

# **Initial Results from the MENA Corporate Governance Survey**

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# Initial Results from the MENA Corporate Governance Survey

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Objectives of the survey

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Initial results

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# Objectives of the survey

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- **A “catalogue” of the key legal information, easy to access, understand, share and compare**
- **Comprehensive and up-to-date overview of the legal frameworks**
- **Overview of public and private sector initiatives**
- **Analysis of the legal data and current reforms**
- **Consideration and analysis of CG practices**
- **Conclusions on the focus of further reforms and on priorities for the WG5**

# Methodology

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- **Six broad themes**
  - ***Board members:*** nomination, election, independence, duties, qualifications, conflict of interests
  - ***Shareholders:*** participation in AGMs, voting rights, equitable treatment, role and responsibilities of institutional investors
  - ***Executive compensation:*** disclosure of compensation package, links between compensation and performance, etc.
  - ***Special Committees:*** responsibilities in the matters of compensation, nomination and internal audit, independence
  - ***Disclosure:*** financial results, ownership structure, material issues re employees and stakeholders
  - ***External Audit:*** criteria for appointment, auditors' independence and qualifications, potential sources for conflict of interests

# Methodology: questionnaire

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**Presentation of straightforward answers to a significant number of detailed questions: highly disaggregated overview of the CG regulatory framework in the MENA**

- **Set of questions**
  - Often use as guidance the Principles and their annotations
  - Closed type questions: yes/no response to facilitate comparisons
  - Two sets of questions: general and specific questions
  
- **Set of answers**
  - NO: the provision is either absent or not required
  - YESa: the provision is only advisory; the weakest positive answer
  - YESv: the provision is voluntary
  - Yesr: recommendation to comply or explain in case of deviation
  - YESs: the provision is statutory

# Initial evidence from the responses

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## □ **Country coverage and accuracy of information**

### ■ **Countries:**

- **Algeria,**
- **Bahrain,**
- **Jordan,**
- **Kuwait,**
- **Lebanon,**
- **Morocco,**
- **Oman,**
- **Qatar,**
- **Tunisia**

### ■ **Accuracy of responses: feedback required**

### ■ **“Re-focus” on pertinent questions, in light of results**

## Initial evidence (cont'd)

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- **Sketch of the main evidence**
  - **In spite of recent legal reforms in a number of MENA countries, serious legal gaps remain. All countries should focus on improving the legal framework, however, the comparative results show that some countries need to start a fundamental overhaul of their systems**
  - **Shareholder rights and equitable treatment represent a challenge for the region. Barrier to the diversification of ownership and control structures in the region and the emergence of effective shareholders, capable of restructuring and developing the corporate sector**
  - **Insufficient attention to boards and committees. Stronger board requirements can contribute to offsetting weaknesses of the regulatory framework of shareholders**
  - **Generally weak framework for disclosure and external audit suggest that the regulation in these areas is a major problem in all countries.**

## Initial evidence (cont'd)

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- **In analysing the results, it is important to recognise the differences between economies**
- **Take into consideration that corporate governance reforms are recent, which calls for cautious assessments of progress**
- **Not a finger pointing exercise**
- **Constructive approach, aiming to formulate agendas for reforms and share experiences, support policy dialogue, raise awareness and enhance regional co-operation**
- **Last but not least, focus on legal frameworks has limitations:**
  - **Examine corporate practices**
  - **Evaluate implementation and enforcement**

# Shareholders

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*If there is only one country with diverging framework, the issue is considered under "common features"*

*Focus on a selection of more important features*

## Common features

- **All shareholders have the right to participate in AGMs and there is a call for sending the notice and documents in advance; however, related sub-issues are treated differently and show potential deficiencies on shareholder participation in AGMs**
- **Call (2 exceptions) for shareholders to participate in decisions on fundamental corporate governance changes (e.g. statutes, issuance of new shares, convertibles and stock options, redemption of shares)**
- **Call for shareholders to vote on distribution of profits, approve annual accounts and recommendation to give redress for right violation**

# Shareholders (cont'd)

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- **Common features**
  - **No provisions to restrict the use of different classes of shares with different voting rights**
  - **Weak (no) framework on institutional investors: use of voting rights, disclosure of voting policy and record**
  - **Weak (no) provisions on how to manage conflicts of interests among shareholders and for majority shareholders to disclose related party transactions**

# Shareholders (cont'd)

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- **Differing features**
  - **Absence/presence of provisions to prevent restrictions on the number of shares for which a shareholder can vote (caps)**
  - **Absence/presence of provisions on explicit instructions from shareholders on voting rights when shares in custody**
  - **Absence/presence of a call for companies to provide a separate resolution on each separate issue at an AGM**
  - **Absence/presence of a call to undertake measures with the approval of the AGM**

# Board responsibilities

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- Common features**
  - **Call for boards to be nominated or elected by shareholders and election process specified**
  - **Call for disclosing conflicts of interests of directors and key executives**
  - **Relatively weak framework on:**
    - independent directors with absent definition, but with and some voluntary provisions and recommendations on certain aspects of independence**
    - the professional qualifications (definition of and guidelines)**
    - disclosure of executive compensation**
    - board committees**

# Board responsibilities

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## Differing features

- **Absence/presence of provision for all board members to be nominated or elected by shareholders**
- **Absence/presence of a recommendation for the board to be responsible for the equitable treatment of all shareholders**
- **Absence/presence of a call for the board to ensure that an ethical culture pervades the company**

# Transparency and disclosure

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- **Common features**
  - **Call for the external auditors to be appointed by shareholders**
  - **Call for audit information with high quality financial standards**
  - **Call for independent external audit, including a call on limiting consultancy services by external auditors (2 exceptions)**
  - **Existence of guidelines on the qualifications of the auditor (2exc.), but differing provisions on specifying such qualifications**
  - **Call for providers of corporate information to disclose any material conflicts of interest**
  - **Recommendation to disclose financial results according to domestically accepted accounting standards (2exc.)**

# Transparency and disclosure (cont'd)

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- **Differing features**
  - **Absence/presence of call to disclose any material foreseeable risk factor or any material issue regarding employees and stakeholders**
  - **Absence/presence of a requirement to disclose the governance policy of the company**
  - **Absence/presence of a requirement to make explicit reference to corporate ethics**

# Other areas of focus for the Survey

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## Assessments of developments on selected CG issues

- **Governance of state-owned assets:**
  - scale and scope,
  - institutional structures for the exercise of the ownership function,
  - implications for privatisation and private sector development
- **CG of non-listed companies**
  - Ownership structures and corporate governance
  - Succession and growth
- **CG of banks**
  - Bank regulation and corporate governance
  - Role of banks in imposing financial discipline and potentially improving governance in the real sector
- **Enforcement and implementation**

# Other areas of focus for the Survey

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## CG initiatives underway

- **Public sector reforms**
- **Private sector initiatives**
  - **Surveys**
  - **Corporate governance codes**
  - **Business and professional associations**

## Regional co-operation

# Potential areas of focus for reformers

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- **Promote private sector development**
  - **Intensify privatisation**
  - **Improve governance of state-owned assets**
  - **Diversify ownership structures and promote a fair and equitable investment environment**
  
- **Increase transparency and disclosure**
  - **Of ownership structures**
  - **Regarding major decisions and actions of managers and controlling investors**
  - **Provide adequate legal means to eliminate self-dealing and to monitor controlling shareholders**
  - **Accelerate adoption of IFRS**
  - **Increase the number and improve the skills of accountants and auditors**
  - **Facilitate Continuous training**
  - **Ensure auditor independence**

# Potential areas of focus for reformers (cont'd)

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- **Improve implementation and enforcement**
  - **Focus on public sector integrity and even-handedness**
  - **Enhance regulatory and judicial mandate, capacity and resources. Secure their independence. Provide adequate compensation**
  - **Use simpler and easier to enforce rules**
- **Enhance shareholder rights**
  - **Improve basic rights on convening and voting at general shareholder meetings, share registration, dividend payments**
- **Protect Minority Shareholders**
  - **Strengthen disclosure of decision-making and related party transactions**
  - **Forbid self-dealing and insider trading**
  - **Provide shareholders with private and collective rights for redress**
  - **Raise shareholder awareness**

# Potential areas of focus for reformers (cont'd)

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- **Raise board performance in strategic planning and monitoring**
  - **Improve board qualifications**
  - **Tighten rules for independent directors and fiduciary duties for all directors**
  - **Promote director accountability mechanisms (e.g. lawsuits, cumulative voting)**
  
- **Improve bank governance and role in imposing financial discipline**
  - **Tighten regulatory oversight**
  - **Improve credit management and risk policies**
  - **Increase ability of bank shareholders to exert governance over banks**
  - **Improve insolvency and creditor rights systems**



# In conclusion

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- Providing detailed conclusions and some recommendations, but also**
- Identifying priorities and defining the focus of reforms**

# For further information...

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□ On the OECD Corporate Governance activities:

**[www.oecd.org/daf/corporate-affairs](http://www.oecd.org/daf/corporate-affairs)**

As well as on the MENA Investment Initiative:

**[www.oecd.org/mena](http://www.oecd.org/mena)**

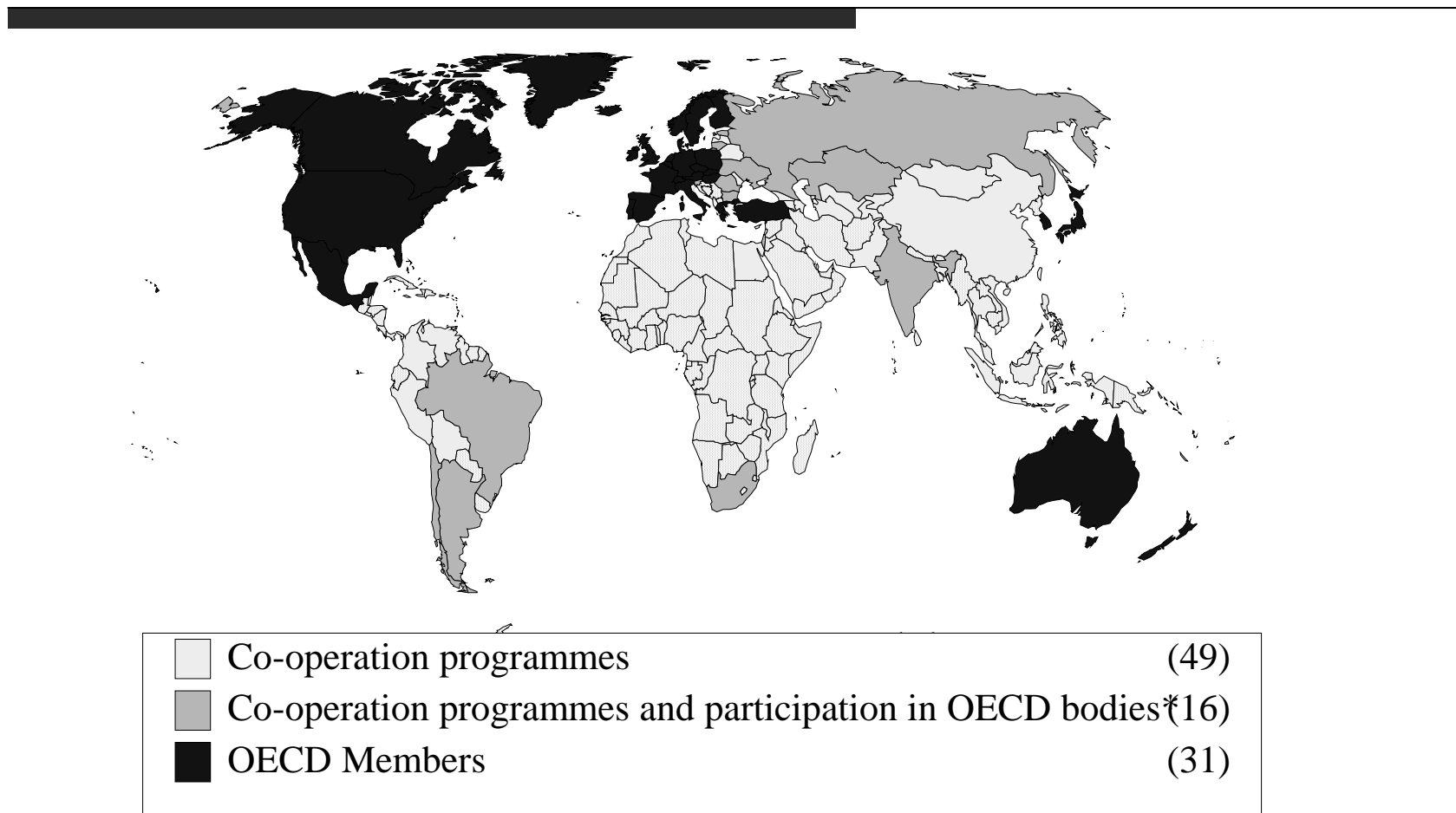
**WG 5 is not only a part of the MENA OECD Investment Programme, but also a component of the OECD - World Bank initiative to organise regional policy dialogue, raise awareness, develop regional self-assessments of CG**

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- Regions** Asia, Russia, Latin America, South-eastern Europe, Eurasia
- Format** Peer discussion among senior policy makers, academics and businessmen using the OECD Principles for CG as a conceptual framework
- Goals** Policy dialogue on realising the OECD Principles in each country of the region; Self-assessment and regional comparison of successes and areas requiring further effort; Knowledge sharing and networking among key regional decision makers
- Output** White paper or comparative paper describing the state of CG, identifying areas for future reform and reviews of implementation

**Founded in 1961 as a follow on to the Marshall Plan, the Organisation for Economic Co-operation and Development promotes international codes, guidelines and principles by which countries can make their economic systems compatible.**

OECD Member Countries and Co-operating Countries



<sup>14</sup> Non-Members not participating in OECD bodies take part in OECD meetings and activities upon *ad hoc* invitations.