

# MCCG 2016 - Public Consultation

Response ID:359 Data

## 2. Background

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**1. Name:**

GEORGE DALLAS

**2. Age:**

51 to 59

**3. Gender:**

Male

**4. Designation/Position**

Policy Director

**5. Company/Institution/Association:**

International Corporate Governance Network

## 3.

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**6. Do you agree with the code's new format of 'Core' and 'Core+' practices?**

Agree

**Comments:** By way of introduction the International Corporate Governance Network (ICGN), is a global investor-led membership organization of over 670 institutional and private investors, corporations and advisors from 48 countries (including Malaysia). Our investor members are responsible for global assets of over US\$26 trillion. ICGN's mission is to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies world-wide. In doing so, ICGN encourages cross border dialogue at conferences and influences corporate governance public policy through its committees. We promote good practice guidance, encourage leadership development and keep our members informed on emerging issues in corporate governance through publications and the ICGN website. Information about the ICGN, its members, and its activities is available on our website: [www.icgn.org](http://www.icgn.org). Our past policy advocacy includes submission to the consultation on the Malaysian Code for Institutional Investors in 2014. With regard to the question regarding Core/Core+ practices, we believe that the distinction between 'Core Principles' to be 'applied or explained' and 'Core +' elements to be 'voluntary applied and disclosed in the Annual Report' would encourage thinking of corporate governance as more than compliance and we should be supportive of this. The distinction may help with the application of good CG practices in smaller enterprises which may feel burdened with too many CG expectations. This could also be accommodated in the 'apply or explain' approach without distinguishing 'Core ' and 'Core +' elements. However, the distinction also could potentially cause confusion in the application process and should be tested for its efficacy with users if introduced. In the event that such a distinction is regarded as not worthwhile making, the differences in in these governance elements could still be covered in explanations of good practices. Further, the distinction has to be carefully made and the 'Core +' elements should not include any elements which really should be more strongly encouraged by being designated 'Core' elements. For example, the 'Core +' element at Practice 4.3 regarding facilitating shareholders being able to nominate persons to the board could very arguably be a 'Core' Principle.

**7. Do you agree with the new approach of 'apply or explain an alternative'?**

Agree

**Comments:** ICGN does not have a particular preference over comply or explain versus apply and explain. But we understand your logic and are supportive of your proposal in the Consultation Paper (CP) as it focuses on the achievement of the

intended outcome. Explanations must cover reasons for non-adoption and alternative practices for achievement of the intended outcome. The apply or explain approach may require some ancillary guidance to demonstrate acceptable 'reasonably detailed explanations'.

4.

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8.

## 1) Responsibilities of the Board

### Practice 1.1

The board discharges the board's responsibilities, including:

Reviewing and adopting a strategic plan for the company which include strategies on environmental, social and governance underpinning sustainability

Providing entrepreneurial leadership to management that promotes innovation and long term value creation

Overseeing management's implementation of the company's strategic objectives and its performance

Ensuring that the company has in place an appropriate risk management framework and setting the risk appetite within which the board expects management to operate

Planning for the succession of board and key senior management

Overseeing the development and implementation of a shareholder communications policy for the company

Overseeing the adequacy and integrity of the entity's accounting and corporate reporting systems as well as internal controls

### Intended Outcome

The board is able to effectively discharge its fiduciary and leadership functions, including leading the governance of the company and supporting long term value creation for its stakeholders.

Agree

**Comments:** We would suggest broadening the point on shareholder communications to include engagement with investors, including at the non-executive director level. Principle A makes reference to the board's "oversight responsibilities. We would note that this wording may be potentially to loose; in other words, boards have more than 'oversight' responsibilities-- including their role in the direction of the company, especially with regard to strategy and risk. The use of this terminology may be rather limiting without further clarification

9.

### Practice 1.2

The company has a formal schedule of matters which clearly identifies matters reserved for the board and those for management.

### Intended Outcome

There is clear division of responsibilities between the board and management to manage expectations, ensure accountability and balance of power between both parties. The allocation of

responsibilities reflects the relationship necessary for the company to adapt to its business circumstances.

Agree

Comments:

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10.

### Practice 1.3

The board formalizes its board charter and executes its functions accordingly. The board charter is periodically reviewed and is made available on the company's website.

[Note: The board charter sets out the board's strategic intent, authority and terms of reference. It outlines the roles and responsibilities of directors, time commitment of its members and protocol for accepting new directorships. The division of responsibilities and powers between the board and management, the different committees and between the chairman and the CEO]

#### Intended Outcome

The board carries out its roles and responsibilities in line with the expectations laid out in the board charter. The document serves as a primary source of reference that guides the governance of the board.

Agree

Comments: This is likely to be a new disclosure item for many companies.

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11.

### Practice 1.4

The Chairman leads and ensures the effectiveness of the board by among others, encouraging healthy debates by all directors, allowing sufficient time for discussion of issues and ensuring that the board's decisions fairly reflect board consensus.

#### Intended Outcome

There is effective leadership by the Chairman to ensure that the board performs its responsibilities, and that all directors are able to fully and actively contribute to the deliberations.

Agree

Comments:

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12.

### Practice 1.5

The board is proactive in upholding good ethics and integrity including establishing, reviewing and implementing policies and procedures on anti-corruption and whistleblowing.

#### Intended Outcome

The company is committed to maintain a healthy corporate culture which promotes ethical conduct.

Strongly Agree

**Comments:** This culture should be strongly promoted at all levels of the company (and to suppliers). Ethical considerations can extend into other areas beyond whistleblowing, human rights, for example. Each company should understand its most pressing ethical concerns and risks.

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13.

### Practice 1.6

**The board has full and unrestricted access to a Company Secretary who is equipped with the skills and expertise to provide sound corporate governance advice and ensure compliance with legal and administrative matters.**

#### Intended Outcome

**The board is supported by a Company Secretary who is experienced and contributes to the effective functioning of the board including providing governance advice and quality information.**

Agree

**Comments:** A possible Core+ principle would be for the company secretary to report to the board as the primary reporting responsibility, which is a practice undertaken by some leading companies.

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14.

### Practice 1.7

**Board members receive meeting materials at least 5 business days in advance.**

#### Intended Outcome

**Directors are provided with sufficient time to review and prepare for board meetings. This allows discussions at board meetings to be robust, undertaken in a detailed manner and benefit from constructive challenge.**

Neutral

**Comments:** This is potentially overly prescriptive, and might impact the flexibility of boards to deal with developing situations. Under normal circumstances 5 days is probably a sensible practice, though this might be overly granular -- unless this is a particular problem in Malaysia.

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## 15.2) Board Composition

### Practice 2.1

**The Nominating Committee has in place and discloses in the annual report, a board skills matrix which provides information on the skills required and how it has been satisfied by the current board composition.**

#### Intended Outcome

**Stakeholders are provided with a collective view of the board's capabilities and are able to make better judgment as to whether the current composition is optimal and effective.**

Neutral

**Comments:** ICGN supports the publication of the 'ideal' board skills matrix but not necessarily the matching of it to the current board skills. We suggest the latter part be omitted as it may too stringently tie the hands of the board in selection of board

candidates. This is an area which may require flexibility depending on the candidates on offer.

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16.

### **Practice 2.2**

**The board establishes a diversity policy formalizing its approach to boardroom diversity. The board through its Nominating Committee takes steps to ensure that women candidates are sought as part of its recruitment exercise. The board explicitly discloses in the annual report its gender diversity policies and targets and the measures taken to meet those targets.**

#### **Intended Outcome**

**The board benefits from having adequate participation of women on the board in terms of different perspectives and insights during deliberations and in decision-making.**

Agree

**Comments:** ICGN fully supports board diversity as a matter affecting overall board effectiveness. Women are certainly a critical focal point here, but as ICGN's own Global Governance Principles state, diversity should take into consideration gender, nationality and other special skills required by the board. Though it is clear that women have a long way to go in all markets, including Malaysia, the real objective should be gender balance; indeed many codes are now framing gender diversity in terms of achieving a minimum balance of the under-represented gender. An articulated target of minimal gender representation might be considered for a Core+ principle.

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17.

### **3) Independence**

#### **Practice 3.1**

**The positions of Chairman and CEO are held by different individuals, and the Chairman is a non-executive member of the board.**

#### **Intended Outcome**

**There is accountability and clear division of responsibilities between the Chairman and CEO, ensuring that there is no one individual with unfettered powers of decision making.**

Strongly Agree

**Comments:** We also believe the Chairman should be independent, certainly for larger and more established companies, and that there should be a clear separation of responsibilities between the board chair and the executive management.

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18.

#### **Practice 3.2**

**The board comprises a majority of independent directors where the Chairman of the board is not an independent director.**

#### **Intended Outcome**

**There is balance of power and authority on the board.**

Strongly Agree

**Comments:** This is possibly a challenging request for companies with controlling shareholders. In such cases, this might be a

Core+ requirement, but in any event independent board members should have a clear critical mass and populate committees such as audit and nominations, where independence is an important criterion.

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19.

### **Practice 3.3**

**The board has a 9-year tenure limit for an independent director which starts from the first day of the director's appointment to the board as an independent director. Upon completion of nine years, the independent director may continue to serve on the board subject to the director's re-designation as a non-independent director.**

**In the event the board intends to retain an independent director who has served in that capacity for more than 9 years, the board seeks shareholders' approval annually through a separate resolution and provides the reasons they believe the individual remains independent and should be re-elected as an independent director.**

**[Note: The tenure of independent directors is capped to a cumulative period of nine years]**

#### **Intended Outcome**

**The independence of the director and overall board independence has not been compromised by the 9-year tenure. Shareholders are empowered and provided with clear and detailed explanation to make an informed decision on whether the director should be re-elected as an independent director.**

Agree

**Comments:** 9 years is a bit of an arbitrary limit to determine independence, so there should be scope for some subjective judgement by both companies and investors. Lack of independence is not intrinsically a bad attribute, as long as the board has sufficient independent representation.

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20.

### **Practice 3.4**

**The board undertakes an assessment on the independence and objectivity of its independent directors annually.**

#### **Intended Outcome**

**Independent directors continue to be free from influences which could interfere with their ability to exercise impartial judgment on key deliberations and decisions.**

Agree

**Comments:** While some directors may remain independent after 9 years, some might lose their independence before 9 years as well-- the board should be alert to all possibilities. ICGN supports the establishment of a formal and rigorous process to assess the performance of the board, its committees and individual directors.

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21.

### **Practice 3.5**

**The board appoints a Senior Independent Director (SID) amongst the independent board members.**

**In determining the suitability of a director as an SID, the board takes into account factors such as**

seniority in terms of years spent on the board and/or industry experience

### **Intended Outcome**

**There is a designated person to share the concerns of directors to the Chairman on sensitive issues of the company, lead in the oversight of Chairman and perform as the alternative contact person for shareholder communication.**

Agree

**Comments:** The role of the SID can be a useful function, particularly with regard to serving as a point person with whom shareholders can communicate, as required. The language of this practice might be extended here to articulate investor engagement, in addition to communication.

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22.

## **4) Nomination and Election**

### **Practice 4.1**

**External independent service provider or advisor is used in the search of candidates for the nomination of non-executive directors.**

### **Intended Outcome**

**The Nominating Committee is provided with a wider pool of candidates for the nomination of non-executive directors and the perception of bias-selection is alleviated through the use of independent search avenues.**

Neutral

**Comments:** External service providers can be useful to identify new board candidates, particularly to avoid selection bias. But it may be limiting to require this approach alone-- as individual situations could legitimately give rise to different solutions. To require it under apply or explain, may lead to 'box-ticking'.

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23.

### **Practice 4.2**

**For appointment and re-appointment of directors, the company discloses in the Notice of General Meeting why the board supports the appointment and re-appointment of the particular director and how the skills and experience of the director contributes to the needs of the company.**

### **Intended Outcome**

**Shareholders are able to make a more informed decision in electing a board member based on what the position requires.**

Agree

**Comments:** We support the idea, but with some caution, as such individual assessments run the risk of being formulaic and of limited interpretive value. It would be useful to provide additional information on possible board candidates in terms of a list of the other board seats and board committee commitments they hold concurrently.

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24.

## **Core+**

### **Practice 4.3**

**Companies inform shareholders in advance of the general meetings on potential vacancies of directorship(s). The company sets out the criteria required for nominations of candidates and allows shareholders to submit nomination of candidate(s) to fill such vacancy for the Nominating Committee's consideration.**

#### **Intended Outcome**

**Shareholders are provided with an avenue to recommend candidates to the Nominating Committee for the election of directors.**

Strongly Agree

**Comments:** This is a fundamental shareholder right, and you may wish to consider making this a Core principle, not Core+.

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25.

### **5) Remuneration**

#### **Practice 5.1**

**The company has in place policies and practices regarding the remuneration of directors and key senior management.**

**[Note: Remuneration includes fees, salary, bonus, benefits in-kind and other emoluments]**

#### **Intended Outcome**

**The remuneration is appropriate to attract, retain and motivate the directors. The level and structure of remuneration for executive directors and key senior management is aligned with the long-term interest and risk policies of the company while the remuneration of non-executive directors commensurates to the level of contribution, taking into account factors such as effort and time spent, and responsibilities of the directors.**

Agree

**Comments:** Emerging best practice is not only for a remuneration policy to be in place, but for this policy to be voted on and approved by shareholders. We would encourage this as a Core or Core+ item.

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26.

#### **Practice 5.2**

**There is detailed disclosure on the remuneration of individual director on a named basis.**

**[Note: Remuneration includes fees, salary, bonus, benefits in-kind and other emoluments]**

#### **Intended Outcome**

**There is transparency on the remuneration of directors and shareholders are allowed to form a judgment as to whether the remuneration of each director is fair, yet attractive enough to retain the person without leading to short-termism and risky behavior.**

Agree

**Comments:** We agree that remuneration should be both transparent and understandable and be disclosed for the key executive directors, focusing on the long term interests of the company, and related to both performance and risk.

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27.

**Core+**

### **Practice 5.3**

**The Nominating Committee discloses the relationship between 'pay and performance' for both executive directors and senior management's remuneration packages.**

#### **Intended Outcome**

**Shareholders are able to form an opinion on the fairness of the remuneration packages.**

Agree

**Comments:** A shareholder vote on pay is a potential way in which the board would be made more aware of potential investor concerns. We would strongly encourage at least a shareholder advisory as a Core+ practice.

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28.

**6) Assessment**

### **Practice 6.1**

**Financial performance of the company and sustainability indicators are considered in assessing the board and senior management.**

#### **Intended Outcome**

**The performance of the board and senior management is assessed holistically.**

Strongly Agree

**Comments:** We do not think sustainability indicators are unlinked to financial performance, and can be good indicators of risk in some cases and strong management in others. The key for both financial and sustainability indicators is understanding their materiality and their relation to the business. There may be scope for better defining what "sustainability indicators" mean in practice. In this regard we encourage "integrated thinking" by companies, and integrated reporting can be a good means to report on this thinking.

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29.

**Core+**

### **Practice 6.2**

**Board evaluation is facilitated by a professional and independent party at least once every three years.**

#### **Intended Outcome**

**The board is able to benefit from professional and external viewpoints in relation to its effectiveness.**

Strongly Agree

**Comments:** This could potentially be a 'Core' principle and the element of an externally facilitated evaluation at least every three years designated as 'Core +'.

## 5. (untitled)

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30.

### 7) Audit Committee

#### Practice 7.1

All members of the Audit Committee are able to read and understand financial statements, and ask pertinent questions about the company's financial reporting process.

#### Intended Outcome

There is an appropriate level of skills and knowledge amongst members to allow them to participate and contribute to the effective functioning of the Audit Committee.

Agree

**Comments:** The reference to 'accounting literacy' is potentially a limiting term and should be replaced with accounting, audit and financial literacy to cover all the skills required of members of an audit committee. We note that the Code is silent on the role of internal audit oversight and in risk systems and internal controls. We would note that the Audit Committee role is much more than linkages to corporate reporting. These are most important and should be included.

31.

#### Practice 7.2

The Chair of the Audit Committee is a person with accounting expertise or experience.

[Note: A Degree or Professional qualification in accounting]

#### Intended Outcome

The Chair has the ability to lead discussions and deliberations and ultimately be satisfied that the end result fairly reflects the understanding of the Audit Committee.

Neutral

**Comments:** As long as the chair is sufficiently financially literate and has an adequate understanding of a company's financial statements, internal control and related risk, it may be limiting to suggest that only qualified accountants hold this role. The definition of 'accounting expertise' would benefit from being much broader than just being professionally qualified, and needs to include knowledge of the recent requirements/developments and practices of accounting and auditing standards and their application.

32.

#### Practice 7.3

The Audit Committee is chaired by an independent director, who is not the chair of the board.

#### Intended Outcome

The Chair of the Audit Committee is able to give full commitment and exercise independent judgment.

Strongly Agree

**Comments:** We believe that even for controlled companies, it is good practice for all audit committee members to be independent.

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33.

## 8) Independence of External Auditors

### Practice 8.1

The Audit Committee has policies and procedures to assess the suitability and independence of the external auditor. The policies include amongst others, the types of non-audited services that are prohibited and limits to the level of fees for non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm.

#### Intended Outcome

The Audit Committee is able to satisfy itself that the independence and objectivity of the auditor is not compromised as a result of the nature and extent of the non-audit services rendered.

Agree

**Comments:** The audit committee and board more generally should not only satisfy themselves of the independence of the auditor, but also of the audit quality more generally

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34.

### Practice 8.2

The company has a policy to govern the circumstances under which former key audit partners of the present and former external auditor(s) can be appointed to the board or be employed by the company. This includes a policy on cooling-off period to govern the independence of such appointments.

[Note: The engagement partner, the individual responsible for the engagement quality control review, and other audit partners, if any, on the engagement team who make key decisions or judgments on significant matters with respect to the audit of the financial statements on which the firm will express an opinion]

[Note: Independence would be deemed to be compromised unless, subsequent to the partner ceasing to be a key audit partner, the company had issued audited financial statements covering a period of not less than two years and the partner was not a member of the audit team with respect to the audit of those financial statements]

#### Intended Outcome

The quality and independence of the audit is safeguarded by avoiding the potential threats which may arise when a member of an audit engagement team joins the company (audit client) and is in a position to exert significant influence over the preparation of the company's financial statements.

Agree

**Comments:** ICGN does not have an established cooling period definition, but we would suggest that it should be at least three years-- as we think that two years would be too short.

35.

Core+

### Practice 8.3

The company has a policy of rotating its external audit firm.

#### Intended Outcome

The quality of the audit is preserved through the auditor's independence, objectivity and professional skepticism.

Comments:

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36.

## 9) Corporate Reporting

### Practice 9.1

The company has internal corporate disclosure policies and procedures which are clear, comprehensive and accurate. In formulating and reviewing these policies and procedures, the company is guided by best practices.

#### Intended Outcome

There is an internal framework that supports and fosters confidence in the quality and integrity of the disclosures provided by the company.

Comments:

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37.

Core+

### Practice 9.2

The company adopts integrated reporting based on a globally recognised framework

[Note: Examples include Integrated Reporting Framework by International Integrated Reporting Council]

#### Intended Outcome

The disclosure on the company's value creation is credible, systematic and comprehensive.

Strongly Agree

**Comments:** We believe that integrated reporting and integrated thinking are both important. The framework is one that many investors support, given its focus on investor requirements. But we also note that there are other credible standards, including the GRI and the SASB frameworks.

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38.

## 10) Internal Audit Function

### Practice 10.1

The internal audit function is carried out in accordance with the standards set by nationally or internationally recognised bodies.

[Note: For example, the *International Standards for the Professional Practice of Internal Auditing* set by the Institute of Internal Auditors]

#### Intended Outcome

The evaluation of internal control processes is carried out in a systematic and disciplined manner, ensuring quality as well as credibility in the internal audit work.

Agree

Comments:

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39.

### Practice 10.2

The head of internal audit or the outsourced internal auditor is a member of a professional body, qualified, has had internal audit experience and has received relevant training for executing the function.

#### Intended Outcome

The internal auditor is equipped with an appropriate level of internal auditing skills and knowledge to carry out the function effectively.

Agree

**Comments:** It would be a good practice to identify the head of internal audit by name with a description of professional background.

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40.

### Practice 10.3

The Audit Committee approves the budget for the internal audit function and decides on the appointment and removal of the head of the internal audit or the outsourced internal audit provider.

#### Intended Outcome

The internal audit function is empowered with an appropriate level of independence and authority to discharge its duties objectively and effectively.

Agree

**Comments:** We would note that in many cases audit committees will provide this oversight, but in other cases it could be the board as a whole, or even a separate risk committee.

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41.

## 11) Risk Management

### Practice 11.1

The board establishes a board-level committee which carries out the responsibility of overseeing the company's risk management framework and policies.

#### Intended Outcome

There is clear accountability and dedicated oversight on the company's risk management framework and policies.

Neutral

**Comments:** We fully support the board assuming accountability for risk oversight, but are less prescriptive as to how it may be best achieved. For example, these activities could come under the purview of an audit committee. It really depends on the company's size and complexity. If a board risk committee is not established, then oversight of risk becomes a role for the full board or added to the audit committee role. Standalone risk committee could possibly be a Core+ principle.

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42.

### Practice 11.2

The board establishes a risk management framework which is periodically reviewed and discloses in the annual report, the main features of the risk management framework.

#### Intended Outcome

Stakeholders are able to assess the company's risk management framework and its ability to manage risks and respond to changes in business environment.

Strongly Agree

**Comments:**

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43.

Core+

### Practice 11.3

The company adopts the elements embodied in internationally recognised risk management standards or frameworks.

[Note: Examples include *ISO 31000:2009 Risk management – Principles and Guidelines* and *COSO Enterprise Risk Management – Integrated Framework*]

#### Intended Outcome

There is a high quality, cohesive and integrative approach to risk management which is aligned to international standards.

Agree

**Comments:**

## 44. 12) Shareholder participation at AGMs

### Practice 12.1

Notices for Annual General Meetings or Extraordinary General Meetings are served at least 28 days prior to the meetings.

#### Intended Outcome

Shareholders are provided with more time to prepare for the Annual General Meeting.

**Comments:** This notification period is consistent with ICGN Global Governance Principles.

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45.

### Core+

### Practice 12.2

The company utilises technology in General Meetings which may include electronic voting and real time broadcasting.

#### Intended Outcome

There is inclusive shareholder participation during General Meetings.

**Comments:** Electronic voting should be Core, not Core+. Real time broadcasting is more discretionary.

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46.

## 13) Communication and Engagement with Shareholders

### Practice 13.1

Companies establish a dedicated Investor Relations function

#### Intended Outcome

There is a dedicated channel for communication between the company and its shareholders to promote regular, effective and fair communication with shareholders.

**Comments:** This is a good start if no such function exists but it is also important to build relations with investors to include engagement, including with board members.

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