

International Corporate Governance Developments: An Update.

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Overview

- **Key Trends Globally**
- **What Would Work for Indonesia?**
- **The European Experience**
- **Conclusions**

Key Trends Globally

- **Key Trends Globally are or will be affected by the events in two major capital markets – the US and Europe**
- **Enron and Worldcom scandals have attracted attention to corporate governance reforms worldwide**
- **Sarbanes-Oxley Act's implications affect companies worldwide because of ADR programs**

Europe's Response to US Scandals

- **Expediting the corporate governance report (the Winter Report)**
- **Ensuring that International Accounting Standards are implemented and enforced – IAS and US GAAP should converge by 2005**
- **The EU is looking “even more intensively at the way the audit profession is regulated”**
- **Implementation of Basel II capital rules**
- **Tougher disclosure requirements for all listed companies**

More Disclosure

- **A coherent and descriptive statement in annual reports and on websites:**
 - **Operation of the General Meeting + downloads**
 - **Operation of the Boards and Committees**
 - **Qualifications of directors (independence/interlocks)**
 - **Individual remuneration**
 - **Voting rights and control rights of major shareholders**
 - **Relationships between the company and major shareholders (material transactions)**

More Disclosure

- **A coherent and descriptive statement in annual reports and on websites:**
 - **Material related party transactions with subsidiaries and associate companies**
 - **Risk management system**
 - **References to national codes in CG statements**

Sanctions

- **Criminal sanctions, civil liability for damages, forfeiture of bonuses at the discretion of member states**
- **New concept: Director disqualification**
- **Criminal + civil liabilities are difficult to enforce, are often too late. A black list might be the solution when directors approve misleading financial and key non-financial disclosures**

Legal Reform in Member Countries

- **SLIM (Simpler Legislation for Internal Market) Initiative – 2001;**
- **High Level Company Law Group – Winter Report – 2002;**
- **Company Law Review in UK – 1999;**
- **Takeover Code of Germany – 2001;**
- **Proxy Solicitation, the Netherlands – 2002**

Trends in Europe

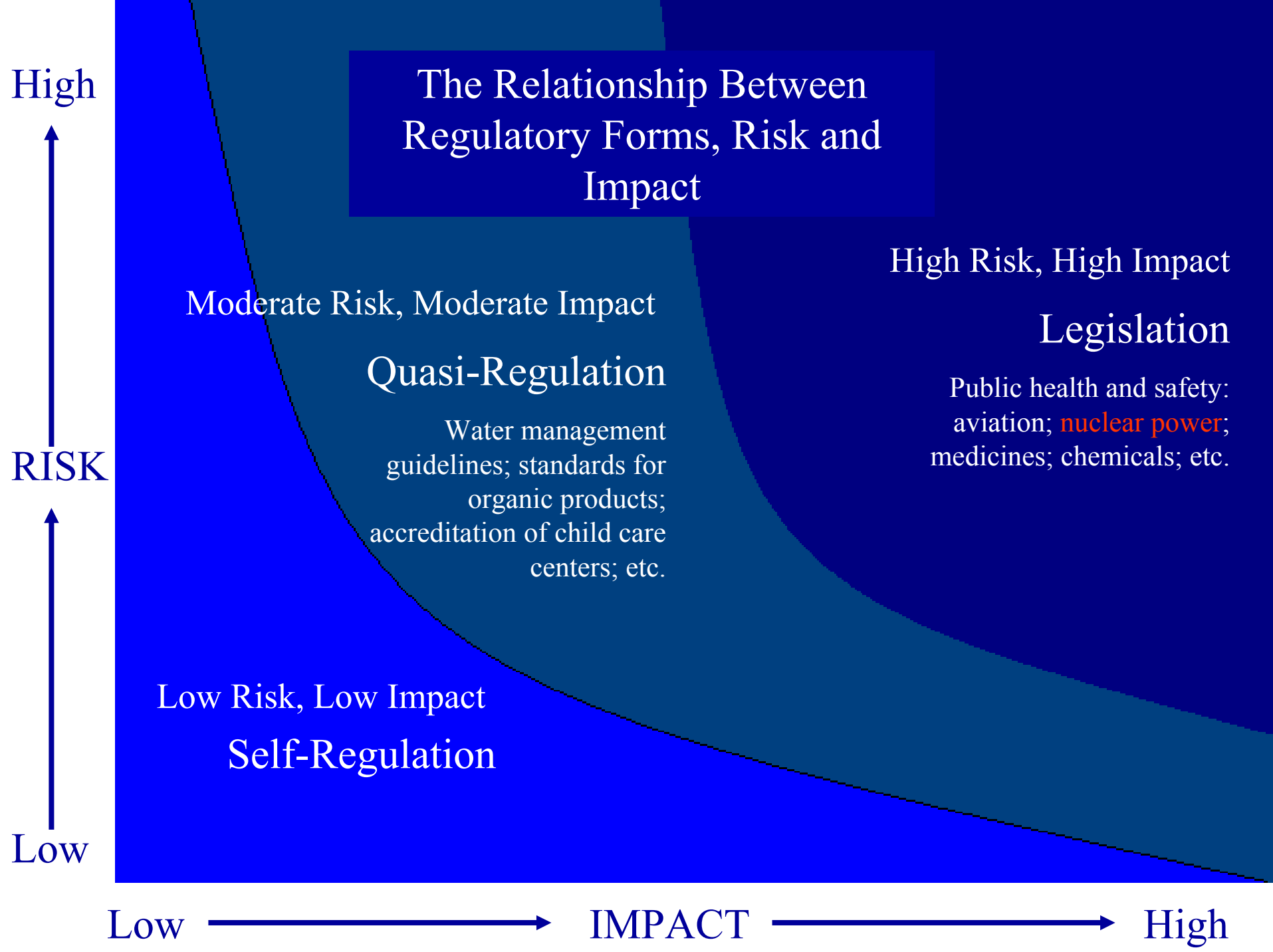
- **Harmonization of CG legislation**
- **Deregulation/decriminalization (broader use of secondary legislation)**
- **More focus on disclosure and self-regulation**
- **New technology**
- **Providing for choice**
- **Convergence of legal families/CG structures**

Future Steps

- **Company law action plan for EU**
- **Permanent structure to provide the Commission with independent advice on future regulatory initiatives**
- **The revision of the OECD Principles (in 2004 instead of 2005)**

Conclusions

- **Most important developments are in the field of self-regulation**
- **Legal interference is secondary**
- **Is the European CG model the solution to avoid scandals like those in the US? -> effectiveness of self-regulation in Europe**



Corporate Governance

- Internal Company Codes
- Country Codes
- Listing Requirements

- International Codes
- OECD/Commonwealth

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

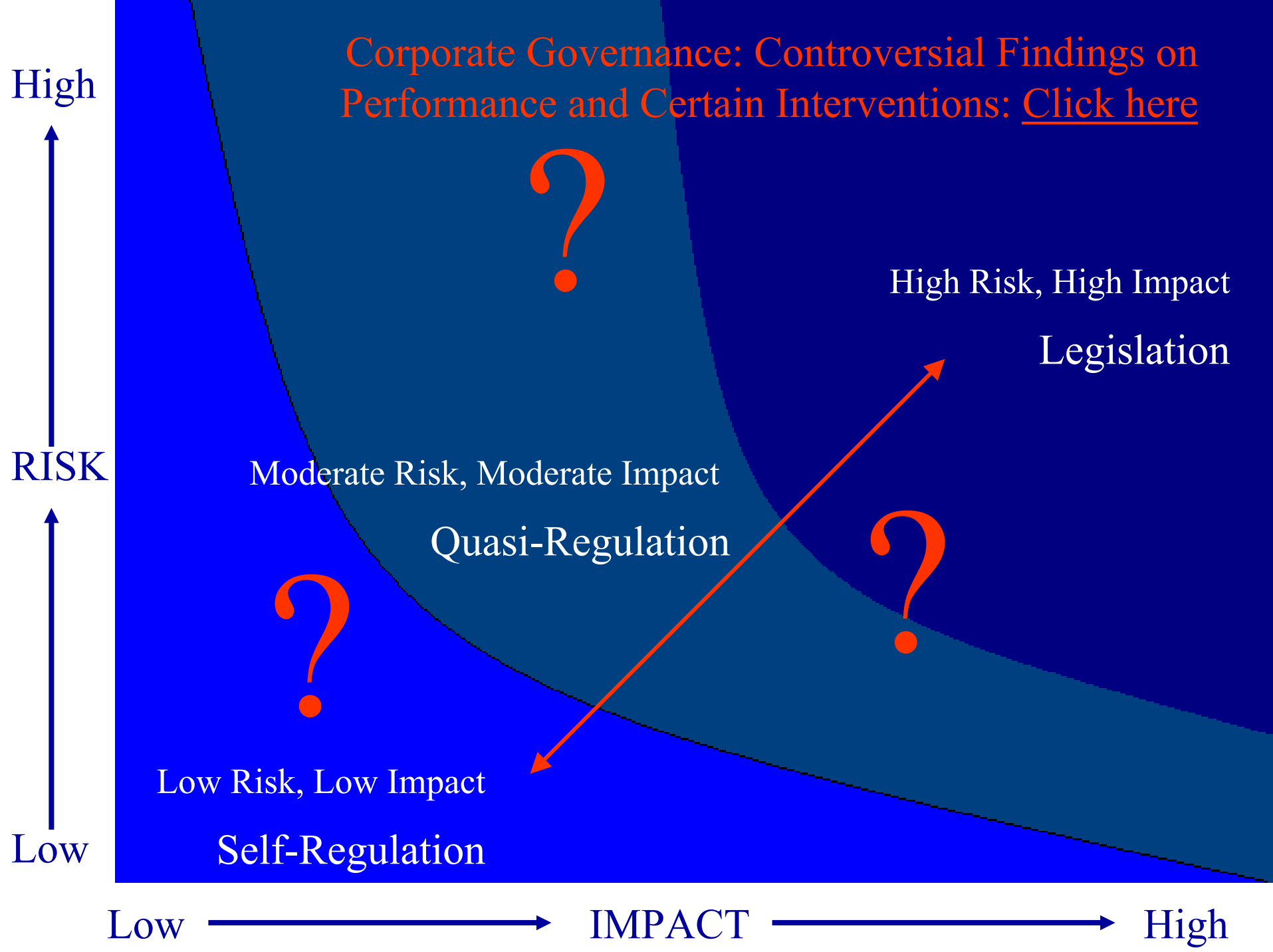
Self-Regulation



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



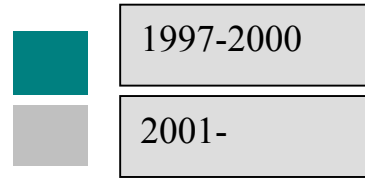
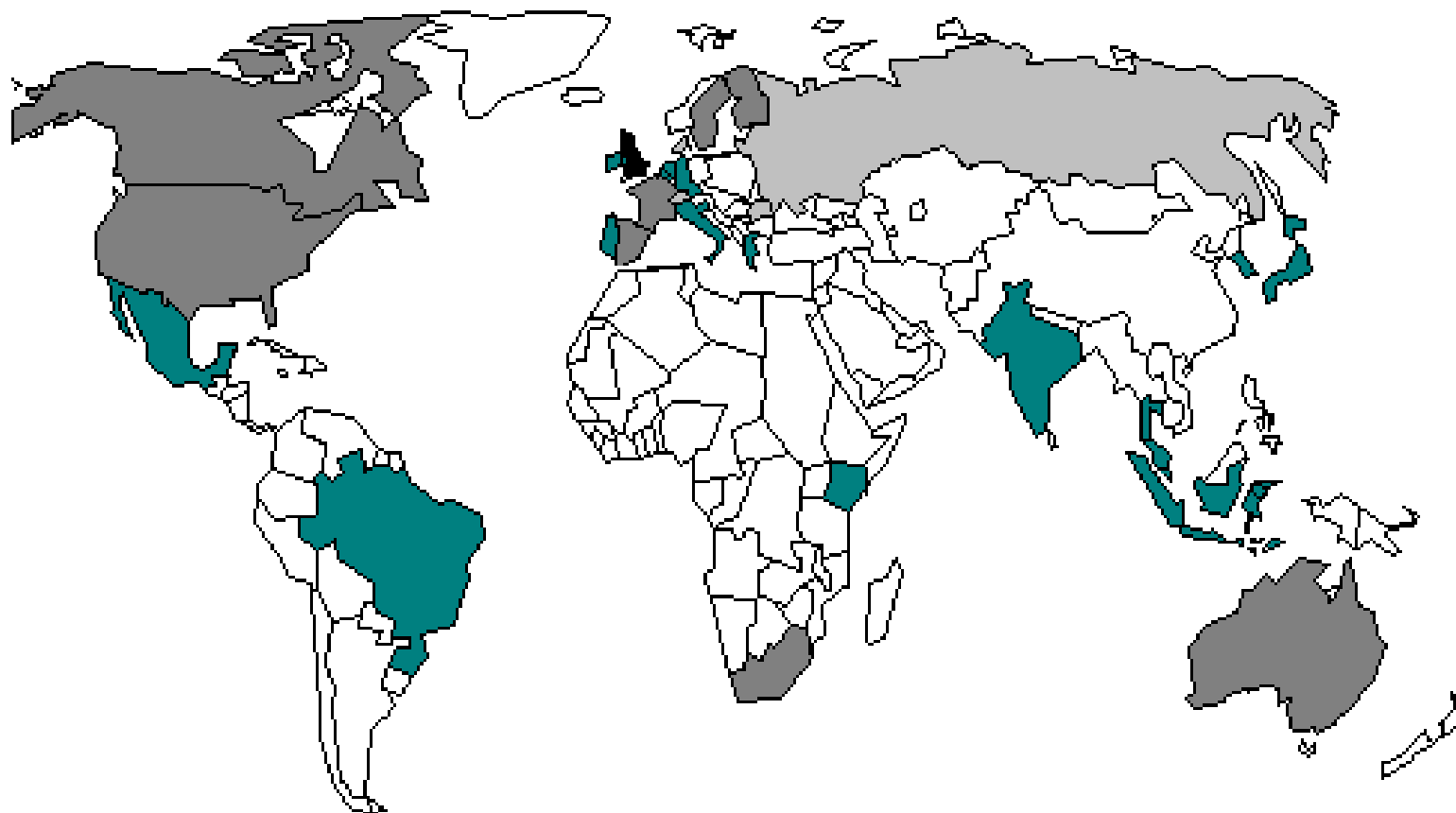
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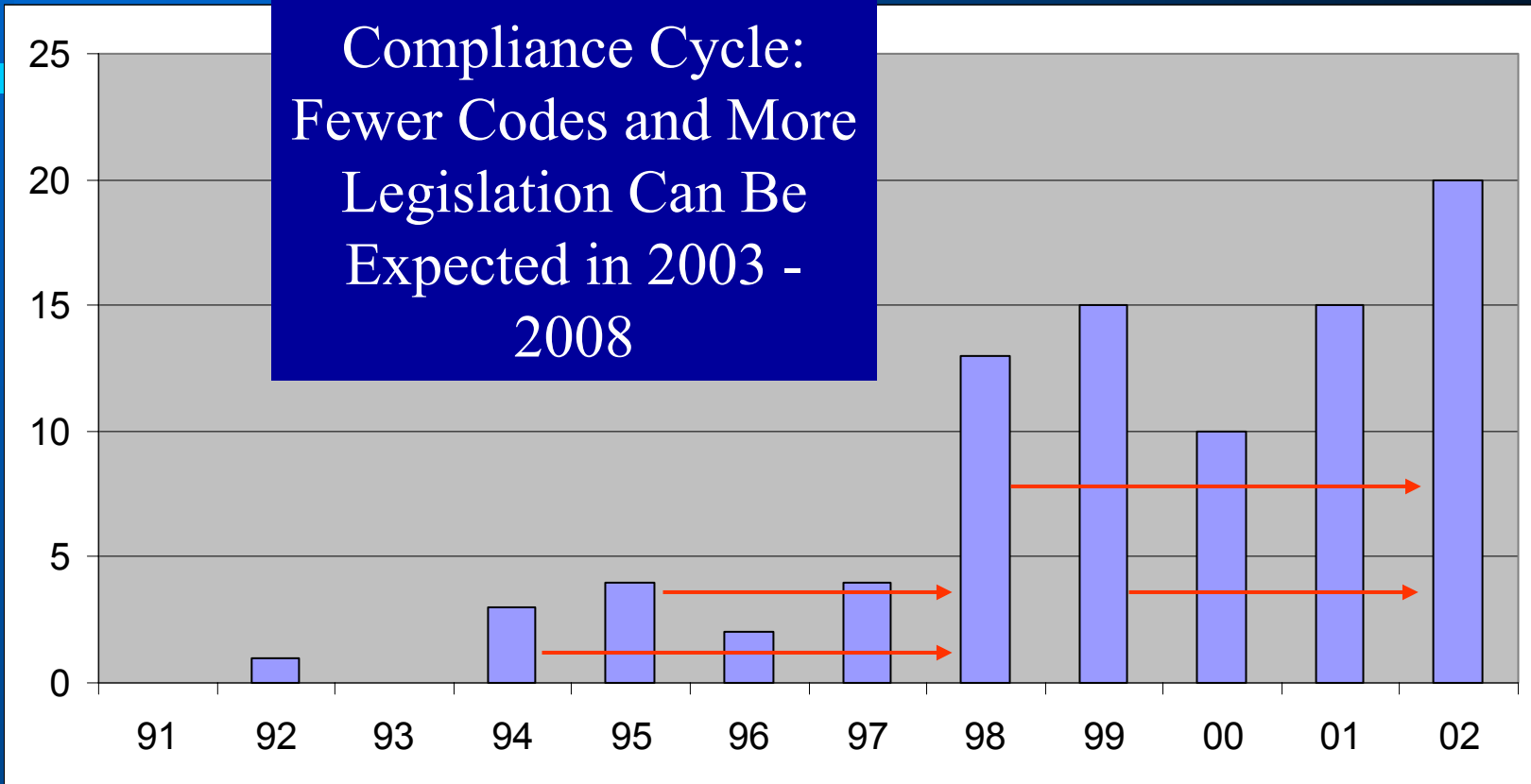
High

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**



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



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

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%

Why 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**

Actions Taken by Indonesia

- **Corporate governance code – March 2000, revised March 2001**
- **Ministerial decree on corporate governance in state-owned companies**
- **Issuance of new BAPEPAM regulations on audit committees and independent commissioners**
- **Activities of the NCCG, FCGI and the Partnership for Governance Reform**
- **Support from the donor community (ADB, INA, USAID, AUSAID, etc.)**
- **Corporate governance awards**

Implications

- **Comparable to Europe?**
- **Not enough?**
- **The majority of investors believe that improvements are being made in corporate governance practices although only 12% believe that considerable improvements have been made**
- **Shareholders need to take more active role in encouraging reforms, as they do in other countries**

Future Steps for Indonesia

- **Indonesia has no choice – has to continue the debate**
- **Beware of limitations of legal transplanting (CIS)**
- **Because of failures elsewhere, greater opportunities for Indonesia**
- **Learn from the mistakes of others**
- **Business is people, not just structures**