G20/OECD Principles of Corporate Governance

OECD

G20/OECD Principles of Corporate Governance 2023

OECD

BETTER POLICIES FOR BETTER LIVES

The *G20/OECD Principles of Corporate Governance* are set out in the Appendix to the OECD Recommendation on Principles of Corporate Governance [OECD/LEGAL/0413] adopted by the OECD Council on 8 July 2015 and revised on 8 June 2023. The Principles were endorsed by the G20 in September 2023. For access to the official text of the Recommendation, as well as other related information, please consult the Compendium of OECD Legal Instruments at https://legalinstruments.oecd.org.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Please cite this publication as:
OECD (2023), *G20/OECD Principles of Corporate Governance 2023*, OECD Publishing, Paris, https://doi.org/10.1787/ed750b30-en.

ISBN 978-92-64-45168-1 (print)
ISBN 978-92-64-76182-7 (pdf)
ISBN 978-92-64-64495-3 (HTML)
ISBN 978-92-64-34658-1 (epub)

Photo credits: Cover © Andrew Esson/Baseline Arts Ltd.

Corrigenda to OECD publications may be found on line at: www.oecd.org/about/publishing/corrigenda.htm.

© OECD 2023

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at https://www.oecd.org/termsandconditions.

Preface

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

As the main international benchmark for good corporate governance, the *Principles* have a global reach and reflect the experiences and ambitions of a wide variety of jurisdictions with varying legal systems and at different stages of development. They are also one of the Financial Stability Board's Key Standards for Sound Financial Systems.

These revised *Principles* are the outcome of 18 months of work. They reflect a strong desire from all OECD and G20 Members to see the *Principles* offer guidance on companies' sustainability and resilience, and will help companies manage environmental and social risks, with insights on disclosure, the roles and rights of shareholders as well as stakeholders and the responsibilities of company boards.

First, they help companies improve access to finance, particularly from capital markets. By doing so, they promote investment, innovation, and productivity growth, and foster economic dynamism more broadly.

Second, they provide a framework to protect investors, which include households with invested savings. A formal structure of procedures that promotes the transparency and accountability of board members and executives to shareholders helps to build trust in markets.

Third, they support the sustainability and resilience of corporations which, in turn, contributes to the sustainability and resilience of the broader economy.

The objectives are to help improve companies' access to financial markets in an environment where investor expectations are evolving and to support investor confidence on the basis of more transparent market information and reinforced investor rights.

The *Principles* will help address the growing role of institutional investors by promoting stewardship codes, and the disclosure of conflicts of interest by advisory services, like proxy advisors and Environmental, Social and Governance index providers. They also include new recommendations which reflect the increasing importance of corporate debt and the role of bondholders in capital markets.

Policy makers, regulators, international organisations and market participants have an important role to play in putting the *Principles* to good use so that countries and corporations may continue benefitting from good corporate governance. The OECD will keep on working closely with all relevant national authorities and other partners to promote the implementation of the *Principles* globally.

Mathias Cormann,

OECD Secretary-General

Foreword

The *G20/OECD Principles of Corporate Governance* are the leading international standard for corporate governance. They aim to help policy makers and regulators evaluate and improve legal, regulatory and institutional frameworks for corporate governance, with a view to supporting market confidence and integrity, economic efficiency, and financial stability.

The *Principles* underwent a comprehensive review in 2021-2023 to update them in light of recent evolutions in corporate governance and capital markets. The revised *Principles* were adopted by the OECD Council at Ministerial Level in June 2023 (the *Principles* are embodied in the OECD Recommendation on Principles of Corporate Governance [OECD/LEGAL/0413]) and endorsed by G20 Leaders in September 2023. The *Principles* are also 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.

The review had two major objectives: to support national efforts to improve the conditions for companies' access to finance from capital markets, and to promote corporate governance policies that support the sustainability and resilience of corporations which, in turn, may contribute to the sustainability and resilience of the broader economy.

Accordingly, a major evolution in the *Principles* is the new Chapter on "Sustainability and resilience" which reflects the growing challenges corporations face in managing climate-related and other sustainability risks and opportunities. This new Chapter also incorporates Chapter IV on "The Role of Stakeholders in Corporate Governance" of the previous version of the *Principles*. A substantial number of new recommendations have also been developed and integrated within the existing chapters of the *Principles*, whose structure remains otherwise unchanged.

The review of the *Principles* was undertaken by the OECD Corporate Governance Committee, chaired by Mr Masato Kanda. OECD, G20 and FSB members participate in the Committee and contributed to the review on an equal footing. Important contributions were also received from the OECD's regional corporate governance roundtables in Asia and Latin America, and from Business at OECD (BIAC) and the Trade Union Advisory Committee (TUAC). An online public consultation and in-person stakeholder consultation were also held, and experts from relevant international organisations, notably the Financial Stability Board, the International Monetary Fund, and the World Bank Group, participated in the review.

In order to ensure the continued accuracy and relevance of the *Principles*, the review was supported and informed by extensive empirical and analytical work examining recent changes in both capital markets and corporate governance policies and practices. The reports developed informed both the Committee's choice of priority areas for consideration during the review as well as the revisions themselves.

The OECD, G20 and relevant stakeholders will now endeavour to promote and monitor the effective implementation of the revised *Principles* globally. This will include a review of the *Methodology for Assessing the Implementation of the Principles of Corporate Governance* and the regular publication of the *OECD Corporate Governance Factbook* which assesses implementation of the *Principles* in a large number of countries.

Table of contents

Preface 3

Foreword 4

About the Principles 6

I. Ensuring the basis for an effective corporate governance framework 9

II. The rights and equitable treatment of shareholders and key ownership functions 14

III. Institutional investors, stock markets, and other intermediaries 22

IV. Disclosure and transparency 27

V. The responsibilities of the board 34

VI. Sustainability and resilience 44

Follow OECD Publications on:

https://twitter.com/OECD

https://www.facebook.com/theOECD

https://www.linkedin.com/company/organisation-eco-cooperation-development-organisation-cooperation-developpement-eco/

https://www.youtube.com/user/OECDiLibrary

https://www.oecd.org/newsletters/

About the Principles

The *Principles of Corporate Governance* ("the *Principles*") are intended to 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. This is primarily achieved by providing shareholders, board members and executives, the workforce and relevant stakeholders, as well as financial intermediaries and service providers with the right information and incentives to perform their roles and help to ensure accountability within a framework of checks and balances.

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

The *Principles* are non-binding and do not aim to provide detailed prescriptions for national legislation. The *Principles* are not a substitute for nor should they be considered to override domestic law and regulation. Rather, they seek to identify objectives and suggest various means for achieving them, typically involving elements of legislation, regulation, listing rules, self-regulatory arrangements, contractual undertakings, voluntary commitments and business practices. A jurisdiction's implementation of the *Principles* will depend on its national legal and regulatory context. 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 to 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 stakeholders. The *Principles* themselves are evolutionary in nature and are reviewed in light of significant changes in circumstances in order to maintain their role as the leading international standard to assist policy makers in the area of corporate governance.

Well-designed corporate governance policies can play an important role in contributing to the achievement of broader economic objectives and three major public policy benefits. First, they help companies to access financing, particularly from capital markets. By doing so, they promote innovation, productivity and entrepreneurship, and foster economic dynamism more broadly. For those who provide capital, either directly or indirectly, good corporate governance serves as an assurance that they can participate and share in the company's value creation on fair and equitable terms. It therefore affects the cost at which corporations can access capital for growth.

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 global capital markets and attract long-term "patient" capital, corporate governance frameworks must be credible, well understood both domestically and across borders, and aligned with internationally accepted principles.

Second, well-designed corporate governance policies provide a framework to protect investors, which include households with invested savings. A formal structure of procedures that promotes the transparency and accountability of board members and executives to shareholders helps to build trust in markets, thereby supporting corporations' access to finance. A substantial part of the general public invests in public equity markets, either directly as retail investors or indirectly through pension and investment funds. Providing them with a system in which they can share in corporate value creation, knowing their rights are protected, will give households access to investment opportunities that may help them to achieve higher returns for their savings and retirement. Given that institutional investors increasingly allocate a large share of their portfolios to foreign markets, policies to protect investors should also cover cross-border investments.

Third, well-designed corporate governance policies also support the sustainability and resilience of corporations and in turn, may contribute to the sustainability and resilience of the broader economy. Investors have increasingly expanded their focus on companies' financial performance to include the financial risks and opportunities posed by broader economic, environmental and societal challenges, and companies' resilience to and management of those risks. In some jurisdictions, policy makers also focus on how companies' operations may contribute to addressing such challenges. A sound framework for corporate governance with respect to sustainability matters can help companies recognise and respond to the interests of shareholders and different stakeholders, as well as contribute to their own long term success. Such a framework should include the disclosure of material sustainability-related information that is reliable, consistent and comparable, including related to climate change. In some cases, jurisdictions may interpret concepts of sustainability-related disclosure and materiality in terms of applicable standards articulating information that a reasonable shareholder needs in order to make investment or voting decisions.

The *Principles* are intended to be concise, understandable, and accessible to all actors with a role in developing and implementing good corporate governance globally. 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, the *Principles* may 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 companies than for smaller ones, policy makers may wish to raise awareness of good corporate governance for all companies, including smaller and unlisted companies as well as those that issue debt securities. The *OECD Guidelines on Corporate Governance of State-Owned Enterprises* complement the *Principles*. Other factors relevant to a company's decision-making processes, such as environmental, anti-corruption or ethical concerns, are considered not only in the *Principles* but also in a number of other international standards including the *OECD Guidelines for Multinational Enterprises*, the *OECD 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* do not intend to prejudice or second-guess the business judgement of market participants, board members and management. What works in one or more companies or for one or more investors may not necessarily be generally applicable. Companies vary in maturity, size and complexity. There is therefore no single model of good corporate governance. However, the *Principles* follow an outcome-oriented approach, suggesting some common elements that 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 intended to embrace the different national models of board structures. In the typical two-tier system, found in some jurisdictions, "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 concerning 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. Throughout the *Principles*, the term "stakeholders" refers to non-shareholder stakeholders and includes, among others, the workforce, creditors, customers, suppliers and affected communities.

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 (ROSC) of the World Bank. The *Principles* are also used as a benchmark in developing sectoral corporate governance guidance by other international standard-setting bodies, including the Basel Committee on Banking Supervision. Implementation of the *Principles* is monitored and supported through the *OECD Corporate Governance Factbook*, peer reviews on thematic issues that compare practices across jurisdictions and corporate governance regional and country reviews.

The *Principles* are presented in six 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) Disclosure and transparency; V) The responsibilities of the board; and VI) Sustainability and resilience.

Each chapter is headed by a single Principle that appears in bold italics and is followed by a number of supporting Principles and their sub-Principles in bold. The *Principles* are supplemented by annotations that contain commentary on the Principles and sub-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 establishing their private contractual relations. By promoting transparent and fair markets, this framework also plays an important role in fostering the trust in markets that is necessary to underpin the achievement of broader economic objectives. The corporate governance framework typically comprises elements of legislation, regulation, listing rules, self-regulatory arrangements, contractual undertakings, voluntary commitments and business practices that are the result of a country's specific circumstances, history and tradition. The desirable mix between these elements 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 such as corporate governance codes which are often based on a "comply or explain" principle in order to allow for flexibility and to address specificities of individual companies. What works well in one company, for one investor or a particular stakeholder may not necessarily be applicable to corporations, investors and stakeholders that operate in another context and under different circumstances. Thus, any particular element of a specific corporate governance framework may not be effective in addressing a particular governance issue in all situations. Rather, the methods for encouraging or requiring good corporate governance practices should aim to achieve desired outcomes by adapting approaches to fit particular circumstances. For example, the desired outcome of ensuring effective implementation of certain corporate governance practices may be achieved more efficiently in markets where institutional investors play a strong role in improving such practices in line with soft law code recommendations, while in markets where investors adopt a more passive role, the regulator may choose to require and enforce the implementation of certain corporate governance standards. As new experiences accrue and business circumstances change, the various provisions of the corporate governance framework should be reviewed and, when necessary, adjusted.

Jurisdictions seeking to implement the *Principles* should monitor their corporate governance framework with the objective of maintaining and strengthening its contribution to market integrity, access to capital markets, economic performance, and transparent and well-functioning markets. As part of this, it is important to consider 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 is an important tool in the process of developing an effective corporate governance framework. To this end, effective and timely 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, national legislators and regulators should consider the need for, and the results of, 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.

I.A. The corporate governance framework should be developed with a view to its impact on corporate access to finance, overall economic performance and financial stability, the sustainability and resilience of corporations, market integrity, and the incentives it creates for market participants and the promotion of transparent and well functioning markets.

Capital markets play a key role in providing companies with funds that allow them to innovate and support economic growth, as well as efficiently diversify their financing sources. Equity and bond financing also support companies' resilience to overcome temporary downturns while meeting their obligations to the workforce, creditors and suppliers. Policy makers and regulators need to consider how the corporate governance framework may encourage and impact corporate access to market-based financing.

The corporate form of organisation of economic activity serves as 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 capable of meeting 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 publicly traded 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 development stage. Policy makers should remain focused 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 promote accountability.

I.B. The legal and regulatory requirements that affect corporate governance practices should be consistent with the rule of law, transparent and enforceable. Corporate governance codes may offer a complementary mechanism to support the development and evolution of companies' best practices, provided that their status is duly defined.

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 it possible to implement and enforce them in an efficient and even-handed manner covering all parties. Consultation by government and other regulatory authorities with corporations, their representative organisations, shareholders, and 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 rules, 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 codes and standards that do not generally have the status of law or regulation. Good practices recommended in such codes are usually encouraged through "comply or explain" disclosure mechanisms or other variations such as "apply and/or explain". While such codes can play an important role in improving corporate governance arrangements and practices, they might leave shareholders and 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.

I.C. The division of responsibilities among different authorities and self-regulatory bodies 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, listing rules, insolvency law, contract law, labour law, tax law, as well as potentially international law. Corporate governance practices of individual companies are also often influenced by human rights and environmental laws, and increasingly laws related to digital security, data privacy and personal data protection. 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 ensure a coherent and stable institutional and regulatory framework. Effective enforcement also requires that the allocation of responsibilities for supervision, implementation and enforcement among different authorities is clearly defined and formalised 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 to avoid regulatory arbitrage and so that no regulatory vacuum is allowed to develop (i.e. issues slipping through for which no authority has explicit responsibility) as well as to minimise the cost of compliance with multiple systems.

When regulatory responsibilities or oversight are delegated to non-public bodies, notably stock exchanges, 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, including appropriate safeguards to address potential conflicts of interest.

I.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 stock exchanges' rules for listing and for governing trading on their 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.

I.E. Supervisory, regulatory and enforcement authorities should have the authority, autonomy, integrity, resources and capacity 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 responsibilities, have adequate powers, proper resources, and the capacity to perform their functions and exercise their powers, including with

respect to corporate governance. Many jurisdictions 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. Some jurisdictions also stagger appointments and make them independent from the political calendar to further enhance independence. Some jurisdictions have sought to reduce potential conflicts of interest by introducing policies to restrict post-employment movement to industry through mandatory time gaps or cooling-off periods. Such restrictions should take into consideration the regulators' ability to attract senior staff with relevant experience. These bodies should be able to pursue their functions without conflicts of interest and their decisions should be subject to judicial or administrative review. At the same time, supervisory staff should be adequately protected against the costs related to defending their actions and/or omissions made while discharging their duties in good faith.

To guard against conflicts of interest (including the potential for political or business interference in supervisory and enforcement processes), operational independence may be reinforced by autonomy over budgetary and human resource management decisions. Such autonomy should be coupled with high ethical standards and accountability mechanisms, including timely, transparent and fully explained decisions that are open to public and judicial scrutiny. 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, they will have a significant demand for fully qualified staff to provide effective oversight and investigative capacity which will require adequate funding. Many jurisdictions impose levies on supervised entities in combination with, or as an alternative to, government funding. This may support greater financial autonomy from governments to carry out their mandates, while structuring such fees to avoid impeding supervisory independence from regulated industry participants and providing adequate transparency on the criteria adopted to set the fees. The ability to attract staff on competitive terms is also important to enhance the quality and independence of supervision and enforcement.

I.F. Digital technologies can enhance the supervision and implementation of corporate governance requirements, but supervisory and regulatory authorities should give due attention to the management of associated risks.

Many jurisdictions use digital technologies to enhance the efficiency and effectiveness of supervisory and enforcement processes related to corporate governance, with benefits, for example, for market integrity. They can also alleviate the regulatory burden on regulated entities, which can themselves use digital tools to lower compliance costs and enhance risk management capabilities. Digital technologies may also be leveraged to make regulatory compliance less onerous for companies, with a view to maintaining the rigour and scope of corporate governance regulation and corporate disclosure through improvements in the functioning of the existing framework.

Adopting digital solutions in regulatory and supervisory processes also comes with challenges and risks. Important considerations include ensuring the quality of data; ensuring that staff have proper technical competence; considering interoperability between systems in the development of reporting formats; and managing third-party dependencies and digital security risks. When artificial intelligence and algorithmic decision-making are used in supervisory processes, it is critical to maintain a human element in place to mitigate against risks of incorporating existing biases in algorithmic models and the risks from an over-reliance on models and digital technologies.

At the same time, regulators in most jurisdictions espouse the value of a technology neutral approach that does not discourage innovation and the adoption of alternative technological solutions. As technologies evolve and may serve to strengthen corporate governance practices, the regulatory framework may require review and adjustments to facilitate their use.

I.G. 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 or joint supervisory actions. International co-operation is becoming increasingly relevant for corporate governance, notably when companies or company groups are active in many jurisdictions through both listed and unlisted entities, and seek multiple stock market listings on exchanges in different jurisdictions.

I.H. Clear regulatory frameworks should ensure the effective oversight of publicly traded companies within company groups.

Well-managed company groups that operate under adequate corporate governance frameworks can help to achieve benefits based on economies of scale, synergies and other efficiencies. Nevertheless, company groups in some cases may be associated with risks of inequitable treatment of shareholders and stakeholders. The prevalence of company groups in many jurisdictions has therefore heightened the need for regulators to ensure that the corporate governance framework provides means to effectively monitor them. If not, the extensive and complex structures of company groups may pose risks to shareholders and stakeholders of publicly traded parent or subsidiary companies within group structures, including through abusive related party transactions. Some group companies may also be used to shift funds within the group as part of the group's tax planning strategies, or may use the funds for board/executive remuneration or dividend payments.

Company groups operating in different sectors and across borders call for co-operation between domestic regulators and across jurisdictions to strengthen the effectiveness and consistency of regulatory oversight. Such efforts may include information sharing on the activities of company groups for supervisory and enforcement purposes. To this end, jurisdictions are encouraged to develop a practical definition and criteria for the oversight of company groups focusing on aspects such as the controlling relationship of group companies and their parent, companies' domicile, and appropriateness of inclusion in consolidated financial reporting, among other aspects. In some jurisdictions, companies have adopted protocols and governance guidelines at group level as a tool to self-regulate group activity.

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 at a reasonable cost and without excessive delay.

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 participating and voting in general shareholder meetings.

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. These are the most basic rights of shareholders and they are recognised by law in most jurisdictions. Additional rights have also been established in various jurisdictions, such as direct nomination of individual board members or board member slates; the ability to pledge shares; the approval of distributions of profits; shareholder ability to vote on board member and/or key executive remuneration; approval of material related party transactions; and others.

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. On the contrary, an inefficient corporate governance mechanism may allow corporate boards, managers and controlling shareholders 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

through 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 of 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 shareholders' 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. Some countries have found that derivative lawsuits filed by minority shareholders on behalf of the company serve as an efficient additional tool for enforcing directors' fiduciary duties, if the distribution of litigation costs is adequately set. The provision of such enforcement mechanisms is a key responsibility of legislators and regulators, and the capacity and quality of courts also play an important role.

There is some risk that a legal system that 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 screening mechanisms, such as a pre-trial procedure to evaluate whether the claim is non-meritorious, and 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 jurisdictions have found that alternative adjudication procedures, such as administrative hearings or arbitration procedures organised by the securities regulators or other bodies, are an efficient method to protect shareholder rights, at least at the first instance level. Specialised court procedures can also be a practical instrument to obtain timely injunctions and to gather evidence on an alleged infringement, ultimately facilitating the effective redress for violations of shareholders' rights.

II.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; 6) share in the profits of the corporation; and 7) elect, appoint or approve the external auditor.

II.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, articles of incorporation or similar governing documents of the company; 2) the authorisation of additional shares; and 3) extraordinary transactions, including the transfer of corporate 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 authority 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.

II.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.

II.C.1. Shareholders should be furnished with sufficient and timely information concerning the date, format, location and agenda of general meetings, as well as fully detailed and timely information regarding the issues to be decided at the meeting.

II.C.2. Processes, format 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, requiring personal attendance at general shareholder meetings to vote, bundling of unrelated resolutions, 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.

II.C.3. General shareholder meetings allowing for remote shareholder participation should be permitted by jurisdictions as a means to facilitate and reduce the costs to shareholders of participation and engagement. Such meetings should be conducted in a manner that ensures equal access to information and opportunities for participation of all shareholders.

Virtual or hybrid (where certain shareholders attend the meeting physically and others virtually) general shareholder meetings can help improve shareholder engagement by reducing their time and costs of participating. By using virtual platform providers, companies may incur additional costs but also streamline shareholders' access to agendas and related information, and provide a secure infrastructure and more efficient means for considering and addressing shareholder comments and questions. However, due care is required to ensure that remote meetings do not decrease the possibility for shareholders to engage with and ask questions to boards and management in comparison to physical meetings. Some jurisdictions have issued guidance to facilitate the conduct of remote meetings, including for handling shareholder questions, responses and their disclosure, with the objective of ensuring transparent consideration of questions by boards and management, including how questions are collected, combined, answered and disclosed. Such guidance may also address how to deal with technological disruptions that may impede virtual access to meetings.

Many companies rely on technology vendors to manage remote participation. When choosing service providers, it is important to consider that they have the appropriate professionalism as well as data handling and digital security capacity to support the conduct of fair and transparent shareholder meetings, with technical and organisational security measures in place for each of the processing operations carried out by virtue of their service, especially concerning personal data, which require stricter security measures. Such processes should allow for the verification of shareholders' identity through secured authentication of attendees and ensure equal participation as well as the confidentiality and security of votes cast prior to the meeting.

II.C.4. Shareholders should have the opportunity to ask questions to the board, including on 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 appropriate replies from management and board members in a manner that ensures their transparency. 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 shareholder meeting should be addressed by the board.

II.C.5. 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.

Electing 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 nominees. To this end, shareholders have access in a number of jurisdictions 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 and transparency with established nomination procedures and to facilitate and co-ordinate the search for a balanced, diverse 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 required or considered good practice in some jurisdictions to also disclose information about any other board positions or committee memberships 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 and structure of remuneration 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, remuneration 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.

II.C.6. 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 identification and participation suggests that jurisdictions and/or companies promote the enlarged use of information technology in voting, including secure electronic voting in all publicly traded companies for both remote and in person meetings. The *Principles* recommend that voting by proxy be generally accepted. Indeed, it is important for the promotion and protection of shareholder rights that investors can rely on 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 chair of the meeting (as the usual recipient of shareholder proxies obtained by the company) will exercise the voting rights attached 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 required or considered

good practice in many jurisdictions that treasury shares and shares of the company held by subsidiaries should not be allowed to vote, nor be counted for quorum purposes.

II.C.7. 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 who in turn hold accounts with other intermediaries and central securities depositories in other jurisdictions, while the publicly traded company resides in a third jurisdiction. 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.

II.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”). In many instances institutional investors limit their ownership stake in individual companies because it is beyond their capacity or would require investing more of their assets in one company than may be prudent or permitted. 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, subject to shareholders’ compliance with applicable law, including, for example, beneficial ownership reporting requirements. Some major institutional investors have established initiatives to facilitate the co-ordination of their engagement, for example to address climate-related concerns. When publicly traded companies have controlling shareholders, these actions also safeguard the interests of minority shareholders while increasing their voice in company matters. 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, with a view to bypass takeover or disclosure regulations which may otherwise apply. Moreover, co-operation might also be for the purpose of circumventing competition law. Safeguards may be needed to prevent anticompetitive behaviour and abusive actions, particularly in jurisdictions where institutional investors are significant owners in publicly traded companies and their co-ordinated actions could have stronger influence on companies’ decisions. Disclosure of the co ordination policy could provide clarity to the market on the scope of such actions. However, if co-operation does not clearly 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 and certainty 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, competition and other rules.

II.E. All shareholders of the same series of a class should be treated equally. 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 company 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 company 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.

Within any series of a class, all shares should carry the same rights. 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 shareholder meetings by a specified (normally higher) majority of voting shares in the affected categories.

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

II.F.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 should include broad but precise definitions of what is understood to be a related party. They should also include 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 take 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 many jurisdictions, great emphasis is placed on board approval supported by the audit committee review, often with a prominent role for independent members. Jurisdictions may also require the board to justify the interest of the transaction for the company and the fairness of its terms. Many jurisdictions require or recommend as good practice for interested board members to abstain from board decisions on related party transactions.

As an alternative or complement to board approval, shareholders may be given a say in approving certain transactions, which in some jurisdictions requires the approval of non-interested shareholders. This may include, in particular, large or non-routine transactions or those in which board members have an interest. Some jurisdictions also require an opinion or evaluation on the fairness of the transaction's proposed price or value by an external auditor or independent outside specialist, in some cases as a precondition for shareholder approval.

II.F.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, many jurisdictions require or recommend as 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 interest and/or to justify the interest of the transaction for the company, notably by mentioning the terms of the transaction.

II.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 controlling shareholders. While the presence of controlling shareholders can reduce the agency problem through 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 that does not correspond to the level of risk that they assume as owners by exploiting legal devices to separate ownership from control. 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 mechanism for addressing such potential for abuse is the existence of 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 jurisdictions 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 jurisdictions 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. A key underlying principle for board members who are working within the structure of a group of companies is that even though a company might be controlled by another company, the duty of loyalty of a board member is related to the company and all of its shareholders and not to the controlling company of the group.

Other common provisions to protect minority shareholders that 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. Considering that some group structures may lead to disproportionate and opaque control, and the risks this may create with respect to the rights of non controlling shareholders, some jurisdictions place limitations on certain structures of company groups such as cross-shareholdings. 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 a company. Other means of improving minority shareholder rights include derivative and class action lawsuits. Most regulators have established mechanisms to receive and investigate complaints from shareholders, and some have the possibility to support lawsuits through disclosure of relevant information (including

whistleblowing mechanisms) 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.

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

II.H.1. The rules and procedures governing the acquisition of corporate control in capital markets, 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.

II.H.2. Anti-takeover devices should not be used to shield management and the board from accountability.

In some jurisdictions, companies employ anti-takeover devices. However, both investors and stock exchanges have expressed concern over the possibility that widespread use of anti-takeover devices may be a serious impediment to the functioning of the market for corporate control. In some instances, takeover 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 takeover proposals, the fiduciary duty of the board to shareholders and the company must remain paramount. Some jurisdictions provide options for exit at a fair and reasonable market price 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 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 vary 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 or may not be effective and could potentially lead to a box-ticking approach.

The *Principles* recommend that institutional investors disclose their policies for corporate governance with respect to their investments. 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 many jurisdictions, codes on shareholder engagement ("stewardship codes") have been introduced as a complementary governance tool with the aim of strengthening both institutional investor accountability and their role in holding company boards and management accountable. Where corporate governance codes apply on a "comply or explain" basis, the role of institutional investors as shareholders is particularly important in holding companies accountable for their explanations of departures from the provisions of those codes.

III.A. The corporate governance framework should facilitate and support institutional investors' engagement with their investee companies. Institutional investors acting in a fiduciary capacity should disclose their policies for corporate governance and voting with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights. Stewardship codes may offer a complementary mechanism to encourage such engagement.

The effectiveness and credibility of the entire corporate governance framework and company oversight could depend in part 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 necessarily require institutional investors to vote their shares, it calls for potential

disclosure of their policies on how they exercise their shareholder 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, as well as asset managers, the right to vote could be considered part of the value of the investment being undertaken on behalf of their clients. Failure to exercise the ownership rights could potentially 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 jurisdictions, the demand for disclosure of policies for corporate governance and voting 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 it will use for such intervention, and how it will assess the effectiveness of the strategy. Disclosure of actual voting records is recognised 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 via public disclosure.

As part of an engagement policy, institutional investors can establish a continued dialogue with portfolio companies either on company-specific matters or non-diversifiable factors affecting their entire portfolio. 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.

Stewardship codes have become a well-established practice in many jurisdictions as a complement to other disclosure requirements for institutional investors on their engagement and voting policies. Most codes on shareholder engagement leave it to institutional investors' discretion whether to apply the code or not. This voluntary and flexible approach has been conceived to allow investors to adapt the codes to their respective investment strategies. Some jurisdictions also have established an implementation mechanism for such codes to ensure compliance and to promote best practice reporting. Some jurisdictions also value carrying out periodic updates and monitoring of these codes to ensure their relevance and oversee their effective implementation.

When institutional investors have developed and disclosed corporate governance and stewardship policies, effective implementation requires that they also set aside the appropriate human and financial resources to pursue these policies in a way that their beneficiaries and portfolio companies can expect. The nature and practical implementation of active corporate governance and voting policies by such institutional investors, including staffing, should be transparent to clients who rely on institutional investors with active corporate governance and stewardship policies.

III.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 that either investment advisors or custodian institutions 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).

III.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, they 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 shareholder rights to the extent applicable under a jurisdiction's law. 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.

III.D. The corporate governance framework should require that entities and professionals that provide analysis or advice relevant to decisions by investors, such as proxy advisors, analysts, brokers, ESG rating and data providers, credit rating agencies and index providers, where regulated, disclose and minimise conflicts of interest that might compromise the integrity of their analysis or advice. The methodologies used by ESG rating and data providers, credit rating agencies, index providers and proxy advisors should be transparent and publicly available.

The investment chain from ultimate owners to corporations involves not only multiple intermediary owners but also 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. Credit rating agencies rate companies according to their ability to meet their debt obligations and ESG rating providers rate companies according to various environmental, social and governance (ESG) criteria. Analysts and brokers 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 regulated entities and professionals that provide analysis or advice relevant to decisions by investors, such as proxy advisors, analysts, brokers, ESG rating and data providers, credit rating agencies, and index providers. These service providers, particularly ESG rating and index providers, can have significant impact on companies' governance and sustainability policies and practices given their rating methodologies and index inclusion criterion. Therefore, the methodologies used by regulated service providers that produce ratings, indices and data should be transparent and publicly available to clients and market participants. This is particularly important when they are also referenced as metrics for regulatory purposes. Exclusive reliance on ratings in regulation may raise questions, while the process for deciding which ratings are eligible for use for regulatory purposes should be transparent and could be subject to evaluation at various levels of frequency. IOSCO's November 2022 Call for Action covers good practices for ESG ratings and data providers and is addressed to voluntary

standard- setting bodies and industry associations operating in financial markets to promote good practices among their members.

At the same time, conflicts of interest may arise and affect judgement, such as when the provider of advice, rating or data is also seeking to provide other services to the company in question, when the provider or its owner have a direct material interest in the company or its competitors, or when the rating provider is at the same time an index provider who will decide on companies' inclusion in an index based on the rating they produce. Many jurisdictions have adopted regulations or voluntary codes of conduct or have 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.

Many jurisdictions require or recommend that proxy advisors disclose publicly and/or to investor clients the research and methodology that underpin their recommendations, and the criteria for their voting policies relevant for their clients. Some jurisdictions require that proxy advisors apply and disclose a code of conduct, and disclose information on their research, advice and voting recommendations and any conflict of interest or business relationships that may influence their research, advice or voting recommendations, and the actions they have undertaken to eliminate, mitigate or manage the actual or potential conflicts of interest. In some cases, requirements for proxy advisors include developing appropriate human and operational resources to effectively perform their functions.

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

As insider trading and market manipulation undermine public confidence in and the effective functioning of capital markets, they are prohibited by securities regulations, company law and/or criminal law in most jurisdictions. 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.

III.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 to that company. It may concern everything from procedures and locations for the annual shareholder 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.

III.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.

All types of investors, whether they follow active or passive investment strategies, have relevant roles to play in contributing to well-functioning capital markets and efficient price discovery. In this regard, the quality of and access to market and company-specific information is key, notably for those using this information to follow active corporate governance strategies.

IV. 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, sustainability, ownership, and governance of the company.

In most jurisdictions a large amount of information, both mandatory and voluntary, is compiled on publicly traded and large unlisted companies, and subsequently disseminated to a broad range of users. Public disclosure is typically required, at a minimum, on an annual basis though some jurisdictions require periodic disclosure on a semi-annual or quarterly basis, or ad hoc disclosure in the case of material related party transactions and other 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, a fundamental principle that companies must uphold.

Disclosure requirements should not place unreasonable administrative or cost burdens on companies. Nor should companies be expected to disclose information that may endanger their competitive position unless disclosure is necessary to fully inform an investor's decisions and to avoid misleading the investor. In order to determine what information should be disclosed at a minimum, many jurisdictions apply the concept of materiality. Material information can be defined as information whose omission or misstatement can reasonably be expected to influence an investor's assessment of a company's value. This would typically include the value, timing and certainty of a company's future cash flows. 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 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, timely, reliable and comparable information in sufficient detail for them to assess the performance of the company's 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.

While corporate disclosure should focus on what is material to investors' decisions and may include an assessment of a company's value, it may also help improve public understanding of the structure and activities of companies, corporate policies and performance with respect to environmental, social and governance matters.

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

IV.A.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 company.

Arguably, failures of governance can often be linked to the failure to disclose the "whole picture". It is therefore important that transactions relating to an entire company group 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.

IV.A.2. Company objectives and sustainability-related information.

In addition to their commercial objectives, companies should disclose material policies and performance metrics related to environmental and social matters, as elaborated on sustainability disclosure in Chapter VI.

IV.A.3. Capital structures, group structures and their control arrangements.

Some capital structures such as pyramid structures, cross-shareholdings and shares with limited or multiple voting rights allow shareholders to exercise a degree of control over the corporation disproportionate to their equity ownership in the company.

Company groups are often complex structures that involve several layers of subsidiaries, including across different sectors and jurisdictions. These structures may limit the ability of non-controlling shareholders of the parent and subsidiary companies to influence corporate policies and understand the risks involved, and may allow controlling shareholders to extract private benefits from group companies.

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 chair will be selected. The agreements can also oblige those in the agreement to vote as a block. Some jurisdictions 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 potential of these mechanisms to redistribute the influence of shareholders on company policy, and also its relevance for the enforcement of takeover regulation, the disclosure of such capital structures, group structures and their control arrangements should be required. Disclosure about such schemes also allows shareholders, debtholders and potential investors to make better informed decisions.

IV.A.4. 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 company 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 the

objectives, nature and structure of the group transparent. Disclosure of ownership data should be provided once certain thresholds of ownership are passed. In equity markets characterised by dispersed ownership structures where small shareholdings may exert significant influence over a company, these thresholds could be set lower. Such disclosure might include data on major shareholders and others that, directly or indirectly, may significantly influence or control the company through, for example, special voting rights, shareholder agreements, the ownership of controlling or large blocks of shares, the use of holding company structures involving layering of companies or significant cross-shareholding relationships and cross guarantees. It is also required or considered good practice in some jurisdictions to disclose shareholdings of directors, including non-executives, and it is good practice that such disclosure is made on an ongoing basis.

For enforcement purposes in particular, and to identify potential conflicts of interest, related party transactions, insider trading and market manipulation, information about record ownership needs to be complemented with current information about beneficial ownership. An increasing number of jurisdictions use a centralised national registry while others may require a company-level registry to facilitate access to up-to-date and accurate information on beneficial ownership. In cases where such registries are not available, information about the beneficial owners should be obtainable at least by regulatory and enforcement agencies and/or through the judicial process. In addition, guidance issued by the Financial Action Task Force and the IMF that advocates a multi-pronged approach to ensure availability of information on beneficial ownership can be useful in this regard.

IV.A.5. Information about the composition of the board and its 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. Information is also important to enable investors to assess the collective experience and qualifications of the board. For board members, standardised information should include their qualifications, share ownership in the company, membership of other boards and board committees, other executive positions, and whether they are considered by the board to be an independent member. This information may also refer to directors' compliance with applicable independence criteria. 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.

Several jurisdictions 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.

Many jurisdictions require or recommend disclosure of the composition of boards, including on gender diversity. Such disclosure may also extend to other criteria such as age and other demographic characteristics, in addition to professional experience and expertise. Some jurisdictions that have established such requirements or recommendations in codes also request disclosure on a "comply or explain" basis. In some cases this includes the disclosure of the composition of management boards in two-tier board systems, and of executive or other senior management positions.

IV.A.6. Remuneration of members of the board and key executives.

Information about board and executive remuneration is also of concern to shareholders, including the link between remuneration and the company's long-term performance, sustainability and resilience. Companies are generally expected to disclose timely information including material changes on the remuneration policies applied to board members and key executives, as well as remuneration levels or

amounts on a standardised and comparable basis, 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 required or recommended in most jurisdictions. Some of these 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. The existence of directors' and corporate officers' liability insurance may also change managerial incentives, thus warranting disclosure of liability insurance policies. The use of sustainability indicators in remuneration may also warrant disclosure that allows investors to assess whether indicators are linked to material sustainability risks and opportunities and incentivise a long-term view.

IV.A.7. 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. Complicated group structures may increase the opaqueness inherent in related party transactions and the possibility of circumventing disclosure requirements. Special consideration should be given to whether the corporate governance framework properly identifies all related parties in jurisdictions with complex group structures involving publicly traded companies.

Transactions involving the major shareholders (or their close family, relations, etc.), either directly or indirectly, are potentially the most difficult type of related party transactions to monitor with a view to ensuring equal treatment of all shareholders. In some jurisdictions, shareholders above a limit as low as five per cent of shareholding are obliged to report transactions. Disclosure requirements include the nature of the relationship where control exists, and the nature, value and number 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 disclose it to the market. This should not absolve the company from maintaining its own monitoring, which is an important task for the board.

To make disclosure more informative, many jurisdictions distinguish related party transactions according to their materiality, terms 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.

IV.A.8. 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 and supply chains; financial market risks including interest rate or currency risk; risks related to derivatives and off-balance sheet transactions; business conduct risks; digital security risks; compliance risks; and sustainability risks, notably climate-related risks.

The *Principles* envision the disclosure of sufficient and comprehensive information to fully inform investors and other users of the reasonably foreseeable material risks of the company. 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, including the nature and effectiveness of related due diligence processes.

IV.A.9. Governance structures and policies, including the extent of compliance with national corporate governance codes or policies and the process by which they are 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. In most jurisdictions, a national report reviewing adherence to the corporate governance code by publicly traded companies is published as a good practice to support effective disclosure and implementation of "comply or explain" codes.

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.

IV.A.10. Debt contracts, including the risk of non-compliance with covenants.

Under normal circumstances, shareholders and directors control the major decisions taken by a company. However, certain provisions in corporate bonds and other debt contracts may significantly limit the discretion of management and shareholders, such as covenants that restrict dividend payouts, require creditors' approval for the divestment of major assets, or penalise debtors if financial leverage exceeds a predetermined threshold. Moreover, under financial stress but before bankruptcy, companies may choose to negotiate a waiver of compliance with a covenant, when existing creditors may require changes in the business. As a consequence, the timely disclosure of material information on debt contracts, including the impact of material risks related to a covenant breach and the likelihood of their occurrence, in accordance with applicable standards, is necessary for investors to understand a company's business risks.

IV.B. Information should be prepared and disclosed in accordance with internationally recognised accounting and disclosure standards.

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 and risks. Most jurisdictions 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 jurisdictions. Such standards should be developed through open, independent and public processes involving the private sector and other interested parties such as investors, professional associations and independent experts. High quality domestic standards can be achieved by making them consistent with one of the internationally recognised accounting standards.

IV.C. An annual external audit should be conducted by an independent, competent and qualified auditor in accordance with internationally recognised auditing, ethical and independence standards in order to provide reasonable assurance to the board and shareholders on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework.

The external auditor provides an opinion as to whether the financial statements present fairly, in all material respects, the financial position and financial performance of a company. The external auditor's report should also include an acknowledgement that the financial statements are the responsibility of the company's management. In some jurisdictions, the external auditors are also required to report on the company's corporate governance or internal controls over financial reporting.

The independence and ethical conduct of external auditors and their accountability to shareholders should be required and they should conduct the audit in the public interest. 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". Monitoring threats to independence should be the responsibility of both the external auditor and the audited company, including its audit committee or an equivalent body.

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 appointment, reappointment and compensation of external auditors, as well as approving and monitoring 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 impair their independence and might involve them auditing their own work or present other threats to independence. To deal with such potential threats, some jurisdictions require the disclosure of payments to external auditors for non-audit services. Examples of other provisions designed to promote external auditor independence include a ban or severe limitation on the nature of non-audit work which can be undertaken by an auditor for their audit client; periodic communications to the audit committee discussing the nature, timing and fees of the non-audit work (including the approval of such work) as well as relationships that may threaten auditor independence; mandatory rotation of auditors (either partners or in some cases the audit company); 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 jurisdictions 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.

Further, a system of audit oversight and audit regulation plays an important role in enhancing auditor independence and audit quality. Consistent with the Core Principles of the International Forum of Independent Audit Regulators (IFIAR), the designation of an audit regulator, independent from the profession, and who, at a minimum, conducts recurring inspections of auditors undertaking audits of public interest entities, contributes to ensuring high quality audits that serve the public interest. In addition, regulators should have at their disposal a comprehensive and effective range of regulatory tools, including disciplinary measures/sanctions, independent investigatory powers vis-à-vis auditors under their jurisdictions, and the authority to communicate disciplinary measures/sanctions to the public to address any breaches of professional or statutory duties by an external auditor in a proportionate manner.

Finally, 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 or required in some jurisdictions. This needs, however, to be supported by ongoing

training and monitoring of work experience to ensure appropriate levels of professional competence and scepticism.

IV.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 in the public interest.

The practice that external auditors are recommended by an independent audit committee of the board or an equivalent body and are elected, appointed or approved 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 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. This practice, however, should not be seen as precluding other bodies such as the audit committee from making such appointments. To enhance accountability to shareholders, shareholders should have the possibility to communicate directly with the audit committee or an equivalent body regarding its oversight of the external auditor, for example by disclosures, including of the methodology for assessing the auditor's performance, or by participation of the audit committee or external auditor in shareholder meetings.

IV.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 jurisdictions by electronic filing and data retrieval systems. Jurisdictions should move to the next stage by integrating different sources of company information, including shareholder filings. Easily accessible and user friendly company websites also provide the opportunity for improving information dissemination, and most jurisdictions now require or recommend 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 in 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.

V. 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 jurisdictions. Some jurisdictions 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, often including employee representatives, and a "management board" composed entirely of executives. Other jurisdictions have "unitary" boards, which bring together executive and non-executive board members. In some jurisdictions, 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 company 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 mechanisms designed to ensure that the corporation obeys applicable laws, including relating to tax, competition, labour, human rights, environmental, equal opportunity, digital security, data privacy and personal data protection, and health and safety. In some jurisdictions, 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 account of, and deal fairly with, stakeholder interests including those of the workforce, creditors, customers, suppliers and affected communities.

V.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, taking into account the interests of stakeholders.

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. Good practice takes acting on a fully informed basis to mean that board members 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 the effective implementation of other principles relating to, for example, the equitable treatment of shareholders, monitoring of related party transactions and the establishment of the 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 company, 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.

Board members should take account of, among other things, the interests of stakeholders, when making business decisions in the interest of the company's long-term success and performance and in the interest of its shareholders. This may help companies, for example, to attract, retain and develop more productive employees, to be supported by the communities in which they operate, and to have more loyal customers, thus creating value for their shareholders.

V.A.1. Board members should be protected against litigation if a decision was made in good faith with due diligence.

Protecting board members and management against litigation, if they made a business decision diligently, with procedural due care, on a duly informed basis and without any conflicts of interest, will better enable them to assume the risk of a decision that is expected to benefit the company but which could eventually be unsuccessful. Subject to these conditions, such a safe harbour would apply even if there are clear short-term costs and uncertain long-term negative impacts to the company, as long as managers diligently assess whether the decision could be reasonably expected to contribute to the long-term success and performance of the company.

V.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 from various constituencies. While specific board members may indeed be nominated or elected by certain shareholders (and sometimes contested by others), it is important that board members carry out their duties in an even-handed manner with respect to all shareholders. This is particularly important in the presence of controlling shareholders who de facto may be able to select a majority of or all board members.

V.C. The board should apply high ethical standards.

The board has a key role in setting the ethical tone of a company, not only through 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, among others, professional standards and sometimes broader codes of behaviour, and to communicate them throughout the organisation. This may include a commitment by the company (including its subsidiaries) to comply with the *OECD Guidelines for Multinational Enterprises* and associated due diligence standards. Similarly, jurisdictions are increasingly demanding that boards oversee the lobbying, finance and tax planning strategies, thus providing authorities with timely and targeted information and discouraging practices, for example the pursuit of aggressive tax planning schemes, 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 code of ethics 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.

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

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

The board is tasked with setting the overall strategy of the company; determining the company's policies; assessing and guiding performance; and overseeing the company's financial operations. It makes important decisions as a fiduciary on behalf of the company and its shareholders. The structure and processes for carrying out these functions may vary across companies, for example with respect to size and industry or allocation of responsibilities between the supervisory and management boards in two-tier board systems. To ensure transparency on the board's duties, some jurisdictions recommend their inclusion in a board charter, the articles of association or the corporate bylaws.

V.D.2. Reviewing and assessing risk management policies and procedures.

Establishing a company's risk appetite and culture, and overseeing its risk management, including internal control, are of major importance for boards and are closely related to corporate strategy. It involves 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. The board's oversight thus provides crucial guidance to management in handling risks to meet the company's desired risk profile.

When fulfilling these key functions, the board should ensure that material sustainability matters are considered. With a view to increasing resilience, boards should also ensure that they have adequate processes in place within their risk management frameworks to deal with significant external company-relevant risks, such as health crises, supply chain disruptions and geopolitical tensions. These frameworks should work *ex ante* (as companies should foster their resilience in the event of a crisis) and *ex post* (as companies should be able to set up crisis management processes at the onset of a sudden negative event).

Of notable importance is the management of digital security risks, which are dynamic and can change rapidly. Risks may relate, among other matters, to data security and privacy, the handling of cloud solutions, authentication methods, and security safeguards for remote personnel working on external networks. As with other risks, these risks should be integrated more broadly within the overall cyclical company risk management framework.

Another important issue is the development of a tax risk management policy. Comprehensive risk management strategies and systems adopted by boards should include tax management and tax compliance risks, with a view to ensuring that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.

To support the board in its oversight of risk management, some companies have established a risk committee and/or expanded the role of the audit committee, following regulatory requirements or recommendations on risk management and the evolution of the nature of risks. OECD due diligence standards on responsible business conduct are also designed to help companies in identifying and responding to environmental and social risks and impacts stemming from their operations and supply chains.

V.D.3. Monitoring the effectiveness of the company's governance practices and making changes as needed.

Monitoring of governance by the board includes continuous review of the internal structure of the company to ensure that there are clear lines of accountability for management throughout the organisation. Such monitoring should also include whether the company's governance framework remains appropriate in light of material changes to the company's size, complexity, business strategy, markets, and regulatory requirements. In addition to requiring the monitoring and disclosure of corporate governance practices on a regular basis, at least in summary form, many jurisdictions have moved to recommend, or indeed

mandate, assessment by boards of their performance and of the performance of their committees, individual board members, the chair and the CEO.

V.D.4. Selecting, overseeing and monitoring the performance of key executives, and, when necessary, replacing them and overseeing succession planning.

The board should oversee the performance of key executives and monitor that their actions are consistent with the strategy and policies approved by the board. The board should select the CEO and may select other key executives. In exercising this fundamental function, the board may be assisted by a nomination committee which may be tasked with defining the profiles of the CEO and board members, and making recommendations to the board on their appointment. Many jurisdictions require or recommend that all or a majority of members of the nomination committee be independent directors. The nomination committee may also help guide talent management and review policies related to the selection of key executives. In most two-tier board systems, the supervisory board is responsible for appointing the management board which normally comprises most of the key executives. The board should also be responsible for succession planning for the CEO and may also be for other key executives, with a view to ensuring business continuity. While comprising contingency mechanisms, succession planning could also be a long-term strategic tool to support talent development and diversity.

V.D.5. 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, as well as to disclose their remuneration levels set pursuant to this policy. Such policy statements may specify, especially with respect to executives, the relationship between remuneration and performance with *ex ante* criteria linked to performance, and include measurable standards that emphasise the long-term interests of the company and the shareholders over short-term considerations. Such measurable standards among others may relate to total shareholder return and appropriate sustainability goals and metrics. 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 options. In some jurisdictions, policy statements also provide guidance on the payments to be made when hiring and/or terminating the contract of an executive. The board may also monitor the implementation of the policy statement on remuneration.

Many jurisdictions recommend or require 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.

The design of remuneration policies and contracts for board members and key executives is critical to set incentives that are aligned with a company's business strategy, corporate governance framework and risk management. These policies, however, may not fulfil their goal if they are frequently adjusted in the absence of a significant change in the business strategy or a structural transformation of the context in which the company operates. Specifically, the likelihood of a significant economic downturn is a factor that companies reasonably should consider when designing their remuneration policies and may not necessarily justify an adjustment of these policies.

V.D.6. Ensuring a formal and transparent board nomination and election process.

The *Principles* promote an active role for shareholders in the nomination and election of board members. The board, with the support of a nomination committee if established, has an essential role to play in ensuring that the nomination and election processes are respected. First, while actual procedures for nomination may differ among jurisdictions, the board has the responsibility to make sure that established procedures are transparent and respected. Second, the board has a key role in defining the collective 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. The board's engagement and dialogue with shareholders may support the effective implementation of these processes, provided that the board ensures transparency, equal treatment and that inside and business sensitive information is not disclosed. It is considered good practice to conduct open search processes extending to a broad range of backgrounds to respond to diversity objectives and evolving risks to the company.

V.D.7. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.

The board should oversee the implementation and operation of policies to identify potential conflicts of interest. Where these conflicts cannot be prevented, they should be properly managed. 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. This function is often assigned to the internal auditor who should maintain direct access to the board. Where other corporate officers such as the general counsel are responsible, 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 oversee the company's whistleblowing policy in order to ensure the integrity, independence and confidentiality of whistleblowing processes, and to encourage the reporting of unethical/unlawful behaviour without fear of retribution. The existence of a publicly available 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 confidentially 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.

V.D.8. Ensuring the integrity of the corporation's accounting and reporting systems for disclosure, including the independent external audit, and that appropriate control systems are in place, in 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 that the board sets and enforces 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 function. This function can play a critical role in providing ongoing support to the audit committee of the board or an equivalent body of its comprehensive oversight of the internal controls and operations of the company. The role and functions of internal audit vary across jurisdictions, but they can include assessment and evaluation of governance, risk management, and internal control processes. 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. Both internal and external audit functions should be clearly articulated so that the board can maximise the quality of assurance it receives. It should also be regarded as good practice for the audit committee, or equivalent

body, to review and report to the board the most critical policies which are the basis for financial and other corporate 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), including company groups, should consider introducing similar reporting systems, including direct reporting to the board, with regard to group-wide risk management and oversight of controls.

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, taxation, competition, and work and safety conditions. Other laws that may be applicable include those relating to human rights, the environment, fraud and money laundering. Such compliance programmes will also underpin the company's code of ethics. 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.

V.D.9. 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 investor relations officer who reports directly to the board is considered good practice for publicly traded companies.

V.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, as well as members of key committees, will need to be independent of management.

In jurisdictions 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 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 who is independent of management 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 company and the effective functioning of the board. The chair or lead independent director may, in some jurisdictions, be supported by a company secretary.

In the case of two-tier board systems, the absence of executive directors from the supervisory board strengthens independence from management. In such 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 chair 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 controlling shareholder has considerable powers to appoint the board, and indirectly 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 jurisdictions 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 and substantial shareholders 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 controlling and substantial 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. While jurisdictions' definitions of what constitutes a substantial shareholder vary, minimum thresholds are common. 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 codes of corporate governance or exchange listing standards have specified quite detailed presumptions for non-independence. 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. While national approaches to defining independence vary, a range of criteria are used, such as the absence of relationships with the company, its group and its management, the external auditor of the company and substantial shareholders, as well as the absence of remuneration, directly or indirectly, from the company or its group other than directorship fees. The board may also be required to make an affirmative finding that a director is independent of the company because they have no material relationship with the company or that the director has no relationship which would interfere with the exercise of independent judgement in carrying out the responsibilities of a director. Many jurisdictions also set a maximum tenure for directors to be considered independent.

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.

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

While the responsibility for corporate reporting, remuneration and nomination is frequently with the board as a whole, independent 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 conflicts of interest. These committees should require a minimum number or be composed entirely of independent members. In some jurisdictions it is good practice that these committees be chaired by an independent non-executive member. In some jurisdictions, shareholders have direct responsibility for nominating and electing independent directors to specialised functions.

V.E.2. Boards should consider setting up specialised committees to support the full board in performing its functions, in particular the audit committee – or equivalent body – for overseeing disclosure, internal controls and audit-related matters. Other committees, such as remuneration, nomination or risk management, may provide support to the board depending upon the company's size, structure, complexity and risk profile. Their mandate, composition and working procedures should be well defined and disclosed by the board which retains full responsibility for the decisions taken.

Where justified in terms of the size, structure, sector or level of development of the company as well as the board's needs and the profile of its members, the use of committees may improve the work of the board and allow for a deeper focus on specific areas. In order to evaluate the merits of board committees, it is important that the market receives a full and clear picture of their mandate, scope, working procedures and composition. Such information is particularly important in the many jurisdictions where boards are required to establish independent audit committees with powers to oversee the relationship with the external auditor. Audit committees should also be able to oversee the effectiveness and integrity of the internal control system, which may include the internal audit function.

Most jurisdictions establish binding rules for the conduct and functions of an independent audit committee, and recommend nomination and remuneration committees on a "comply or explain" basis. While risk committees are commonly required for companies in the financial sector, a number of jurisdictions also regulate risk management responsibilities of non-financial companies, requiring or recommending assigning this role to either the audit committee or a dedicated risk committee. The separation of the functions of the audit and risk committees may be valuable given the greater recognition of risks beyond financial risks, to avoid audit committee overload and to allow more time for risk management issues.

The establishment of committees to advise on additional issues should remain at the discretion of the company and should be flexible and proportional according to the needs of the board. Some boards have created a sustainability committee to advise the board on social and environmental risks, opportunities, goals and strategies, including related to climate. Some boards have also established a committee to advise on the management of digital security risks as well as on the company's digital transformation. Ad hoc or special committees can also be temporarily set up to respond to specific needs or corporate transactions. Disclosure need not extend to specific committees set up to deal with, for example, confidential commercial transactions. When established, committees should have access to the necessary information to comply with their duties, receive appropriate funding and engage outside experts or counsels.

Committees have monitoring and advisory roles, and it should be well understood that the board as a whole remains fully responsible for the decisions taken unless legally defined otherwise, and its oversight and accountability should be clear.

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

Service on too many boards or committees can interfere with the performance of board members. Some jurisdictions 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 and committee memberships and chair responsibilities to shareholders is therefore a key instrument to improve board and committee 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.

V.E.4. Boards should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences, including with respect to gender and other forms of diversity.

In order to improve board practices and the performance of its members, an increasing number of jurisdictions now encourage companies to engage in board and committee evaluation and training. Many corporate governance codes recommend an annual evaluation of the board, which may periodically be supported by external facilitators to increase objectivity.

Unless certain qualifications are required, such as for financial institutions, board members may need to acquire appropriate skills upon appointment through training or other means. Thereafter, such measures may also support board members to remain abreast of relevant new laws, regulations, and changing commercial and other risks.

In order to avoid groupthink and bring a diversity of thought to board discussion, evaluation mechanisms may also support boards to consider if they collectively possess the right mix of background and competences. This may be based on diversity criteria such as gender, age or other demographic characteristics, as well as on experience and expertise, for example on accounting, digitalisation, sustainability, risk management or specific sectors.

To enhance gender diversity, many jurisdictions require or recommend that publicly traded companies disclose the gender composition of boards and of senior management. Some jurisdictions have established mandatory quotas or voluntary targets for female participation on boards with tangible results. Jurisdictions and companies should also consider additional and complementary measures to strengthen the female talent pipeline throughout the company and reinforce other policy measures aimed at enhancing board and management diversity. Complementary measures may emanate from government, private and public-private initiatives and may, for example, take the form of advocacy and awareness-raising activities; networking, mentorship and training programmes; establishment of supporting bodies (women business associations); certification, awards or compliant company lists to activate peer pressure; and the review of the role of the nomination committee and of recruitment methods. Some jurisdictions have also established guidelines or requirements intended to ensure consideration of other forms of diversity, such as with respect to experience, age and other demographic characteristics.

V.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 granting recourse to independent external advice at the expense of the company.

In order to fulfil their responsibilities, board members should have access to and ensure that they obtain accurate, relevant and timely information. In cases when a publicly traded company is the parent of a group, the regulatory framework should also ensure board members' access to key information about the activities of its subsidiaries to manage group-wide risks and implement group-wide objectives. When board committees are established, efficient mechanisms should be put in place to ensure that the entire board has access to relevant information. At the same time, the regulatory framework should maintain safeguards to ensure that insiders will not use such information for their personal gain or that of others. Where companies rely on complex risk management models, board members should be made aware of the possible shortcomings of such models.

V.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, information and diversity. 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 ensure the independence of employee board members from the CEO and executives. These procedures should also include adequate and 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.

VI. Sustainability and resilience

The corporate governance framework should provide incentives for companies and their investors to make decisions and manage their risks, in a way that contributes to the sustainability and resilience of the corporation.

Companies play a central role in our economies by creating jobs, contributing to innovation, generating wealth, and providing essential goods and services. Countries have made commitments to transition to a sustainable, net-zero/low-carbon economy in line with the Paris Agreement and the Sustainable Development Goals, which will require companies to respond to rapidly changing regulatory and business circumstances taking into account any applicable policies and transition paths followed by different jurisdictions. In addition, many companies and investors are setting voluntary goals or otherwise taking steps to anticipate a future transition towards sustainable development. A sound corporate governance framework would allow investors and companies to consider and manage the potential risks and opportunities associated with such transition pathways, which in turn may contribute to the sustainability and resilience of the economy.

In addition, investors are increasingly considering disclosures about how companies assess, identify and manage material climate change and other sustainability risks and opportunities, including for human capital management. In response, many jurisdictions require or plan to require disclosures about companies' exposure to and management of sustainability matters. A core feature of these disclosures is to provide investors with a better understanding of the governance and management structures and processes for managing climate and other sustainability risks and identifying related opportunities. The corporate governance framework should support both the sound management of these risks and the consistent, comparable and reliable disclosure of material information in order to support investors' financial, investment and voting decisions. The combination of sound governance and clear disclosures will promote fair markets and the efficient allocation of capital, while supporting companies' long-term growth and resilience.

Several jurisdictions have oriented their capital market policies to foster a more sustainable and resilient corporate sector. In doing so, such policies should aim to also preserve access to capital markets by preventing prohibitively high costs of listing a company while still ensuring that investors have access to the information necessary to allocate capital efficiently to companies. Investors, directors and key executives must also be open to a constructive dialogue on the best strategy to support the company's sustainability and resilience. A company that takes account of stakeholder interests may be better able to attract productive workforce, support from the communities in which it operates, and more loyal customers.

In jurisdictions that allow for or require the consideration of stakeholders' interests, companies should still consider the financial interests of their shareholders. A profitable company provides jobs for its workforce and creates value for investors, many of whom are part of the general public and have invested their retirement savings.

Corporate directors are not expected to be responsible for resolving major environmental and societal challenges stemming from their duties alone. To guide corporate activities, sectoral policies that make companies internalise environmental and social externalities as well as corporate governance frameworks that set predictable boundaries within which directors have to exercise their fiduciary duties should be considered by policy makers. These policies could relate to, for instance, environmental regulation, or

directly investing in or incentivising research and development of technologies that may contribute to addressing major environmental challenges.

VI.A. Sustainability-related disclosure should be consistent, comparable and reliable, and include retrospective and forward-looking material information that a reasonable investor would consider important in making an investment or voting decision.

To ensure the efficiency of capital markets, investors must be able to compare different companies' past performance and future prospects and then decide how to allocate their capital and engage with companies. With the emergence and greater awareness of environmental and social risks, investors have been demanding better disclosure from companies on governance, strategy, risk management (e.g. overall results of risk assessments for different climate change scenarios) and sustainability-related metrics (for example related to greenhouse gas emissions and biodiversity) that are material for investors when assessing a company's business perspectives and risks.

While stakeholders may not typically be the primary users of corporate sustainability-related disclosure, disclosures may benefit such stakeholders. For instance, disclosure on collective bargaining coverage and mechanisms for workforce representation may be both material for an investor's assessment of a company's value and relevant to its workforce and other stakeholders.

At the same time, sustainability-related disclosure frameworks need to be flexible in relation to the existing capacities of companies and relevant institutions. Limiting mandatory sustainability-related disclosure to publicly traded companies might result in a disincentive for companies to go public. With these challenges in mind, policy makers may need to devise sustainability-related disclosure requirements that are flexible with respect to the size of the company and its stage of development.

Companies and their service providers, as well as regulators themselves, may face a learning curve in their understanding of sustainability matters and might need time to develop adequate processes and good practices. This may justify prioritising disclosure requirements of some of the most relevant sustainability matters, phasing in other requirements such as for independent, external assurance, or establishing some recommendations in "comply or explain" corporate governance codes.

VI.A.1. Sustainability-related information could be considered material if it can reasonably be expected to influence an investor's assessment of a company's value, investment or voting decisions.

Without prejudice to voluntary initiatives or specific environmental regulations that may contain additional disclosure requirements, corporate disclosure frameworks require at a minimum information on what is material to investors' assessment of a company's value, investment or voting decisions. This assessment typically includes the value, timing and certainty of a company's future cash flows over the short, medium and long-term.

Material sustainability-related information could include environmental and social matters that can reasonably be expected to affect a company's asset value and its ability to generate revenues and long-term growth. However, a company's own impact on society and the environment could also be considered material if it is expected to affect the company's value, such as environmental liabilities under a jurisdiction's existing laws or regulations, or greenhouse gas (GHG) emissions that may be capped or taxed in the future. Likewise, human rights and human capital policies, such as training programmes, retention policies, employee share ownership plans, and diversity strategies, can communicate important information on the competitive strengths of companies to market participants.

The determination of which information is material may vary over time, and according to the local context, company-specific circumstances, and jurisdictional requirements. The assessment of material information may also consider sustainability matters that are critical to a company's workforce and other key stakeholders. For example, sustainability risks that may not seem to be financially material in the short-

term but that are relevant to society may become financially material for a company in the long-term. In addition, some jurisdictions also consider what is material to investors to include companies' influence on non- diversifiable risks. For example, an investor may consider that the value created by a profit maximising major carbon emitting company in their portfolio would be offset by losses in the value of other investee companies affected by climate change. In this context, some jurisdictions may also require or recommend disclosing sustainability matters critical to a company's key stakeholders or a company's influence on non-diversifiable risks.

VI.A.2. Sustainability-related disclosure frameworks should be consistent with high quality, understandable, enforceable and internationally recognised standards that facilitate the comparability of sustainability-related disclosure across companies and markets.

The efficiency of capital markets is enhanced if investors are able to compare sustainability-related disclosure by companies, including those listed in different jurisdictions, helping investors decide how best to allocate their capital and engage with companies. Consistency and interoperability between regional or national sustainability-related disclosure frameworks and internationally recognised standards can still allow for flexibility of complementary local requirements, including on matters where specific geographical characteristics or jurisdictional requirements may influence materiality.

VI.A.3 Disclosure of sustainability matters, financial reporting and other corporate information should be connected.

Corporate disclosure frameworks, including financial reporting standards and regulatory filing requirements (e.g. public offering prospectuses), should have the same goal of providing information that a reasonable investor would consider important in making an investment and voting decision. It follows that information understood as material in a sustainability-related report should also be considered and assessed in the preparation and presentation of the financial statements. The same level of rigour applied to the measurement and reporting of financial information should be applied to the measurement and reporting of sustainability-related information. Ensuring such connectivity between different corporate disclosures implies the consideration of material sustainability matters in financial estimates and assumptions in the financial statements, as well as in the disclosure of risks that have had or are likely to have a material impact on a company's business.

VI.A.4. If a company publicly sets a sustainability-related goal or target, the disclosure framework should provide that reliable metrics are regularly disclosed in an easily accessible form to allow investors to assess the credibility and progress towards meeting the announced goal or target.

Sustainability-related goals, such as GHG emissions reduction targets or goals established under climate transition plans, can affect an investor's assessment of the value, timing and certainty of a company's future cash flows. These goals may also help a company to attract funding from investors to whom the relevant sustainability matters are important. Both from a market efficiency and an investor protection perspective, if a company publicly sets a sustainability-related goal or target, the disclosure framework should require sufficient disclosure of consistent, comparable and reliable metrics. This would allow investors to assess the credibility of the announced goal and management's progress towards meeting it. The disclosure may include, for instance, the definition of interim targets when a long-term goal is announced, annual consistent disclosure of relevant sustainability metrics, and possible corrective actions the company intends to take to address underperformance against a target.

VI.A.5. Phasing in of requirements should be considered for annual assurance attestations by an independent, competent and qualified attestation service provider in accordance with high quality internationally recognised assurance standards in order to provide an external and objective assessment of a company's sustainability-related disclosure.

Sustainability-related disclosures reviewed by an independent, competent and qualified attestation service provider may enhance investors' confidence in the information disclosed and the possibility to compare

sustainability-related information between companies. Wherever high quality assurance for all disclosed sustainability-related information might not be possible or is too costly, mandatory assessment for the most relevant sustainability-related metrics or disclosures, such as GHG emissions, may be considered. However, greater convergence of the level of assurance between financial statements and sustainability-related disclosures should be the long-term goal.

VI.B. Corporate governance frameworks should allow for dialogue between a company, its shareholders and stakeholders to exchange views on sustainability matters as relevant for the company's business strategy and its assessment of what matters ought to be considered material.

General shareholder meetings provide an important forum for a structured decision-making process. Dialogue between companies, shareholders, the workforce and other stakeholders may also play an essential role in informing management's decision-making process and in building trust in a long-term business strategy. While such dialogue may be useful for a range of issues, this is notably important for decisions to improve a company's sustainability and resilience, which may represent short-term cash outflows while generating long-term benefits. Such dialogue may also prove helpful for the company to assess which sustainability matters are material and, therefore, should be disclosed. When in dialogue with shareholders, the company should comply with the principle of equitable treatment of shareholders.

VI.B.1. When corporate governance frameworks allow for existing companies to adopt corporate forms that incorporate both for-profit and public benefit objectives, such frameworks should provide for due consideration of dissenting shareholder rights.

A number of jurisdictions have frameworks for the establishment of public benefit corporations or other specific corporate forms that enable companies to incorporate both for-profit and public benefit objectives, that allow them to pursue explicit objectives related to environmental and social matters. In such cases where an existing for-profit company adopts public benefit objectives, it is important to have mechanisms in place that provide for the due consideration of dissenting shareholder rights. Possible solutions to protect the interests of dissenting shareholders could include requiring the consent of minority shareholders or a supermajority shareholders' approval for a company to add public benefit goals to its articles of association, or providing the right for dissenting shareholders to sell their shares back to the company at a fair price.

VI.C. The corporate governance framework should ensure that boards adequately consider material sustainability risks and opportunities when fulfilling their key functions in reviewing, monitoring and guiding governance practices, disclosure, strategy, risk management and internal control systems, including with respect to climate-related physical and transition risks.

When fulfilling their key functions, boards are increasingly ensuring that material sustainability matters are also considered. Notably, the board has a role in ensuring that effective governance and internal controls are in place to improve the reliability and credibility of sustainability-related disclosure. For instance, boards may assess if and how sustainability matters affect companies' risk profiles. Such assessments may also relate to key executive remuneration and nomination (e.g. whether targets integrated into executives' compensation plans would be quantifiable, linked to financially material risks and incentivise a long-term view) or how sustainability is approached by the board and its committees. OECD due diligence standards on responsible business conduct can provide an important framework for embedding sustainability factors in risk management systems and processes.

VI.C.1. Boards should ensure that companies' lobbying activities are coherent with their sustainability-related goals and targets.

Boards should effectively oversee the lobbying activities management conducts and finances on behalf of the company, in order to ensure that management gives due regard to the long-term strategy for sustainability adopted by the board. For instance, lobbying against any carbon pricing policy may be expected to increase a company's short-term profits but not be in line with the company's goal to make an

orderly transition to a low carbon economy. In some jurisdictions, boards also have a role in overseeing the disclosure of political donations, including related to lobbying activities.

VI.C.2. Boards should assess whether the company's capital structure is compatible with its strategic goals and its associated risk appetite to ensure it is resilient to different scenarios.

The management and board members are best placed to decide if the capital structure of a company is compatible with the strategic goals and its associated risk appetite, within existing restrictions established by shareholders. In order to ensure the company's financial soundness, the board should monitor the capital structure and capital sufficiency with due consideration to different scenarios, including those with low probability but high impact.

VI.D. The corporate governance framework should consider the rights, roles and interests of stakeholders and encourage active co-operation between companies, shareholders and stakeholders in creating value, quality jobs, and sustainable and resilient companies.

Corporate governance aims to encourage the various stakeholders in the company to undertake economically optimal levels of investment in company-specific human and physical capital. For workers, the company they work for is not only their source of income but also where they spend a large part of their lives and the company's long-term sustainability is important to them. 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, the workforce, creditors, customers, affected communities, suppliers and other stakeholders. Corporations should recognise that the contributions of stakeholders constitute a valuable resource for building competitive and profitable businesses. It may, therefore, be in the long-term interest of corporations to foster value-creating co-operation among stakeholders.

VI.D.1. The rights of stakeholders that are established by law or through mutual agreements are to be respected.

The rights of stakeholders are to a large extent established by law (e.g. labour, business, commercial, environmental, and insolvency laws) or by contractual relations that companies must respect. In some jurisdictions, it is mandatory for companies to carry out human rights and environmental due diligence. Nevertheless, even in areas where stakeholder interests are not legislated or established by contract, many companies make additional commitments to stakeholders, given that concern over corporate reputation and corporate performance often requires the recognition of broader interests. This may in some jurisdictions be achieved by companies using the *OECD Guidelines for Multinational Enterprises* and associated due diligence standards for risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts of their business, and account for how these impacts are addressed.

VI.D.2. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights at a reasonable cost and without excessive delay.

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 at a reasonable cost and without excessive delay.

VI.D.3. 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 can be found in many jurisdictions. 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 in the interest of all beneficiaries.

VI.D.4. 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.

VI.D.5. Stakeholders, including individual workers and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and/or 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 detrimental to the company in terms of reputational effects. It is therefore important for companies to establish a confidential whistleblowing policy with procedures and safe-harbours for complaints by workers, either personally or through their representative bodies, and others outside the company, concerning illegal and unethical behaviour. The board should be encouraged 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. Relevant authorities have also established confidential phone and e-mail facilities to receive complaints. While in certain jurisdictions representative workforce bodies undertake the tasks of conveying concerns to the company, individual workers 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 action to a complaint regarding contravention of the law, workers are encouraged to report their bona fide complaint to the competent authorities. Many jurisdictions also provide for the possibility to bring cases of alleged violations of the *OECD Guidelines for Multinational Enterprises* to the relevant National Contact Point. The company should refrain from discriminatory or disciplinary actions against such workers or bodies.

VI.D.6. The exercise of the rights of bondholders of publicly traded companies should be facilitated.

The extended and substantial rise in the use of bond financing by publicly traded companies and their subsidiaries warrants greater attention to the role and rights of bondholders in corporate governance, as well as its importance for the resilience of companies.

In bond issuances offered to a large number of investors, an independent bond trustee is typically assigned to represent them, review instances of covenant default and protect the interests of bondholders during debt restructuring. While the exact scope of a trustee's activities is generally contractually defined, policy makers may enact regulation regarding the eligibility of a trustee and its duties prior to and during a default.

The exercise of bondholder rights can also be facilitated by incentivising institutional investors to monitor and engage with companies. Institutional investors have different business models and liability structures, and therefore face distinct incentives to be more or less active as bondholders. Corporate governance frameworks can, however, spur investors to be more active as creditors, such as recommending in a stewardship code that signatories can actively exercise their rights with respect to corporate bonds. Further, market initiatives may be useful to set standards and incentivise the use of enforceable and clearly defined covenants. The use of adjustable financial metrics that leave issuers the discretion to define whether they comply with covenants may need to be avoided.

Out-of-court debt restructuring, such as a distressed debt exchange, is often more cost-effective than formal bankruptcy proceedings and its use may, therefore, be facilitated. In addition to adhering to internationally recognised benchmarks for creditor rights and insolvency frameworks, countries could benefit from facilitating bondholders' participation in publicly traded companies' out-of-court debt restructuring. For instance, clear guidance on how insider trading rules may apply during a debt restructuring or a covenant waiver negotiation could provide more comfort for bondholders to take part in such processes. Another possibility would be to make the identification of bondholders easier so that corporate debtors can quickly find them to start a debt restructuring negotiation. However, this is subject to jurisdictional legislation, such as the resolution and restructuring regime applicable to banks and credit institutions in several jurisdictions.

VI.D.7. The corporate governance framework should be complemented by an effective and efficient insolvency framework and by effective enforcement of creditor rights.

Creditors are key stakeholders and the terms, volume and type of credit extended to companies will depend importantly on their rights and on their enforceability. Companies with a good corporate governance record are generally able to borrow larger sums 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.

Creditor rights also vary, ranging from secured bondholders 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 company in bankruptcy.

G20/OECD Principles of Corporate Governance

The *G20/OECD Principles of Corporate Governance* help policy makers evaluate and improve the legal, regulatory and institutional framework for corporate governance. They identify the key building blocks for a sound corporate governance framework and offer practical guidance for implementation at the national level. The Principles also provide guidance for stock exchanges, investors, corporations and others that have a role in developing good corporate governance.

PRINT ISBN 978-92-64-45168-1
PDF ISBN 978-92-64-76182-7