

**TUSIAD COMMENTS ON REVIZED OECD CORPORATE GOVERNANCE PRINCIPLES**  
**TS/ŞİB/14-81**

REVIZED PRINCIPLES	TUSIAD PROPOSAL
<b>I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK</b>	<b>I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK</b>
The corporate governance framework should promote transparent, efficient and fair markets. It should be consistent with the rule of law and ensure effective supervision and enforcement.	The corporate governance framework should promote <del>transparent</del> , efficient and <u>effective</u> <del>fair</del> markets. It should be consistent with the rule of law and ensure effective supervision and enforcement.

**Comments:** Among others, as transparency and fairness are both prerequisite for efficiency, it may not be correct to use them together. Since there is no definition of “fair markets” in the Principles, the terminology should be clarified.

1.  ...  As new experiences accrue and business circumstances change, different provisions of the corporate governance framework should be reviewed and, when necessary, adjusted.	1.  ...  As new experiences accrue and business circumstances change, different provisions of the corporate governance framework should be reviewed and, when necessary, adjusted. <u>The flexibility of corporate governance framework, however, should not be perceived as a mean of modification of the essence of corporate governance, it is rather an instrumental flexibility, referring to the fine-tuning of the instruments deployed to diffuse this essence.</u>
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**Comments:** In the framework, references to the flexibility can be interpreted as a rationalization for divergence from the essential principles of good governance. It should be made clear that OECD’s intention is not to encourage seeking alternative approaches to the fundamental concepts (id this is the case) such as a clear distinction between the roles of execution and monitoring, but it recognizes that there are alternative ways to achieve this ideal by different methods and at different degrees.

<p>3. The corporate form of organizations 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 a place a framework that is flexible enough to meet the need 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. Publicly listed companies are not a homogenous group, but vary greatly. Corporate governance frameworks should in particular take into account the size of listed companies and ensure proportionality.</p> <p>...</p>	<p>3. The corporate form of organizations 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 a place a framework that is flexible enough to meet the need 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. <u>Companies at small scale, set up as sole proprietorship or limited liability have difficulty in practicing corporate governance principles. Developing countries should regulate the form of business and take necessary measures to make ownership structure of these companies adoptable to the corporate governance principles. Developing countries should also provide the necessary legal conditions for ensuring the independency of the board of directors.</u> Publicly listed companies are not a homogenous group, but vary greatly. Corporate governance <u>frameworks principles</u> should in particular take into account the size <u>and market value</u> of listed companies and ensure proportionality.</p> <p>...</p>
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**Comments:** In developing countries, the majority of companies are at small scale or sole proprietorship. These companies do not have proper infrastructure to practise corporate governance principles. Their ownership structure should be regulated accordingly. Studies on developing countries show that CEO would have non-formal relationship with the owner of the company or CEO would be assigned by the preference of the owners or shareholder and owner would impose a pressure on CEO. Independency of CEO and the board should be legally ensured.

The corporate governance framework refers to a model that involves conceptual distinctions under different contingencies, e.g., size, ownership structure, geographical presence. As the framework allows for variations, it would be a better terminology to underline that the individual principles that constitute the framework are subject to vary to address different needs, not the framework itself, as it is per se the basis for this flexibility.

In addition to the size of the listed companies, the Principles can also refer to the “market value of companies.

5. Public authorities should have effective enforcement and sanctioning powers, including the ability of authorities to deter dishonest behaviour and	
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help ensure 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.	
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**Comment:** This provision has the potential to conflict with provision I/1. Principles should make clear which part of the Principles should be compulsory and which part will be “comply or explain” and how it should be determined.

<b>I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK</b>  <b>D. Stock markets should be regulated in a way that supports effective corporate governance.</b>	
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**Comment:** This section regarding stock exchanges, can provide additional insights, how stock exchanges can promote corporate governance practices in the listed companies.

11. 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. Where certain functions, for example in the context of takeover reviews, have been delegated to non-public bodies, the governance structure of any such delegated institutions should be transparent and encompass the public interest. They should be able to pursue their functions without conflicts of interest and that are their decisions be subject to judicial review. When the number of corporate events and the volume of disclosures increase, the	11. <u>The corporate governance framework should clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.</u> 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. Where certain functions, for example in the context of takeover reviews, have been delegated to non-public bodies, the governance structure of any such delegated institutions should be transparent and encompass the public interest. They should be able to pursue their functions without conflicts
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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.	of interest and that are their decisions be subject to judicial 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.
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**Comment:** The corporate governance framework should clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities (Previous provision in the entrance of Part I should be saved) . Also, especially in jurisdictions where bank finance is the main source of funding and stock markets are in their developing stages, actions trying to merge capital markets regulatory authorities into banking regulatory authority or similar may well cause to hinder more the development of capital markets and institutions as well as investor base for equities in those specific jurisdictions.

15. 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 key executive compensation, approval of material related-party transactions and others have also been established in various jurisdictions.	15. 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 <u>total value of the</u> board member and key executive compensation <u>where the scope of key executive is defined and disclosed by the company</u> , approval of material related-party transactions and others have also been established in various jurisdictions.
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**Comment:** Compensation should not be voted on an individual basis. Total value of the compensation can be classified and grouped according to the approved and/or disclosed positions/titles of the board and key executives. It should also be taken into consideration that, for many jurisdictions, this information is still considered as inside information and a source of competitive advantage.

<p><b>II. THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS</b></p> <p><b>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></p>	<p><b>II. THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS</b></p> <p><b>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 <u>equitably</u> in general shareholder meetings; 5) elect and remove members of the board; and 6) share in the profits of the corporation.</b></p>
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**Comments:** Votes of shareholders should also be equitable.

<p><b>II. THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS</b></p> <p><b>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.</b></p>	<p><b>II. THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS</b></p> <p><b>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, <u>material related-party transactions and changing of its main business or cash flow structure.</u></b></p>
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**Comments:** The Principles recognize that shareholders’ rights to approve or participate in critical decisions also involve material related-party transactions at the relevant item of the Code. It would be a good practice to include the same approach to this overarching statement for the sake of conceptual consistency. Some additional material results should also be included.

<p>28. 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 no voting rights. Companies may also issue participation certificates or shares without voting rights, which would presumably trade at different prices than shares with 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.</p>	<p>28. 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 no voting rights. Companies may also issue participation certificates or shares without voting rights, which would presumably trade at different prices than shares with 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. <u>The Principles do not take a position on the concept of “one share one vote”.</u> However, many institutional investors and shareholder associations support this concept.</p>
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**Comments:** The crucial “one share one vote” concept has been omitted from the revision draft. “One share one vote” concept is one of the vital principles that represent the essence of corporate governance principles. We think that this principle is the prime application of “fairness” doctrine which is one of the four fundamental pillars of corporate governance and therefore should remain in the Principles. “One share one vote” principle carries utmost importance in the protection of the rights of small and minority investors. Although there are applications otherwise, we still argue that the mere presence of this concept in the Principles is enough to exert the essence of “fairness” doctrine.

<p>35. Most jurisdictions have put in place rules for clearly flagging these transactions. They include broad 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 minimizes 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.</p>	<p>35. Most jurisdictions have put in place rules for clearly flagging these transactions. They include broad 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 minimizes their negative potential. In most jurisdictions, great emphasis is placed on board approval of <u>related party transactions</u>, 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. <u>For material related party transactions that affect the company’s operations or financials, instead of or in addition to board approval,</u> shareholders may also be given a say in approving <del>certain</del> <u>such material</u> transactions, with interested shareholders excluded.</p>
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**Comments:** The concept of materiality should be emphasized for related party transactions where board approval or shareholder approval is sought. Shareholder approval should be applicable in critically material cases and not for all ordinary transactions as such will mean an interruption of the company's everyday activities.

<p>44. The Principles recommend that institutional investors disclose their policies with respect to corporate governance. Voting at shareholder meetings is, however, only one channel for ownership engagement. Direct contact and dialogue with the board and management represent other forms of ownership engagement that are frequently used. In recent years, some countries have begun to consider adoption of so-called “stewardship codes” that institutional investors are invited to sign up to on a voluntary basis. As investors may pursue different investment objectives, the Principles do not advocate any particular investment strategy and do not seek to prescribe the optimal degree of investor activism. Nevertheless, in considering the costs and benefits of exercising their ownership rights, many investors are likely to conclude that positive financial returns and growth can be obtained by undertaking a reasonable amount of analysis and by using their rights.</p>	<p>44. The Principles recommend that institutional investors disclose their policies with respect to corporate governance. Voting at shareholder meetings is, however, only one channel for ownership engagement. <u>Without violating any related rules and regulations and taking into consideration fairness rules,</u> <del>D</del>irect contact and dialogue with the board and management represent other forms of ownership engagement that are frequently used. In recent years, some countries have begun to consider adoption of so-called “stewardship codes” that institutional investors are invited to sign up to on a voluntary basis. As investors may pursue different investment objectives, the Principles do not advocate any particular investment strategy and do not seek to prescribe the optimal degree of investor activism. Nevertheless, in considering the costs and benefits of exercising their ownership rights, many investors are likely to conclude that positive financial returns and growth can be obtained by undertaking a reasonable amount of analysis and by using their rights.</p>
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**Comments:** From the perspective of capital market rules and regulations, direct contact with board members and top management always requires due care and attention.

<p>53. The investment chain from ultimate owners to corporations does not only involve multiple intermediary owners. It also includes a wide variety of professions that sell advice and services to intermediary owners. Proxy advisors whose business model is to sell recommendations to institutional investors on how to vote and to 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 sell corporate governance related consulting services to corporations and provide so-called corporate governance ratings of these companies. Other services providers, such as analysts, brokers and rating agencies, perform similar roles and face the same potential conflicts of interest.</p>	<p>53. The investment chain from ultimate owners to corporations does not only involve multiple intermediary owners. It also includes a wide variety of professions that sell advice and services to intermediary owners. Proxy advisors whose business model is to sell recommendations to institutional investors on how to vote and to 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 sell corporate governance related consulting services to corporations and provide <del>so-called</del> corporate governance ratings of these companies. Other services providers, such as analysts, brokers and rating agencies, perform similar roles and face the same potential conflicts of interest</p>
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**Comments:** Although service providers such as proxy advisors, analysts, and brokers may assign ratings as well on corporate governance standing of the company in question in some jurisdictions, these services have clearly been separated and defined in Turkey. The Capital Markets Board (CMB) rules that only accredited “rating agencies” can provide “rating” services. As per the relevant communique of the CMB, rating agencies cannot provide advisory, consultancy or similar services to companies that they rate in order to avoid potential conflicts of interest.

Item (54) of the draft document reflects this clearly: Many jurisdictions have adopted regulations or encouraged the implementation of self-regulatory codes designed to mitigate such conflicts of interest, or at least provide for more extensive disclosure.

Furthermore, as per item (55) which states; Providers of corporate governance services and advice should provide clients with information about the process and methodology that underpin their recommendations.

Accredited rating agencies in Turkey have presented fully detailed version of their methodologies to the CMB and are obligated to update the Board when revisions are made. Also, since these methodologies, with the exception of proprietary details, fully reflect the Corporate Governance Principles which are published and made available to public by the CMB, they are de facto transparent for rated clients as well. Rating agencies in Turkey have also pledged their full compliance with the IOSCO rules.

The awkward “so-called ratings” expression in the draft document (item 53) is improper, inaccurate, and inexact and it misrepresents the above applications of jurisdictions such as Turkey and the CMB. It not only erroneously equates the rating services of “accredited” rating agencies with “similar” or “advisory” services of proxy advisors and other analysts, brokers, or consultants, but it also obstructs other jurisdictions’ potential future attempts to take example of CMB’s hugely successful implementation.

70. 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.

70. 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 or cause a change in the value of a company’s share.



**Comments:** The definition of “material information” could be extended to also cover information that could lead to change in the value of a company’s shares.

77. In many countries, such disclosures are required for large companies, typically as part of their management reports. Many companies have started to embrace concepts such as sustainability or “integrated” reporting. To allow investors to hold the board and managers accountable for the use of company funds, disclosure of donations for political purposes is also considered good practice, particularly where such information is not easily available through other disclosure channels.

**Comments:** Large vs. small company distinction is not very clear through the Principles. Some reference can be given. On the other hand, it is not clear which of the Principles really concerned about the scale issue. Scale issue, with regard to the application of Principles is critical and can be dealt in a separate paragraph.

83. 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. 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 subsidiaries that are consolidated are also disclosed.

**P.83** 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. 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 that are consolidated not wholly or substantially owned are also disclosed.

**Comments:** Exemptions can be granted to disclosure of transactions with subsidiaries where the company owns 100% or a substantial amount of the subsidiary’s shares as there will not be any significant amount of minority interest in such cases.

Regarding the internationally accepted accounting standard, the number of the standards can be given (ie. IAS 24 etc.)

<p>90. Companies should report their corporate governance practices, and in a number of countries such disclosure is now should be mandated as part of the regular reporting. In several countries, cCompanies must should implement corporate governance principles set, or endorsed, by the listing authority with mandatory reporting on a “comply or explain” basis. Disclosure of the governance structures and policies of the company, including, in the case of non-operating holding companies, that of significant subsidiaries, in particular the division of authority between shareholders, management and board members 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.</p>	<p>90. Companies should report their corporate governance practices, and in a number of countries such disclosure is now should be mandated as part of the regular reporting. In several countries, companies must should implement corporate governance principles set, or endorsed, by the <u>regulatory or</u> listing authority with mandatory reporting on a “comply or explain” basis. Disclosure of the governance structures and policies of the company, including, in the case of non-operating holding companies, that of significant subsidiaries, in particular the division of authority between shareholders, management and board members 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.</p>
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**Comments:** In some jurisdictions regulatory and listing authority can be different.

<p>92. The application of high quality 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.</p>	<p>92. The application of high quality 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 <u>accounting and reporting</u> 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.</p>
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**Comments:** International accounting standards (IAS) should be mentioned.

<p>98. 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.</p>	<p>98. 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 <u>company web sites and shareholder filings</u>. 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. <u>Best practice calls for deploying a standardized disclosure format for corporate governance disclosures in order to provide stakeholders with a valid, reliable and comparable set of information on individual companies traded in the same stock exchange.</u></p>
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**Comments:** In many jurisdiction, company web sites have become one of the main sources of information.

Companies' individual disclosures on corporate governance vary largely in terms of their precision to respond to the relevant item subject to disclose. This limits the ability of the supervisory authority and market players to assess the content of the disclosure and leads to a binary (yes/no) evaluation, in the nature of box ticking exercise (whether or not the disclosure was made). A standard disclosure format (structured template coupled with open-ended explanations) will provide a comparable and measurable market data and encourage companies to respond precisely to what needs to be disclosed.

<p>101. 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 systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labour, environmental, equal opportunity, health and safety laws. In some</p>	<p>101. Together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders, while <del>preventing</del> <u>managing</u> conflicts of interest <u>in order to prevent their detrimental impact on the corporation</u> 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 systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labour,</p>
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countries, companies have found it useful to explicitly articulate the responsibilities that the board assumes and those for which management is accountable.	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.
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**Comments:** Conflict of interest must be perceived as an intrinsic feature of having different stakeholder groups. The corporation itself is a mean to melt these conflicting interests in a single pot. The board's essential role could only be managing and balancing these conflicts by defining high-level strategies and assessing priorities.

106. 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, <i>inter alia</i> , professional standards and sometimes broader codes of behaviour. A good practice is the commitment by the company (including its subsidiaries) to comply with the <i>OECD Guidelines for Multinational Enterprises</i> which reflect, <i>inter alia</i> , all four principles contained in the <i>ILO Declaration on Fundamental Labour Rights</i> . Similarly, jurisdictions are increasingly demanding that boards oversee the tax planning strategies management is allowed to conduct, thus discouraging practices that do not contribute to the long term interests of the company and its shareholders, and can cause legal and reputational risks.	106. 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, <i>inter alia</i> , professional standards and sometimes broader codes of behaviour. A good practice is the commitment by the company (including its subsidiaries) to comply with the <i>OECD Guidelines for Multinational Enterprises</i> which reflect, <i>inter alia</i> , all four principles contained in the <i>ILO Declaration on Fundamental Labour Rights</i> . Similarly, jurisdictions are increasingly demanding that boards oversee the <u>finance</u> and tax planning strategies management is allowed to conduct, thus discouraging practices that do not contribute to the long term interests of the company and its shareholders, and can cause legal and reputational risks.
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**Comments:** The reference to the strategies could be extended to cover not only tax strategies but also all financial strategies.

<p><b>VI. THE RESPONSIBILITIES OF THE BOARD</b></p> <p><b>D. The board should fulfil certain key functions, including:</b></p> <p>(...)</p> <p><b>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. Large companies should be encouraged to put in place an internal audit function and an audit committee of the board to oversee the effectiveness and integrity of the internal control system.</b></p>	<p><b>VI. THE RESPONSIBILITIES OF THE BOARD</b></p> <p><b>D. The board should fulfil certain key functions, including:</b></p> <p>(...)</p> <p><b>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. Depending on their scale, Large companies should be encouraged to put in place <u>an</u> structures starting from simpler ones to more <u>sophisticated</u> internal audit function <u>where applicable</u> and an audit committee of the board to oversee the effectiveness and integrity of the internal control system.</b></p>
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**Comments:** Internal audit and control function can be necessary even for start-ups. This fact/scale should be taken into consideration.

<p>116. 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. One way of doing this is through 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 coordinated 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 ensuring the integrity of the reporting systems. Some</p>	<p>116. 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. One way of doing this is through 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 coordinated 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 ensuring the integrity of the reporting systems. Some countries have provided for the chair of the</p>
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countries have provided for the chair of the board to report on the internal control process. Companies with large or complex risk exposures (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.	board to report on the internal control process. Companies, compared to their scale, which face <del>with</del> large or complex risk exposures (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.
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**Comments:** Comparison of scale need to be introduced.

127. 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 therefore 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. In large companies, the audit committee 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.	127. 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 therefore important that the market receives a full and clear picture of their purpose, duties and composition. Such information is particularly important in <del>the</del> 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. <del>In large companies, the</del> audit committee 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. Depending on the size of the company, <del>the</del> 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.
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**Comments:** Size should not be a factor for the audit committee for overseeing the internal control system.

<b>VI. THE RESPONSIBILITIES OF THE BOARD</b>  <b>E. The board should be able to exercise objective independent judgement on corporate affairs.</b>	<b>VI. THE RESPONSIBILITIES OF THE BOARD</b>  <b>E. The board should be able to exercise objective independent judgement on corporate affairs.</b>
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<p>(...)</p> <p><b>4. Boards of large companies should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences.</b></p> <p>129. 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, sometimes with the help of external facilitators to increase objectivity. This might include that board members acquire appropriate skills upon appointment, and thereafter 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.</p>	<p>(...)</p> <p><b>4. <del>Boards of large companies</del> should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences.</b></p> <p>129. In order to improve board practices and the performance of its members <u>and also taking into consideration the size of the company</u>, 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, sometimes with the help of external facilitators to increase objectivity. This might include that board members acquire appropriate skills upon appointment, and thereafter 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.</p>
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**Comments:** The principle should be self-evaluation of the boards, without depending on the size of the company.

<p>130. Measures such as voluntary targets, disclosure requirements and private initiatives that enhance gender diversity on boards and in senior management should be encouraged.</p>	<p>130. <u>Diversity on boards in all possible aspects such as gender, background, skills, age etc. should be encouraged.</u> Measures such as voluntary targets, disclosure requirements and private initiatives that enhance <del>gender</del> diversity on boards and in senior management should be encouraged. <u>Regulations, especially in the context of negative criteria in defining independence as mentioned in paragraph 124<sup>1</sup>, shall be carefully designed so that they do not conflict with the measures to encourage diversity.</u></p>
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**Comments:** We appreciate the inclusion of the concept of diversity on the board of directors and in senior management in Paragraph 130. However the concept of diversity shall not be limited to gender diversity only. Diversity has many aspects such as background, skills, age, color and religion. Gender diversity,

<sup>1</sup> P.124. 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.

though being a good starting point, will not embrace all the features and advantages to be driven from diversity and therefore shall not be emphasized solely on its own.

<p><b>VI. THE RESPONSIBILITIES OF THE BOARD</b></p> <p><b>G. When employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of board skills, information and independence.</b></p> <p>132. When employee representation on boards is mandated by the law or collective agreements, 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, should act in the best interest of the company and treat all shareholders equitably.</p>	<p><b>VI. THE RESPONSIBILITIES OF THE BOARD</b></p> <p><b>G. The effectiveness of meetings of the board of directors is one of the main factors determining its contribution to the company.</b></p> <p><u>132. The composition of a board of directors sets the limits of its potential and the meetings determine how effectively this potential is realized. Best practice calls for companies to establish a general approach setting forth the principles to follow before, during and following the board meetings. These principles should include general guidelines and division of roles for setting the meeting agenda to ensure an adequate and timely evaluation of the essential matters faced by the company, governing the meeting effectively to ensure maximum contribution from individual members and devising a mechanism to follow up on the implementation of board resolutions by responsible persons.</u></p> <p><b>GH. When employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of board skills, information and independence.</b></p> <p><del>132</del><u>133.</u> When employee representation on boards is mandated by the law or collective agreements, 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, should act in the best interest of the company and treat all shareholders equitably.</p>
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**Comments:** In terms of board meetings, the Principles recognize the importance of right mix of skills and competencies, sufficient preparation for the meeting but do not mention the effectiveness of board meetings. The right team composition is a significant element of board effectiveness, which will make a real contribution to the company only if this strong team unveils its potential in a constructive environment for collective decision making, i.e., board meetings.