OECD Principles of Corporate Governance
Draft for public comment – issued November 2014

Comments from ACCA to the OECD
ID number: TECH-CDR-1329

23 December 2014

ACCA (the Association of Chartered Certified Accountants) is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people of application, ability and ambition around the world who seek a rewarding career in accountancy, finance and management.

We support our 170,000 members and 436,000 students in 180 countries, helping them to develop successful careers in accounting and business, with the skills needed by employers. We work through a network of 91 offices and centres and over 8,500 Approved Employers worldwide, who provide high standards of employee learning and development.

www.accaglobal.com

Further information about ACCA’s comments may be obtained from:

Adrian Berendt
Chair, ACCA Global Forum on Governance, Risk and Performance
Email: adrian.berendt2@gmail.com

Pauline Schu
Researcher, ACCA
Email: pauline.schu@accaglobal.com
ACCA welcomes the opportunity to comment on the revised Principles of Corporate Governance issued by the Organisation for Economic Co-operation and Development (OECD).

The attached views embody ACCA’s experience of developing principles of corporate governance and frameworks for best practice. In forming its views, ACCA has drawn on the expertise and experience of its Global Forums\(^1\) and its participation in roundtable discussions and events in major financial centres.

ACCA has contributed to the BIAC response and whilst it supports the BIAC proposals, ACCA considers that the sheer volume of detailed comments illustrates how complex the Principles have become.

**ACCA believes that now is the opportune time for a radical overhaul of the Principles.** As well as having become too complex and detailed for general application in all circumstances, the Principles often fail to take into account the latest thinking on corporate governance.

In addition, ACCA has a number of specific comments, outlined below. ACCA is willing to share its latest research in this area and is keen to work with the OECD and with BIAC to develop the proposals in more detail.

**KEY PROPOSALS**

- Reduce the number of Principles to a set of 10 – 12 statements that can apply to all jurisdictions and to individual enterprises and be capable of enduring without revision for the medium term; and

- Introduce additional supporting Guidelines that could be revised more frequently, setting out how the Principles might operate in different circumstances, such as:
  - Jurisdictions at different stages of corporate governance development;
  - Different sizes of enterprise; and
  - Enterprises in both public and private sectors.

---

\(^1\) Especially audit and assurance, business law, corporate reporting, and governance, risk and performance.
SPECIFIC COMMENTS

If ACCA’s proposal for restructuring the Principles is accepted, many of the following suggestions could be included in the Guidelines. If not, they should be included in the Principles.

1. The purpose of the Principles

ACCA appreciates that the Principles are a public policy instrument intended to evaluate and improve corporate governance in individual jurisdictions. It remains unclear how the detailed Principles intend to achieve the objective, or how the impact could be measured. We agree with BIAC that ‘the objective and main target group of the Principles should be clearly communicated’ and that ‘the overall focus should be on desired outcomes, rather than too many detailed prescriptions’.

I. Implement mechanisms to (a) evaluate how corporate governance is developing and (b) assess how the Principles make a positive contribution to the stated objective.

Whilst the Principles are aimed primarily at jurisdictions, it should be made clear where and how they also apply to individual enterprises – corporations and other organisations.

II. Identify those Principles that apply solely to a jurisdiction’s laws and codes and those that apply to enterprises.

III. Supply additional guidance to enterprises that wish to follow the OECD Principles, irrespective of whether or not the local regulator has enacted the necessary legal framework.

2. The structure of the Principles

ACCA agrees that the Principles should be high-level and should not prescribe particular laws and regulations. The current draft contains 38 Principles in 5 sections, each section with its own over-arching principle, plus 31 sub-principles and 130 explanatory paragraphs. ACCA considers that the structure is now too complex and detailed for what are supposed to be high-level Principles.

The Principles are a good standard for jurisdictions that are developing corporate governance from a relatively low base but they risk missing developments in thinking about corporate governance. Whilst the Principles may achieve the stated objective of ‘assist[ing] governments and regulators
in their efforts to evaluate … the legal, regulatory and institutional framework for corporate governance’, they are unlikely to help the twin objective of ‘improving’ the framework.

Issuing high-level Principles plus detailed Guidelines could allow individual jurisdictions to apply the Principles in a way that is suitable for local circumstances.

IV. Reduce the Principles to 10 – 12 to make them applicable to all enterprises within every jurisdiction and permit their endurance over an extended period.

V. Add detailed Guidelines that set out how the Principles apply for different types of jurisdiction or enterprise. The Guidelines should be updated regularly to take account of the latest thinking on corporate governance. The Guidelines could be published by the OECD or, in some cases, be delegated to national authorities to update in line with legislative and commercial developments.

3. The purpose of corporate governance

ACCA welcomes the OECD statement of the purpose of the Principles as ‘contributing to economic efficiency, sustainable growth and financial stability’. However, there is no stated purpose of corporate governance itself. ACCA believes that the overarching purpose of corporate governance is to ensure that an enterprise achieves its specified objectives, often creating long-term, sustainable value – societal, environmental and economic – rather than just a pure profit based measure.

In addition, although most policymakers and regulators are well aware of the subject at hand, some market participants may not fully understand what corporate governance is and a definition of the term would be helpful.

VI. Include in the Principles definitions of (a) the term ‘corporate governance’ and (b) the purpose of corporate governance.

4. Emerging thinking

4.1 The purpose of the corporation

ACCA notes that the latest thinking about a corporation’s purpose makes its contribution to society in general at least as important as maximising
shareholder value. ACCA encourages the OECD to enter the debate about
the purpose of the corporation and believes this purpose should be added to
the objectives of the Principles.

VII. Extend the introduction to the Principles to include a statement
that the purpose of corporate governance is to help enterprises
achieve their objectives, which will often be to create long-term sustainable value for society as a whole.

4.2 Impact of culture and behaviour

We note that the Principles contain no reference to culture and few
references to ‘ethics’, to ‘behaviour’ and to ‘public interest’, none of which
are defined. Whilst thinking about culture and behaviour is work-in-progress,
and there is little definitive scientific evidence, ACCA believes that the
Principles should address this important subject.

Financial services enterprises increasingly place emphasis on ethical
culture. The recent OECD report on implementing the Bribery Convention
highlights key factors contributing to an (un)ethical environment. ACCA
believes that the OECD should capture such developments together with
lessons from other research in the revised Principles.

The tone and actions at the top of an enterprise, a department or a team
significantly influence individuals’ corporate behaviour and decision-making.
Promoting ethical behaviour requires an enterprise to embed corresponding
values in the board and senior leadership.

VIII. Add definitions of ‘public interest’ and ‘ethical culture’ to the
Principles.
IX. Add a reference to corporate culture in the introduction and a
statement about how the Principles assume ethical behaviour.
X. Include in the Guidelines the latest thinking about promoting
ethical culture and behaviour within the enterprise and embedding
it in the board and senior leadership.

Feedback to ACCA’s Creating Value through Governance discussion paper has
highlighted that corporate governance exists to help enterprises achieve their objectives –
often creating long-term sustainable value (in the broadest sense).

The behaviour of boards and senior leadership is critical to promoting business ethics, as
born out in the OECD analysis of foreign bribery cases concluded between 15/02/1999 and
01/06/2014; it appears that over 40% of bribes analysed involved management, and 12%
were signed off by the Chief Executive Officer; http://www.oecd.org/newsroom/scale-of-
international-bribery-laid-bare-by-new-oecd-report.htm

See www.accaglobal.com/culture for links to relevant ACCA research.
4.3 Risk Governance

A recent study by ACCA and KPMG in Singapore looked at the alignment of markets’ corporate governance requirements with the OECD Principles\(^5\). The study identified 32 areas of better practice requirements based on 2004 Principles that the OECD could consider\(^6\). These include risk governance, board diversity, disclosures across a number of governance aspects and accountabilities at board, board committee and senior management level.

For example, a declaration (or assurance) from the CEO or CFO to the board about the integrity of the financial statements could improve accountability.

An emerging area of risk governance that is not currently well-defined relates to the governance framework for group and subsidiary boards and is becoming more important as group structures expand. Given the potential financial and/or reputational risk associated with subsidiaries, additional guidance for countries developing frameworks would be helpful.

4.4 Comply or explain

The draft Principles continue to reference the concept of ‘Comply or Explain’, which is rapidly becoming outdated in favour of ‘Apply and Explain’. This change is important because jurisdictions and enterprises should be expected to apply the Principles and explain how they have done so. Such a change could help form part of the measurement of application of the Principles referred to earlier.

**XI. Replace ‘Comply or Explain’ with ‘Apply and Explain’.

4.5 Business’s tax contribution

The role of business in society is to some extent reflected by its tax payments\(^7\) and it is appropriate for the Principles to refer to the approach taken by the business in respect of its tax affairs. We agree with BIAC that reference to ‘aggressive tax avoidance’ in Paragraph 104 is unhelpful\(^8\), as it

\(^5\) See ACCA/KPMG (2014), 'Balancing rules and flexibility'
\(^6\) Reduced to 29 based on the draft revised text
\(^7\) See the ACCA blog [http://blogs.accaglobal.com/2014/12/01/tax-is-difficult/](http://blogs.accaglobal.com/2014/12/01/tax-is-difficult/)
is not clearly defined and could make boards open to legal challenge for failing to protect shareholder value by paying tax ‘unnecessarily’.

The tax language should remain generic since the majority of taxes paid by corporations, especially larger businesses in more developed nations, are not corporation tax.

The emphasis on shareholder interests to the exclusion of other stakeholders appears to be waning and we suggest replacing the word ‘shareholder’ in Paragraph 106 with ‘stakeholder’, consistent with the paragraph heading and overall purpose of the Principles.

Although ACCA largely approves of the changes proposed by BIAC, ACCA notes that jurisdictions are increasingly requiring boards to have a tax oversight role, to ensure that the tax function operates in accordance with the wider corporate governance objectives of the organisation.

| XII. The Principles should not advocate that the Board exposes itself to litigation either by paying more tax than is required by law or by pursuing aggressive tax avoidance, and should remove the reference, unless clearly defined. |
| XIII. Retain generic language about tax and avoid referring to ‘Corporation Tax’. |
| XIV. Replace the term ‘shareholder’ with ‘stakeholder’ in Paragraph 106. |
| XV. Add that the board should ensure that the tax planning practices are sustainable and contribute to the long-term interest of the company and its stakeholders, including accounting for legal and reputational risks where appropriate. |

4.6 Investor information

Boards are responsible for the overall quality of communication with shareholders. Implementing the concept of integrated reporting, including the need for annual reports to be fair, balanced and understandable, as set out in the UK corporate governance codes, could improve the quality of information to investors.

---

9 ACCA defines aggressive tax avoidance as ‘completely artificial arrangements that have no clear purpose other than to avoid tax by complicated schemes’.  
XVI. We recommend that the concept of integrated reporting be actively embraced by the Principles.

4.7 Audit

Whilst internal audit is largely directed at the board, external audit assurance is intended for shareholders and for other stakeholders. ACCA suggest changing paragraph C of section V on Disclosure and Transparency:

XVII. “An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects are prepared, in all material respects, in accordance with an applicable financial reporting framework.”

Paragraph 93 contains an unnecessary repeat of the principle above plus reference to a document developed by the International Forum of Independent Audit Regulators (IFIAR), which has not yet developed with due process, such as public exposure.

XVIII. We suggest deleting Paragraph 93.

If the OECD wishes to reference the IFIAR recommendation, this could form part of the proposed Guidelines, once it has been the subject of due process.

4.8 Audit committees

Paragraph 95 contains three points that are related but essentially separate and it should be split into three paragraphs:

– The role of audit committees in respect of internal control;
– The role of audit committees in respect of supervising non-audit work; and
– The potential conflict of interest for external audit firms providing non-audit services.

In the UK, audit committees are required to form an opinion that financial statements are fair, balanced and understandable, but it is not their role to review processes of internal control and this reference should be removed. ACCA recommends that paragraph 95 should now read:
XIX. “The audit committee or an equivalent body should provide oversight of the internal audit activities and should also be charged with overseeing the whole relationship with the external auditor including 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 significantly impair their independence and might involve them auditing their own work.

XX. Include separate point that “providing non-assurance services may create threats to the independence of the external auditor. The threats created are most often self-review, self-interest and advocacy threats. To deal with skewed incentives which may arise such threats, safeguards that promote transparency such as disclosure of payments to external auditors for non-audit services should be required (…).”

4.9 Institutional Investors

Some countries such as the UK have a Stewardship Code for publicly listed companies, as well as a corporate governance code. ACCA believes that the two codes should be combined and suggests that the stewardship code provisions be included in the proposed Guidelines (e.g. “Guidelines for Institutional Investors”).

XXI. Retain specific provisions for institutional investors in Guidelines to the Principles.