

Good Corporate and Public Governance: How to Make It a Self- Enforcing Process.

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Overview

- **Regulatory Forms**
- **Why and When Self-Regulation?**
- **The European Experience**
- **Conclusions for Indonesia**

Definitions

“Self-regulation is any regulatory regime which has generally been developed and funded by industry, and is enforced exclusively by industry”

Voluntary, no intervention from government

Self-Regulation



Quasi-Regulation



Explicit Government
Regulation

Definitions

“Self-regulation begins at home and family. Business corporations have to work collectively as well as individually. For business corporations, a basic tool for self-regulation is a corporate code of conduct that sets out the ground rules for all concerned.”

F. Antonius Alijoyo

Self-Regulation



Quasi-Regulation



Explicit Government
Regulation

Definitions

“Quasi-regulation refers to the range of rules, instruments and standards that are not part of government regulation where government influences business to comply”

“An aura of government endorsement”, accreditation

Self-Regulation



Quasi-Regulation



Explicit Government
Regulation

Definitions

“Explicit Government Regulation: Legislation Consisting of Acts Passed by Parliament”

Mandatory, enforcement through judicial system

Self-Regulation



Quasi-Regulation



Explicit Government Regulation

Self-Regulation/Quasi-Regulation

- **More Popular Than One Might Think.**
- **Good Examples From Australia:**
 - 480 self-regulatory schemes
 - Not only corporate governance
 - Interesting examples include regulation of babysitters, transportation of frozen foods, supermarket scanning codes, transportation of livestock, the Internet, etc.

Why Is It So Popular?

- **Enforced by Regulated Industry**
- **Flexibility**
- **Low Costs**
- **Valuable Tool (Not in Isolation)**
- **Minimize Damage to Reputation**
- **“Smokescreen For Market Behavior”**
- **Great Tool For Window Dressing**

Factors For Choosing the Regulatory Form

- **The Nature of the Problem**
- **Risk Assessment (Risks to the Population)**
- **Flexibility and Responsiveness**
- **Cost of Compliance and Enforcement**
- **Existing Legislative Environment**
- **Industry Organization and Attitude**
- **External Pressures**

2 September, 2002. Bosses quit in Japan nuclear scandal

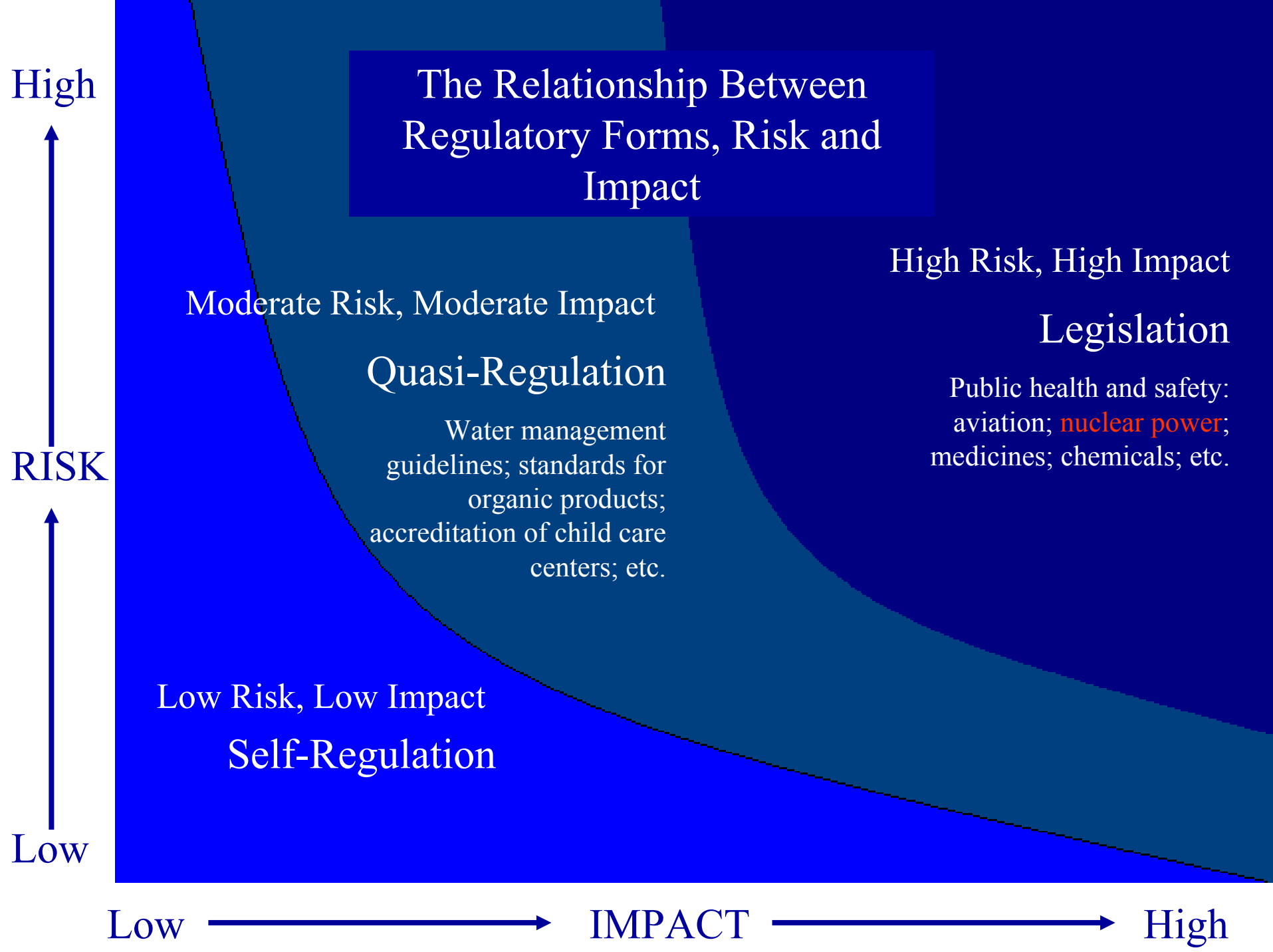


Top executives at Japanese electricity producer Tepco are to quit, after the firm admitted possibly having falsified nuclear safety records.

Tepco admitted last week that there may have been problems with maintenance work at its nuclear power plants between the late 1980s and early 1990s, and launched an internal investigation.

I deeply regret the incident and cannot apologize enough for it," Tepco president Nobuya Minami told a news conference.





Corporate Governance

- Internal Company Codes
- Country Codes
- Listing Requirements

- International Codes
- OECD/Commonwealth

- Company Law
- Securities Legislation
- BAPEPAM Regulations
- Sarbanes/Oxley

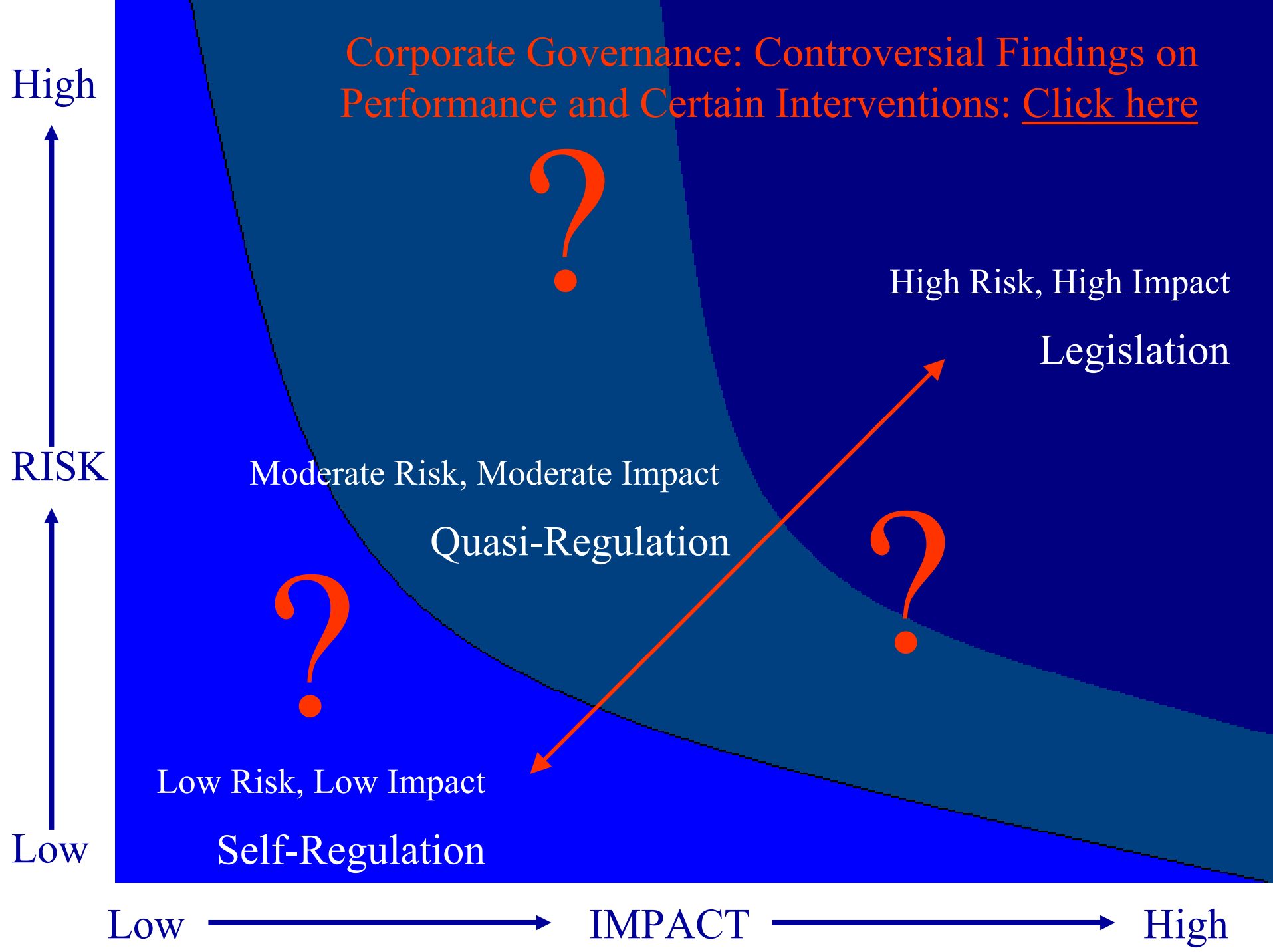
Self-Regulation



Quasi-Regulation



Explicit Government
Regulation



High



RISK



Low

Impact and Risks Related to Corporate Governance

- The Nature of the Problem?
- Quality of Legislation?
- Business Ethics?
- Insufficient Foreign Investment?
- Lack of Trust?
- Image?



When do we use self-regulation?

Low



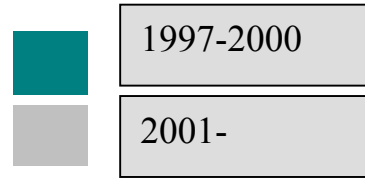
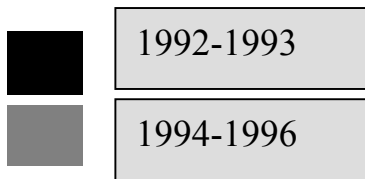
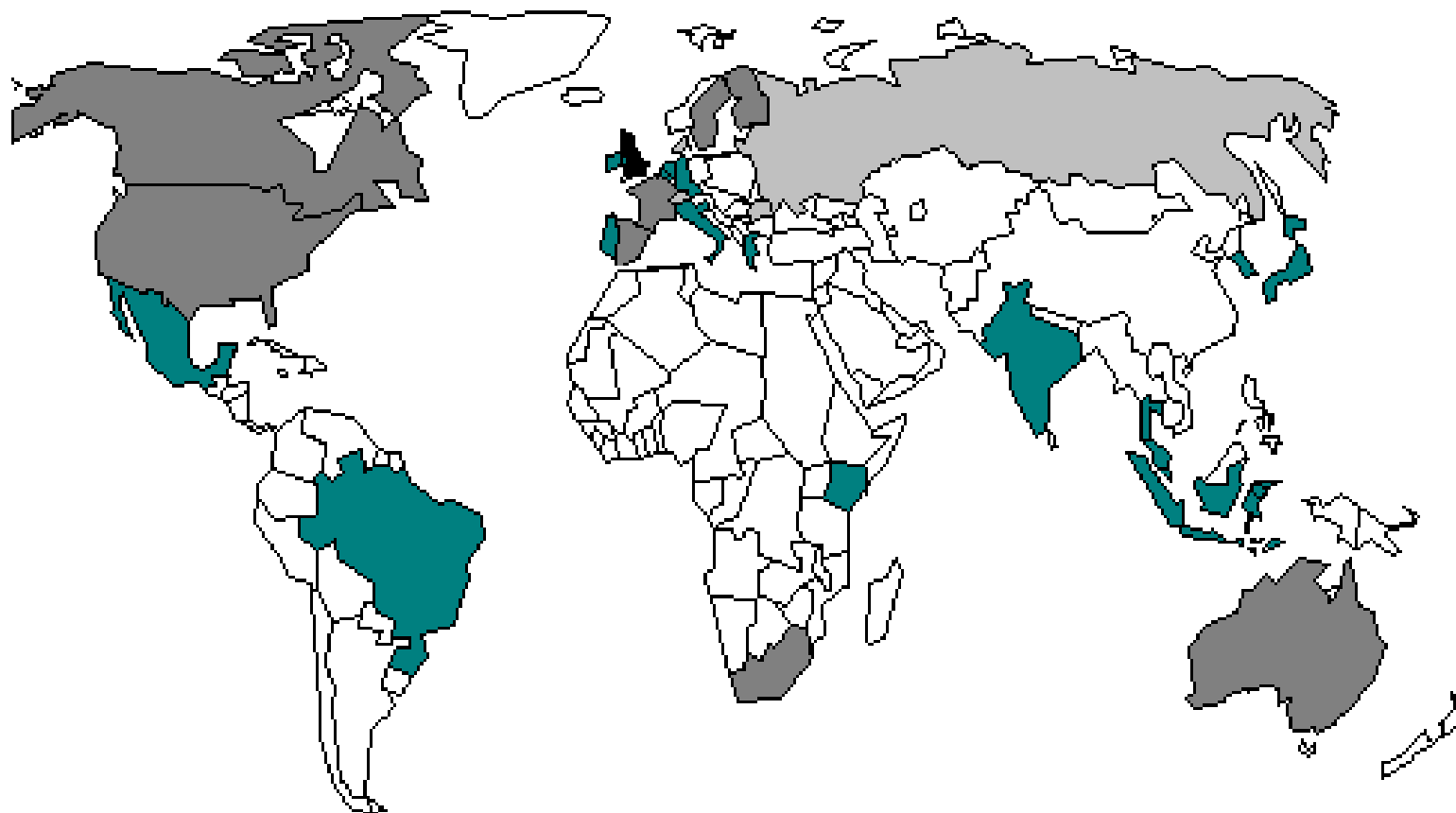
IMPACT



High

Does It Work in Europe?

- **Part of a Greater International Movement (+/- 95 Codes in 34 Countries Worldwide)**
- **Great Popularity Across Europe**
- **+/- 50 Codes in Europe (53%, 18 Countries)**
- **No Pan-European Code Endorsed by EU**
- **[Click Here](#) For an Overview of Corporate Governance Codes**



Phase 1
1992-1993

Cadbury
Code 1992



The first code of best practices on corporate governance introduced in the UK + GM Guidelines in 1994 in the US

Phase 2
1994-1996

Greenbury
Report
1995



Anglo-Saxon countries are the first to follow including some initiatives in continental-European countries

Phase 3
1997-2000

Hampel
/ Turnbull
1998/1999



The majority of continental-European countries and a few countries in Asia and South America follow with the introduction of voluntary standards

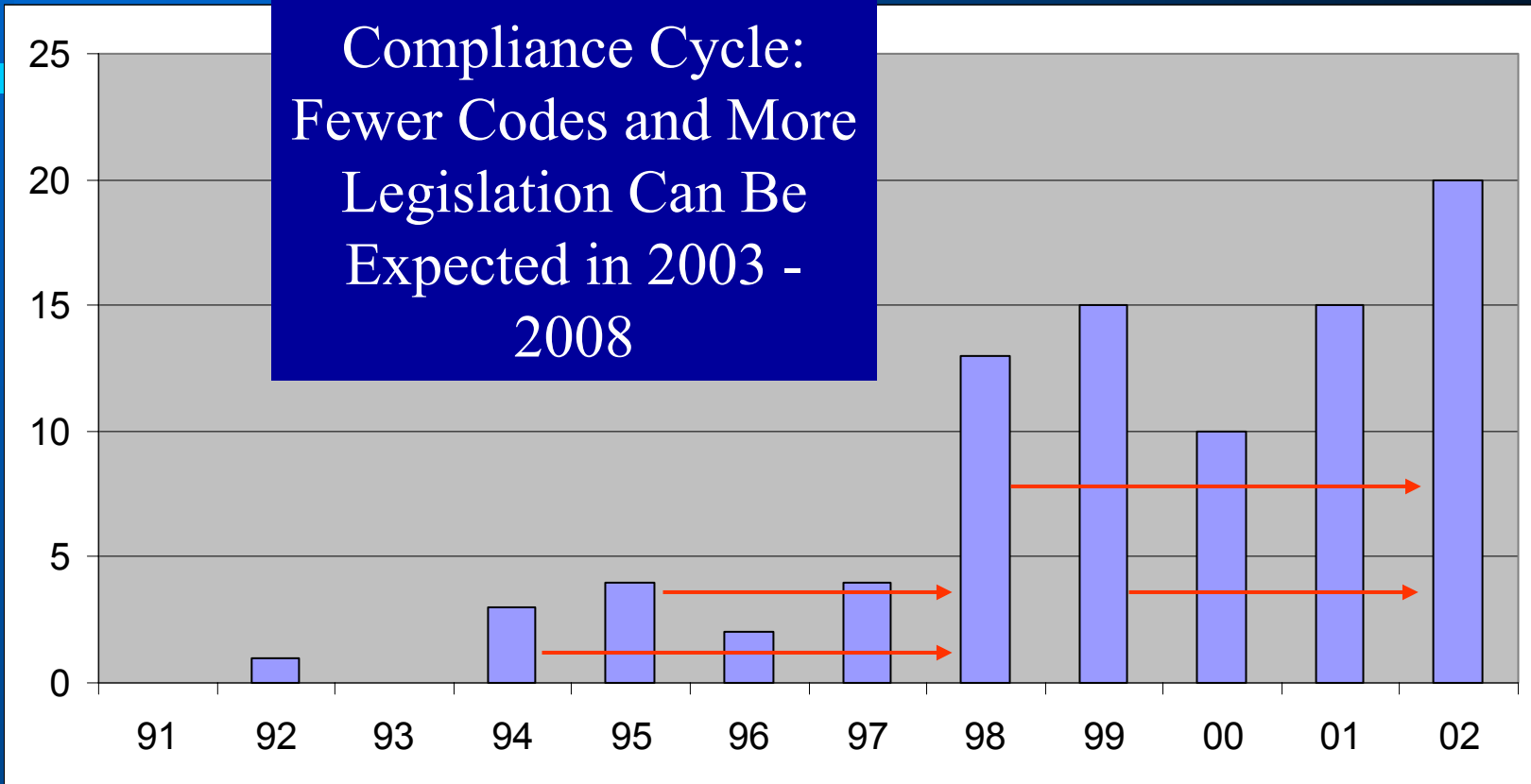
Phase 4
2001-

DTI Law
Review
2001



Developing countries start to embark on corporate governance through the development of legislation and codes

The 4-5 Year
Compliance Cycle:
Fewer Codes and More
Legislation Can Be
Expected in 2003 -
2008



Does It Work in Europe?

- Threat of Legislation / Winter Report
- Enforceable Requirements / Listing Req.
- Greater Enforcement Costs
- Greater Risks/Uncertainty
- Sanctions
- Greater Business Opportunities
- Greater Value of Assets
- No Need -> Legislation is in Place?
- No Incentives, Certainly After US Experience

Does It Work in Europe?

- **No Membership Qualifications**
- **No Organized Enforcement/ Ad Hoc**
- **No Complaint Mechanisms**
- **No Reduction of Liabilities**
- **What is Acceptable and What is Not?**
- **Small Population of Companies**
- **Results of 10 years?**

Does It Work in Europe? The Data...

Country	Number of Companies	Percentage of Companies
Belgium	20	4.1%
Czech Republic	16	3.3%
France	39	8.1%
Germany	30	6.2%
Italy	27	5.6%
Netherlands	100	20.7%
Poland	14	2.9%
Russia	10	2.1%
Spain	31	6.4%
Sweden	21	4.3%
Switzerland	25	5.2%
United Kingdom	150	31.1%
Total:	483	100.0%

Countries	Individuals	Positions	Companies
12	Males: 4637	Executive: 1883	One Tier Boards: 305
	Females: 270	Non-Executive: 4122	Two Tier Boards: 178
	Unknown: 88	Unknown: 88	
	Total: 4995	Total: 6093	Total: 483

Does It Work in Europe? Basics...

Country	Number of Positions	Disclosure of Nationality		Disclosure of Gender		Disclosure of Age		Disclosure of Tenure	
Belgium	271	59	21.8%	264	97.4%	145	53.5%	98	36.2%
Czech Republic	221	190	86.0%	221	100.0%	102	46.2%	63	28.5%
France	603	172	28.5%	594	98.5%	420	69.7%	279	46.3%
Germany	733	47	6.4%	732	99.9%	300	40.9%	226	30.8%
Italy	384	4	1.0%	372	96.9%	34	8.9%	7	1.8%
Netherlands	896	711	79.4%	844	94.2%	803	89.6%	571	63.7%
Poland	200	130	65.0%	200	100.0%	13	6.5%	9	4.5%
Russia	226	212	93.8%	223	98.7%	44	19.5%	24	10.6%
Spain	453	8	1.8%	452	99.8%	38	8.4%	80	17.7%
Sweden	256	18	7.0%	254	99.2%	203	79.3%	185	72.3%
Switzerland	224	76	33.9%	224	100.0%	120	53.6%	52	23.2%
United Kingdom	1626	129	7.9%	1623	99.8%	1600	98.4%	1419	87.3%
Total:	6093	1756	28.8%	6003	98.5%	3822	62.7%	3013	49.5%

Does It Work in Europe? Meetings...

Country	Number of Companies	Number of Committees	Number of Positions	Disclosure of Committee Meetings		Disclosure of Board Meetings	
Belgium	20	53	271	22	41.5%	19	95.0%
Czech Republic	16	17	221	0	0.0%	1	6.3%
France	39	100	603	70	70.0%	28	71.8%
Germany	30	86	733	49	57.0%	28	93.3%
Italy	27	53	384	17	32.1%	14	51.9%
Netherlands	100	163	896	52	31.9%	83	83.0%
Poland	14	14	200	0	0.0%	0	0.0%
Russia	10	14	226	0	0.0%	1	10.0%
Spain	31	87	453	32	36.8%	21	67.7%
Sweden	21	39	256	9	23.1%	17	81.0%
Switzerland	25	63	224	5	7.9%	10	40.0%
United Kingdom	150	574	1626	179	31.2%	100	66.7%
Total:	483	1263	6093	435	25.5%	322	66.7%

Does It Work in Europe? Non-Execs...

Country	Number of Non-Executive Positions	Disclosure of Individual Remuneration		Disclosure of Chairman Remuneration		Disclosure of Independent Member Remuneration		Disclosure of Common Member Remuneration	
Belgium	214	20	9.3%	1	8.3%	7	8.8%	19	9.8%
Czech Republic	131	0	0.0%	0	0.0%	0	0.0%	0	0.0%
France	475	185	38.9%	5	33.3%	63	57.8%	175	39.5%
Germany	527	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Italy	293	136	46.4%	4	66.7%	48	51.1%	126	46.0%
Netherlands	546	114	20.9%	13	13.7%	0	0.0%	93	22.0%
Poland	112	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Russia	111	5	4.5%	1	12.5%	0	0.0%	4	4.1%
Spain	381	7	1.8%	0	0.0%	0	0.0%	6	1.7%
Sweden	228	19	8.3%	5	38.5%	0	0.0%	11	5.6%
Switzerland	184	7	3.8%	0	0.0%	0	0.0%	6	3.8%
United Kingdom	920	809	87.9%	86	91.5%	595	91.5%	672	87.2%
Total:	4122	1302	31.6%	115	35.7%	713	68.2%	1112	31.3%

Does It Work in Europe? Independence

Country	Number of Non-Executive Positions	Independent Non-Executives		Non-Independent Non-Executives		Dependency Disclosed
Belgium	214	80	37.4%	73	34.1%	71.5%
Czech Republic	131	0	0.0%	0	0.0%	0.0%
France	475	109	22.9%	85	17.9%	40.8%
Germany	527	0	0.0%	0	0.0%	0.0%
Italy	293	94	32.1%	48	16.4%	48.5%
Netherlands	546	11	2.0%	0	0.0%	2.0%
Poland	112	0	0.0%	0	0.0%	0.0%
Russia	111	0	0.0%	0	0.0%	0.0%
Spain	381	64	16.8%	24	6.3%	23.1%
Sweden	228	14	6.1%	1	0.4%	6.6%
Switzerland	184	23	12.5%	2	1.1%	13.6%
United Kingdom	920	650	70.7%	79	8.6%	79.2%
Total:	4122	1045	25.4%	312	7.6%	32.9%

Does It Work in Europe? Execs...

Country	Number of Executive Positions	Disclosure of Individual Remuneration		Disclosure of Chairman Remuneration		Disclosure of CEO Remuneration		Disclosure of Common Member Remuneration	
Belgium	56	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Czech Republic	90	0	0.0%	0	0.0%	0	0.0%	0	0.0%
France	107	29	27.1%	12	36.4%	10	34.5%	15	24.6%
Germany	206	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Italy	60	29	48.3%	9	60.0%	8	47.1%	9	39.1%
Netherlands	350	114	32.6%	23	43.4%	9	20.9%	80	31.9%
Poland	88	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Russia	115	8	7.0%	0	0.0%	1	16.7%	7	7.6%
Spain	65	1	1.5%	0	0.0%	1	5.6%	0	0.0%
Sweden	22	7	31.8%	1	33.3%	7	35.0%	0	0.0%
Switzerland	21	0	0.0%	0	0.0%	0	0.0%	0	0.0%
United Kingdom	703	641	91.2%	50	94.3%	127	93.4%	462	90.1%
Total:	1883	829	44.0%	95	38.5%	163	50.9%	573	44.4%

When Is It Ineffective?

- **Great Tool for Window Dressing**
- **No Recognition of the Real Problems**
- **Restatement of Existing Obligations**
- **Poor Enforcement**
- **Inactive Shareholders**
- **Controversial Solutions**

When It Works: Incentives

- **Understanding Costs and Opportunities**
- **Threat of Legislation**
- **Presence of Enforceable Requirements**
- **Sanctions/Penalties**
- **Greater Business Opportunities**
- **Greater Value of Assets**

Conclusions For Indonesia?

**Good Corporate and Public
Governance: How to Make it a Self-
Enforcing Process?**

Conclusions For Indonesia?

Self-Regulation Can Work When:

- Incentives/Benefits Are in Place
- The Nature, Opportunities and Costs of Problems Are Understood
- We Continue to Learn From Lessons Abroad/US
- We Benefit From Conventional Wisdom

Corporate Governance in Indonesia

Opportunities

Threats



Greater Value
of Assets

Lower Value
of Assets

More Foreign
Investment

Fewer Foreign
Investment

Greater Business
Opportunities

Fewer Business
Opportunities

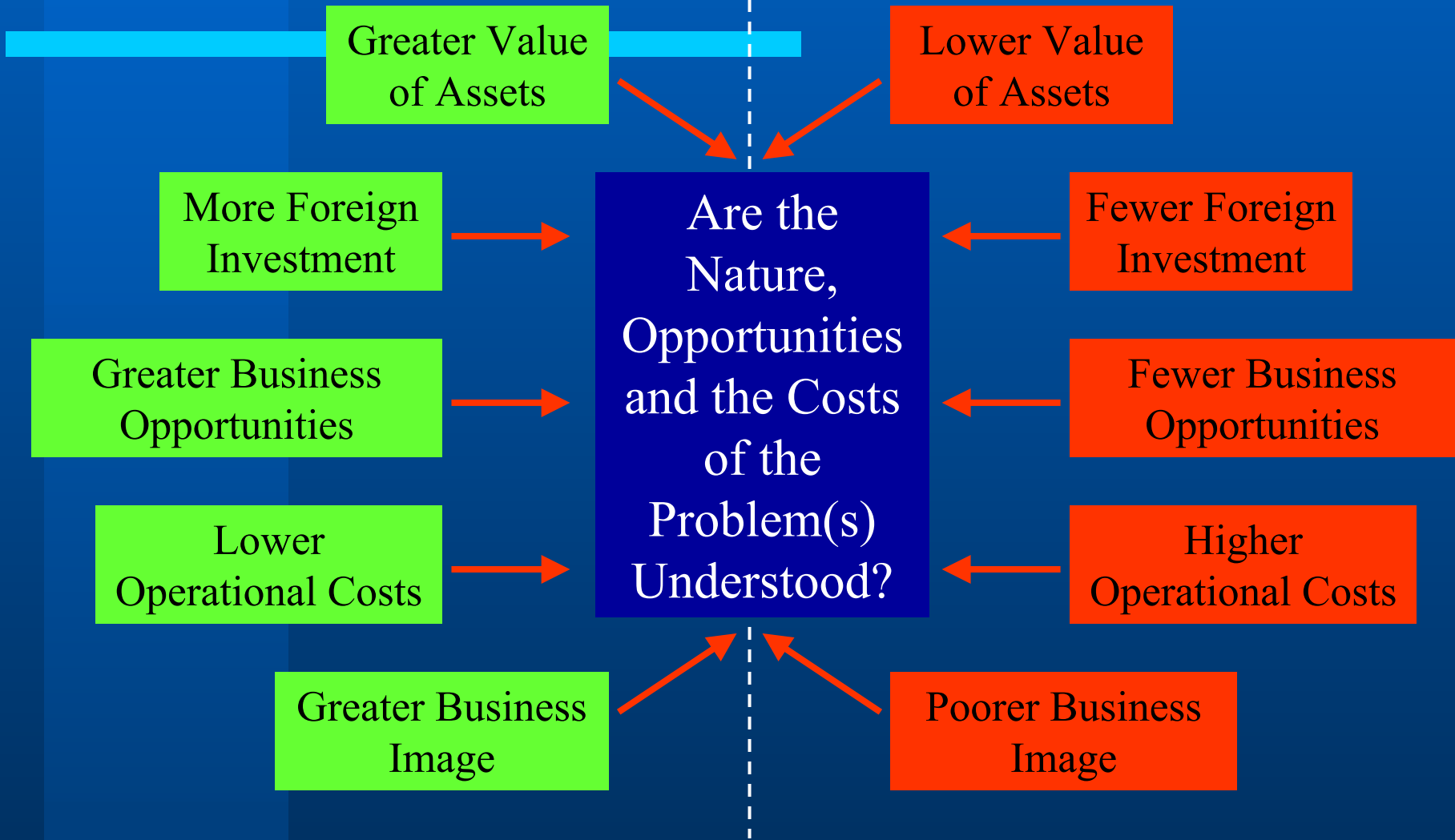
Lower
Operational Costs

Higher
Operational Costs

Greater Business
Image

Poorer Business
Image

Are the
Nature,
Opportunities
and the Costs
of the
Problem(s)
Understood?



Conclusions for Indonesia?

- **Continue the Discussion**
- **Public Awareness of Costs and Opportunities is Essential**
- **New Generation of Business Leaders**
- **It Takes Two To Tango: Foreign Investors Are a Great Source of Incentives, But They Also Must Take the Lead.**

Download This Presentation:

- www.corpgov.biz

Sources:

- **Grey-Letter Law. A report of the Commonwealth Interdepartmental Committee on Quasi-Regulation. Australia, December 1997.**
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