

# **ICGN STATEMENT ON GLOBAL CORPORATE GOVERNANCE PRINCIPLES**

**REVISED JULY 8, 2005 AT THE ANNUAL CONFERENCE IN LONDON, UK**

## **The ICGN objectives**

The International Corporate Governance Network (ICGN), founded in 1995 at the instigation of major institutional investors, represents investors, companies, financial intermediaries, academics and other parties interested in the development of global corporate governance practices. One of its objectives is to facilitate international dialogue on issues of concern to investors. Through this process, the ICGN believes, companies can compete more effectively and economies can best prosper. The ICGN also believes that it is in the public interest to encourage and enable the owners of corporations to participate in their governance.

The ICGN's charter empowers it to adopt guidelines when it feels they can contribute to achieving this objective.

## **Statement on the OECD principles**

In May 1999 ministers representing the 29 governments which comprise the Organisation for Economic Co-operation and Development (OECD) voted unanimously to endorse the OECD Principles of Corporate Governance. Since their endorsement, the Principles have become recognized as a declaration of minimum acceptable governance standards for companies and investors around the world.

The OECD reviewed and revised its Principles in 2004. The ICGN participated in this process by identifying a number of additional principles which would further facilitate improved global corporate governance and by submitting these additional principles to the OECD for consideration in its review and revision of its Principles.

## **ICGN's REVISION**

The present revision of the ICGN Principles reflects the revisions to the OECD Principles and also reflects principles developed by the ICGN.

This revision, in general, endorses the revised OECD Principles, a number of which are thus repeated here. The revision also identifies additional principles of corporate governance of particular concern to the ICGN and its members.

## **Governance investing criteria**

Along with traditional financial criteria, the governance of a corporation is an essential factor that investors take into consideration when deciding how to allocate their investment capital. The ICGN Principles highlight elements that ICGN investing members take into account when making asset allocations and investment decisions.

ICGN members will also take into account the governance profile of a market in making investment decisions. The governance profile of a market will be defined by the manner in which the market addresses the issues of disclosure, insider trading and the other issues of investor protection. The ICGN Principles mainly focus on the governance of corporations whose securities are traded in the market – but in many instances the Principles may also be applicable to private or closely-held companies committed to good governance.

In developing this revision to the ICGN Principles, the ICGN intends to give guidance to corporations as to the principles of corporate governance which will influence the conduct of ICGN members as investors.

The ICGN Principles do, however, encourage jurisdictions to address certain broader corporate and regulatory policies in areas which are beyond the authority of a corporation.

The ICGN Principles are drafted to be compatible with other recognized codes of corporate governance, although in some circumstances, the ICGN Principles may be more rigorous.

The ICGN believes that improved governance should be the objective of all participants in the corporate governance process, including investors, boards of directors, corporate officers and other stakeholders as well as legislative bodies and regulators. Therefore, the ICGN intends to address these principles to all participants in the governance process.

The ICGN has published a number of policies addressing in greater detail certain of the Principles addressed in this revision. These policies are published on the ICGN website: [www.icgn.org](http://www.icgn.org). Reference to these policies is made, where appropriate, in this revision.

Practical guidance can help boards meet real-world expectations so that they may operate most efficiently and, in particular, compete for scarce investment capital effectively. If investors and companies succeed in establishing productive communication on governance issues, companies will have enhanced prospects for economic prosperity, fuller employment, better wages and greater shareholder wealth.

## **ICGN STATEMENT ON GLOBAL CORPORATE GOVERNANCE PRINCIPLES**

### **1. CORPORATE OBJECTIVE– SHAREHOLDER RETURNS<sup>1</sup>**

**1.1** *Optimizing Return to Shareholders.* The overriding objective of the corporation should be to optimize over time the returns to its shareholders. Corporate governance practices should focus board attention on this objective. In particular, the company should strive to excel in comparison with the specific equity sector peer group benchmark. Where other considerations affect this objective, they should be clearly stated and disclosed.

**1.2** *Long Term Prosperity of the Business.* To achieve this objective, the board should develop and implement a strategy for the corporation which improves the equity value over the long term.

### **2. DISCLOSURE AND TRANSPARENCY<sup>2</sup>**

**2.1** *Objective.* Corporations should disclose relevant and material information concerning the corporation on a timely basis, in particular meeting market guidelines where they exist, so as to allow investors to make informed decisions about the acquisition, ownership obligations and rights, and sale of shares.

**2.2** *Disclosure of Ownership and Voting Rights.* In addition to financial and operating results, company objectives, risk factors, stakeholder issues and governance structures, the information should include a description of the relationship of the company to other companies in the corporate group, data on major shareholders and others that control or may control the company, including information on special voting rights, shareholder agreements, the beneficial ownership of controlling or large blocks of shares, significant cross-shareholding relationships and cross-guarantees as well as information on differential voting rights and related party transactions.

### **3. AUDIT<sup>3</sup>**

**3.1** *Accounting Principles.* The ICGN supports the development of the highest-quality international accounting and financial reporting standards. The ICGN also supports the harmonization of such standards and encourages corporations to apply those or other standards of comparable quality.

**3.2** *Audit Independence.* Annual audits of the financial statements carried out on behalf of shareholders should be required for all corporations. The audit should be carried out by independent, external auditors who should be proposed by or with the assistance of, the audit committee of the board (or its equivalent where applicable) for approval by the shareholders. The corporation's interaction with the external auditor should be overseen by

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<sup>1</sup> FORMERLY “CORPORATE OBJECTIVE” also includes former section 7 “Operating Performance” and section 8 “Shareholder Returns”

<sup>2</sup> FORMERLY “COMMUNICATIONS AND REPORTING”

<sup>3</sup> NEW

the audit committee on behalf of the shareholders. To limit the risk of possible conflicts of interest, non-audit services and fees paid to auditors for non-audit services should be both approved in advance by the audit committee and disclosed in the annual report.

**3.3 Annual Audit.** The annual audit should provide an external and objective opinion that the financial statements fairly represent the financial position and performance of the company in all material respects, give a true and fair view of the affairs of the company and are in compliance with applicable law and regulations as appropriate.

**3.4 Scope of Audit.** The scope of the audit will be as prescribed by applicable law, provided that shareholders should have the right to expand the scope of the audit.

**3.5 Approval of Financial Statements and Internal Controls.** The board of directors, and where required, the appropriate officers of the corporation should affirm on a regular (at least annual) basis, the accuracy of the company's financial statements or financial accounts, as appropriate, and the adequacy of its internal controls.

#### **4. SHAREHOLDERS' OWNERSHIP, RESPONSIBILITIES AND VOTING RIGHTS AND REMEDIES<sup>4</sup>**

**4.1 Shareholder Ownership Rights.** The exercise of ownership rights by all shareholders should be facilitated, including giving shareholders reasonable notice of all matters in respect of which shareholders are required to or may take action in the exercise of voting rights.

**4.2 Protections.** Boards should treat all the corporation's shareholders equitably and should ensure that the rights of all investors, including minority and foreign shareholders, are protected.

**4.3 Unequal Voting.** Corporations' ordinary shares should feature one vote for each share. Corporations should act to ensure the owners' rights to vote. Divergence from a 'one-share, one-vote' standard which gives certain shareholders power disproportionate to their equity ownership should be both disclosed and justified.

**4.4 Access to the Vote.** The right and opportunity to vote at shareholder meetings hinges in part on the adequacy of the voting system. Markets and companies should facilitate access to the ballot by following the ICGN's *Global Share Voting Principles*. In particular, the ICGN supports initiatives to expand voting options to include the secure use of telecommunication and other electronic channels.

**4.5 Shareholder Participation in Governance.** Shareholders should have the right to participate in key corporate governance decisions, including the right to nominate, appoint and remove directors on an individual basis as well as the external auditor and the right to approve major decisions of the nature referred to in Section 4.9

Jurisdictions which do not have laws enabling the appointment and removal of a director or an external auditor by shareholders holding a majority of votes should enact them. Companies incorporated in such jurisdictions should nevertheless strive to provide such rights to shareholders.

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<sup>4</sup> FORMERLY "VOTING RIGHTS"; also includes former section 6 entitled "Strategic Focus"

- 4.6** *Shareholders' Right to Call a Meeting of Shareholders.* Every corporation should provide holders of a specified portion of the outstanding shares of a corporation, not greater than ten percent (10%), with the right to call a meeting of shareholders for the purpose of transacting the legitimate business of the corporation.
- 4.7** *Shareholder Resolutions.* Jurisdictions should enact laws which provide shareholders with the right to put resolutions to a shareholders meeting which may be either advisory to the board of directors or may be binding upon the board of directors depending upon the criteria which must be satisfied by the shareholders putting the resolution.
- 4.8** *Shareholder Questions.* Shareholders should be provided with the right to ask questions of the board, management and the external auditor at meetings of shareholders, including questions relating to the board and questions relating to the annual external audit. In addition, shareholders should have the right to receive and discuss the annual audited financial statements of the corporation.
- 4.9** *Major Decisions.* Major changes to the core businesses of a corporation and other major corporate changes which may in substance or effect materially dilute the equity or erode the economic interests or share ownership rights of existing shareholders, including major acquisitions and major dispositions and closures of businesses, should not be made without prior shareholder approval of the proposed change. The equity component of compensation schemes for board members and employees should be subject to shareholder approval. Further, corporations should not implement shareholder rights plans or so called "poison pills" without shareholder approval. In addition, changes to the articles or by-laws of the corporation should not be made without prior shareholder approval. Shareholders should be given sufficient information about any such corporate changes, in sufficient time to allow them to make an informed judgment and exercise their voting rights.
- 4.10** *Duty to Vote.* Corporate voting systems should be designed to enable institutional investors to discharge their fiduciary obligation to vote their shares, recognizing the duty of institutional investors to vote their shares responsibly, wherever practicable. Similarly, regulations and laws should facilitate voting rights and should eliminate impediments to cross-border voting.
- 4.11** *Institutional Shareholder Responsibilities.* Institutional investors should discharge their responsibilities as shareholders as set out in the ICGN Statement on Institutional Shareholder Responsibilities.
- 4.12** *Consultation Amongst Institutional Shareholders.* Jurisdictions which do not have laws allowing institutional investors to consult on issues concerning their basic shareholder rights should enact such laws.
- 4.13** *Vote Execution.* Votes cast by intermediaries should be cast only in accordance with the instructions of the beneficial owner or his or her authorized agent.
- 4.14** *Record of Ownership of a Corporation's Shares.* Every corporation shall maintain a record of the registered owners of its shares and every corporation should be entitled to require such registered owners to provide the corporation with the identity of beneficial owners if the registered owner is not the beneficial owner. Jurisdictions which do not give corporations

the right to require registered owners to provide the corporation with the identity of beneficial owners if the registered owner is not the beneficial owner are encouraged to enact laws which give corporations such rights.

Corporations should also be entitled to know the identity of the person authorized to vote shares, if that right is exercised by a person other than the registered owner.

- 4.15** *Disclosing Voting Results.* Equal effect should be given to votes whether cast in person or in absentia and meeting procedures should ensure that votes are properly counted and recorded. Corporations should make a timely announcement of the outcome of a vote and to implement this recommendation, corporations should publish voting levels for each resolution forthwith following the meeting.
- 4.16** *Shareholder Rights of Action.* Shareholders should be afforded rights of action and remedies which are readily accessible in order to redress conduct of a corporation which treats them inequitably. In addition, minority shareholders should be afforded protection and remedies against abusive or oppressive conduct. Jurisdictions with systems of justice which do not effectively afford shareholders the foregoing rights, should facilitate the development of alternative mechanisms for the resolution of disputes involving inequitable, abusive or oppressive treatment of shareholders.

## **5. CORPORATE BOARDS**

These Principles do not advocate any particular board structure and the term “board” as used in this document is meant to embrace the different national models of board structures. In the typical two-tier system, “board” as used in the Principles refers to the “supervisory board” while “key executives” refers to the “management board”. Although not totally appropriate terminology for a supervisory board in the context of a two-tier board, the term “director” is used to be interchangeable with the term “board member”.

**5.1** *Duties of the Board<sup>5</sup>.* The board’s duties and responsibilities and key functions, for which they are accountable, include those set out below:

1. Reviewing, approving and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.
2. Monitoring the effectiveness of the company’s governance practices and making changes as needed to ensure the alignment of the corporation’s governance system with current best practices.
3. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.

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<sup>5</sup> The board duties described in section 5.1 are essentially taken from Section VI of the OECD Principles of Corporate Governance.

4. Aligning key executive and board remuneration with the longer term interests of the company and its shareholders.
5. Ensuring a formal and transparent board nomination and election process.
6. Monitoring and managing potential conflicts of interest of management, board members, shareholders, external advisors and other service providers, including misuse of corporate assets and abuse in related party transactions.
7. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
8. Overseeing the process of disclosure and communications.

**5.2 Director Competencies.** The board should ensure that it is made up of directors with the requisite range of skills, knowledge and experience to enable it to discharge its duties and responsibilities.

**5.3 Directors are Fiduciaries.** Members of the boards of directors or supervisory boards are fiduciaries who must act in the best interests of all of the shareholders or in the best interests of the corporation and are accountable to the shareholder body as a whole. As fiduciaries directors owe a duty of loyalty to the corporation and must exercise reasonable care in relation to their duties as directors.

**5.4 Independent-Minded Directors.** One of the principal features of a well-governed corporation is the exercise by its board of directors of independent judgment. Independent judgment means judgment in the best interests of the corporation free of any external influence that may attempt to be or may be or may appear to be exerted on any individual director or the board as a whole.

**5.5 Factors Affecting Independence.** A common source of influence arises from a relationship which a director has with the corporation, such as a consulting agreement. The potential influence arises because the contract may have been awarded by management. In addition, a significant shareholder may attempt to influence the judgment of a director in the interests of the significant shareholder rather than in the interests of the corporation.

Individual directors with relationships to management or to a significant shareholder are by definition not considered to be independent; however, the absence of such relationships does not guarantee independent judgment.

**5.6 Disclosing the Meaning of Independence.** These Principles do not offer a comprehensive definition of an "independent director". Such definitions vary from jurisdiction to jurisdiction and reflect different approaches to the drafting of codes of governance. These Principles simply underline the importance of all directors being independent-minded which means exercising objective judgment in the best interests of the corporation in all circumstances regardless of the consequences which such judgment may have for the director personally. However, every corporation should disclose its definition of independence (which should be at least as

strict as the requirements of applicable law) and should disclose its determination as to each member of its board of directors whether such member is independent.

- 5.7 *Independent Board Members.*** Each board should include a strong presence of independent non-executive directors with appropriate competencies including key industry sector knowledge and experience.
- 5.8 *Non-Executive Non-Independent Board Members.*** Each board may also include a minority of directors who are non-executive directors and who are not independent but who may nevertheless effectively discharge their responsibilities as directors because of, amongst other things, a relationship with the corporation or past experience with the corporation.
- 5.9 *Information on Board Members.*** Corporations should disclose upon nomination or appointment to the board and thereafter in each annual report or proxy statement information on the identities, core competencies, professional or other backgrounds, recent and current board and management mandates at any other corporations, factors affecting independence, board and committee meeting attendance and overall qualifications of board members and nominees so as to enable investors to weigh the value they add to the company. Information on the appointment procedure should also be disclosed annually.
- 5.10 *Election of Directors.*** Each director should stand for election on a regular basis and, in any event, at least once every three years and shareholders should be entitled to vote on the election of each director separately.
- 5.11 *Board Chairs.*** The chair of the board should neither be the CEO nor a former CEO and should be independent on the date of appointment as chair and should not participate in executive compensation plans. The corporation should explain the reasons, if this is not the case, and in such event should adopt an appropriate alternative structure to ensure that the board responsibilities can be effectively discharged in all circumstances, for example by appointing a deputy chair who is independent.
- 5.12 *Board Committees.*** Where committees of the board are established, their remit, composition, accountability and working procedures should be well-defined and disclosed by the board.
- 5.13 *Independent Committees.*** All corporations should establish the key committees of the board which include the audit, compensation and nomination/ governance committees. At least a majority and, preferably all members of the audit committee should be independent. The compensation and nomination/governance committees should be composed of a majority of independent directors.
- 5.14 *Related Party Transactions.*** Every corporation should have a process for reviewing and monitoring any related party transaction. Typically, a committee of independent directors should review every related party transaction to determine whether such transaction is in the best interests of the corporation and if so, ensure that the terms of such transaction are fair to the corporation. The corporation should disclose details of all material related party transactions in the annual report of the corporation.
- 5.15 *Director Conflicts of Interest.*** Corporations should have a process for identifying and managing conflicts of interest directors may have. If a director has an interest in a matter under consideration by the board, then the director and the board should follow that process.

- 5.16** *Board Evaluation.* Every board of directors should evaluate its performance and the performance of individual directors on a regular basis and should consider engaging an outside consultant to assist in the process. Every corporation should disclose the process for such evaluation.
- 5.17** *Non-Executive Director Meetings.* Non-executive directors should meet in the absence of executives of the corporation as often as required and on a regular basis.
- 5.18** *Share Ownership.* Every corporation should have and disclose a policy concerning ownership of shares of the corporation by senior managers and directors with the objective of aligning the interests of the senior managers and directors with the interests of shareholders in a meaningful way.

## **6. CORPORATE REMUNERATION POLICIES**

- 6.1** *Aligning Remuneration with the Interests of Shareholders.* Corporations should follow the best practices for remuneration set out in the most current policy of the ICGN.<sup>6</sup>

## **7. CORPORATE CITIZENSHIP, STAKEHOLDER RELATIONS<sup>7</sup> AND THE ETHICAL CONDUCT OF BUSINESS**

- 7.1** *Board Responsibilities and Duties in Relation to Stakeholders.* The board is accountable to shareholders and responsible for managing successful and productive relationships with the corporation's stakeholders. The ICGN concurs in the view that active cooperation between corporations and stakeholders is essential in creating wealth, employment and financially-sound enterprises over time.
- 7.2** *Compliance with Laws.* Corporations should adhere to all applicable laws of the jurisdictions in which they operate.
- 7.3** *Disclosure of Policies.* Corporations should disclose their policies on issues involving stakeholders.
- 7.4** *Employee Participation.* Corporations are encouraged to develop performance-enhancing mechanisms which align employee interests with shareholder and other stakeholder interests. These include broad-based employee share ownership plans or other profit-sharing programs that are designed to enable employees to share in improved returns to shareholders.
- 7.5** *Corporate Social Responsibility.* Corporations should adopt and effectively implement a code of ethics and should conduct their activities in an economically, socially and environmentally responsible manner.
- 7.6** *Integrity.* The board is *responsible* for determining, implementing and maintaining a culture of integrity.

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<sup>6</sup> ICGN web site.

<sup>7</sup> FORMERLY "CORPORATE CITIZENSHIP"

## **8. CORPORATE GOVERNANCE IMPLEMENTATION**

**8.1** *Compliance with and Disclosure of Governance Codes and Systems.* Corporations should comply with a widely recognized national corporate governance code which is generally in line with these ICGN Principles. Where such a code does not exist, investors and others should endeavour to develop a code. Where the ICGN Principles are more rigorous than those of national codes, companies are encouraged to adopt the ICGN Principles. Each corporation should disclose the code that is applicable to it, whether it is complied with and, where not, the reasons for non-compliance. Institutional investors should give due and informed consideration to explanations given by corporations for such non-compliance.

**8.2** *Resolution of Governance Issues.* Corporate governance issues between shareholders, the board and management should be addressed through dialogue and, where appropriate, with government and regulatory representatives as well as other concerned bodies, so as to resolve disputes, if possible, through negotiation, mediation or arbitration. Where those means fail, more forceful actions should be available. For instance, investors should have the right to sponsor resolutions or [and] convene extraordinary meetings.