The OECD Principles as a reference point for good corporate governance

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To Regional Seminar on Corporate Governance for Banks in Asia, Hong Kong 19-20 June 2006

A working definition of corporate governance

- 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** (i.e strategy) of the company are set, and the **means** of obtaining those objectives and **monitoring performance** are determined.

Moreover

- “Good corporate governance should provide proper **incentives** for the board and management to pursue objectives that are in the interests of the company and shareholders and should facilitate **effective monitoring**, thereby encouraging firms to use resources more efficiently”
- It is about **compliance <u>and</u> performance**

Why the emphasis on shareholders?

- Does not deny role and interest of stakeholders
- But shareholders are the only ones interested in efficient use of capital
- And the key actor prepared to take calculated risk since they benefit on the upside
- Consequences for the governance of the company (e.g. control of managers)

Core Elements of the OECD Principles

- Ensuring the basis of an effective Cg framework: rules and institutions
- The rights of Shareholders: also in major transactions
- The equitable treatment of shareholders: protection against insiders: equal treatment
- The role of stakeholders including creditors and depositors
- Disclosure and transparency; also control mechanisms
- The responsibilities of the boards; accountability

The Principles need to be adapted to national conditions but not just in any way

- The Principles are outcome oriented and not prescriptive. Therefore widely accepted in the world
- Functional equivalence is key: can achieve the same outcome in many ways.
- They are concerned with actual practices rather than just the legal and regulatory framework
- In implementation, Principles must be adjusted to national laws and customs and most especially the structure of ownership and control
- However, some institutions, laws etc might need to be adapted to encourage a key aspect: economic efficiency.
- A key objective is efficiency and growth and not just compliance

Ensuring the basis for an effective corporate governance framework: a check on policy decisions

- 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 efficient markets**.
- Need for high quality regulation and laws: efficient, enforceable and enforced
- The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.
- Supervisory and enforcement authorities should have authority, integrity and resources. Rulings timely, transparent and fully explained
- Implications: public consultation, analysis taking intro account the whole corporate governance framework

Boards as the fulcrum between shareholders and professional management

- Responsible for management, accountable to company and its shareholders: duty to act in their interests. Is duty clear?
- Monitoring managerial performance and appointing management
- Guiding, not setting, corporate strategy and establishing risk policy
- Setting the ethical tone and a compliance culture (incentives, feedbacks etc)
- Managing conflicts of interest
- Ensuring integrity of accounting and financial systems: internal control
- Selecting and compensating key executives
- Overseeing the external audit and major accounting principles

Implications: the board should be able to exercise objective judgement on corporate affairs

- Must be independent from management and in many countries blockholders and controlling shareholders
- Should consider using a sufficient number of non-executive board members capable of exercising independent judgement where there is conflict of interest
- Should devote sufficient time to their responsibilities
- Appropriate qualifications

To check the power of the boards, the corporate governance framework should protect shareholders rights

- Right to have shares registered and secure
- Should be able to take part in shareholder meetings and in major decisions concerning the firm
- Votes are effective
- Equitable treatment of all shareholders, foreign and minority especially
- Should not be abused by insiders (e.g. change in control)
- Right to cooperate subject to safeguards.
- Special role of some institutional investors

Key elements of disclosure and transparency

- Major share ownership and voting rights
- Material foreseeable risk factors
- Full financial disclosure
- Governance structure and policies, and what code if any followed
- Information should be prepared audited and disclosed in accordance with high standards of accounting, audit and non-financial disclosure
- Regular continuous disclosure
- Full disclosure of related party transactions, usually with controlling shareholders

Stakeholders including creditors, depositors and employees

- Encourage active co-operation between between company and stakeholders
- Performance enhancing mechanisms should be available
- Redress for violation of legal rights
- Need for effective, efficient insolvency framework and effective enforcement of creditor rights
- Access to relevant information

In which areas were the revised Principles strengthened?

- Stronger role of shareholders: institutional investors
- Conflicts of interest and self dealing
- Abuse of related companies
- The role of stakeholders including creditors
- Executive and director remuneration
- Financial market integrity: audit and accounting
- Transparency; also intermediaries
- Ensuring the basis for an effective corporate governance framework: effective enforcement

What is said about some issues?

- Market in corporate control: the market should function in an efficient and transparent manner. Rules clearly articulated and disclosed, transparent prices and fair conditions for shareholders; Anti takeover devices should not be used to shield management and the board from accountability
- Insider trading and abusive self dealing should be prohibited.
- Institutional investors (e.g. Hedge funds): should they be activist; issue of vote lending, complex topic with no easy answers
- Board responsible for overseeing the process of continuous disclosure. Should be equal, timely and cost efficient. No leaks, tips etc

Good corporate governance and a compliance culture is more than meeting regulatory requirements. Also accountability and performance.

- Thank you