The OECD Principles as a reference point for good corporate governance

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A working definition of corporate governance

Corporate governance … involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives (i.e. strategy) of the company are set, and the means of obtaining those objectives and monitoring performance are determined.
Moreover

“Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and shareholders and should facilitate effective monitoring, thereby encouraging firms to use resources more efficiently”

It is about compliance and performance
Why the emphasis on shareholders?

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

- Ensuring the basis of an effective Cg framework: rules and institutions
- The rights of Shareholders: also in major transactions
- The equitable treatment of shareholders: protection against insiders: equal treatment
- The role of stakeholders including creditors and depositors
- Disclosure and transparency; also control mechanisms
- The responsibilities of the boards; accountability
The Principles need to be adapted to national conditions but not just in any way

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

- The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets.
- Need for high quality regulation and laws: efficient, enforceable and enforced
- The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.
- Supervisory and enforcement authorities should have authority, integrity and resources. Rulings timely, transparent and fully explained
- Implications: public consultation, analysis taking intro account the whole corporate governance framework
Boards as the fulcrum between shareholders and professional management

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

- Must be independent from management and in many countries blockholders and controlling shareholders
- Should consider using a sufficient number of non-executive board members capable of exercising independent judgement where there is conflict of interest
- Should devote sufficient time to their responsibilities
- Appropriate qualifications
To check the power of the boards, the corporate governance framework should protect shareholders rights

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

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

- Encourage active co-operation between company and stakeholders
- Performance enhancing mechanisms should be available
- Redress for violation of legal rights
- Need for effective, efficient insolvency framework and effective enforcement of creditor rights
- Access to relevant information
In which areas were the revised Principles strengthened?

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

- Market in corporate control: the market should function in an efficient and transparent manner. Rules clearly articulated and disclosed, transparent prices and fair conditions for shareholders; Anti takeover devices should not be used to shield management and the board from accountability.

- Insider trading and abusive self dealing should be prohibited.

- Institutional investors (e.g. Hedge funds): should they be activist; issue of vote lending, complex topic with no easy answers.

- Board responsible for overseeing the process of continuous disclosure. Should be equal, timely and cost efficient. No leaks, tips etc.
Good corporate governance and a compliance culture is more than meeting regulatory requirements. Also accountability and performance.

Thank you