G20/OECD Principles of Corporate Governance

OECD

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Foreword

The G20/OECD Principles of Corporate Governance *help policy makers evaluate and improve the legal, regulatory, and institutional framework for corporate governance, with a view to supporting economic efficiency, sustainable growth and financial stability.*

First published in 1999, the Principles *have since become an international benchmark for policy makers, investors, corporations and other stakeholders worldwide. They have also been adopted as one of the Financial Stability Board's Key Standards for Sound Financial Systems and form the basis for the World Bank Reports on the Observance of Standards and Codes (ROSC) in the area of corporate governance.*

This edition contains the results of the second review of the Principles, *conducted in 2014/15. The basis for the review was the 2004 version of the* Principles, *which embrace the shared understanding that a high level of transparency, accountability, board oversight, and respect for the rights of shareholders and role of key stakeholders is part of the foundation of a well-functioning corporate governance system. These core values have been maintained and strengthened to reflect experiences since 2004 and ensure the continuing high quality, relevance and usefulness of the* Principles.

The second review was conducted under the responsibility of the OECD Corporate Governance Committee chaired by Mr. Marcello Bianchi. All non-OECD G20 countries were invited to participate on an equal footing. Experts from relevant international organisations, notably the Basel Committee on Banking Supervision, the Financial Stability Board and the World Bank Group, also participated actively in the review.

Significant contributions were received from the OECD's regional corporate governance roundtables in Latin America, Asia and the Middle East and North Africa, experts, an online public consultation and the OECD's official advisory bodies, the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC).

A draft of the Principles *was discussed by the G20/OECD Corporate Governance Forum in April 2015. Following that meeting, the OECD Council adopted the* Principles *on 8 July 2015. The* Principles *were then submitted to the G20 Leaders Summit on 15-16 November 2015 in Antalya, where they were endorsed as the* G20/OECD Principles of Corporate Governance.

In order to ensure their continuing relevance and accuracy, the review of the Principles *was supported and informed by extensive empirical and analytical work*

addressing relevant changes in both the corporate and financial sectors. In this work, the OECD Secretariat and the Corporate Governance Committee reached out to a large number of experts, organisations and research institutions. Support for research was also received from relevant academic institutions, including Boğaziçi University.

The next step for the OECD working with the G20 and stakeholders is to promote and monitor effective implementation of the revised Principles. *This will include a comprehensive review of the* Methodology for Assessing the Implementation of the Principles of Corporate Governance.

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Preface

The purpose of corporate governance is to help build an environment of trust, transparency and accountability necessary for fostering long-term investment, financial stability and business integrity, thereby supporting stronger growth and more inclusive societies.

The *G20/OECD Principles of Corporate Governance* provide this benchmark. They clearly identify the key building blocks for a sound corporate governance framework and offer practical guidance for implementation at a national level.

Partnering with the G20 gives the *Principles* a global reach and further underlines that they reflect experiences and ambitions in a wide variety of countries at different stages of development and with varying legal systems.

To be relevant, it is essential that corporate governance rules and regulations are adapted to the reality in which they will be implemented. That is why the update of the *Principles* has been supported by extensive empirical and analytical work on emerging trends in both the financial and corporate sectors. This includes corporate governance lessons from the global financial crisis, the increase in cross-border ownership, changes in the way that stock markets function and the consequences of a longer and more complex investment chain from household savings to corporate investments. The conclusions of this fact-based research are reflected in the recommendations. The *Principles* also address the rights of the many stakeholders whose jobs and retirement savings depend on the performance and integrity of the corporate sector.

Now, the priority is to put the *Principles* to good use and for countries and corporations to harvest the benefits of better corporate governance. For this purpose, the OECD will work with the G20, national institutions and other international organisations to assess the quality of the corporate governance framework and to support implementation of the *Principles* on the ground.

Angel Gurría

OECD Secretary-General

About the *Principles*

The *Principles* are intended to help policymakers evaluate and improve the legal, regulatory, and institutional framework for corporate governance, with a view to support economic efficiency, sustainable growth and financial stability. This is primarily achieved by providing shareholders, board members and executives as well as financial intermediaries and service providers with the right incentives to perform their roles within a framework of checks and balances.

The *Principles* are intended to be concise, understandable and accessible to the international community. On the basis of the *Principles*, it is the role of government, semi-government or private sector initiatives to assess the quality of the corporate governance framework and develop more detailed mandatory or voluntary provisions that can take into account country-specific economic, legal, and cultural differences.

The *Principles* focus on publicly traded companies, both financial and non-financial. To the extent they are deemed applicable, they might also be a useful tool to improve corporate governance in companies whose shares are not publicly traded. While some of the *Principles* may be more appropriate for larger than for smaller companies, policymakers may wish to raise awareness of good corporate governance for all companies, including smaller and unlisted companies.

Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.

The *Principles* do not intend to prejudice or second-guess the business judgment of individual market participants, board members and company officials. What works in one company or for one group of investors may not necessarily be generally applicable to all of business or of systemic economic importance.

The *Principles* recognise the interests of employees and other stakeholders and their important role in contributing to the long-term success and performance of the company. Other factors relevant to a company's decision-making

processes, such as environmental, anti-corruption or ethical concerns, are considered in the *Principles* but are treated more explicitly in a number of other instruments including the *OECD Guidelines for Multinational Enterprises*, the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, the *UN Guiding Principles on Business and Human Rights*, and the *ILO Declaration on Fundamental Principles and Rights at Work*, which are referenced in the *Principles*.

The *Principles* are developed with an understanding that corporate governance policies have an important role to play in achieving broader economic objectives with respect to investor confidence, capital formation and allocation. The quality of corporate governance affects the cost for corporations to access capital for growth and the confidence with which those that provide capital – directly or indirectly – can participate and share in their value-creation on fair and equitable terms. Together, the body of corporate governance rules and practices therefore provides a framework that helps to bridge the gap between household savings and investment in the real economy. As a consequence, good corporate governance will reassure shareholders and other stakeholders that their rights are protected and make it possible for corporations to decrease the cost of capital and to facilitate their access to the capital market.

This is of significant importance in today's globalised capital markets. International flows of capital enable companies to access financing from a much larger pool of investors. If companies and countries are to reap the full benefits of the global capital market, and if they are to attract long-term "patient" capital, corporate governance arrangements must be credible, well understood across borders and adhere to internationally accepted principles. Even if corporations do not rely primarily on foreign sources of capital, a credible corporate governance framework, supported by effective supervision and enforcement mechanisms, will help improve the confidence of domestic investors, reduce the cost of capital, underpin the good functioning of financial markets, and ultimately induce more stable sources of financing.

There is no single model of good corporate governance. However, some common elements underlie good corporate governance. The *Principles* build on these common elements and are formulated to embrace the different models that exist. For example, they do not advocate any particular board structure and the term "board" as used in the *Principles* is meant to embrace the different national models of board structures. In the typical two-tier system, found in some countries, "board" as used in the *Principles* refers to the "supervisory board" while "key executives" refers to the "management board". In systems where the unitary board is overseen by an internal auditor's body, the principles applicable to the board are also, *mutatis mutandis*, applicable. As the definition of the term "key executive" may vary among jurisdictions and

depending on context, for example remuneration or related party transactions, the *Principles* leave it to individual jurisdictions to define this term in a functional manner that meets the intended outcome of the *Principles*. The terms "corporation" and "company" are used interchangeably in the text.

The *Principles* are non-binding and do not aim at detailed prescriptions for national legislation. Rather, they seek to identify objectives and suggest various means for achieving them. The *Principles* aim to provide a robust but flexible reference for policy makers and market participants to develop their own frameworks for corporate governance. To remain competitive in a changing world, corporations must innovate and adapt their corporate governance practices so that they can meet new demands and grasp new opportunities. Taking into account the costs and benefits of regulation, governments have an important responsibility for shaping an effective regulatory framework that provides for sufficient flexibility to allow markets to function effectively and to respond to new expectations of shareholders and other stakeholders.

The *Principles* are widely used as a benchmark by individual jurisdictions around the world. They are also one of the Financial Stability Board's Key Standards for Sound Financial Systems and provide the basis for assessment of the corporate governance component of the Reports on the Observance of Standards and Codes of the World Bank.

The *Principles* themselves are evolutionary in nature and are reviewed in light of significant changes in circumstances in order to maintain their role as a leading instrument for policy making in the area of corporate governance.

The *Principles* are presented in six different chapters: I) Ensuring the basis for an effective corporate governance framework; II) The rights and equitable treatment of shareholders and key ownership functions; III) Institutional investors, stock markets, and other intermediaries; IV) The role of stakeholders; V) Disclosure and transparency; and VI) The responsibilities of the board. Each chapter is headed by a single principle that appears in bold italics and is followed by a number of supporting sub-principles. The *Principles* are supplemented by annotations that contain commentary on the *Principles* and are intended to help readers understand their rationale. The annotations may also contain descriptions of dominant or emerging trends and offer alternative implementation methods and examples that may be useful in making the *Principles* operational.

I. Ensuring the basis for an effective corporate governance framework

The corporate governance framework should promote transparent and fair markets, and the efficient allocation of resources. It should be consistent with the rule of law and support effective supervision and enforcement.

Effective corporate governance requires a sound legal, regulatory and institutional framework that market participants can rely on when they establish their private contractual relations. This corporate governance framework typically comprises elements of legislation, regulation, self-regulatory arrangements, voluntary commitments and business practices that are the result of a country's specific circumstances, history and tradition. The desirable mix between legislation, regulation, self-regulation, voluntary standards, etc., will therefore vary from country to country. The legislative and regulatory elements of the corporate governance framework can usefully be complemented by soft law elements based on the "comply or explain" principle such as corporate governance codes in order to allow for flexibility and address specificities of individual companies. What works well in one company, for one investor or a particular stakeholder may not necessarily be generally applicable to corporations, investors and stakeholders that operate in another context and under different circumstances. As new experiences accrue and business circumstances change, the different provisions of the corporate governance framework should be reviewed and, when necessary, adjusted.

Countries seeking to implement the *Principles* should monitor their corporate governance framework, including regulatory and listing requirements and business practices, with the objective of maintaining and strengthening its contribution to market integrity and economic performance. As part of this, it is important to take into account the interactions and complementarity between different elements of the corporate governance framework and its overall ability to promote ethical, responsible and transparent corporate governance practices. Such analysis should be viewed as an important tool in the process of developing an effective corporate governance framework. To this end, effective and continuous consultation with the public is an essential element. In some jurisdictions, this may need to be complemented by initiatives to inform companies and their stakeholders about the benefits of

implementing sound corporate governance practices. Moreover, in developing a corporate governance framework in each jurisdiction, national legislators and regulators should duly consider the need for, and the results from, effective international dialogue and co-operation. If these conditions are met, the corporate governance framework is more likely to avoid over-regulation, support the exercise of entrepreneurship and limit the risks of damaging conflicts of interest in both the private sector and in public institutions.

A. The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and well-functioning markets.

The corporate form of organisation of economic activity is a powerful force for growth. The regulatory and legal environment within which corporations operate is therefore of key importance to overall economic outcomes. Policy makers also have a responsibility to put in place a framework that is flexible enough to meet the needs of corporations operating in widely different circumstances, facilitating their development of new opportunities to create value and to determine the most efficient deployment of resources. Where appropriate, corporate governance frameworks should therefore allow for proportionality, in particular with respect to the size of listed companies. Other factors that may call for flexibility include the company's ownership and control structure, geographical presence, sectors of activity, and the company's stage of development. Policy makers should remain focussed on ultimate economic outcomes and when considering policy options, they will need to undertake an analysis of the impact on key variables that affect the functioning of markets, for example in terms of incentive structures, the efficiency of self-regulatory systems and dealing with systemic conflicts of interest. Transparent and well-functioning markets serve to discipline market participants and to promote accountability.

B. The legal and regulatory requirements that affect corporate governance practices should be consistent with the rule of law, transparent and enforceable.

If new laws and regulations are needed, such as to deal with clear cases of market imperfections, they should be designed in a way that makes them possible to implement and enforce in an efficient and even handed manner covering all parties. Consultation by government and other regulatory authorities with corporations, their representative organisations and other stakeholders, is an effective way of doing this. Mechanisms should also be established for parties to protect their rights. In order to avoid over-regulation, unenforceable laws, and unintended consequences that may impede or

distort business dynamics, policy measures should be designed with a view to their overall costs and benefits.

Public authorities should have effective enforcement and sanctioning powers to deter dishonest behaviour and provide for sound corporate governance practices. In addition, enforcement can also be pursued through private action, and the effective balance between public and private enforcement will vary depending upon the specific features of each jurisdiction.

Corporate governance objectives are also formulated in voluntary codes and standards that do not have the status of law or regulation. While such codes play an important role in improving corporate governance arrangements, they might leave shareholders and other stakeholders with uncertainty concerning their status and implementation. When codes and principles are used as a national standard or as a complement to legal or regulatory provisions, market credibility requires that their status in terms of coverage, implementation, compliance and sanctions is clearly specified.

C. The division of responsibilities among different authorities should be clearly articulated and designed to serve the public interest.

Corporate governance requirements and practices are typically influenced by an array of legal domains, such as company law, securities regulation, accounting and auditing standards, insolvency law, contract law, labour law and tax law. Corporate governance practices of individual companies are also often influenced by human rights and environmental laws. Under these circumstances, there is a risk that the variety of legal influences may cause unintentional overlaps and even conflicts, which may frustrate the ability to pursue key corporate governance objectives. It is important that policy-makers are aware of this risk and take measures to limit it. Effective enforcement also requires that the allocation of responsibilities for supervision, implementation and enforcement among different authorities is clearly defined so that the competencies of complementary bodies and agencies are respected and used most effectively. Potentially conflicting objectives, for example where the same institution is charged with attracting business and sanctioning violations, should be avoided or managed through clear governance provisions. Overlapping and perhaps contradictory regulations between jurisdictions is also an issue that should be monitored so that no regulatory vacuum is allowed to develop (i.e. issues slipping through in which no authority has explicit responsibility) and to minimise the cost of compliance with multiple systems by corporations. When regulatory responsibilities or oversight are delegated to non-public bodies, it is desirable to explicitly assess why, and under what circumstances, such delegation is desirable. In addition, the public authority should maintain effective safeguards to ensure that the delegated authority is applied fairly, consistently, and in accordance with the law. It is also essential

that the governance structure of any such delegated institution be transparent and encompass the public interest.

D. Stock market regulation should support effective corporate governance.

Stock markets can play a meaningful role in enhancing corporate governance by establishing and enforcing requirements that promote effective corporate governance by their listed issuers. Also, stock markets provide facilities by which investors can express interest or disinterest in a particular issuer's governance by allowing them to buy or sell the issuer's securities, as appropriate. The quality of the stock market's rules and regulations that establish listing criteria for issuers and that govern trading on its facilities is therefore an important element of the corporate governance framework.

What traditionally were called "stock exchanges" today come in a variety of shapes and forms. Most of the large stock exchanges are now profit maximising and themselves publicly traded joint stock companies that operate in competition with other profit maximising stock exchanges and trading venues. Regardless of the particular structure of the stock market, policy makers and regulators should assess the proper role of stock exchanges and trading venues in terms of standard setting, supervision and enforcement of corporate governance rules. This requires an analysis of how the particular business models of stock exchanges affect the incentives and ability to carry out these functions.

E. Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfil their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.

Supervisory, regulatory and enforcement responsibilities should be vested with bodies that are operationally independent and accountable in the exercise of their functions and powers, have adequate powers, proper resources, and the capacity to perform their functions and exercise their powers, including with respect to corporate governance. Many countries have addressed the issue of political independence of the securities supervisor through the creation of a formal governing body (a board, council, or commission) whose members are given fixed terms of appointment. If the appointments are staggered and made independent from the political calendar, they can further enhance independence. These bodies should be able to pursue their functions without conflicts of interest and their decisions should be subject to judicial or administrative review. When the number of corporate events and the volume of disclosures increase, the resources of supervisory, regulatory and enforcement authorities may come under strain. As a result, in order to follow developments, they will have a significant demand for fully qualified staff to provide effective oversight and investigative capacity which will need to be appropriately funded. The ability to attract staff

on competitive terms will enhance the quality and independence of supervision and enforcement.

F. Cross-border co-operation should be enhanced, including through bilateral and multilateral arrangements for exchange of information.

High levels of cross-border ownership and trading require strong international co-operation among regulators, including through bilateral and multilateral arrangements for exchange of information. International co-operation is becoming increasingly relevant for corporate governance, notably where companies are active in many jurisdictions through both listed and unlisted entities, and seek multiple stock market listings on exchanges in different jurisdictions.

II. The rights and equitable treatment of shareholders and key ownership functions

The corporate governance framework should protect and facilitate the exercise of shareholders' rights and ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

Equity investors have certain property rights. For example, an equity share in a publicly traded company can be bought, sold, or transferred. An equity share also entitles the investor to participate in the profits of the corporation, with liability limited to the amount of the investment. In addition, ownership of an equity share provides a right to information about the corporation and a right to influence the corporation, primarily by participation in general shareholder meetings and by voting.

As a practical matter, however, the corporation cannot be managed by shareholder referendum. The shareholding body is made up of individuals and institutions whose interests, goals, investment horizons and capabilities vary. Moreover, the corporation's management must be able to take business decisions rapidly. In light of these realities and the complexity of managing the corporation's affairs in fast moving and ever changing markets, shareholders are not expected to assume responsibility for managing corporate activities. The responsibility for corporate strategy and operations is typically placed in the hands of the board and a management team that is selected, motivated and, when necessary, replaced by the board.

Shareholders' rights to influence the corporation centre on certain fundamental issues, such as the election of board members, or other means of influencing the composition of the board, amendments to the company's organic documents, approval of extraordinary transactions, and other basic issues as specified in company law and internal company statutes. This Section can be seen as a statement of the most basic rights of shareholders, which are recognised by law in most countries. Additional rights such as the approval or election of auditors, direct nomination of board members, the ability to pledge shares, the approval of distributions of profits, shareholder ability to vote on board member and/or key executive compensation, approval

of material related party transactions and others have also been established in various jurisdictions.

Investors' confidence that the capital they provide will be protected from misuse or misappropriation by corporate managers, board members or controlling shareholders is an important factor in the development and proper functioning of capital markets. Corporate boards, managers and controlling shareholders may have the opportunity to engage in activities that advance their own interests at the expense of non-controlling shareholders. In providing protection to investors, a distinction can usefully be made between *ex ante* and *ex post* shareholder rights. *Ex ante* rights are, for example, pre-emptive rights and qualified majorities for certain decisions. *Ex post* rights allow the seeking of redress once rights have been violated. In jurisdictions where the enforcement of the legal and regulatory framework is weak, it can be desirable to strengthen the *ex ante* rights of shareholders such as by low share ownership thresholds for placing items on the agenda of the shareholders meeting or by requiring a supermajority of shareholders for certain important decisions. The *Principles* support equal treatment for foreign and domestic shareholders in corporate governance. They do not address government policies to regulate foreign direct investment.

One of the ways in which shareholders can enforce their rights is to be able to initiate legal and administrative proceedings against management and board members. Experience has shown that an important determinant of the degree to which shareholder rights are protected is whether effective methods exist to obtain redress for grievances at a reasonable cost and without excessive delay. The confidence of minority investors is enhanced when the legal system provides mechanisms for minority shareholders to bring lawsuits when they have reasonable grounds to believe that their rights have been violated. The provision of such enforcement mechanisms is a key responsibility of legislators and regulators.

There is some risk that a legal system which enables any investor to challenge corporate activity in the courts can become prone to excessive litigation. Thus, many legal systems have introduced provisions to protect management and board members against litigation abuse in the form of tests for the sufficiency of shareholder complaints, so-called safe harbours for management and board member actions (such as the business judgement rule) as well as safe harbours for the disclosure of information. In the end, a balance must be struck between allowing investors to seek remedies for infringement of ownership rights and avoiding excessive litigation. Many countries have found that alternative adjudication procedures, such as administrative hearings or arbitration procedures organised by the securities regulators or other regulatory bodies, are an efficient method for dispute settlement, at least at the first instance level. Specialised court procedures can

also be a practical instrument to obtain timely injunctions, and ultimately facilitate the rapid settlement of disputes.

A. Basic shareholder rights should include the right to: 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant and material information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5) elect and remove members of the board; and 6) share in the profits of the corporation.

B. Shareholders should be sufficiently informed about, and have the right to approve or participate in, decisions concerning fundamental corporate changes such as: 1) amendments to the statutes, or articles of incorporation or similar governing documents of the company; 2) the authorisation of additional shares; and 3) extraordinary transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company.

The ability of companies to form partnerships and related companies and to transfer operational assets, cash flow rights and other rights and obligations to them is important for business flexibility and for delegating accountability in complex organisations. It also allows a company to divest itself of operational assets and to become only a holding company. However, without appropriate checks and balances such possibilities may also be abused.

C. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:

1. **Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting.**
2. **Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes.**

The right to participate in general shareholder meetings is a fundamental shareholder right. Management and controlling investors have at times sought to discourage non-controlling or foreign investors from trying to influence the direction of the company. Some companies have charged fees for voting. Other potential impediments include prohibitions on proxy voting, the requirement of personal attendance at general shareholder meetings to vote, holding the meeting in a remote location, and allowing voting by show of hands only. Still other procedures may make it practically impossible to exercise ownership rights. Voting materials may be sent too close to the time

of general shareholder meetings to allow investors adequate time for reflection and consultation. Many companies are seeking to develop better channels of communication and decision-making with shareholders. Efforts by companies to remove artificial barriers to participation in general meetings are encouraged and the corporate governance framework should facilitate the use of electronic voting in absentia, including the electronic distribution of proxy materials and reliable vote confirmation systems. In jurisdictions where private enforcement is weak, regulators should be in a position to curb unfair voting practices.

3. Shareholders should have the opportunity to ask questions to the board, including questions relating to the annual external audit, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations.

In order to encourage shareholder participation in general meetings, many jurisdictions have improved the ability of shareholders to place items on the agenda through a simple and clear process of filing amendments and resolutions, and to submit questions in advance of the general meeting and to obtain replies from management and board members. Shareholders should also be able to ask questions relating to the external audit report. Companies are justified in assuring that abuses of such opportunities do not occur. It is reasonable, for example, to require that in order for shareholder resolutions to be placed on the agenda, they need to be supported by shareholders holding a specified market value or percentage of shares or voting rights. This threshold should be determined taking into account the degree of ownership concentration, in order to ensure that minority shareholders are not effectively prevented from putting any items on the agenda. Shareholder resolutions that are approved and fall within the competence of the shareholders' meeting should be addressed by the board.

4. Effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members, should be facilitated. Shareholders should be able to make their views known, including through votes at shareholder meetings, on the remuneration of board members and/or key executives, as applicable. The equity component of compensation schemes for board members and employees should be subject to shareholder approval.

To elect the members of the board is a basic shareholder right. For the election process to be effective, shareholders should be able to participate in the nomination of board members and vote on individual nominees or on different lists of them. To this end, shareholders have access in a number of countries to the company's voting materials which are made available to shareholders, subject to conditions to prevent abuse. With respect to nomination

of candidates, boards in many companies have established nomination committees to ensure proper compliance with established nomination procedures and to facilitate and co-ordinate the search for a balanced and qualified board. It is regarded as good practice for independent board members to have a key role on this committee. To further improve the selection process, the *Principles* also call for full and timely disclosure of the experience and background of candidates for the board and the nomination process, which will allow an informed assessment of the abilities and suitability of each candidate. It is considered good practice to also disclose information about any other board positions that nominees hold, and in some jurisdictions also positions that they are nominated for.

The *Principles* call for the disclosure of remuneration of board members and key executives. In particular, it is important for shareholders to know the remuneration policy as well as the total value of compensation arrangements made pursuant to this policy. Shareholders also have an interest in how remuneration and company performance are linked when they assess the capability of the board and the qualities they should seek in nominees for the board. The different forms of say-on-pay (binding or advisory vote, *ex ante* and/or *ex post*, board members and/or key executives covered, individual and/or aggregate compensation, compensation policy and/or actual remuneration) play an important role in conveying the strength and tone of shareholder sentiment to the board. In the case of equity-based schemes, their potential to dilute shareholders' capital and to powerfully determine managerial incentives means that they should be approved by shareholders, either for individuals or for the policy of the scheme as a whole. Shareholder approval should also be required for any material changes to existing schemes.

5. Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.

The objective of facilitating shareholder participation suggests that jurisdictions and/or companies promote the enlarged use of information technology in voting, including secure electronic voting in all listed companies. The *Principles* recommend that voting by proxy be generally accepted. Indeed, it is important to the promotion and protection of shareholder rights that investors can place reliance upon directed proxy voting. The corporate governance framework should ensure that proxies are voted in accordance with the direction of the proxy holder. In those jurisdictions where companies are allowed to obtain proxies, it is important to disclose how the Chairperson of the meeting (as the usual recipient of shareholder proxies obtained by the company) will exercise the voting rights attaching to undirected proxies. Where proxies are held by the board or management for company pension funds and for employee stock ownership plans, the directions for voting should be

disclosed. It is regarded as good practice that treasury shares and shares of the company held by subsidiaries should not be allowed to vote, nor be counted for quorum purposes.

6. Impediments to cross border voting should be eliminated.

Foreign investors often hold their shares through chains of intermediaries. Shares are typically held in accounts with securities intermediaries, that in turn hold accounts with other intermediaries and central securities depositories in other jurisdictions, while the listed company resides in a third country. Such cross-border chains cause special challenges with respect to determining the entitlement of foreign investors to use their voting rights, and the process of communicating with such investors. In combination with business practices which provide only a very short notice period, shareholders are often left with only very limited time to react to a convening notice by the company and to make informed decisions concerning items for decision. This makes cross border voting difficult. The legal and regulatory framework should clarify who is entitled to control the voting rights in cross border situations and where necessary to simplify the depository chain. Moreover, notice periods should ensure that foreign investors in effect have the same opportunities to exercise their ownership functions as domestic investors. To further facilitate voting by foreign investors, laws, regulations and corporate practices should allow participation through electronic means in a non-discriminatory way.

D. Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the *Principles*, subject to exceptions to prevent abuse.

It has long been recognised that in companies with dispersed ownership, individual shareholders might have too small a stake in the company to warrant the cost of taking action or for making an investment in monitoring performance. Moreover, if small shareholders did invest resources in such activities, others would also gain without having contributed (i.e. they are "free riders"). This effect, which serves to lower incentives for monitoring, is probably less of a problem for institutions, particularly financial institutions acting in a fiduciary capacity, in deciding whether to increase their ownership to a significant stake in individual companies, or to rather simply diversify. However, other costs with regard to holding a significant stake might still be high. In many instances institutional investors are prevented from doing this because it is beyond their capacity or would require investing more of their assets in one company than may be prudent. To overcome this asymmetry which favours diversification, they should be allowed, and even encouraged, to co-operate and co-ordinate their actions in nominating and electing board members, placing proposals on the agenda and holding discussions directly

with a company in order to improve its corporate governance. More generally, shareholders should be allowed to communicate with each other without having to comply with the formalities of proxy solicitation.

It must be recognised, however, that co-operation among investors could also be used to manipulate markets and to obtain control over a company without being subject to any takeover or disclosure regulations. Moreover, co-operation might also be for the purposes of circumventing competition law. However, if co-operation does not involve issues of corporate control, or conflict with concerns about market efficiency and fairness, the benefits of more effective ownership may still be obtained. To provide clarity among shareholders, regulators may issue guidance on forms of co-ordination and agreements that do or do not constitute such acting in concert in the context of takeover and other rules.

E. All shareholders of the same series of a class should be treated equally. Capital structures and arrangements that enable certain shareholders to obtain a degree of influence or control disproportionate to their equity ownership should be disclosed.

1. Within any series of a class, all shares should carry the same rights. All investors should be able to obtain information about the rights attached to all series and classes of shares before they purchase. Any changes in economic or voting rights should be subject to approval by those classes of shares which are negatively affected.

The optimal capital structure of the firm is best decided by the management and the board, subject to the approval of the shareholders. Some companies issue preferred (or preference) shares which have a preference in respect of receipt of the profits of the firm but which normally have limited or no voting rights. Companies may also issue participation certificates or shares with limited or no voting rights, which would presumably trade at different prices than shares with full voting rights. All of these structures may be effective in distributing risk and reward in ways that are thought to be in the best interests of the company and to cost-efficient financing.

Investors can expect to be informed regarding their voting rights before they invest. Once they have invested, their rights should not be changed unless those holding voting shares have had the opportunity to participate in the decision. Proposals to change the voting rights of different series and classes of shares should be submitted for approval at general shareholders meetings by a specified (normally higher) majority of voting shares in the affected categories.

2. The disclosure of capital structures and control arrangements should be required.

Some capital structures allow a shareholder to exercise a degree of control over the corporation disproportionate to the shareholders' equity

ownership in the company. Pyramid structures, cross shareholdings and shares with limited or multiple voting rights can be used to diminish the capability of non-controlling shareholders to influence corporate policy.

In addition to ownership relations, other devices can affect control over the corporation. Shareholder agreements are a common means for groups of shareholders, who individually may hold relatively small shares of total equity, to act in concert so as to constitute an effective majority, or at least the largest single block of shareholders. Shareholder agreements usually give those participating in the agreements preferential rights to purchase shares if other parties to the agreement wish to sell. These agreements can also contain provisions that require those accepting the agreement not to sell their shares for a specified time. Shareholder agreements can cover issues such as how the board or the Chairman will be selected. The agreements can also oblige those in the agreement to vote as a block. Some countries have found it necessary to closely monitor such agreements and to limit their duration.

Voting caps limit the number of votes that a shareholder may cast, regardless of the number of shares the shareholder may actually possess. Voting caps therefore redistribute control and may affect the incentives for shareholder participation in shareholder meetings.

Given the capacity of these mechanisms to redistribute the influence of shareholders on company policy, the disclosure of such capital structures and arrangements should be required. Disclosure about such schemes also allows shareholders and potential investors to make better informed decisions (see Chapter V.3).

F. Related-party transactions should be approved and conducted in a manner that ensures proper management of conflict of interest and protects the interest of the company and its shareholders.

1. Conflicts of interest inherent in related-party transactions should be addressed.

The potential abuse of related party transactions is an important policy issue in all markets, but particularly in those where corporate ownership is concentrated and corporate groups prevail. Banning these transactions is normally not a solution as there is nothing wrong per se with entering into transactions with related parties, provided that the conflicts of interest inherent in those transactions are adequately addressed, including through proper monitoring and disclosure. This is all the more important where significant portions of income and/or costs arise from transactions with related parties.

Jurisdictions should put in place an effective framework for clearly flagging these transactions. They include broad but precise definitions of what is understood to be a related party as well as rules to disregard some of these

transactions when they are not material because they do not exceed *ex ante* thresholds, can be regarded as recurrent and taking place at verifiable market terms or taking place with subsidiaries where no specific interest of a related party is present. Once the related party transactions have been identified, jurisdictions set procedures for approving them in a manner that minimises their negative potential. In most jurisdictions, great emphasis is placed on board approval, often with a prominent role for independent board members, or a requirement for the board to justify the interest of the transaction for the company. Shareholders may also be given a say in approving certain transactions, with interested shareholders excluded.

2. Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

Members of the board, key executives and, in some jurisdictions, controlling shareholders have an obligation to inform the board where they have a business, family or other special relationship outside of the company that could affect their judgement with respect to a particular transaction or matter affecting the company. Such special relationships include situations where executives and board members have a relationship with the company via their association with a shareholder who is in a position to exercise control. Where a material interest has been declared, it is good practice for that person not to be involved in any decision involving the transaction or matter and for the decision of the board to be specifically motivated against the presence of such interests and/or to justify the interest of the transaction for the company, notably by mentioning the terms of the transaction.

G. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress. Abusive self-dealing should be prohibited.

Many publicly traded companies have a large controlling shareholder. While the presence of a controlling shareholder can reduce the agency problem by closer monitoring of management, weaknesses in the legal and regulatory framework may lead to the abuse of other shareholders in the company. Abusive self-dealing occurs when persons having close relationships to the company, including controlling shareholders, exploit those relationships to the detriment of the company and investors.

The potential for abuse is marked where the legal system allows, and the market accepts, controlling shareholders to exercise a level of control which does not correspond to the level of risk that they assume as owners through exploiting legal devices to separate ownership from control, such as pyramid structures or

multiple voting rights. Such abuse may be carried out in various ways, including the extraction of direct private benefits via high pay and bonuses for employed family members and associates, inappropriate related party transactions, systematic bias in business decisions and changes in the capital structure through special issuance of shares favouring the controlling shareholder.

In addition to disclosure, a key to protecting minority shareholders is a clearly articulated duty of loyalty by board members to the company and to all shareholders. Indeed, abuse of minority shareholders is most pronounced in those countries where the legal and regulatory framework is weak in this regard. A particular issue arises in some jurisdictions where groups of companies are prevalent and where the duty of loyalty of a board member might be ambiguous and even interpreted as to the group. In these cases, some countries have developed sets of rules to control negative effects, including by specifying that a transaction in favour of another group company must be offset by receiving a corresponding benefit from other companies of the group.

Other common provisions to protect minority shareholders, which have proven effective, include pre-emptive rights in relation to share issues, qualified majorities for certain shareholder decisions and the possibility to use cumulative voting in electing members of the board. Under certain circumstances, some jurisdictions require or permit controlling shareholders to buy-out the remaining shareholders at a share-price that is established through an independent appraisal. This is particularly important when controlling shareholders decide to de-list an enterprise. Other means of improving minority shareholder rights include derivative (including multiple) and class action law suits. Some regulators have established complaint facilities, and some have the possibility to support lawsuits through disclosure of relevant information and/or funding. With the common aim of improving market credibility, the choice and ultimate design of different provisions to protect minority shareholders necessarily depends on the overall regulatory framework and the national legal system.

H. Markets for corporate control should be allowed to function in an efficient and transparent manner.

1. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.

2. Anti-take-over devices should not be used to shield management and the board from accountability.

In some jurisdictions, companies employ anti-take-over devices. However, both investors and stock exchanges have expressed concern over the possibility that widespread use of anti-take-over devices may be a serious impediment to the functioning of the market for corporate control. In some instances, take-over defences can simply be devices to shield the management or the board from shareholder monitoring. In implementing any anti-takeover devices and in dealing with take-over proposals, the fiduciary duty of the board to shareholders and the company must remain paramount. Some jurisdictions provide options for exit to dissenting shareholders in case of major corporate restructurings including mergers and amalgamations.

III. Institutional investors, stock markets, and other intermediaries

The corporate governance framework should provide sound incentives throughout the investment chain and provide for stock markets to function in a way that contributes to good corporate governance.

In order to be effective, the legal and regulatory framework for corporate governance must be developed with a view to the economic reality in which it is to be implemented. In many jurisdictions, the real world of corporate governance and ownership is no longer characterised by a straight and uncompromised relationship between the performance of the company and the income of the ultimate beneficiaries of shareholdings. In reality, the investment chain is often long and complex, with numerous intermediaries that stand between the ultimate beneficiary and the company. The presence of intermediaries acting as independent decision makers influences the incentives and the ability to engage in corporate governance.

The share of equity investments held by institutional investors such as mutual funds, pension funds, insurance companies and hedge funds has increased significantly, and many of their assets are managed by specialised asset managers. The ability and interest of institutional investors and asset managers to engage in corporate governance varies widely. For some, engagement in corporate governance, including the exercise of voting rights, is a natural part of their business model. Others may offer their beneficiaries and clients a business model and investment strategy that does not include or motivate spending resources on active shareholder engagement. If shareholder engagement is not part of the institution's business model and investment strategy, mandatory requirements to engage, for example through voting, may be ineffective and lead to a box-ticking approach.

The *Principles* recommend that institutional investors disclose their policies with respect to corporate governance. Voting at shareholder meetings is, however, only one channel for shareholder engagement. Direct contact and dialogue with the board and management, represent other forms of shareholder engagement that are frequently used. In recent years, some countries have begun to consider adoption of codes on shareholder engagement

("stewardship codes") that institutional investors are invited to sign up to on a voluntary basis.

A. Institutional investors acting in a fiduciary capacity should disclose their corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights.

The effectiveness and credibility of the entire corporate governance framework and company oversight depend to a large extent on institutional investors' willingness and ability to make informed use of their shareholder rights and effectively exercise their ownership functions in companies in which they invest. While this principle does not require institutional investors to vote their shares, it calls for disclosure of how they exercise their ownership rights with due consideration to cost effectiveness. For institutions acting in a fiduciary capacity, such as pension funds, collective investment schemes and some activities of insurance companies, and asset managers acting on their behalf, the right to vote can be considered part of the value of the investment being undertaken on behalf of their clients. Failure to exercise the ownership rights could result in a loss to the investor who should therefore be made aware of the policy to be followed by the institutional investors.

In some countries, the demand for disclosure of corporate governance policies to the market is quite detailed and includes requirements for explicit strategies regarding the circumstances in which the institution will intervene in a company; the approach they will use for such intervention; and how they will assess the effectiveness of the strategy. Disclosure of actual voting records is regarded as good practice, especially where an institution has a declared policy to vote. Disclosure is either to their clients (only with respect to the securities of each client) or, in the case of investment advisors to registered investment companies, to the market. A complementary approach to participation in shareholders' meetings is to establish a continuing dialogue with portfolio companies. Such a dialogue between institutional investors and companies should be encouraged, although it is incumbent on the company to treat all investors equally and not to divulge information to the institutional investors which is not at the same time made available to the market. The additional information provided by a company would normally therefore include general background information about the markets in which the company is operating and further elaboration of information already available to the market.

When institutional investors have developed and disclosed a corporate governance policy, effective implementation requires that they also set aside the appropriate human and financial resources to pursue this policy in a way that their beneficiaries and portfolio companies can expect. The nature and practical implementation of an active corporate governance policy by such

institutional investors, including staffing, should be transparent to clients who rely on institutional investors with active corporate governance policies.

B. Votes should be cast by custodians or nominees in line with the directions of the beneficial owner of the shares.

Custodian institutions holding securities as nominees for customers should not be permitted to cast the votes on those securities unless they have received specific instructions to do so. In some jurisdictions, listing requirements contain broad lists of items on which custodians may not vote without instruction, while leaving this possibility open for certain routine items. Rules should require custodian institutions to provide shareholders with timely information concerning their options in the exercise of their voting rights. Shareholders may elect to vote by themselves or to delegate all voting rights to custodians. Alternatively, shareholders may choose to be informed of all upcoming shareholder votes and may decide to cast some votes while delegating some voting rights to the custodian.

Holders of depository receipts should be provided with the same ultimate rights and practical opportunities to participate in corporate governance as are accorded to holders of the underlying shares. Where the direct holders of shares may use proxies, the depositary, trust office or equivalent body should therefore issue proxies on a timely basis to depository receipt holders. The depository receipt holders should be able to issue binding voting instructions with respect to the shares, which the depositary or trust office holds on their behalf.

It should be noted that this principle does not apply to the exercise of voting rights by trustees or other persons acting under a special legal mandate (such as, for example, bankruptcy receivers and estate executors).

C. Institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.

The incentives for intermediary owners to vote their shares and exercise key ownership functions may, under certain circumstances, differ from those of direct owners. Such differences may sometimes be commercially sound but may also arise from conflicts of interest which are particularly acute when the fiduciary institution is a subsidiary or an affiliate of another financial institution, and especially an integrated financial group. When such conflicts arise from material business relationships, for example, through an agreement to manage the portfolio company's funds, such conflicts should be identified and disclosed.

At the same time, institutions should disclose what actions they are taking to minimise the potentially negative impact on their ability to exercise key ownership rights. Such actions may include the separation of bonuses for

fund management from those related to the acquisition of new business elsewhere in the organisation. Fee structures for asset management and other intermediary services should be transparent.

D. The corporate governance framework should require that proxy advisors, analysts, brokers, rating agencies and others that provide analysis or advice relevant to decisions by investors, disclose and minimise conflicts of interest that might compromise the integrity of their analysis or advice.

The investment chain from ultimate owners to corporations does not only involve multiple intermediary owners. It also includes a wide variety of professions that offer advice and services to intermediary owners. Proxy advisors who offer recommendations to institutional investors on how to vote and sell services that help in the process of voting are among the most relevant from a direct corporate governance perspective. In some cases, proxy advisors also offer corporate governance related consulting services to corporations. Other service providers rate companies according to various corporate governance criteria. Analysts, brokers and rating agencies, perform similar roles and face the same potential conflicts of interest.

Considering the importance of – and sometimes dependence on – various services in corporate governance, the corporate governance framework should promote the integrity of professions such as analysts, brokers, rating agencies, and proxy advisors. When managed appropriately, these can play an important role in shaping good corporate governance practices. At the same time, conflicts of interest may arise and affect judgement, such as when the provider of advice is also seeking to provide other services to the company in question, or where the provider has a direct material interest in the company or its competitors. Many jurisdictions have adopted regulations or encouraged the implementation of self-regulatory codes designed to mitigate such conflicts of interest or other risks related to integrity, and have provided for private and/or public monitoring arrangements.

Providers of proxy advisory services should, where appropriate in each context, disclose publicly and/or to investor clients the process and methodology that underpin their recommendations, and the criteria for their voting policies relevant for their clients.

E. Insider trading and market manipulation should be prohibited and the applicable rules enforced.

As insider trading entails manipulation of the capital markets, it is prohibited by securities regulations, company law and/or criminal law in most countries. These practices can be seen as constituting a breach of good corporate governance as they violate the principle of equitable treatment of shareholders. However, the effectiveness of such prohibition depends on vigorous enforcement action.

F. For companies who are listed in a jurisdiction other than their jurisdiction of incorporation, the applicable corporate governance laws and regulations should be clearly disclosed. In the case of cross listings, the criteria and procedure for recognising the listing requirements of the primary listing should be transparent and documented.

It is increasingly common that companies are listed or traded at venues located in a different jurisdiction than the one where the company is incorporated. This may create uncertainty among investors about which corporate governance rules and regulations apply for that company. It may concern everything from procedures and locations for the annual shareholders meeting, to minority rights. The company should therefore clearly disclose which jurisdiction's rules are applicable. When key corporate governance provisions fall under another jurisdiction than the jurisdiction of trading, the main differences should be noted.

Another important consequence of increased internationalisation and integration of stock markets is the prevalence of secondary listings of an already listed company on another stock exchange, so called cross-listings. Companies with cross-listings are often subject to the regulations and authorities of the jurisdiction where they have their primary listing. In case of a secondary listing, exceptions from local listing rules are typically granted based on the recognition of the listing requirements and corporate governance regulations of the exchange where the company has its primary listing. Stock markets should clearly disclose the rules and procedures that apply to cross-listings and related exceptions from local corporate governance rules.

G. Stock markets should provide fair and efficient price discovery as a means to help promote effective corporate governance.

Effective corporate governance means that shareholders should be able to monitor and assess their corporate investments by comparing market-related information with the company's information about its prospects and performance. When shareholders believe it is advantageous, they can either use their voice to influence corporate behaviour, sell their shares (or buy additional shares), or re-evaluate a company's shares in their portfolios. The quality of and access to market information including fair and efficient price discovery regarding their investments is therefore important for shareholders to exercise their rights.

IV. The role of stakeholders in corporate governance

The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

A key aspect of corporate governance is concerned with ensuring the flow of external capital to companies both in the form of equity and credit. Corporate governance is also concerned with finding ways to encourage the various stakeholders in the firm to undertake economically optimal levels of investment in firm-specific human and physical capital. The competitiveness and ultimate success of a corporation is the result of teamwork that embodies contributions from a range of different resource providers including investors, employees, creditors, customers and suppliers, and other stakeholders. Corporations should recognise that the contributions of stakeholders constitute a valuable resource for building competitive and profitable companies. It is, therefore, in the long-term interest of corporations to foster wealth-creating co-operation among stakeholders. The governance framework should recognise the interests of stakeholders and their contribution to the long-term success of the corporation.

A. The rights of stakeholders that are established by law or through mutual agreements are to be respected.

The rights of stakeholders are often established by law (e.g. labour, business, commercial, environmental, and insolvency laws) or by contractual relations that companies must respect. Nevertheless, even in areas where stakeholder interests are not legislated, many firms make additional commitments to stakeholders, and concern over corporate reputation and corporate performance often requires the recognition of broader interests. For multinational enterprises, this may in some jurisdictions be achieved by companies using the *OECD Guidelines for Multinational Enterprises* for due diligence procedures that address the impact of such commitments.

B. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

The legal framework and process should be transparent and not impede the ability of stakeholders to communicate and to obtain redress for the violation of rights.

C. Mechanisms for employee participation should be permitted to develop.

The degree to which employees participate in corporate governance depends on national laws and practices, and may vary from company to company as well. In the context of corporate governance, mechanisms for participation may benefit companies directly as well as indirectly through the readiness by employees to invest in firm specific skills. Examples of mechanisms for employee participation include: employee representation on boards; and governance processes such as works councils that consider employee viewpoints in certain key decisions. International conventions and national norms also recognise the rights of employees to information, consultation and negotiation. With respect to performance enhancing mechanisms, employee stock ownership plans or other profit sharing mechanisms are to be found in many countries. Pension commitments are also often an element of the relationship between the company and its past and present employees. Where such commitments involve establishing an independent fund, its trustees should be independent of the company's management and manage the fund for all beneficiaries.

D. Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

Where laws and practice of corporate governance frameworks provide for participation by stakeholders, it is important that stakeholders have access to information necessary to fulfil their responsibilities.

E. Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and to the competent public authorities and their rights should not be compromised for doing this.

Unethical and illegal practices by corporate officers may not only violate the rights of stakeholders but also be to the detriment of the company and its shareholders in terms of reputation effects and an increasing risk of future financial liabilities. It is therefore to the advantage of the company and its shareholders to establish procedures and safe-harbours for complaints by employees, either personally or through their representative bodies, and others outside the company, concerning illegal and unethical behaviour. The board should be encouraged by laws and or principles to protect these individuals and representative bodies and to give them confidential direct access to someone independent on the board, often a member of an audit or an ethics committee. Some companies have established an ombudsman to

deal with complaints. Several regulators have also established confidential phone and e-mail facilities to receive allegations. While in certain countries representative employee bodies undertake the tasks of conveying concerns to the company, individual employees should not be precluded from, or be less protected, when acting alone. In the absence of timely remedial action or in the face of reasonable risk of negative employment action to a complaint regarding contravention of the law, employees are encouraged to report their *bona fide* complaint to the competent authorities. Many countries also provide for the possibility to bring cases of violations of the *OECD Guidelines for Multinational Enterprises* to the National Contact Point. The company should refrain from discriminatory or disciplinary actions against such employees or bodies.

F. The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

Creditors are a key stakeholder and the terms, volume and type of credit extended to firms will depend importantly on their rights and on their enforceability. Companies with a good corporate governance record are often able to borrow larger sums and on more favourable terms than those with poor records or which operate in less transparent markets. The framework for corporate insolvency varies widely across countries. In some countries, when companies are nearing insolvency, the legislative framework imposes a duty on directors to act in the interests of creditors, who might therefore play a prominent role in the governance of the company. Other countries have mechanisms which encourage the debtor to reveal timely information about the company's difficulties so that a consensual solution can be found between the debtor and its creditors.

Creditor rights also vary, ranging from secured bond holders to unsecured creditors. Insolvency procedures usually require efficient mechanisms for reconciling the interests of different classes of creditors. In many jurisdictions provision is made for special rights such as through "debtor in possession" financing which provides incentives/protection for new funds made available to the enterprise in bankruptcy.

V. Disclosure and transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

In most countries a large amount of information, both mandatory and voluntary, is compiled on publicly traded and large unlisted enterprises, and subsequently disseminated to a broad range of users. Public disclosure is typically required, at a minimum, on an annual basis though some countries require periodic disclosure on a semi-annual or quarterly basis, or even more frequently in the case of material developments affecting the company. Companies often make voluntary disclosure that goes beyond minimum disclosure requirements in response to market demand.

The *Principles* support timely disclosure of all material developments that arise between regular reports. They also support simultaneous reporting of material or required information to all shareholders in order to ensure their equitable treatment. In maintaining close relations with investors and market participants, companies must be careful not to violate this fundamental principle of equitable treatment.

Disclosure requirements are not expected to place unreasonable administrative or cost burdens on enterprises. Nor are companies expected to disclose information that may endanger their competitive position unless disclosure is necessary to fully inform the investment decision and to avoid misleading the investor. In order to determine what information should be disclosed at a minimum, many countries apply the concept of materiality. Material information can be defined as information whose omission or misstatement could influence the economic decisions taken by users of information. Material information can also be defined as information that a reasonable investor would consider important in making an investment or voting decision.

A strong disclosure regime that promotes real transparency is a pivotal feature of market-based monitoring of companies and is central to shareholders' ability to exercise their shareholder rights on an informed basis. Experience shows that disclosure can also be a powerful tool for influencing

the behaviour of companies and for protecting investors. A strong disclosure regime can help to attract capital and maintain confidence in the capital markets. By contrast, weak disclosure and non-transparent practices can contribute to unethical behaviour and to a loss of market integrity at great cost, not just to the company and its shareholders but also to the economy as a whole. Shareholders and potential investors require access to regular, reliable and comparable information in sufficient detail for them to assess the stewardship of management, and make informed decisions about the valuation, ownership and voting of shares. Insufficient or unclear information may hamper the ability of the markets to function, increase the cost of capital and result in a poor allocation of resources.

Disclosure also helps improve public understanding of the structure and activities of enterprises, corporate policies and performance with respect to environmental and ethical standards, and companies' relationships with the communities in which they operate. The *OECD Guidelines for Multinational Enterprises* may, in many jurisdictions be relevant for multinational enterprises.

A. Disclosure should include, but not be limited to, material information on:

1. The financial and operating results of the company.

Audited financial statements showing the financial performance and the financial situation of the company (most typically including the balance sheet, the profit and loss statement, the cash flow statement and notes to the financial statements) are the most widely used source of information on companies. They enable appropriate monitoring to take place and also help to value securities. Management's discussion and analysis of operations is typically included in annual reports. This discussion is most useful when read in conjunction with the accompanying financial statements. Investors are particularly interested in information that may shed light on the future performance of the enterprise.

Arguably, failures of governance can often be linked to the failure to disclose the "whole picture", particularly where off-balance sheet items are used to provide guarantees or similar commitments between related companies. It is therefore important that transactions relating to an entire group of companies be disclosed in line with high quality internationally recognised standards and include information about contingent liabilities and off-balance sheet transactions, as well as special purpose entities.

2. Company objectives and non-financial information.

In addition to their commercial objectives, companies are encouraged to disclose policies and performance relating to business ethics, the environment and, where material to the company, social issues, human rights and other public policy commitments. Such information may be important for certain investors and other users of information to better evaluate the relationship

between companies and the communities in which they operate and the steps that companies have taken to implement their objectives.

In many countries, such disclosures are required for large companies, typically as part of their management reports, or companies disclose non-financial information voluntarily. This may include disclosure of donations for political purposes, particularly where such information is not easily available through other disclosure channels.

Some countries require additional disclosures for large companies, for example net turnover figures or payments made to governments broken down by categories of activity and country (country-by-country reporting).

3. Major share ownership, including beneficial owners, and voting rights.

One of the basic rights of investors is to be informed about the ownership structure of the enterprise and their rights *vis-à-vis* the rights of other owners. The right to such information should also extend to information about the structure of a group of companies and intra-group relations. Such disclosures should make transparent the objectives, nature and structure of the group. Disclosure of ownership data should be provided once certain thresholds of ownership are passed. Such disclosure might include data on major shareholders and others that, directly or indirectly, significantly influence or control or may significantly influence or control the company through, for example, special voting rights, shareholder agreements, the ownership of controlling or large blocks of shares, significant cross shareholding relationships and cross guarantees. It is also good practice to disclose shareholdings of directors, including non-executives.

Particularly for enforcement purposes, and to identify potential conflicts of interest, related party transactions and insider trading, information about record ownership needs to be complemented with current information about beneficial ownership. In cases where major shareholdings are held through intermediary structures or arrangements, information about the beneficial owners should therefore be obtainable at least by regulatory and enforcement agencies and/or through the judicial process. In addition, the OECD template *Options for Obtaining Beneficial Ownership and Control Information* and the Financial Action Task Force's Guidance on Transparency and Beneficial Ownership can be useful in this regard.

4. Remuneration of members of the board and key executives.

Information about board and executive remuneration is also of concern to shareholders. Of particular interest is the link between remuneration and long-term company performance. Companies are generally expected to disclose information on the remuneration of board members and key executives so that investors can assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to company

performance. Disclosure on an individual basis (including termination and retirement provisions) is increasingly regarded as good practice and is now mandated in many countries. In these cases, some jurisdictions call for remuneration of a certain number of the highest paid executives to be disclosed, while in others it is confined to specified positions.

5. Information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.

Investors require information on individual board members and key executives in order to evaluate their experience and qualifications and assess any potential conflicts of interest that might affect their judgement. For board members, the information should include their qualifications, share ownership in the company, membership of other boards, other executive positions, and whether they are considered by the board to be an independent member. It is important to disclose membership of other boards not only because it is an indication of experience and possible time pressures facing a member of the board, but also because it may reveal potential conflicts of interest and makes transparent the degree to which there are inter-locking boards.

National principles, and in some cases laws, lay down specific duties for board members who can be regarded as independent and recommend that a significant part, in some instances a majority, of the board should be independent. It should be incumbent on the board to set out the reasons why a member of the board can be considered independent. It is then up to the shareholders, and ultimately the market, to determine if those reasons are justified. Several countries have concluded that companies should disclose the selection process and especially whether it was open to a broad field of candidates. Such information should be provided in advance of any decision by the general shareholder's meeting or on a continuing basis if the situation has changed materially.

6. Related party transactions.

To ensure that the company is being run with due regard to the interests of all its investors, it is essential to fully disclose all material related party transactions and the terms of such transactions to the market individually. In many jurisdictions this is indeed already a legal requirement. In case the jurisdiction does not define materiality, companies should be required to also disclose the policy/criteria adopted for determining material related party transactions. Related parties should at least include entities that control or are under common control with the company, significant shareholders including members of their families and key management personnel. While the definition of related parties in internationally accepted accounting standards provides a

useful reference, the corporate governance framework should ensure that all related parties are properly identified and that in cases where specific interests of related parties are present, material transactions with consolidated subsidiaries are also disclosed.

Transactions involving the major shareholders (or their close family, relations, etc.), either directly or indirectly, are potentially the most difficult type of transactions. In some jurisdictions, shareholders above a limit as low as 5 per cent shareholding are obliged to report transactions. Disclosure requirements include the nature of the relationship where control exists and the nature and amount of transactions with related parties, grouped as appropriate. Given the inherent opaqueness of many transactions, the obligation may need to be placed on the beneficiary to inform the board about the transaction, which in turn should make a disclosure to the market. This should not absolve the firm from maintaining its own monitoring, which is an important task for the board.

To make disclosure more informative, some jurisdictions distinguish related party transactions according to their materiality and conditions. Ongoing disclosure of material transactions is required, with a possible exception for recurrent transactions on "market terms", which can be disclosed only in periodic reports. To be effective, disclosure thresholds may need to be based mainly on quantitative criteria, but avoidance of disclosure through splitting of transactions with the same related party should not be permitted.

7. Foreseeable risk factors.

Users of financial information and market participants need information on reasonably foreseeable material risks that may include: risks that are specific to the industry or the geographical areas in which the company operates; dependence on commodities; financial market risks including interest rate or currency risk; risk related to derivatives and off-balance sheet transactions; business conduct risks; and risks related to the environment.

The *Principles* envision the disclosure of sufficient and comprehensive information to fully inform investors of the material and foreseeable risks of the enterprise. Disclosure of risk is most effective when it is tailored to the particular company and industry in question. Disclosure about the system for monitoring and managing risk is increasingly regarded as good practice.

8. Issues regarding employees and other stakeholders.

Companies are encouraged, and in some countries even obliged, to provide information on key issues relevant to employees and other stakeholders that may materially affect the performance of the company or that may have significant impacts upon them. Disclosure may include management/employee relations, including remuneration, collective bargaining coverage, and mechanisms for employee representation, and relations with other stakeholders such as creditors, suppliers, and local communities.

Some countries require extensive disclosure of information on human resources. Human resource policies, such as programmes for human resource development and training, retention rates of employees and employee share ownership plans, can communicate important information on the competitive strengths of companies to market participants.

9. Governance structures and policies, including the content of any corporate governance code or policy and the process by which it is implemented.

Companies should report their corporate governance practices, and such disclosure should be mandated as part of the regular reporting. Companies should implement corporate governance principles set, or endorsed, by the regulatory or listing authority with mandatory reporting on a "comply or explain" or similar basis. Disclosure of the governance structures and policies of the company, including, in the case of non-operating holding companies, that of significant subsidiaries, is important for the assessment of a company's governance and should cover the division of authority between shareholders, management and board members. Companies should clearly disclose the different roles and responsibilities of the CEO and/or Chair and, where a single person combines both roles, the rationale for this arrangement. It is also good practice to disclose the articles of association, board charters and, where applicable, committee structures and charters.

As a matter of transparency, procedures for shareholders meetings should ensure that votes are properly counted and recorded, and that a timely announcement of the outcome is made.

B. Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial reporting.

The application of high quality accounting and disclosure standards is expected to significantly improve the ability of investors to monitor the company by providing increased relevance, reliability and comparability of reporting, and improved insight into company performance. Most countries mandate the use of internationally recognised standards for financial reporting, which can serve to improve transparency and the comparability of financial statements and other financial reporting between countries. Such standards should be developed through open, independent, and public processes involving the private sector and other interested parties such as professional associations and independent experts. High quality domestic standards can be achieved by making them consistent with one of the internationally recognised accounting standards. In many countries, listed companies are required to use these standards.

C. An annual audit should be conducted by an independent, competent and qualified, auditor in accordance with high-quality auditing standards in order to provide an external and objective assurance to the board and

shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

In addition to certifying that the financial statements represent fairly the financial position of a company, the audit statement should also include an opinion on the way in which financial statements have been prepared and presented. This should contribute to an improved control environment in the company. In some jurisdictions, the external auditors are also required to report on the company's corporate governance.

The independence of auditors and their accountability to shareholders should be required. The designation of an audit regulator independent from the profession, consistent with the Core Principles of the International Forum of Independent Audit Regulators (IFIAR), is an important factor in improving audit quality.

It is good practice for external auditors to be recommended by an independent audit committee of the board or an equivalent body and to be appointed either by that committee/body or by shareholders directly. Moreover, the IOSCO *Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence* states that, "standards of auditor independence should establish a framework of principles, supported by a combination of prohibitions, restrictions, other policies and procedures and disclosures, that addresses at least the following threats to independence: self-interest, self-review, advocacy, familiarity and intimidation".

The audit committee or an equivalent body should provide oversight of the internal audit activities and should also be charged with overseeing the overall relationship with the external auditor including the nature of non-audit services provided by the auditor to the company. Provision of non-audit services by the external auditor to a company can significantly impair their independence and might involve them auditing their own work. To deal with the skewed incentives which may arise, the disclosure of payments to external auditors for non-audit services should be required. Examples of other provisions designed to promote auditor independence include, a total ban or severe limitation on the nature of non-audit work which can be undertaken by an auditor for their audit client, mandatory rotation of auditors (either partners or in some cases the audit partnership), a fixed tenure for auditors, joint audits, a temporary ban on the employment of an ex-auditor by the audited company and prohibiting auditors or their dependents from having a financial stake or management role in the companies they audit. Some countries take a more direct regulatory approach and limit the percentage of non-audit income that the auditor can receive from a particular client or limit the total percentage of auditor income that can come from one client.

An issue which has arisen in some jurisdictions concerns the pressing need to ensure the competence of the audit profession. A registration process for individuals to confirm their qualifications is considered good practice. This needs, however, to be supported by ongoing training and monitoring of work experience to ensure appropriate levels of professional competence and scepticism.

D. External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.

The practice that external auditors are recommended by an independent audit committee of the board or an equivalent body and that external auditors are appointed either by that committee/body or by the shareholders' meeting directly can be regarded as good practice since it clarifies that the external auditor should be accountable to the shareholders. It also underlines that the external auditor owes a duty of due professional care to the company rather than any individual or group of corporate managers that they may interact with for the purpose of their work.

E. Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

Channels for the dissemination of information can be as important as the content of the information itself. While the disclosure of information is often provided for by legislation, filing and access to information can be cumbersome and costly. Filing of statutory reports has been greatly enhanced in some countries by electronic filing and data retrieval systems. Countries should move to the next stage by integrating different sources of company information, including shareholder filings. Company websites also provide the opportunity for improving information dissemination, and some countries now require companies to have a website that provides relevant and significant information about the company itself.

Provisions for ongoing disclosure which includes periodic disclosure and continuous or current disclosure which must be provided on an ad hoc basis should be required. With respect to continuous/current disclosure, good practice is to call for "immediate" disclosure of material developments, whether this means "as soon as possible" or is defined as a prescribed maximum number of specified days. The IOSCO *Principles for Periodic Disclosure by Listed Entities* set guidance for the periodic reports of companies that have securities listed or admitted to trading on a regulated market on which retail investors participate. The IOSCO *Principles for Ongoing Disclosure and Material Development Reporting by Listed Entities* set forth common principles of ongoing disclosure and material development reporting for listed companies.

VI. The responsibilities of the board

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

Board structures and procedures vary both within and among countries. Some countries have two-tier boards that separate the supervisory function and the management function into different bodies. Such systems typically have a "supervisory board" composed of non-executive board members and a "management board" composed entirely of executives. Other countries have "unitary" boards, which bring together executive and non-executive board members. In some countries there is also an additional statutory body for audit purposes. The *Principles* are intended to apply to whatever board structure is charged with the functions of governing the enterprise and monitoring management.

Together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the corporation. In order for boards to effectively fulfil their responsibilities they must be able to exercise objective and independent judgement. Another important board responsibility is to oversee the risk management system and systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labour, environmental, equal opportunity, health and safety laws. In some countries, companies have found it useful to explicitly articulate the responsibilities that the board assumes and those for which management is accountable.

The board is not only accountable to the company and its shareholders but also has a duty to act in their best interests. In addition, boards are expected to take due regard of, and deal fairly with, other stakeholder interests including those of employees, creditors, customers, suppliers and local communities. Observance of environmental and social standards is relevant in this context.

A. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

In some countries, the board is legally required to act in the interest of the company, taking into account the interests of shareholders, employees, and the public good. Acting in the best interest of the company should not permit management to become entrenched.

This principle states the two key elements of the fiduciary duty of board members: the duty of care and the duty of loyalty. The duty of care requires board members to act on a fully informed basis, in good faith, with due diligence and care. In some jurisdictions there is a standard of reference which is the behaviour that a reasonably prudent person would exercise in similar circumstances. In nearly all jurisdictions, the duty of care does not extend to errors of business judgement so long as board members are not grossly negligent and a decision is made with due diligence, etc. The principle calls for board members to act on a fully informed basis. Good practice takes this to mean that they should be satisfied that key corporate information and compliance systems are fundamentally sound and underpin the key monitoring role of the board advocated by the *Principles*. In many jurisdictions this meaning is already considered an element of the duty of care, while in others it is required by securities regulation, accounting standards, etc. The duty of loyalty is of central importance, since it underpins effective implementation of other principles in this document relating to, for example, the equitable treatment of shareholders, monitoring of related party transactions and the establishment of remuneration policy for key executives and board members. It is also a key principle for board members who are working within the structure of a group of companies: even though a company might be controlled by another enterprise, the duty of loyalty for a board member relates to the company and all its shareholders and not to the controlling company of the group.

B. Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.

In carrying out its duties, the board should not be viewed, or act, as an assembly of individual representatives for various constituencies. While specific board members may indeed be nominated or elected by certain shareholders (and sometimes contested by others) it is an important feature of the board's work that board members when they assume their responsibilities carry out their duties in an even-handed manner with respect to all shareholders. This principle is particularly important to establish in the presence of controlling shareholders that *de facto* may be able to select all board members.

C. The board should apply high ethical standards. It should take into account the interests of stakeholders.

The board has a key role in setting the ethical tone of a company, not only by its own actions, but also in appointing and overseeing key executives and

consequently the management in general. High ethical standards are in the long term interests of the company as a means to make it credible and trustworthy, not only in day-to-day operations but also with respect to longer term commitments. To make the objectives of the board clear and operational, many companies have found it useful to develop company codes of conduct based on, *inter alia*, professional standards and sometimes broader codes of behaviour, and to communicate them throughout the organisation. The latter might include a voluntary commitment by the company (including its subsidiaries) to comply with the *OECD Guidelines for Multinational Enterprises* which reflect all four principles contained in the *ILO Declaration on Fundamental Principles and Rights at Work*. Similarly, jurisdictions are increasingly demanding that boards oversee the finance and tax planning strategies management is allowed to conduct, thus discouraging practices, for example the pursuit of aggressive tax avoidance, that do not contribute to the long term interests of the company and its shareholders, and can cause legal and reputational risks.

Company-wide codes serve as a standard for conduct by both the board and key executives, setting the framework for the exercise of judgement in dealing with varying and often conflicting constituencies. At a minimum, the ethical code should set clear limits on the pursuit of private interests, including dealings in the shares of the company. An overall framework for ethical conduct goes beyond compliance with the law, which should always be a fundamental requirement.

D. The board should fulfil certain key functions, including:

1. Reviewing and guiding corporate strategy, major plans of action, risk management policies and procedures, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.

An area of increasing importance for boards and which is closely related to corporate strategy is oversight of the company's risk management. Such risk management oversight will involve oversight of the accountabilities and responsibilities for managing risks, specifying the types and degree of risk that a company is willing to accept in pursuit of its goals, and how it will manage the risks it creates through its operations and relationships. It is thus a crucial guideline for management that must manage risks to meet the company's desired risk profile.

2. Monitoring the effectiveness of the company's governance practices and making changes as needed.

Monitoring of governance by the board also includes continuous review of the internal structure of the company to ensure that there are clear lines of accountability for management throughout the organisation. In addition to

requiring the monitoring and disclosure of corporate governance practices on a regular basis, many countries have moved to recommend, or indeed mandate, self-assessment by boards of their performance as well as performance reviews of individual board members and the Chair and the CEO.

3. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.

In most two tier board systems the supervisory board is also responsible for appointing the management board which will normally comprise most of the key executives.

4. Aligning key executive and board remuneration with the longer term interests of the company and its shareholders.

It is regarded as good practice for boards to develop and disclose a remuneration policy statement covering board members and key executives. Such policy statements specify the relationship between remuneration and performance, and include measurable standards that emphasise the longer run interests of the company over short term considerations. Policy statements generally tend to set conditions for payments to board members for extra-board activities, such as consulting. They also often specify terms to be observed by board members and key executives about holding and trading the stock of the company, and the procedures to be followed in granting and re-pricing of options. In some countries, policy also covers the payments to be made when hiring and/or terminating the contract of an executive.

In large companies, it is considered good practice that remuneration policy and contracts for board members and key executives be handled by a special committee of the board comprising either wholly or a majority of independent directors and excluding executives that serve on each other's remuneration committees, which could lead to conflicts of interest. The introduction of malus and claw-back provisions is considered good practice. They grant the company the right to withhold and recover compensation from executives in cases of managerial fraud and other circumstances, for example when the company is required to restate its financial statements due to material noncompliance with financial reporting requirements.

5. Ensuring a formal and transparent board nomination and election process.

These *Principles* promote an active role for shareholders in the nomination and election of board members. The board has an essential role to play in ensuring that this and other aspects of the nominations and election process are respected. First, while actual procedures for nomination may differ among countries, the board or a nomination committee has a special responsibility to make sure that established procedures are transparent and respected. Second, the board has a key role in defining the general or individual profile of board members that the company may need at any given

time, considering the appropriate knowledge, competencies and expertise to complement the existing skills of the board. Third, the board or nomination committee has the responsibility to identify potential candidates to meet desired profiles and propose them to shareholders, and/or consider those candidates advanced by shareholders with the right to make nominations. There are increasing calls for open search processes extending to a broad range of people.

6. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.

It is an important function of the board to oversee the internal control systems covering financial reporting and the use of corporate assets and to guard against abusive related party transactions. These functions are often assigned to the internal auditor which should maintain direct access to the board. Where other corporate officers are responsible such as the general counsel, it is important that they maintain similar reporting responsibilities as the internal auditor.

In fulfilling its control oversight responsibilities it is important for the board to encourage the reporting of unethical/unlawful behaviour without fear of retribution. The existence of a company code of ethics should aid this process which should be underpinned by legal protection for the individuals concerned. A contact point for employees who wish to report concerns about unethical or illegal behaviour that might also compromise the integrity of financial statements should be offered by the audit committee or by an ethics committee or equivalent body.

7. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

The Board should demonstrate a leadership role to ensure that an effective means of risk oversight is in place. Ensuring the integrity of the essential reporting and monitoring systems will require the board to set and enforce clear lines of responsibility and accountability throughout the organisation. The board will also need to ensure that there is appropriate oversight by senior management. Normally, this includes the establishment of an internal audit system directly reporting to the board. It is considered good practice for the internal auditors to report to an independent audit committee of the board or an equivalent body which is also responsible for managing the relationship with the external auditor, thereby allowing a co-ordinated response by the board. It should also be regarded as good practice for this

committee, or equivalent body, to review and report to the board the most critical accounting policies which are the basis for financial reports. However, the board should retain final responsibility for oversight of the company's risk management system and for ensuring the integrity of the reporting systems. Some jurisdictions have provided for the chair of the board to report on the internal control process. Companies with large or complex risks (financial and non-financial), not only in the financial sector, should consider introducing similar reporting systems, including direct reporting to the board, with regard to risk management.

Companies are also well advised to establish and ensure the effectiveness of internal controls, ethics, and compliance programmes or measures to comply with applicable laws, regulations, and standards, including statutes criminalising the bribery of foreign public officials, as required under the OECD Anti-Bribery Convention, and other forms of bribery and corruption. Moreover, compliance must also relate to other laws and regulations such as those covering securities, competition and work and safety conditions. Other laws that may be applicable include those relating to taxation, human rights, the environment, fraud, and money laundering. Such compliance programmes will also underpin the company's ethical code. To be effective, the incentive structure of the business needs to be aligned with its ethical and professional standards so that adherence to these values is rewarded and breaches of law are met with dissuasive consequences or penalties. Compliance programmes should also extend to subsidiaries and where possible to third parties, such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners.

8. Overseeing the process of disclosure and communications.

The functions and responsibilities of the board and management with respect to disclosure and communication need to be clearly established by the board. In some jurisdictions, the appointment of an investment relations officer who reports directly to the board is considered good practice for large listed companies.

E. The board should be able to exercise objective independent judgement on corporate affairs.

In order to exercise its duties of monitoring managerial performance, preventing conflicts of interest and balancing competing demands on the corporation, it is essential that the board is able to exercise objective judgement. In the first instance this will mean independence and objectivity with respect to management with important implications for the composition and structure of the board. Board independence in these circumstances usually requires that a sufficient number of board members will need to be independent of management.

In countries with single tier board systems, the objectivity of the board and its independence from management may be strengthened by the separation of the role of chief executive and Chair. Separation of the two posts is generally regarded as good practice, as it can help to achieve an appropriate balance of power, increase accountability and improve the board's capacity for decision making independent of management. The designation of a lead director is also regarded as a good practice alternative in some jurisdictions if that role is defined with sufficient authority to lead the board in cases where management has clear conflicts. Such mechanisms can also help to ensure high quality governance of the enterprise and the effective functioning of the board.

The Chairman or lead director may, in some countries, be supported by a company secretary. In the case of two tier board systems, consideration should be given to whether corporate governance concerns might arise if there is a tradition for the head of the lower board becoming the Chairman of the Supervisory Board on retirement.

The manner in which board objectivity might be underpinned also depends on the ownership structure of the company. A dominant shareholder has considerable powers to appoint the board and the management. However, in this case, the board still has a fiduciary responsibility to the company and to all shareholders including minority shareholders.

The variety of board structures, ownership patterns and practices in different countries will thus require different approaches to the issue of board objectivity. In many instances objectivity requires that a sufficient number of board members not be employed by the company or its affiliates and not be closely related to the company or its management through significant economic, family or other ties. This does not prevent shareholders from being board members. In others, independence from controlling shareholders or another controlling body will need to be emphasised, in particular if the *ex ante* rights of minority shareholders are weak and opportunities to obtain redress are limited. This has led to both codes and the law in most jurisdictions to call for some board members to be independent of dominant shareholders, independence extending to not being their representative or having close business ties with them. In other cases, parties such as particular creditors can also exercise significant influence. Where there is a party in a special position to influence the company, there should be stringent tests to ensure the objective judgement of the board.

In defining independence for members of the board, some national principles of corporate governance have specified quite detailed presumptions for non-independence which are frequently reflected in listing requirements. While establishing necessary conditions, such "negative" criteria defining

when an individual is *not* regarded as independent can usefully be complemented by "positive" examples of qualities that will increase the probability of effective independence.

Independent board members can contribute significantly to the decision-making of the board. They can bring an objective view to the evaluation of the performance of the board and management. In addition, they can play an important role in areas where the interests of management, the company and its shareholders may diverge such as executive remuneration, succession planning, changes of corporate control, take-over defences, large acquisitions and the audit function. In order for them to play this key role, it is desirable that boards declare who they consider to be independent and the criterion for this judgement. Some jurisdictions also require separate meetings of independent directors on a periodic basis.

1. **Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and non-financial reporting, the review of related party transactions, nomination of board members and key executives, and board remuneration.**

While the responsibility for financial reporting, remuneration and nomination are frequently with the board as a whole, independent non-executive board members can provide additional assurance to market participants that their interests are safeguarded. The board should consider establishing specific committees to consider questions where there is a potential for conflict of interest. These committees should require a minimum number or be composed entirely of non-executive members. In some countries, shareholders have direct responsibility for nominating and electing non-executive directors to specialised functions.

2. **Boards should consider setting up specialised committees to support the full board in performing its functions, particularly in respect to audit, and, depending upon the company's size and risk profile, also in respect to risk management and remuneration. When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board.**

Where justified in terms of the size of the company and its board, the use of committees may improve the work of the board. In order to evaluate the merits of board committees it is important that the market receives a full and clear picture of their purpose, duties and composition. Such information is particularly important in the many jurisdictions where boards have established independent audit committees with powers to oversee the relationship with the external auditor and to act in many cases independently.

Audit committees should also be able to oversee the effectiveness and integrity of the internal control system. Other such committees include those dealing with nomination, compensation, and risk. The establishment of additional committees can sometimes help avoid audit committee overload and to allow more board time to be dedicated to those issues. Nevertheless, the accountability of the rest of the board and the board as a whole should be clear. Disclosure need not extend to committees set up to deal with, for example, confidential commercial transactions.

3. Board members should be able to commit themselves effectively to their responsibilities.

Service on too many boards can interfere with the performance of board members. Some countries have limited the number of board positions that can be held. Specific limitations may be less important than ensuring that members of the board enjoy legitimacy and confidence in the eyes of shareholders. Disclosure about other board memberships to shareholders is therefore a key instrument to improve board nominations. Achieving legitimacy would also be facilitated by the publication of attendance records for individual board members (e.g. whether they have missed a significant number of meetings) and any other work undertaken on behalf of the board and the associated remuneration.

4. Boards should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences.

In order to improve board practices and the performance of its members, an increasing number of jurisdictions now encourage companies to engage in board training and voluntary board evaluation that meet the needs of the individual company. Particularly in large companies, board evaluation can be supported by external facilitators to increase objectivity. Unless certain qualifications are required, such as for financial institutions, this might include that board members acquire appropriate skills upon appointment. Thereafter, board members may remain abreast of relevant new laws, regulations, and changing commercial and other risks through in-house training and external courses. In order to avoid groupthink and bring a diversity of thought to board discussion, boards should also consider if they collectively possess the right mix of background and competences.

Countries may wish to consider measures such as voluntary targets, disclosure requirements, boardroom quotas, and private initiatives that enhance gender diversity on boards and in senior management.

F. In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information.

Board members require relevant information on a timely basis in order to support their decision-making. Non-executive board members do not

typically have the same access to information as key managers within the company. The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company such as, for example, the company secretary, the internal auditor, and the head of risk management or chief risk officer, and recourse to independent external advice at the expense of the company. In order to fulfil their responsibilities, board members should ensure that they obtain accurate, relevant and timely information. Where companies rely on complex risk management models, board members should be made aware of the possible shortcomings of such models.

G. When employee representation on the board is mandated, mechanisms should be developed to facilitate access to information and training for employee representatives, so that this representation is exercised effectively and best contributes to the enhancement of board skills, information and independence.

When employee representation on boards is mandated by the law or collective agreements, or adopted voluntarily, it should be applied in a way that maximises its contribution to the board's independence, competence and information. Employee representatives should have the same duties and responsibilities as all other board members, and should act in the best interest of the company.

Procedures should be established to facilitate access to information, training and expertise, and the independence of employee board members from the CEO and management. These procedures should also include adequate, transparent appointment procedures, rights to report to employees on a regular basis – provided that board confidentiality requirements are duly respected – training, and clear procedures for managing conflicts of interest. A positive contribution to the board's work will also require acceptance and constructive collaboration by other members of the board as well as by management.

ANNEX

Recommendation of the Council on Principles of Corporate Governance

8 July 2015

THE COUNCIL,

HAVING REGARD to Article 5b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Recommendation of the Council on OECD Guidelines on Corporate Governance of State-Owned Enterprises which sets complementary guidelines for state-owned enterprises;

HAVING REGARD to the *Guidelines for Multinational Enterprises*, which form an integral part of the Declaration on International Investment and Multinational Enterprises, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship;

CONSIDERING that the *Principles* have gained worldwide recognition and serve as an important basis for national and international efforts to improve corporate governance;

RECOGNISING that the implementation of the *Principles* depends on varying legal, economic, social, and regulatory settings;

On the proposal of the Corporate Governance Committee:

I. RECOMMENDS that Members and non-Members having adhered to this Recommendation (hereafter the "Adherents") take due account of the *Principles* which are set out in the Appendix to this Recommendation and form an integral part thereof;

II. INVITES the Secretary-General to disseminate this Recommendation;

III. INVITES Adherents to disseminate this Recommendation;

IV. INVITES non-Adherents to take due account of and adhere to this Recommendation;

V. INSTRUCTS the Corporate Governance Committee to follow-up on the implementation of this Recommendation and to report to Council no later than five years following its adoption and as appropriate thereafter.

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The *G20/OECD Principles of Corporate Governance* help policy makers evaluate and improve the legal, regulatory, and institutional framework for corporate governance. They also provide guidance for stock exchanges, investors, corporations, and others that have a role in the process of developing good corporate governance. First issued in 1999, the Principles have become the international benchmark in corporate governance. They have been adopted as one of the Financial Stability Board's Key Standards for Sound Financial Systems and endorsed by the G20.

This 2015 edition takes into account developments in both the financial and corporate sectors that may influence the efficiency and relevance of corporate governance policies and practices.

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