influence the audit quality of the entity, especially when it comes to the number of members that the executive board has.

Al-Gamrh et al. (2018) found a positive influence of corporate governance strength on the accounting performance, but a negative influence on the firms' economic performance. In normal times, corporate governance mitigates the negative influence of leverage and risk on the accounting and economic firm performance. Mahdy and Dina (2019) addressed the need for proactive corporate governance, using meta analysis to reconcile conflicting research findings, employing alternative theoretical underpinnings that go beyond agency theory, thinking blockchains, and developing an agenda for corporate governance convergence.

In an effort of internal assessment of corporate governance, what is the common and comparative standardized set of so-called China corporate governance standards?

Theory of Corporate Governance, Scandal and Market Manipulation

Theory of manipulation

There are different views on market and stock manipulation which are suggested to prevent their negative impacts in securities market in state and company laws. Firstly, Kenneth M. Breen, Keith W. Miller, Morgan J. Miller, and Thomas A. Zaccaro., (2008) pointed the possibility of manipulation relating to short-selling opportunities might be considered in relevant regulations. Lambert, Caroline and Sponem, Samuel (2003) argued that earning manipulation can be a tool to fulfill the role of efficient operating of companies in Anglo-Saxon corporate governance context. They also found that in companies with weak financial context, management controllers and operational managers can manipulate profits under pressure from shareholders. In addition to, there are evidence in stock market which disclose market manipulation can be used either to increase market value of the firm to benefit management team, or be used in stock price downturn for some private speculation. Beatriz García Osmá, and Encarna Guillamón-Saorín, (2009) suggested that strong governance may result in lower manipulation. Therefore, we can see technique of market manipulation can be done with relevance of several individuals or groups.

Theory of corporate governance and financial crisis

First, OECD (2004) stated that corporate governance structure identifies distribution of rights and duties of different participants such as board, managers, shareholders and other stakeholders in the corporation. The UN Global Compact and IFC (2009) offered ten (10) principles to govern the company in fields of Human rights, Labor Standards, Environment and Anti-corruption. The Economist Intelligence Unit, (2002) stated in their report, Corporate governance is about facilitating corporate fairness, transparency and accountability. After Asia crisis, in 2002, KPMG Ltd. identified strong corporate governance is a foundation for preserving reputation and values, such as investor confidence, capital access, employee satisfaction, customer loyalty and organizational sustainability. And Thailand Stock Exchange, until 2006 defined corporate governance as a set of structures and processes b.t board, management and shareholders to strengthen the co.'s competitiveness, growth and long-term shareholder value, together with interests of other co.'s stakeholders.

Up to now, there are different analytical views on corporate governance and its importance.

3. Research methodology

Firstly, we analyze and compare corporate governance principles in each of two (2) different groups including: 1) Group 1 – China CG representative standards including China mainland and Taiwan Corporate Governance Principles which have a few modifications in corporate governance principles after the crisis period; and 2) Group 2 - Relatively good corporate governance group including Hong Kong corporate governance principles and KPMG Guide for Directors;

We also use, but not limited to, international standards of corporate governance such as: OECD, ADB and McKinsey corporate governance principles and surveys as reference.

Then, we suggest on what so-called comparative China corporate governance principles which is aiming to create a common and sharing background for public and private corporations interesting in different aspects of corporate governance subjects. See Exhibit 2 for our model.

In general, it can be considered as the recommendation to relevant countries' government and other relevant organizations for public policy and necessary evaluation. For a summary of our standards, see Exhibit and the

below table 1 and 2 in relevant sessions.

4. Empirical findings

A - Findings on Corporate governance issues after financial crisis, corporate scandals and market manipulation

There are several popular issues including: a weakness in information disclosure and transparency of corporations, as well as the matter of roles, values and participation of independent directors in the corporation.

Also, we can find out another corporate governance (CG) issue. It is, the lack of practices for connecting and participation of different types of shareholders such as individual, institutional and foreign shareholders. Another problem is the separation b.t conflicts of interests of controlling shareholders and other types of shareholders.

Moreover, the construction of operational processes of supervisory board is among interesting matters in post-crisis and post-scandal periods. Last but not least, the effectiveness of board, committees and internal regulations are also needed to audit.

Generally speaking, Chinese enterprises follows a socialist market economy theory and is in the transformation and corporatization stage which shows very fast growing GDP number, so it needs lots of efforts on operational improvement.

B - Findings on Ways of Manipulation during Corporate Scandals

Several Manipulation Techniques found out during corporate scandals involve, but not limited to:

B.1 – The manipulation techniques in the income statement:

Here, there is the involvement of management in preparing financial statements which contributed to transaction manipulation. For example, the case of Sunbeam showed us the earning was manipulated for smooth income purposes, by allowing contracts or customers paid in months later.

B.2 - The manipulation techniques in both the income statement and balance sheet:

We can find here evidence from Tobu Railway Company scandal, a Group company with subsidiaries, which is involved in using accounting techniques to hide liabilities or losses in financial statements. Or another case, famous Enron scandal, has to be verified its hiding of \$ 1 billion losses.

B.3 - The manipulation techniques relevant to international accounting practice code:

In our previous paper series on Corporate Governance, we indicated that there is gap to manipulate the asset values and its depreciation time by utilizing international accounting standards. Also, a switching of inventory method, allowed by laws to some extent, is also taken into account for transaction manipulation.

B.4 - Other manipulation techniques net belong to above classifications:

Market Manipulation can happen in an event in which groups of participants such as shareholders concern in manipulation. For example, Fairfax Financial Holdings Ltd., Toronto, (2006) found that some group of hedge funds tend to manipulate market. Or the using of initial sale in transaction manipulation can be another example for this category.

C - Actions on Preventing or Controlling negative manipulation

Necessary actions to prevent or control negative market manipulation are, but not limited to, designing proper measures to provide sound results on both positive and negative effects of market manipulation action and information. Additionally, there is the fact that the analysis techniques used in review of big corporations' fi-

financial statements such as Enron needed to be enhanced. On the other hand, the competence of the Board and the control and reporting system also need to be strengthened.

D - Findings on Construction of Comparative International Corporate Governance Standards

These findings will be shown in a detailed analysis of a model indicated in the later sessions.

<D.1> - Group 1 - China and Taiwan Corporate Governance standards analysis

The China CG Principles

After financial crisis 1997-1999, in 2001, China SEC issued Code of CG.

It is said that one of its significant advantages is to clarify full rights of shareholders, including but not limited to, participation in major matters, and their duties in the invested company. Additionally, similar to Japan Code, China Code considers the Company as a whole when it makes conditions of fully disclosure of basis for pricing of related-party transactions. Besides, it also gives another party “affiliates” in provision regarding to preventing them from transferring capital and assets of the co. through different means.

And different from some other Asian Codes, it stated the independence of the co.’s assets and controlling shareholders’ invested assets which has to be recognized in proper accounting and management procedures. Generally speaking, The China 2001 Code has a meaningful objective and solid focus on shareholder and their participation in the company. Besides, it is good to point that directors should have relevant training on their roles and duties, as well as buying liability insurance for directors which does not cover liability for violating laws. However, it still has not pointed well interest conflicts.

The Taiwan 2002 Corporate Governance Best Practice Principles

After impacts from crisis 1997-1999, until 2002, Taiwan TSE provided The 2002 Best Practice CG Code.

It pays lots of attention to shareholders and directors importance, esp. the roles of the independent directors, as well as provided details on information disclosure. Moreover, it indicated the co. as a whole should maintain environmental protection and communication with relevant stakeholders such as bankers, creditors, consumers, and employee.

Different from most of Asian Codes, there is an inspector at the GM who will examine documents by BD and SB. Also, it shows a good view on criteria for BD meeting such as sound recording and video taping.

However, it would be better to present clear views on the chairman of the co. and the chairman of the GM.

Comparison between the China and Taiwan Corporate Governance Principles

Different from most of Asian Codes, there is a focus on controlling shareholders in the China 2001 code. For example, it prevents them from damaging other shareholders’ legal rights by means such as assets restructuring. Moreover, it clarifies roles of directors when participating in BD meeting such as; presenting clear opinions on topics with responsible manner. Also, it makes a sound point when it suggests the BD may establish a corporate strategy committee (see Figure 1).

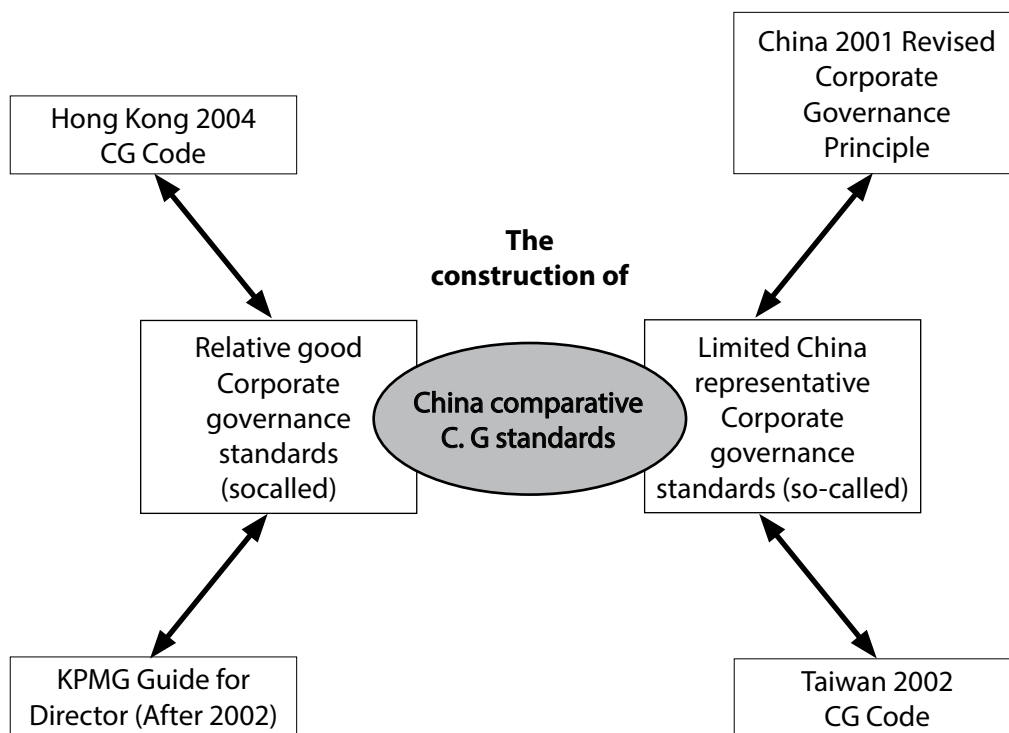


Figure 1. The Model of Construction of Comparative China corporate governance standards

Source: authors

On the other hand, the 2002 Taiwan Code considers roles of Supervisory Board as a vital element in corporate governance structure. It indicates a supervisor need to understand duties and functions of BD and Managers, as well as it is necessary for them to attend regular meeting of BD. Through its 2002 CG Code, it signifies the compliance with laws and regulations. And it strengthens the role of information transparency as one of co.’s missions. Next, it makes sense when pointing a shareholder should be in a good faith with other shareholders or make MGT involving in illegal earning transactions. But it has to identify actions from compliance division in more details. See Table 1.

Table 1. China Corporate Governance (CG) representative standards

Subjects or parties	Main quality factors	Sub quality factors
Audit committee (AC)	Responsible to Board of Director (BD); at least one with expertise in accounting or finance;	Established by BD; AC oversee External Audit (EA) and Internal Audit (IA) interaction;
CEO/General manager and The Chair	The Chair, not a CEO, attend General meeting (GM) and inquire shareholders’ opinion;	N/A (for further research and implementation)
Corporate Secretary (CS)	Be in charge of information disclosure; provide consultation; contact shareholders;	BD and Management (MGT) actively support CS work;
Compliance officer	May engage legal counsel to ensure legal framework;	N/A (for further research and implementation)
Board of Directors	Operate in independent manner; faithfully, honestly and diligently; Composition ensure effective discussion and timely decision making;	Liability of compensation if violating laws and causing damages to co.;
Independent director	Independent from major shareholders;	May receive liability insurance as GM resolution;
Supervisory board to the Management	professional knowledge in law or accounting;	meet periodically;
Supervisory to the Board of Directors (SB)	accountable to all shareholders; professional knowledge in law or accounting; meet periodically; professional knowledge and skill, time and energy;	Liability of compensation if violating laws and causing damages to co.; honest, fair and practical attitude;
Internal control	Comprehensive and effective;	SB supervise BD and managers to perform operations;

Internal audit	No subordinate relationship b.t Co.'s IA and controlling shareholders or their IA;	Evaluate problems of IA system and efficiency of operation;
External audit	Engaged or replaced based on recommendation from AC;	Can be an independent CPA;
Disclosure and transparency	Set efficient communication channel with shareholder;	Explicit and Concrete Principles of Authorization for BD in GM;
Shareholders	Fair treatment to all shareholders;	Participate in major events of company;
The corporation as a whole entity	Ensure the CG Code have provisions to guarantee full exercise of shareholders' rights; Clarify with directors rights and obligations;	Design measures to prevent affiliates from misappropriating co.'s capital and assets;

<D.2> -Group 2 – Relative Good Corporate governance group analysis

After the financial crisis 1997-1998, Hong Kong Exchanges and Clearing Limited has some improvements in their 2004 Conclusion of Corporate governance Codes.

Hong Kong's 2004 Conclusion on Corporate Governance Code:

In the 2004 Code, so-called, it stated that companies can issue their own Code of Practice. It also enhanced roles of corporate secretaries in implementing good CG and in keeping minutes of BD meeting and other committees meeting.

Good recommendations involved in the 2004 Code include, but not limited to, specifies roles of AC with the Corporate Governance Report in which it might identifies reasons the BD takes different views on appointment or removal of EA.

Besides, it indicated there might be several chair at board committees such as independent board meeting chair, who can show up at GM to answer shareholders.

A minor point might be it will provide better views if it indicates more on roles of supervisory board.

In summary, the 2004 Code strengthen the duties of AC in relation with EA, as a key representative body of the corporation.

KPMG-Hong Kong Guideline for Directors analysis:

After financial crisis 1997-1999, and the consultation paper of HKSE in 2002, KPMG in Hong Kong provide guide for directors on a corporate governance system.

According to the code, the responsibilities of the co. to customers are recognized. One example is the commitment to provide safe products to meet customers' expectation.

It is also recommended that disclosure should be made as soon as practicable. And the co. should disclose transactions with a "connected person" such as chief executive, controlling shareholder as well. However, the Code has little attention to the role of CEO.

The 1st Establishment of a so-called relatively Good Corporate Governance standard

This following table is built with the consideration of comparative analysis of two (2) selected above organizations. See Table 2.

Table 2. A relatively Good Corporate Governance standards

Subjects or parties	Main quality factors	Sub quality factors
Audit committee	Separate secretary keep meeting minutes; build non-audit services policy with EA;	AC Chair can answer at GM;
CEO and The Chair	Chairman approve board meeting agenda; propose separate resolution at GM; Both have written roles;	Chair ensure directors receive adequate, reliable information;
Corporate Secretary	provide access and services to all directors; keep meeting minutes;	Have effective communication with shareholders;
Compliance officer	Disclose name in interim report in securities transactions;	N/A (for further research and implementation)
Board of Directors	Meeting notice at least 14 days; balance of skills and experience;	Director may find independent professional advice;
Independent director	Can Attend A board meeting held to solve conflict with shareholder;	N/A (for further research and implementation)
Supervisory board to the Management	Act by BD or other professional advice;	N/A (for further research and implementation)
Supervisory to the Board of Directors	Professional consult accessed by committees;	N/A (for further research and implementation)
Internal control	Annually reviewed by directors covering operational , compliance and RM;	Procedures to handle price sensitive information;
Internal audit	AC ensure coordination b.t IA and EA;	N/A (for further research and implementation)
External audit	Discuss AC scope of audit;	Independence, skills , knowledge reviewed by AC;
Disclosure and transparency	Disclose any information enabling public to evaluate the co.'s position and avoid false market on co.'s securities;	Disclose transactions b.t companies and "connected person";
Shareholders	Elect new directors at GM with biographical notes;	Voting by poll;
The corporation as a whole entity	Set code of conduct regarding to securities transactions;	Has development programs for directors;

D.3- The 1st Establishment of a so-called comparative International Corporate Governance standards

Comparison of corporate governance standards between <D.1> and <D.2> group

Before we come to set up a set of general limited standards of corporate governance, we need to review the standards combined in the previous two (2) groups

The advantages of Group 1 (OECD and ICGN) are related to clear division of responsibilities of Board, but not limited to, disclosure standards, though it still works more on board composition.

On the contrary, the relative Good Corporate Governance Group standards states quality requirements of audit committee and duties of the corporation as a whole (while Group 1 regarding BD as a whole).

A so-called Limited Comparative International Corporate Governance Set of standards

Based on the above analysis, we consider building comparative standards for a comparative International Corporate Governance system. See Table 3

Table 3. The Comparative China Corporate Governance standards

Subjects or parties	Main quality factors	Sub quality factors
Audit committee	Responsible to BD; at least one with expertise in accounting or finance;	Established by BD; may invite intermediary org. to give professional ideas; AC oversee EA and IA interaction; improve communication b.t BD and EA;
Nominating committee	Written duties and authority;	Established by BD; may invite intermediary org. to give professional ideas;
Numeration or Compensation Committee	Consult chairman or CEO remuneration proposals; approve performance-based compensation;	Established by BD; may invite intermediary org. to give professional ideas;
CEO and The Chair	The Chair approve board meeting agenda; propose separate resolution at GM;	The Chair, not be a CEO, attend GM and inquire shareholders' opinion;
CFO	Helped by AC to raise concerns in a forum;	N/A (for further research and implementation)
Corporate Secretary	Be in charge of information disclosure; provide consultation; contact shareholders;	BD and MGT actively support CS work;
Compliance officer	May engage legal counsel to ensure legal framework;	N/A (for further research and implementation)
Board of Directors or Management Board	Operate in independent manner; Composition ensure effective discussion and timely decision making;	Liability of compensation if violating laws and causing damages to co.; faithfully, honestly and diligently; if BD or Managers resign, SB will investigate causes; cooperate well with inspector in GM;
Independent director	Independent from major shareholders;	May receive liability insurance as from GM resolution;
Supervisory board to the Management	Institutional investors join in supervisory for MGT; Act by BD;	professional knowledge in law or accounting;
Supervisory to the Board of Directors	professional knowledge in law or accounting; meet periodically; co. set a channel for SB to communicate with employees, shareholders;	Liability of compensation if violating laws and causing damages to co.; accountable to all shareholders; cooperate well with inspector in GM;
Internal control	Comprehensive and effective;	SB supervise BD and managers to perform operations;
Internal audit	Evaluate problems of IA system and efficiency of operation;	No subordinate relationship b.t Co.'s IA and controlling shareholders or their IA;
External audit	discuss AC scope of audit;	Engaged or replaced based on recommendation from AC; can be an independent CPA;
Disclosure and transparency	Explicit and Concrete Principles of Authorization for BD in GM;	Set efficient communication channel with shareholder;
Shareholders	Fair treatment to all shareholders;	Participate in major events of company;
Stakeholders	Ensure shareholders' legal rights following state laws;	Co. provided information to banks and creditors to assess its financial position;
Accountability	BD show balanced, comprehensible assessment on co.'s position;	truthfully, accurately, completely and timely information disclosure;
Leadership	BD has duty for leadership and control;	Board leadership by chairman;
Employee	Enhance professionalism and knowledge of the law	AC consider hiring employees from EA; treat employees fairly and equitably;
3 rd parties and conflicts of interests	A board meeting held to solve conflict with shareholder or director;	Specific Written agreements with equality, compensation and voluntariness principles;
The corporation as a whole entity	Clarify with directors rights and obligations; fulfill the function of supervisors;	Design measures to prevent affiliates from misappropriating co.'s capital and assets;
The Code	Ensure full exercise of shareholders' rights	Disclose corporate governance structure and rules;

(Note: source are based on corporate governance standards of group <D.1> and <D.2> and the appraisal of these standards)

3. Conclusions

In previous analysis, we found out several key corporate governance issues including, but not limited to, the lack of an effective board as well as necessary mechanisms to build better disclosure system. The 2006 Taiwan Conference on CG also identified despite of its active growing capital market, the quality of independent directors are not enhanced well.

To lower its impacts, The 2001 China Code and 2002 Taiwan Best Practice Principles enhances recommendations on disclosure and transparency policies as well as connection b.t Board and SB.

Besides, the Hong Kong Code and KPMG Guide also play a vital role in guiding the Board toward setting a good CG system although it needs to give more views on internal and risk contents.

In CFA Institute Survey on China CG 2007, it shows accuracy of financial reporting are one of the most important factor in disclosure policy.

In consideration of corporate governance issues analyzed in the previous sessions, we proposed the main and sub quality factors in this paper **a set of general China corporate governance standards** in a limited model with selected above countries. Though limited, it has some implications for further research and proper recommendations to relevant government and organizations. And it also provides relevant academic and non-academic, lawyer and consultant, board and non-board people with minimum information for further researches.

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