

**MENA-OECD
INVESTMENT
PROGRAMME**

**ADVANCING THE CORPORATE GOVERNANCE AGENDA IN THE MIDDLE EAST
AND NORTH AFRICA: A SURVEY OF RECENT DEVELOPMENTS**

D R A F T

- Working Group 5 -

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ABOUT THIS PAPER

1. The purpose of this paper is to give policy makers and private sector leaders, including international investors, experts and multilateral institutions, an overview of the main issues and developments in the MENA region, providing benchmarks for measuring progress. **This is a draft version which will be further developed through a consultation with the participants in the MENA OECD Working Group on corporate governance in order to highlight priorities and possible recommendations for reform to improve corporate governance frameworks, promote legal changes and progress with reforms of the corporate governance of state-owned enterprises.**

2. Recent research and experience show that certain key corporate governance arrangements are critical to private-sector led economic growth, enhanced welfare, increased investment, capital market efficiency and company performance. MENA countries, in their efforts to stimulate growth, investment and employment, increasingly acknowledge the importance of improved corporate governance for the success of the economic reforms underway. Against this background, MENA countries in co-operation with the OECD and other multilateral and bilateral partners decided to launch a Working Group on corporate governance in the region.

3. This paper draws upon the discussions and work of the MENA-OECD Working Group on corporate governance, which is a regional forum for policy dialogue. It has built upon the MENA Regional Corporate Governance Forum, launched by MENA countries, the Global Corporate Governance Forum and the Centre for International Private Enterprise (CIPE) in 2003, with additional support from the OECD and the World Bank. The Working Group benefits from the support of CIPE and the International Finance Corporation and works closely with home grown regional and country specific initiatives and institutions.

4. At its first meeting, held on 14 February 2005 in Amman, the Working Group agreed to develop a regional comparative corporate governance paper. The OECD Principles of Corporate Governance, which the Financial Stability Forum¹ has adopted as one of its twelve key standards aiming to promote stability in the global financial system, were used as a key reference for this work. The OECD Guidelines on the Corporate Governance of State-Owned Enterprises were used in the analysis of the role of the state as a shareholder in the MENA region.

5. The MENA Regional Corporate Governance Forum and other national and regional organisations and groupings have issued guidelines, statements of good practices and recommendations for policy reforms, that the Working Group continues to build upon. Also, individual companies, investors and business associations active in the MENA have developed policies that target good corporate governance as an objective or criterion for their investment decisions. This paper should be seen as complementary to these efforts.

¹ The Financial Stability Forum (FSF), convened in April 1999, brings together senior representatives of 25 national financial authorities (e.g. central banks, supervisory authorities and treasury departments), international financial institutions, international regulatory and supervisory groupings, committees of central bank experts and the European Central Bank.

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6. The final version of the paper will be made available through participants in the MENA Working Group on Corporate Governance to key national policy makers, regulators, standard-setting bodies, relevant private sector institutions and civil society. It will also be widely disseminated to the public, and posted on the OECD Internet website at www.oecd.org/daf/corporate-affairs/ and www.oecd.org/mena/investment.

7. The OECD MENA Working Group on Corporate Governance forms part of the MENA OECD Investment Programme. It also contributes to the global dialogue on corporate governance the OECD has launched in Asia, Eurasia, Latin America, Russia and South East Europe.

**THE IMPORTANCE OF GOOD CORPORATE GOVERNANCE FOR
THE MIDDLE EAST AND NORTH AFRICA**

8. Good corporate governance is a crucial part of private sector-led economic growth in the MENA and it needs to be recognised as a public policy concern of rapidly growing importance in the region. Employment generation, development of technology, and ultimately the international competitiveness of the MENA economies must rest on a base of firms that do not suffer from cost of capital disadvantages, and that adapt sound management and corporate governance practices to domestic circumstances.

9. Increasing investment, local and foreign is a common goal throughout the region. The MENA region has witnessed significant economic and financial development. However, MENA countries' trade and cash flows, as well as GDP levels and growth remain marginal at a global scale. The region would need a significant capital infusion in order to promote business development and growth to close the gap. The number of large companies contributing to growth is still limited, and there is a need for many more. Due to the substantial increase in oil prices, national savings, especially in oil producing countries, exceeded investments and resulted in substantial accumulation of financial assets abroad. At the national level, corporate governance practices of domestic corporations need to improve in order to attract and retain more capital locally and to successfully compete for investment globally.

10. Attracting investment is only one demonstration of how essential good corporate governance is for efficiently channelling savings to productive uses. Good corporate governance plays a critical role in the process of building strong domestic financial markets - including capital markets - public securities markets, banking and non-bank financial systems, private equity and venture capital sectors. It increases public confidence in the securities markets, which adds liquidity. Deeper, broader and more liquid capital markets serve the investment needs, not only of existing businesses, but also of tomorrow's new enterprises and industries.

11. Good corporate governance is also important for the sound development of the banking sector. Banks channel public savings to the corporate sector. If banks are not in a position to assess the viability of debtor companies, they risk accumulating non-performing loans and be forced into direct or indirect re-nationalisation to avoid systemic risk. A common challenge of the banking sector in emerging economies is banking capture by corporations. This capture often occurs with the help of the government, pointing to the importance of another aspect of governance, the governance of banks.

12. Apart from its importance in ensuring access to capital, good corporate governance provides more effective mechanisms for building competitive businesses. Proper checks and balances within the corporation support strategic thinking, while competent company directors add real value to the decision-making of the firms. The benefits of good governance for long-term value creation raise confidence among all stakeholders of the corporation.

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13. A rule-based corporate governance system is critical for MENA economies, because of market imperfections and failures that hinder financial and product market disciplines. These disciplines will thus not be sufficient to police corporate managers. In advanced market economies, when shareholders are not satisfied with the performance of the company, they may shift their investments by selling shares in the market, which decreases share prices. This triggers difficulties for companies to raise capital via the capital markets and the banks and makes companies vulnerable to take-over threats. However, in emerging economies, market discipline hardly works because of the insufficient development of the financial sector. Therefore, the legal and regulatory environments of corporate governance in such countries tend to play a greater role as a mechanism through which shareholders and creditors can discipline corporate managers.

14. Corporate governance reforms are driven by a multitude of public and private efforts, from the adoption of legislation in the parliament and its implementation by the courts, to regulatory action, professional codes and requirements, as well as individual company policies. While good corporate governance cannot exist without an adequate level of public governance, it will never materialise unless the private sphere of the economy and its main players -- the companies -- become more transparent, law-abiding corporate citizens. Awareness of this mutual interdependence is the key for the success of any reform effort. Business leaders must, therefore, play a prominent role in the public dialogue on corporate governance in the MENA.

15. It should be pointed out that the improvement of corporate governance should have an important spill-over effect on the society as a whole. Adequate checks and balances within the corporation, proper oversight of executive management by the board of directors, better internal controls and clear lines of accountability reduce the opportunities for managers and others to engage in corrupt activities. On the contrary, unaccountable and opaque corporations are more likely to undermine the rule of law and the effectiveness of government, creating and sustaining a vicious circle of corruption, bribery and mismanagement in the private and public sector alike. The development of good corporate governance can, thus, be seen as key institution-building ingredient for a transparent and accountable society.

16. Finally, the past years witnessed a series of high profile corporate governance failures in the United States and other OECD countries. These events contributed to a contraction in the public securities markets and triggered an array of public and private sector responses, aiming to restore market integrity and public confidence. An important lesson of this experience is that building corporate governance is always a work in progress, even in economies with a well-developed institutional framework.

SOME REGIONAL CHARACTERISTICS

17. The participants in the MENA OECD Working Group on Corporate Governance acknowledge that corporate governance should be discussed and addressed not only at the national and global levels, but also at the regional level. Common political, economic and legal characteristics within MENA, as well as the growing regionalisation and internationalisation of financial markets and investment opportunities attest to the benefit of applying a regional approach to current challenges and priorities. However, such an approach needs to be balanced by attention to national characteristics in crafting corporate governance reforms, as the MENA region comprises countries with significant distinctions in levels of per capital income, economic diversification, liberalisation and economic and political stability.

18. In most MENA countries, financial markets are thin and tightly regulated, government ownership is prevalent and market forces play a limited role. Most countries made progress over the past decade in corporate governance reforms, but are still at an early stage in the process. More concretely, the following characteristics of the economies in the region shape the way the corporate sector is currently governed and financed, as well as its ability to respond to rapid technological change and economic globalisation:

Concentration of ownership. The corporate landscape is characterised by an extreme level of concentration, due to large, family dominated companies and company groups, that also include banks and by a very strong presence of the state. The vast majority of large companies in the region have come to existence as family businesses or businesses of a number of influential families. Family control by the founders or the descendents remains the norm in most of the countries among the large non-listed, as well as small and medium- sized enterprises.

Publicly traded companies in the MENA are also characterised by a high degree of ownership concentration². The pattern of ownership is similar across industries and has remained relatively stable in recent years concentrating control in the hands of the largest shareholder or the five largest shareholders. On the contrary, small shareholders hold comparatively low stakes in publicly listed companies. The prevailing practice of raising equity through rights issues, allowing existing shareholders to buy shares before they are offered to the public, is one of the reasons why the levels of ownership concentration are maintained.

Majority shareholders can play a positive role in corporate governance thank to their capacity to exercise effective management oversight and to ensure direct access to financing. However, business development and growth cannot always be met through retained earnings and credits; the challenge under such circumstances is to tap alternative local and international sources of capital. This in turn requires adoption of adequate governance practices and standards and a capacity to align ownership and control patterns with the strategic objectives of company development.

² Average ownership concentration ratios by country range from 20 to 85 per cent of stocks held by the largest shareholder, and 35 to 80 per cent of stocks held by the top five shareholders in publicly listed companies. See Musa T., *Corporate Governance and Finance*, Union of Arab Banks, November 2002, p. 197

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Family ownership and control. The ownership composition in the region suggests substantial role of families, often facilitated through nominee accounts. Individuals among the top five shareholders are mostly family members or close relatives holding high level executive positions within the companies. Moreover, the distribution of shares among individual investors is extremely narrow.

Most family companies in the MENA are characterised by a strong family leader. Not surprisingly, families play also an important role in shaping boards of directors, by nominating family members, close relatives or senior managers. Evidence also suggests that the higher the ownership share of the dominant family shareholder, the more likely it is for the chief executive officer to be members of that family. This leads to tight oversight of management by the family with little role for the board. Family and other controlling shareholders influence corporate decisions also indirectly through their stakes in a number of holding companies and subsidiaries.

Under such circumstances the market for corporate control is not very active throughout the region. In spite of stronger disclosure provisions and other legal improvements to ensure that mergers and acquisitions are conducted in an orderly fashion and with due respect to minority shareholder rights, their number has only modestly increased in recent years. It is also worth noting that many appear to be related to corporate restructuring and rescue plans.

Although strong control by families might have worked well in the past, due to their entrepreneurial spirit, this was in time when relationship-based systems could be sustained under the circumstances of an opaque regulatory regime and wide-spread rent seeking behaviour. There is a question whether such a governance system is well adapted to the future as competition grows and the need for an efficient allocation of resources in response to market signals increases.

Bank-based corporate finance. Though the region has been a net exporter of capital for decades, the financial sector has failed to develop the capacity to channel a significant proportion of these savings into long-term productive investment within the region. Domestic financial systems and in particular, the banking sector, have undergone important reforms in recent years in order to address this challenge. Progress has been uneven and related reforms need to be bolder if they are to bring a more modern credit culture and greater competition among sources of financing.

Financial systems in MENA countries are fragmented, dominated by banks and in some economies, by state-owned banks. The banking sector in the MENA region is moderately to highly concentrated. Moreover, financial institutions, including insurance, investment and securities companies own significant proportions of the shares in listed companies and are often among the five largest block holders. In spite of current prudential regulations, preventing banks from holding "significant" shares in listed companies, commercial banks have become large shareholders in non-financial listed companies, sometimes ranking among the five largest shareholders. This suggests the need for particular attention to good governance of banks with a special focus on related lending and sound risk management policies.

The most important forms of external finance of the corporate sector include bank loans, followed by equity. This can also be explained by the dominance of family owners relying on bank financing in order to maintain ownership and control and the still insufficient degree of development of capital markets. On the other hand, corporate bonds play a limited role in corporate financing. The debt market is underdeveloped, due to regulatory restrictions, inefficient

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insolvency systems, and lack of effective market structure. Inadequate transparency and disclosure practices of companies are considered to be another impediment to its development.

Allocation of credit to more productive investment should guide a growth enhancing lending strategy. However, experience shows that government interference in credit allocation is a feature for many MENA countries. Public sector banks play a role in this respect, channelling soft finance to target sectors, often in the framework of industrial development plans aiming to ensure import substitution and export promotion. Implicit and explicit state guarantees and bail-outs of failing corporations lead, in some countries, to a moral hazard problem for corporations and banks alike.

Developing capital markets. Financial liberalisation and development programmes, carried out in the last decade yielded modest results for the financial markets as well. Capital markets which are traditional sources of long-term investment, including foreign, lag behind the banking sector in their role as a source of corporate finance in the MENA region.

Evidence suggests that there is a limited number of relatively advanced countries³, while in the rest of the region, capital markets have a significant room for improvement and development. In the latter, they are characterised by high concentration, relatively few listings resulting in low levels of liquidity and a limited role in supporting economic growth. Until recently, foreign participation was limited, however under pressure for attracting capital and reducing volatility, markets in the region started gradually to open.

Ownership concentration and dominance-of control-oriented shareholders of publicly listed companies have a negative impact on liquidity and trading, but also on transparency and disclosure standards and substantive corporate governance practices observed on these markets. Large and sometimes politically powerful shareholders are less likely to actively pursue transparency and corporate governance mechanisms, which may ultimately erode their control.

In spite of this situation, following efforts of liberalisation and improvements of the underlying legal framework, some MENA capital markets have shown considerable growth in recent years. This development underlines the urgency of corporate governance reforms, which are critical for the sustainability of capital market growth and in order to avoid the potential drawbacks stemming from inadequate corporate governance arrangements of new share issues and newly listed companies. Such reforms should focus in particular on transparency and disclosure, equitable treatment of shareholders and regulatory capacity building, which is critical in ensuring compliance and enforcement.

Legal Traditions and Enforcement Patterns. The Gulf and Palestinian jurisdictions, as well as Egypt and Jordan converge to the common law system, while the rest of the countries rely on the European civil code tradition. In most countries from the region, the legal system should also comply with the *Islamic shariah*, based on religious rules and guiding principles. The legal frameworks of securities markets are relatively new and more recent than company laws; however both had to undergo amendments in the recent past.

³ Kuwait and Qatar, for example, are considered developed markets in Standard and Poor's Global Stock Markets Factbook (2004).

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Legal/judicial commonalities within the region extend as well to the approaches to enforcement of laws and contracts. In spite of the fact that the legal and regulatory framework of corporate governance is largely in place, there is vast room for improvement. Research shows that law effectiveness and concrete actions taken in accordance with existing norms may be more important in emerging markets than the extensiveness of the body of the law⁴. Therefore, deficiencies in the rule of law in the region seriously affect the credibility of the corporate governance framework in the MENA and the prospects for diversifying access to capital.

Another important challenge of MENA countries lies currently in the effectiveness of its enforcement and implementation. In several MENA countries, the judicial system is susceptible to political pressure and long delays, resulting in poor enforcement. In general, civil litigation plays a limited role, while greater emphasis is placed on administrative and criminal judicial actions. Private dispute resolution mechanisms are new and largely untested.

Until the mid-1980s, markets remained largely unregulated or overseen by a stock exchange committee. With the wider recognition of the need for more developed capital markets as vehicles for privatisation and alternative source of investment, reformers started carving the regulatory function out of the exchanges. Thus, specialised government securities commissions with different governance models and varying degrees of independence were established across the region. Capacity building is an important priority for MENA countries where the emphasis needs to be put on clearly defined responsibilities, adequate staffing and budgets of the regulators.

Privatisation. Although the countries of the region have adopted a variety of different models to promote economic transformation and growth, the 1990s marked a shift to a new approach to the division of responsibility between the public and private sectors. However, the promise that privatisation held out for the development of broader and deeper capital markets, greater access to financing and lower cost of capital did not materialise.

In the MENA region privatisation has been rather slow. Lack of political will, overstaffing⁵, low pace of job creation in the private sector, pressure by interest groups are considered to be among the main reasons for the markedly slow enterprise reform and privatisation in the region. The region's privatisation receipts in the 1990s reached \$8.2 billion, a figure comparable to privatisation proceeds in sub-Saharan Africa during the same period, and much smaller than in other emerging economies⁶. Privatisation methods have relied only to a limited extent on the capital market.

⁴ Pistor, K., M. Raiser, S. Gelfer, *Law and Finance in Transition Economies*, European Bank for Reconstruction and Development Working Paper No. 48,2000.

⁵ This particular feature suggests that social welfare reforms and effective labour redundancy policies should be addressed as a prerequisite for successful enterprise reform and privatisation policies.

⁶ For example privatisation proceeds reached \$178 billion for Latin America and the Caribbean, \$65 billion for Eastern Europe and Central Asia, \$44 billion for East Asia and Pacific, and \$12 billion for South Asia for the same period. Also note that the cited MENA data includes more countries, than the ones addressed in this paper. Abed G. and H. Davoodi, *Challenges of Growth and Globalisation in the Middle East and North Africa*, International Monetary Fund, 2003, www.imf.org.

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MENA countries should focus on the development of a well designed strategy for state ownership and privatisation as it has a real potential for propelling structural reforms in the region. Such a strategy may fulfil mutually reinforcing multiple objectives, including fiscal objectives, attracting investment, improving corporate efficiency and performance of SOEs. Importantly, experience shows that in many countries of the world and especially in OECD economies, privatisation has had profound effects on corporate governance and capital market development.

REVIEW OF LEGAL CORPORATE GOVERNANCE FRAMEWORKS IN THE MENA

19. Proper corporate governance and protection of shareholder rights require an adequate legal framework and its effective enforcement. The MENA region faces numerous challenges in many of these areas, which can be illustrated by the quick-reference tables of MENA corporate governance frameworks, provided in annex A. Closely related to a sound legal basis of corporate governance are rule of law and property rights systems, since weaknesses in both areas seriously affect the credibility of corporate governance frameworks and the prospects for diversifying access to capital in the region. Therefore, reforms of the legal framework of corporate governance need to take into consideration and target these broader legal foundations.

20. The availability of accurate, comprehensive, up-to-date and comparable information on the regulatory framework is an important precondition for the design of a well-informed strategy for corporate governance reforms. This section of the paper analyses the data presented in annex A, and focuses on the following eleven countries: Algeria, Bahrain, Egypt, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Tunisia and United Arab Emirates. The information was collected in 2005, in the framework of the MENA OECD Working Group on Corporate Governance, with support from government officials, scholars and private sector experts.

Collecting the information

21. Information on the legal framework on corporate governance in the MENA needs to be interpreted with caution. In spite of similarities, in comparing countries and designing reform programmes one should recognise and pay due attention to national characteristics and differences. It is also important to recognise that corporate governance frameworks and the required reforms cannot be viewed in isolation. While certain jurisdictions may appear to be the "best" in terms of rules and regulations, their performance in terms of implementation, enforcement, investor perceptions and corporate practices show a different picture.

22. Moreover, this survey is not undertaken as an exercise aiming to criticise the countries, which lag behind, but rather to assist in identifying priorities and encouraging the exchange of experience among MENA countries. Given the use of the OECD Principles as a reference for the preparation of the tables provided in annex A, the latter can also serve as useful analysis and comparison with results from similar surveys carried out for other regions, in the framework of the OECD corporate governance roundtables and ultimately the OECD company law database, currently under preparation.

23. As a starting point, the corporate governance areas covered for each country have been divided into six broad items:

Board members, including specific issues regarding the nomination, election, independence, duties, qualifications and conflict of interests;

Shareholders, covering their participation in the general meetings, voting rights, equitable treatment of shareholders and the role and responsibilities of institutional investors;

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Executive compensation, including issues ranging from requirements of minimum equity holding periods to the specification of severance payment conditions and from disclosure of compensation packages to the links between compensation and performance;

Special committees, covering responsibilities in the matters of compensation, nomination and internal audit, as well as the independence of their members;

Disclosure, including *inter alia* financial results, ownership structure, material issues regarding employees and stakeholders, and references to corporate ethic;

External audit focuses on criteria for appointment, auditors' independence and qualifications, along with possible sources of conflict of interests.

24. There is a growing awareness among legislators and regulators that in today's global financial markets corporate governance arrangements in the above areas have a strong bearing on the reputation of the corporate sector and on public confidence in general. Each of the six items is explored through a set of questions. Using the guidance of the Principles and their annotations, the objective is to provide a detailed view on key corporate governance issues to be addressed by legislators and to facilitate gap analysis in the way forward to greater compliance with the Principles.

25. The questions used to gather the information were closed-type questions, implying a "yes" or "no" response. They aim at collecting general information, referring to broad issues, as well as specific information (see questions in *italics*) in order to better capture the meaning of the responses.

Summary of results

26. Given that most corporate governance rules and regulations were introduced in the last decade, the results of the survey show that MENA economies have made a significant effort to improve their corporate governance standards. It is also observed that the most important bedrock provisions for corporate governance are largely in place in the region.

27. Certain sets of corporate governance rules and regulations are common across all eleven economies. There are also sets of rules and regulations that differ across countries. The results, however, show significant variations on all surveyed items.

28. The following are **common features** of rules and regulations among the surveyed jurisdictions:

Board members:

(i) Shareholders have the right to nominate or elect board members and the process of election is specified (although, not all countries make this requirement for all board members);

(ii) Terms of board appointments should be specified;

(iii) Disclosure of conflicts of interests of directors and key executives is required (except in Jordan);

(iv) Definition of the responsibilities of the board is required, including responsibilities for ensuring the strategic guidance of the company, for ensuring the integrity of the corporation's accounting and financial system, a call for board's accountability to the company and shareholders;

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(v) *Absence* of a call for separation between the chair and chief executive (except in Egypt, where a voluntary provision exists);

(vi) *Absence* of guidelines on the professional qualifications of board members (with the exception of Egypt);

(vii) *Absence* of a call for periodic training of board members (except in Egypt).

Shareholders:

(i) General meetings must be notified to shareholders and the accompanying documents sent in advance; a minimum period of notice is specified (except in Kuwait and Tunisia);

(ii) Shareholders have the right to participate and vote at the general meeting;

(iii) Mergers require approval of the general meeting;

(iv) Shareholders can participate in decisions on fundamental corporate governance changes (such as issuance of new shares, convertibles and stock options, reduction of share capital / redemption of shares);

(v) Shareholders have the right to approve annual accounts;

(vi) Shareholders can vote on distribution of profits;

(vii) Shareholders have the right to redress.

Executive compensation and special committees

Scarce provisions on executive compensation and special committees, as well as *absence* of the following:

(i) Recommendation on minimum holding periods of equity received as compensation;

(ii) Requirement to link executive compensation to specific company objectives;

(iii) Provisions allowing shareholders to vote on compensation packages for executives.

Disclosure and external audit:

(i) Financial results of the company should be disclosed according to domestically accepted accounting standards;

(ii) Independent external audit is required and external auditors should be appointed by shareholders;

(iii) Guidelines on the qualifications of the auditors are provided (except in Oman and Qatar);

(iv) The providers of company information should disclose any material conflict of interests.

Some implications for reforms

29. On the basis of these results, it appears that MENA countries pay more attention to the powers and duties of **board members**, as well as their election, while the results are quite mixed and largely disappointing with respect to director independence, professional qualifications, board committees and executive compensation.

- While **board member duties** are present in MENA company laws, it is not clear whether they are **explicit or detailed** enough.
- **Board provisions ensuring the protection of shareholder rights are also limited:**
 - In the presence of controlling shareholders in the MENA, independent directors have an important role to play on behalf of the minority. However, the mandate of independent directors means little without an effective definition of “independence” and a **definition of director independence** should become a part of the company laws in the countries of the region.
 - The process of electing directors should facilitate a board that represents the interests of all shareholders. In MENA economies, **cumulative voting** can be an important tool for ensuring independence. This can be a very useful device, especially given the significant asymmetries between insiders and outsiders in the region.
 - In MENA countries, the **separation of the CEO from the chair of corporations** is left to the discretion of corporations since legislators are reluctant to weaken the link between strategic guidance and management. However, separation is an additional tool ensuring independence, and in the MENA economies which decide to introduce it, it might yield good results as a hard rule.
 - In MENA economies, **committee** structures and the detailed rules as to their remit, composition and functions can be important subject matter for the corporate governance codes that are currently being elaborated. Experience shows, that companies which voluntarily adhere to a code might see that the risk of their shares drops significantly.
- In spite of the highly concentrated ownership and the less pronounced agency problems, it is important for MENA economies to **strengthen the monitoring function of boards**, because of relatively low normative constraints. In this respect, local legislation should **improve directors’ powers to obtain accurate, relevant and timely information from the company**.
- MENA legislation should also establish **clear guidelines and specify the skills and expertise of board members**, including substantive knowledge and experience. With the goal of ensuring the availability of independent and qualified board members, **institutes devoted to director training and professionalism** have been established in a number of countries outside of the MENA, with one being currently launched in Egypt. This approach should be studied and replicated in all countries in the region.
- **Individual or at least aggregate director- and senior-executive-compensation arrangements should be fully and accurately disclosed.** Accounting for executive

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compensation, as well as compensation incurred for the performance of services, should reflect the economic impact of the compensation on the income statement and balance sheet.

30. The fundamental building blocks of corporate governance concerning shareholders in the MENA are in place. However, the legal and regulatory framework should improve the rules intended to protect the non-controlling shareholders from exploitation and abuse by insiders and controlling shareholders. As shareholders are ideally placed to act as a watchdog and shareholder apathy may have many harmful effects, the MENA framework should be enhanced to ensure that shareholders become informed and active owners.

- Shareholder influence in the MENA will much depend on the costs and difficulties faced to entice shareholders to participate in general meetings. Therefore, the legal framework should facilitate this process through **improved pre-meeting communication, voting procedures and the right to ask questions and table resolutions.**
- In particular, **rules on proxy and *in absentia* voting** should be liberalised, and the integrity of the voting process should be strengthened.
- The exercise of these important rights may be facilitated by **recourse to modern technology.** However, as not all shareholders have access to electronic facilities, it should not rely solely on them.
- The **fiduciary duties of directors to act in the interest of the company and all shareholders** need to be clarified and strengthened.
- MENA jurisdictions should also strengthen disclosure requirements and develop or enhance **rules on related party transactions and self-dealing.**
- The adoption and enforcement of **private and collective rights of shareholders for action against controlling shareholders and directors** should be another important priority.
- The legal and regulatory framework must provide for clear and *ex ante* rules regarding how **minority shareholders are to be treated when there is a change in corporate control.**
- The rules governing **the role of the state as a shareholder will need to be strengthened** to ensure that it does exercise its rights actively and in the best interest of the company.

31. **Disclosure** has a pivotal role in the corporate governance framework. The quick-reference tables show mixed results and suggest significant differences of the disclosure frameworks of the countries in the region. It also appears that disclosure and external audit pose serious problems in virtually all countries from the region.

- **Responsibility for the annual corporate governance statement should lie with the board as a whole.**
- Conversely, a **board audit committee** could play an important role in supervising the audit of the financial statements. It should rely on a majority of non-executive, independent directors. Provisions on the role and responsibilities of audit committees regarding external and internal audit should also be established, together with provisions guaranteeing the independence of auditors.

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- Since financial statements do not represent all information that is material to investors, **comprehensive disclosure of non-financial information should also be mandatory**, including corporate governance structures and practices, as well as director remuneration.
- **Disclosure of self-dealing and related party transactions should also be strengthened throughout the region.** This requires a sufficiently large definition, encompassing a wide range of self-dealing activities. Provisions on the disclosure of policies on related party transactions in annual accounts and director reports on transfer-pricing policies should also be strengthened.
- The regulatory framework should also encourage **a transition to international standards and practices for accounting, audit and non-financial disclosure.**

32. The legal framework of corporate governance in the MENA matters crucially in ensuring access of corporations to financing, in attracting higher quality of investment and in supporting financial market development. These are all factors leading to better enterprise performance, productivity, competitiveness and ultimately economic growth, underlining the importance of legal reforms of corporate governance in the MENA.

33. Fundamental reviews of the legal framework are not required in all countries of the region, while in some they may not be politically timely. In such circumstances and in taking into account the rapidly changing company environments, there is a growing need to continuously adapt existing rules⁷. Consistent and clear rules in primary legislation underpin certainty, credibility, democratic legitimacy and usually strong possibility for enforcement. However, primary legislation does not provide scope for sufficient flexibility in responding to changing circumstances.

34. An alternative in the drive to adapt to the requirements of a modern corporate governance framework can be sought in secondary regulation by governments and regulators and in standard-setting by market participants. Secondary regulation by governments, consistent with the broad objectives of primary legislation, together with standard setting by market participants (such as corporate governance codes), or in partnership between government and market participants on the basis of the "comply or explain" approach, can often replace formal legal provisions. For alternative forms of regulation that may be introduced, but also for any new primary company legislation, it is important to ensure that full and proper consultation takes place with industry, commerce, services, professions and other stakeholders.

35. Special attention in the MENA will also need to be paid to eliminating inconsistencies between different legal and regulatory norms in the areas of property rights, company law, securities market legislation, accounting and auditing rules, insolvency provisions and the civil codes (including labour law). Moreover, in some countries, the tradition of *ad-hoc* resolutions and decrees in addressing legal and regulatory gaps tend to exacerbate existing contradictions among rules and laws. Adherence to internationally recognised standards can help in solving such difficulties.

36. In order to reap the full benefits of legal reforms, countries need to devote the necessary attention and resources in order to significantly improve enforcement. Concrete actions taken by the responsible authorities in accordance with existing norms are as important as the quality and extensiveness of the body of law. Ownership and control in the MENA is unlikely to evolve unless companies adhere to their obligations of transparency, equitable treatment of shareholders and, in general, respect for their rights.

⁷ Winter J., Report of the High Level Group of Company Law Experts on A Modern Regulatory Framework for Company Law in Europe. Brussels, November 2002

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The related impact can be seen at the firm level, but also in terms of capital market development and economic growth.

CORPORATE GOVERNANCE OF STATE-OWNED ENTERPRISES IN THE MENA

37. Enterprise reforms and privatisation have swept the world in the past decades. However, states remain controlling shareholders in many countries of the world, and often retain shares in some of the largest companies by revenue, assets, and employment. These companies often have a strategic function in the economy in the area of air travel, telecommunications, banking, electricity, water, oil, etc. Determining the role of the state in the economy, including in infrastructure and utilities, is a matter of a strategic decision by the government and remains an on-going challenge for policy makers all over the world.

38. In principle, governance rules applicable to state-owned enterprises (SOEs), at least the ones belonging to the competitive sector, should not be fundamentally different from the ones applicable to any other company. In fact, the situation of the state vis-à-vis of the company in which it holds significant interest is much more complex than that of a dominant private shareholder. In addition, evidence shows that often the state does not act as an efficient owner and that the scope for improvement in many countries of the world is vast.

State-ownership and privatisation efforts in the MENA

39. This also appears to be the case for MENA economies. While accurate data on the size of the public sector is lacking, there is sufficient evidence that state-owned enterprises play a dominant role in production, consumption and labour markets in the region. SOEs are prevalent in many sectors in MENA economies, including banks and network industries. They provide a wide range of goods and services that would normally be produced by the private sector in a market-based, competitive environment. Many are actively engaged in quasi-fiscal activities that are not subject to the rigors of transparency and financial accountability.

40. Political interference, lack of commercial incentives, deficient financial discipline and availability of soft credit are important reasons behind the inefficiencies of the MENA public sector. Undue interference by the state is also a source of distorted incentives, inefficient allocation of resources and reduced competitiveness and productivity. In many countries in the region, the public sector has also served as "employer of last resort", inflating civil servants' wages at a pace unequalled by other emerging economies. Moreover, observers note that a clear cut separation between the private and public sector is lacking, which leads to conflicts of interests, asset stripping and corruption.

41. Although public ownership in itself is not necessarily a cause for inefficiency in the operation of SOEs, privatisation has become one of the most widely accepted strategies for improvement of their performance. Over the past two decades, close to one trillion USD worth of SOEs have been privatized in more than 100 countries, 80 per cent of which from the OECD area⁸. In the MENA region, evidence shows that the privatisation process has been rather slow. It yielded modest results with proceeds comparable to levels reached in Sub-Saharan Africa. A well designed strategy for state ownership and privatisation has a real potential for propelling structural reforms in the MENA region. Such a strategy may fulfil mutually

⁸ Nestor S., M. Steindi, *Board Composition, structure and practice in European state-controlled companies*, proceedings of the 2005 meeting of the OECD Russian Corporate Governance Roundtable, www.oecd.org

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reinforcing multiple objectives, including fiscal objectives, attracting investment, improving corporate efficiency and performance of SOEs. Introduction of competition into hitherto monopolistic sectors of the economy and further privatisation efforts in infrastructure and utilities could serve to further stimulate private sector investments. Importantly, experience shows that in many countries of the world and especially in OECD economies, privatisation has had profound effects on corporate governance and capital market development.

42. Divestiture through initial and secondary public offerings is one of the most transparent and politically acceptable privatisation methods. In addition, public offerings create broad ownership, assist in the development of the domestic retail and institutional investor base and are a good mechanism to attract foreign investment. However, it should be remembered that there is a strong interdependence between privatisation and capital market development, indicating that weak capital markets may be an obstacle to privatisation. This has been addressed by many OECD and non-OECD governments, by defining capital market development as an explicit public policy objective, often together with privatisation and corporate governance reforms.

43. Without clear legal framework, systemic decisions and structural reforms, including of the financial sector and corporate governance, the reform of state ownership cannot succeed. However, there is a need for pragmatic steps, as some strategic issues may take long to be settled. In this respect, joint work with partner state institutions is important, together with a well designed communication strategy, explaining public policy objectives and underlining achievements in order to build a perception of success.

Box 1. Some prerequisites for successful privatisation

1. Ensure strong political commitment at the highest level

2. Prepare the political and social policy agenda:

Through

- *establishment of a dedicated institution responsible for privatisation,*
- *design of a privatisation strategy and implementation plan,*
- *decision on:*
 - * *which companies to be privatized and which to stay in state hands,*
 - * *what special powers to preserve for the government,*
 - * *how to provide utilities and infrastructure services through the market,*
 - * *limiting foreign ownership restrictions,*
- *ensuring transparency and integrity of the process,*
- *design of a public awareness campaign;*

3. Implement regulatory reform in utilities and infrastructure:

Through an effort

- *to introduce or enhance competition and*
- *to create independent regulatory bodies;*

4. Prepare SOEs for the market:

Through

- *corporatisation,*
- *improved corporate governance,*
- *guarantee of full transparency and protection of minority shareholders and*
- *better management culture;*

5. Prepare the market for SOEs:

Through

- *implementation of policies to create a broad base retail and market institutions and*
- *design of incentives for these purposes;*

6. Prepare the transaction:

Through

- *well thought-out and transparent procedure for selecting and working with advisers and underwriters;*
- *built-in accountability mechanisms for the privatisation body*

7. Prepare the rules of the game post-privatisation:

Through

- *setting adequate rules for corporate control transactions, including for mergers and acquisitions in order to prepare the conditions for the post-privatisation development of companies.*

Source: This table is based on experiences discussed in *Privatising State-Owned Enterprises: An Overview of Policies and Practices in OECD countries*, Paris, OECD, 2003.

Corporate governance of state-owned enterprises in the MENA

44. Notwithstanding two decades of extensive privatisation, SOEs play a significant role in numerous OECD countries and even greater and sometimes preponderant role in emerging economies. In many cases governments retain substantial shareholdings in large companies, often operating in energy infrastructure and utilities. Not surprisingly, the governance of such companies has a significant impact on the functioning of the economies and the markets in which such enterprises are increasingly in competition with private companies.

45. The governance of these enterprises poses specific challenges to governments in their capacity as owners. Given its political nature, the state as a controlling shareholder is highly sensitive to social pressure, has multiple objectives (employment, public services to specific constituencies, etc.), and has often conflicting roles as a regulator and owner. For these reasons, governments are less focused on management oversight than a private controlling shareholder and pay less attention to maximising shareholder economic value.

46. Given the important role of state ownership in MENA countries, they need to acknowledge the need for a clear policy for enterprise reform through a programme on improved corporate governance of state-owned enterprises and a clear cut strategy for privatisation. By improving the process of decision making and control by the state, good governance can improve SOEs performance and competitiveness, and level the playing field between state-owned and private enterprises. In many instances, better performing SOEs can have positive fiscal implications, insofar as government budgets are all too often called to the rescue of large SOEs.

47. On the other hand, the state's behaviour as a significant shareholder on some of MENA stock exchanges cannot fail to have a major impact on their operations and stability. It is, therefore, important for the government to set an example before turning to private players for improving their corporate governance and performance.

48. Successful corporate governance reforms of state-owned enterprises will also underpin the success of privatisation in the region. Corporate governance arrangements are, to a great extent, the cause behind a privatised company's capacity to maintain or increase its profitability after privatisation. Consequently, privatisation is only effective in terms of economic performance if adequate corporate governance practices and an appropriate institutional framework are in place. Moreover, good governance of SOEs is conducive to better public sector governance in general and to reducing corruption in particular through greater transparency and reduced opportunities for political interference in the interactions amongst government, administration and SOEs.

49. In acknowledging the specific corporate governance challenges posed by state ownership, in April 2005 the OECD approved its Guidelines on Corporate Governance of State-owned Enterprises, which currently constitute the leading international reference in this area. They are not intended to discourage the implementation of privatisation programmes, but to outline good practices for ensuring that SOEs fulfil their assigned objectives, are efficient and report on their performance in a transparent fashion. The

50. OECD Guidelines (see box 2) can constitute a useful tool for MENA policy makers in addressing the specific corporate governance challenges of state ownership, including for enterprises they might ultimately wish to privatise.

Box 2. Main elements of the OECD Guidelines on the Governance of State-owned Enterprises

I. Ensuring an effective legal and regulatory framework for state-owned enterprises

The legal and regulatory framework for state-owned enterprises should ensure a level playing field in markets where state-owned enterprises and private sector companies compete in order to avoid market distortions. The framework should build on, and be fully compatible with, the OECD Principles of Corporate Governance.

II. The state acting as an owner

The state should act as an informed and active owner and establish a clear and consistent ownership policy, ensuring that the governance of state-owned enterprises is carried out in a transparent and accountable manner, with the necessary degree of professionalism and effectiveness.

III. Equitable treatment of shareholders

The state and state-owned enterprises should recognise the rights of all shareholders and in accordance with the OECD Principles of Corporate Governance ensure their equitable treatment and equal access to corporate information.

IV. Relations with stakeholders

The state ownership policy should fully recognise the state-owned enterprises' responsibilities towards stakeholders and request that they report on their relations with stakeholders.

V. Transparency and disclosure

State-owned enterprises should observe high standards of transparency in accordance with the OECD Principles of Corporate Governance.

VI. The responsibilities of the boards of state-owned enterprises

The boards of state-owned enterprises should have the necessary authority, competencies and objectivity to carry out their function of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.

The full text of the Guidelines is available on line, at <http://www.oecd.org/dataoecd/46/51/34803211.pdf> . It is also being translated into Arabic by CIPE and will shortly be available on their internet site.

51. Overall, there is little concrete guidance on how to exercise the state ownership function in MENA countries. Therefore, it is important to focus on some priority areas in initiating corporate governance reforms of SOEs in the region, on the basis of the following:

- **Ensure protection of the interests of all shareholders, including minority shareholders.** This is an essential prerequisite for good corporate governance of SOEs, which should be guaranteed by legislation and effective enforcement mechanisms.
- **Institute fair rules and level playing field between private and SOEs that find themselves in competition with each other.** This can be achieved through the separation of the regulatory and industrial policy functions from the ownership function within the state administration. It is also recommended to simplify and harmonise the legal form of SOEs and as far as possible subject these enterprises to the same legal and regulatory provisions as private ones. SOEs should not be unduly favoured and enjoy special access to financing, especially from state-owned banks. The same conditions should apply to SOEs and private

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enterprises, in particular in areas like state subsidies, competition and general business regulations.

- **Reinforce the state ownership function.** MENA states should become informed and active owners, which should not be confused with state interference in the day-to-day business decisions of SOEs. Recent experience suggests that the centralisation of the ownership function within the government, or at least, effective co-ordination is an important ingredient of success. This was done recently in France (see box 3) and in the United Kingdom through the creation of respectively the Agence des Participations d'Etat and the Shareholder Executive. Such institutions should be accountable to the Government and the Parliament and publish regular reports on their activities.
- **Foster greater transparency of SOEs.** Internal control mechanisms of SOEs, should be developed, together with independent external audit performed according to international standards, even where state audit is in place. Large SOEs need to be as transparent as listed companies, while in smaller entities, greater transparency should be considered against the underling costs. Adequate disclosure rules should be established for SOEs, particularly regarding related party transactions and state financial aid, including guarantees and other commitments undertaken on behalf of the firms. The entity in charge of the ownership function within the state administration should also consider aggregate reporting by publishing an annual report providing information on the performance and evolution of the state sector, as well as information on the ownership policy, the composition of boards of directors, etc.
- **Strengthen SOE boards of directors.** Legislation and ownership policy should empower the board of directors as the key body for strategic direction of the company and the accountability of management. Management should not be allowed to bypass the board through direct contacts with the administration in charge of the ownership function. Management of SOEs should also be sheltered from political interference. The boards of MENA companies including SOEs should include directors, which are competent and capable to exercise objective judgment on the conduct of the company, independent of management. The ownership entity should consider appointing independent board members, capable to fulfil their mission of strategic guidance and monitoring of management. Board nomination should be skill-based and transparent, while board performance should be subject to systematic monitoring based on good practices established in the private sector.
- **Further steps should be undertaken to improve the framework for business activities for all enterprises - private or state-owned - in MENA countries.** Coherence of legislation, elimination of bureaucratic obstacles, streamlining of administrative procedures, fighting corruption and reform of the judiciary are key priorities in this respect.

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Box 3. French Reforms: Main Recommendations of the Douste-Blazy Report

The French reforms were presented at the meeting of the MENA OECD Working Group on Corporate Governance, held in Morocco on 14-15 September 2005. The Douste-Blazy Report attracted attention, as it provided a comprehensive set of issues to be addressed in reforming the corporate governance of SOEs.

APE (State Participation Agency):

- Define and codify reporting by SOEs, as well as rule for examination of acquisition projects
- Leading state representative within boards
- Inter ministerial committee for strategic coordination of SOEs
- Annual reporting of the APE director to the Parliament

State representation within boards:

- Mission letter
- Maximum of 3 board members
- Pre-meetings among state representatives
- Regular monitoring by the APE

Controls:

- Define performance criteria and issues requiring action
- Suppress specific state controls other than through board and APE

CEOs:

- Maintain nomination by the government
- Evaluated by Parliamentary commissions
- Remuneration closer to the private sector
- Performance evaluation by the Agency

Boards of Directors:

- Maximum 15 board members
- Unify status
- Internal and detailed rules
- Strategy committees to examine acquisition projects
- Audit committees with access to external expertise
- The Agency will establish a list of external candidates and promote independent directors
- Corporate governance committees

Management tools:

- Generalise public company status
- Check quality of management tools
- Systematic risk analysis
- Reporting as listed companies

Public service missions:

- Establish contracts to fulfil public service or policy obligations
- Performance evaluation and incentive based remuneration for these services

Source: Rapport Douste-Blazy, N° 1004, "Rapport fait au nom de la commission d'enquête sur la gestion des entreprises publiques afin d'améliorer le système de prise de décision », July 2003, Assemblée Nationale.



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ANNEXES

Annexes to this paper are intended to provide factual background and a glossary of useful terms.

Throughout the meetings of the Regional Corporate Governance Forum and the MENA OECD Working Group meetings, participants have prepared papers and reports, which are available on the OECD website at www.oecd.org/daf/corporate-affairs/, www.oecd.org/mena/investment/ and CIPE website at <http://www.hawkama.net/>, www.cipe.org. They can serve as an illustration to the points made in this paper.

**ANNEX A: QUICK-REFERENCE TABLES ON CORPORATE GOVERNANCE FRAMEWORKS
IN THE MIDDLE EAST AND NORTH AFRICA**

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BOARD MEMBERS

QUESTIONS	Algeria	Bahrain	Egypt	Jordan	Kuwait	Morocco	Oman	Qatar	Tunisia	United Arab Emirates
1 Is there a call for board members to be nominated or elected by shareholders?	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESr
2 Is there a provision for all board members to be nominated or elected by shareholders?	NO	NO	YESs	YESs	YESs	NO	YESs	YESs	NO	YESs
3 Is the process of election of board members specified?	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
4 Is there a call for independent non executive board members?	YESv	YESv	YESs	YESs	NO	YESv	YESa	NO	YESv	NO
5 <i>Is there a definition of independence?</i>	NO	NO	YESv	NO	NO	NO	YESr	NO	NO	NO
6 <i>Is there any recommended proportion of independent board members?</i>	YESv	YESv	NO	NO	NO	YESv	NO	NO	YESv	NO
7 Is there a recommendation to prevent the same individual from exercising the role of chairperson and chief executive?	NO	NO	YESv	NO	NO	NO	NO	NO	NO	NO
8 Is there a provision specifying the duties of the chairman?	YESs	YESs	NO	YESs	NO	YESs	YESr	YESs	YESs	YESy
9 Is there a recommendation for the non executive board members to meet separately from the executives?	NO	NO	NO	YESs	NO	NO	NO	NO	NO	NO
10 Are there guidelines about the professional qualifications of board members?	NO	NO	YESs	NO	NO	NO	NO	NO	NO	NO
11 <i>Are the skills, experience and expertise of board members specified?</i>	NO	NO	YESs	NO	YESs	NO	NO	NO	NO	NO
12 Is there a call for periodic training of board members?	NO	NO	YESr	NO	NO	NO	NO	NO	NO	NO
13 Is there a limit as to how many boards an individual can sit in?	NO	NO	NO	YESs	NO	NO	YESs	YESs	NO	YESs
14 Is there a recommendation to disclose the method of selection?	NO	NO	YESa	NO	NO	NO	YESs	NO	NO	YESr
15 Is there a call to appoint members of the board for specific terms?	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs

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QUESTIONS	Algeria	Bahrain	Egypt	Jordan	Kuwait	Morocco	Oman	Qatar	Tunisia	United Arab Emirates
16 Is there a call to ban or restrict staggered boards?	NO	NO	YESs	NO	NO	NO	YESs	NO	NO	YESa
17 Is there a call for non-automatic re-appointment of board members?	YESs	YESs	YESs	NO	NO	YESs	YESs	YESs	YESs	NO
18 Is there a call for disclosing to shareholders conflicts of interests of directors and key executives?	YESs	YESs	YESs	NO	YESs	YESs	YESr	YESs	YESs	YESs
19 Are there guidelines about how to manage such conflicts?	YESs	YESs	YESs	YESs	NO	YESs	YESr	NO	YESs	YESs
20 Is there a call for specifying the responsibilities of the board?	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
21 Is there a specific call for the board to oversee executives?	NO	NO	YESs	YESs	YESs	NO	YESs	YESs	NO	YESa
22 Is there a recommendation for the board to ensure the strategic guidance of the company?	YESs	YESs	YESs	YESs	YESs	YESs	YESr	YESs	YESs	YESa
23 Is there a call for the board to ensure the integrity of the corporation's accounting and financial system?	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
24 Is there a call for the board's accountability to the company?	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
25 Is there a call for the board's accountability to the shareholders?	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
26 Is there a call for the board to act in the interest of the company and shareholders?	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
27 Is there a recommendation for board members to devote sufficient time to their responsibilities?	NO	NO	YESv	YESs	YESs	NO	YESs	NO	NO	YESa
28 Is there a recommendation for the board to be responsible for an equitable treatment of all shareholders?	YESs	YESs	YESs	YESs	YESs	YESs	NO	NO	YESs	YESr
29 Is there a call for the board to ensure that an ethical culture pervades the company?	NO	NO	YESa	NO	YESs	NO	NO	YESs	NO	YESa

NOTES:

NO = Absent or not required

YESs = Statutory, or required by financial exchange

YESr = Recommended, and in case of deviation company must explain

YESv = Voluntary, provision is recommended but company is not obliged to explain non-compliance

YESa = Advisory, the company is encouraged to comply with the provision of the code/ principle



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SHAREHOLDERS

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QUESTIONS	Algeria	Bahrain	Egypt	Jordan	Kuwait	Lebanon	Morocco	Oman	Qatar	Tunisia	United Arab Emirates
1 Is there a call for sending the notice of the GM and the accompanying documents to shareholders in advance of the GM?	YESs	YESs	YESs	YESs	YESs	YESs (note 1)	YESs	YESs	YESs	NO	YESs
2 Is there a call for sending the notice and the accompanying documents at least 15 days before the GM?	YESs	YESs	YESs	YESs	NO	YESs (note 1)	YESs	YESs	YESs	NO	YESs
3 Are shareholders allowed to place items on the agenda of the GM?	NO	NO	NO	YESs	YESs	NO	YESs	NO	NO	YESs	YESs
4 Is there a call to block trading of shares between the record date and the date of the meeting?	NO	NO	YESs	NO	NO	NO	NO	YESa	YESs	NO	YESs
5 Do all shareholders, regardless of the size of their holdings, have the right to participate and vote at the general meeting?	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
6 Are there provisions to restrict the use of different classes of shares with different voting rights?	N O	N O	YESs	NO	NO	NA (note 2)	NO	NO	NO	N O	NO
7 Is the amount of shares national or foreign shareholders may own unrestricted?	YESs	NO	NO	YESs	NO	YES	YESs	YESs	NO	YESs	NO
8 Are there provisions to prevent restrictions on the number of shares for which an individual shareholder can vote (voting caps)?	YESs	YESs	NO	NO	NO	NA	NO	YESs	YESs	YESs	NO
9 Is there a call for ensuring distant voting?	NO	YESs	YESs	NO	NO	NO	NO	YESs	YESs	YESs	NO
10 Is management prevented from using company funds to collect proxies?	NO	YESs	YESs	YESs	NO	YES	NO	YESs	NO	YESs	YESs
11 Are explicit instructions from shareholders necessary for exercising voting rights over shares held in custody?	YESs	YESs	YESs	YESv	NO	NO	YESs	YESs	NO	YESs	NO
12 Is there a call for companies to provide a separate resolution on each separate issue at GM?	YESs	YESs	YESs	YESs	NO	NO	YESs	YESs	NO	NO	YESs
13 Is there a call for board members and executive officers to answer questions at the GM?	NO	NO	YESs	YESs	NO	YES	YESs	YESa	YESs	NO	YESs
14 Is there a call to undertake antitakeover measures with the approval of the GM?	NO	YESs	YESs	NO	NO	NO	YESs	NO	NO	NO	NO
15 Is there a call to undertake merger measures with the approval of the GM?	YESs	YESs ³	YESs	YESs	YESs	YESs	YESs	YESs	NO	YESs	YESs
16 Is there a call to allow shareholders to participate in decisions concerning fundamental corporate governance changes (for ex. statutory changes)?	YESs	YESs	YESa	NO	YESs	YESs	YESs	YESr	NO	YESs	YESr

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QUESTIONS	Algeria	Bahrain	Egypt	Jordan	Kuwait	Lebanon	Morocco	Oman	Qatar	Tunisia	United Arab Emirates
17 <i>Is there a call for shareholders to vote the issuance of new shares?</i>	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
18 <i>Is there a call for shareholders to vote the issuance of convertibles and stock options?</i>	YESs	YESs	YESs	YESs	NO	YESs	YESs	YESs	YESs	YESs	YESs
19 <i>Is there a call for shareholders to vote the reduction of share capital/redemption of shares?</i>	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
20 <i>Is there a call for shareholders to approve annual accounts?</i>	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
21 <i>Is there a call for shareholders to vote on distribution of profits?</i>	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
22 <i>Is it recommended to give redress for the violation of shareholders' rights?</i>	YESs	YESs	YESs	YESs	YESs	YES	YESs	YESs	NO	YESs	YESs
23 <i>Is there a call to encourage institutional investors to use their voting rights?</i>	NO	NO	YESs	YESs	NO	NO	NO	NO	NO	NO	YESv
24 <i>Are institutional investors required to disclose their voting policy?</i>	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YESr
25 <i>Is there a call to disclose the resources that the institutional investors put aside to implement this policy?</i>	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YESr
26 <i>Are institutional investors required to disclose their voting record?</i>	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO	YESv
27 <i>Are there provisions about how to manage conflicts of interest among shareholders?</i>	NO	YESs	YESs	NO	NO	NO	NO	NO	NO	NO	NO
28 <i>Is there a call for majority shareholders to disclose any related party transaction?</i>	NO	NO	YESs	YESs	YESs	NO	NO	YESs	NO	NO	YESr

NOTES:

NO = Absent or not required

YESs = Statutory, or required by financial exchange

YESr = Recommended, and in case of deviation company must explain

YESv = Voluntary, provision is recommended but company is not obliged to explain non-compliance

YESa = Advisory, the company is encouraged to comply with the provision of the code/ principle

Note 1: Lebanese Law require the documents to be made available to the shareholders but does not require such documents to be actually sent to the shareholders.

Note 2: All shares have equal voting rights, to the exception of the double voting right of nominative shares owned by the same shareholder for more than two years.



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EXECUTIVE COMPENSATION

QUESTIONS	Algeria	Bahrain	Egypt	Jordan	Kuwait	Morocco	Oman	Qatar	Tunisia	United Arab Emirates
1 Is there a call to distinguish between components of executive compensation (i.e. fixed and variable components)?	NO	NO	YESv	NO	NO	YESs	YESs	NO	NO	NO
2 Is there a recommendation to include both cash pay and stocks or stock based awards?	NO	NO	NO	NO	NO	NO	YESs	NO	NO	NO
3 Is there a call to include not only the compensation received from the hiring company but also from any other company in the group?	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
4 Is there a recommendation to disclose the amount of executive compensation?	NO	NO	NO	YESs	YESs	NO	YESr	NO	NO	NO
5 Is there a recommendation to disclose the individual amount of executive compensation?	NO	NO	NO	YESs	NO	NO	NO	NO	NO	NO
6 Is there a recommendation to disclose the amount of executive severance payments?	NO	NO	NO	YESs	NO	NO	YESs	NO	NO	NO
7 Is there a recommendation to assess and disclose the costs of executive equity-based compensation?	NO	NO	YESv	NO	YESs	NO	YESs	NO	NO	NO
8 Is there a recommendation for minimum holding periods of equity received as compensation?	NO	NO	YESs	NO	NO	NO	NO	NO	NO	NO
9 Are executives recommended to give notice of their intention to sell company's stock?	NO	NO	YESs	YESs	NO	NO	NO	NO	NO	NO
10 Is there a recommendation to link executive compensation to specific objectives of the company?	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
11 Is there a call to compare executive compensation to the one paid by other companies in the same sector?	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
12 Are there guidelines about the length of the period over which severance payments can be executed?	NO	NO	NO	NO	NO	NO	YESs	NO	NO	NO
13 Is there a provision to allow shareholders to vote on compensation packages for executives?	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO

NOTES:

² NO = Absent or not required

YESs = Statutory, or required by financial exchange

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SPECIAL COMMITTEES

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QUESTIONS	Algeria	Bahrain	Egypt	Jordan	Kuwait	Morocco	Oman	Qatar	Tunisia	United Arab Emirates
1 Is there a recommendation to establish a compensation committee?	NO	NO	YESv	NO	YESa	YESs	NO	NO	NO	NO
2 Is there a call for the participation of independent directors in the compensation committee?	NO	N/A	YESv	NO	NO	YESs	NO	NO	NO	NO
3 <i>Is there a recommended proportion of independent directors participating in the compensation committee?</i>	NO	N/A	NO	NO	NO	NO	NO	NO	NO	NO
4 <i>Is there a recommendation that all members participating to the compensation committee are independent?</i>	NO	N/A	NO	NO	NO	NO	NO	NO	NO	NO
5 Is the compensation committee authorised to obtain the assistance of an external consultant?	NO	N/A	YESv	NO	NO	NO	NO	NO	NO	NO
6 Are there guidelines about the oversight powers of the compensation committee?	NO	N/A	YESv	NO	NO	NO	NO	NO	NO	NO
7 <i>Are such oversight powers specified to cover both cash pay and stocks?</i>	NO	N/A	YESv	NO	NO	NO	NO	NO	NO	NO
8 <i>Are such oversight powers specified to cover payments from affiliated companies?</i>	NO	N/A	NO	NO	NO	NO	NO	NO	NO	NO
9 <i>Are such oversight powers specified to cover the amount of severance payments?</i>	NO	N/A	YESv	NO	NO	NO	NO	NO	NO	NO
10 Is there a call to establish a nomination committee?	NO	NO	NO	NO	YESa	YESs	NO	NO	NO	NO
11 <i>Is there a recommended proportion of independent directors participating in the nomination committee?</i>	NO	N/A	NO	NO	NO	NO	NO	NO	NO	NO
12 <i>Is there a call for the members of the nomination committee to be all independent?</i>	NO	N/A	NO	NO	NO	NO	NO	NO	NO	NO
13 Is there a call to establish an audit committee or a similar internal audit body?	NO	NO	YESs	YESs	YESs	YESs	YESs	YESa	NO	YESa
14 Is there a call for the participation of independent directors in the audit committee?	NO	N/A	YESs	YESs	YESs	NO	YESs	NO	NO	YESv
15 <i>Is there a recommended proportion of independent directors participating in the audit committee?</i>	NO	N/A	YESs	YESs	YESs	NO	YESs	NO	NO	YESv
16 <i>Is there a recommendation that all members of the audit committee/internal audit body are independent?</i>	NO	N/A	NO	YESs	NO	NO	YESs	NO	NO	YESr
17 Are there guidelines about the powers of the audit committee/the internal audit body?	NO	N/A	YESs	YESs	YESs	NO	YESs	NO	NO	YESs
18 <i>Is there any recommendation to authorise the audit committee/internal audit body to obtain the assistance of an external auditor?</i>	NO	N/A	YESs	YESs	YESs	NO	YESr	NO	NO	YESr
19 Is there a recommendation for the audit committee/internal audit body to meet a minimum number of times per year?	39 NO	N/A	YESs	YESs	YESs	NO	YESs	NO	NO	YESr

DISCLOSURE

QUESTIONS	Algeria	Bahrain	Egypt	Jordan	Kuwait	Morocco	Oman	Qatar	Tunisia	United Arab Emirates
1 Is there a recommendation to disclose the financial results of the company according to domestically accepted accounting standards?	NO	YESs	YESs	YESs	YESs	YESs	YESs	YESs	NO	YESr
2 Is there a call to disclose the ownership structure of the company?	NO	NO	YESs	YESs	YESs	NO	YESs	NO	NO	YESa
3 Are there provisions to require disclosure of at least the first 15 shareholders or alternatively of all shareholders with at least 5% voting rights?	NO	YESs	YESs	YESs	NO	NO	NO	NO	NO	NO
4 Is there a call to disclose any material foreseeable risk factor?	NO	NO	YESs	YESs	YESs	NO	YESr	NO	NO	YESr
5 Is there an obligation to disclose any material issue regarding employees and stakeholders?	NO	NO	YESs	YESs	YESs	NO	YESs	NO	NO	YESv
6 Is there a requirement to recognise the rights of stakeholders?	NO	NO	YESs	YESs	YESs	NO	YESs	NO	NO	YESs
7 Is there a definition of stakeholders?	NO	NO	YESs	YESs	YESs	NO	YESs	NO	NO	NO
8 Does such a definition include creditors?	NO	N/A	YES	NO	YESs	NO	YESs	NO	NO	NO
9 Is there a requirement to disclose the governance policy of the company?	NO	NO	YESv	YESa	YESs	NO	YESs	NO	NO	YESr
10 Is there a requirement to make explicit reference to corporate ethic?	NO	NO	YESv	YESa	YESs	NO	YESs	NO	NO	NO

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EXTERNAL AUDIT

QUESTIONS	Algeria	Bahrain	Egypt	Jordan	Kuwait	Morocco	Oman	Qatar	Tunisia	United Arab Emirates
1 Is there a call for the external auditors to be appointed by shareholders?	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
2 Is there a call to audit information according with high quality financial standards?	YESs	YESs	YESs	YESs	YESs	YESs	YESs	NO	YESs	YESr
3 Is there a call for independent external audit?	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs	YESs
4 Is there a call for companies to rotate auditor at specified terms?	NO	NO	YESv	NO	NO	NO	YESs	YESs	YESs	YESr
5 Is there a call for limiting consultancy services by external auditors?	YESs	NO	YESv	YESs	YESs	YESs	YESs	YESs	NO	YESr
6 Are there any guidelines about the qualifications of the auditor?	YESs	YESs	YESs	YESs	YESs	YESs	NO	NO	YESs	YESr
7 Are such qualifications specified?	YESs	NO	YESs	YESs	YESs	YESs	NO	NO	YESs	YESs
8 Is there a call for providers of corporate information to disclose any material conflict of interest?	YESs	YESs	YESs	YES s	YESs	YESs	YESs	NO	YESs	YESr

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ANNEX B: GLOSSARY

Alternative dispute resolution: The use of private arbitration and or mediation to resolve civil disputes that might otherwise go to court. For example, a stock exchange may offer private arbitration binding on listed companies to shareholders seeking redress for violations of their rights. While normally seen as a supplement to the judiciary, to be effective private arbitration and mediation must have some formal legal backing.

Annual report: A report issued by open companies to their shareholders each year. Normally contains information on overall performance, future prospects and audited financial information.

American Depository Receipt (ADR): A certificate issued by a U.S. depository that represents a number of shares of stock issued by a non-U.S. company. ADR's are normally traded on a U.S. exchange, but may not give the holder all the rights that shares in a U.S. company would.

Audit committee: A committee formed from members of the company's board of directors or supervisory board. Non-executive board members normally make up all or a majority of the committee. The audit committee normally oversees the company's financial reporting and sometimes risk management and or legal compliance. The committee may also have the power to assess and / or block related party transactions.

Beneficial owner: The person who benefits from the ownership of a security or other property, the *de facto* owner. The beneficial owner may not always be the same as the nominal owner (who is registered as the owner or who holds the title to the property.).

Business judgement rule: A rule or rules that gives board members the benefit of the doubt with respect to normal business decisions, limiting potential liability in the process. Also see "duty of care".

Capital increase: An issue of new shares by a company.

Chairman of the board of directors: The person (of either sex) who heads the board and leads its business.

Class action lawsuit: A lawsuit filed by one or more persons on behalf of a group of individuals all having the same grievance. Until recently these suits were only allowed in certain common law countries.

Closed Corporation (or close corporation): A joint stock company owned by a small number of individuals.

Control pyramid: Ownership structure where a parent company will control a fraction of another company, which may own a control fraction of a third company, etc. This will allow the owner of the parent company to control the subsidiaries while having a fraction of the underlying ownership. Can be combined with cross-shareholdings to make very complex corporate structures.

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Controlling shareholder: A shareholder who has enough votes to choose a majority of the board and exert *de facto* control over management. A shareholder may be able to control the company while owning less than 50% of the equity through the use of shares with special voting rights, control pyramids, and other tactics.

Corporate governance: The relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.

Cross-shareholding: When two or more companies hold each other's shares. Frequently used in conjunction with control pyramids.

Cumulative voting: Under cumulative voting, shareholders assign votes to one or more candidates for the board, instead of voting separately for each board member. Each shareholder receives a number of votes proportionate to their shareholdings—i.e. their number of shares multiplied by the number of open board seats. Under cumulative voting, 10%-15% of vote is normally enough to select one board member. This may allow minority shareholders to choose some members of the board.

Derivative suit: A law suit seeking damages from board members or other company officers filed by a shareholder or shareholders on behalf of the company. If successful, damages can be used to defer the legal expenses of the filing shareholders, but the remainder is awarded to the company, not directly to the filing shareholders.

Duty of care: The duty of a board member to act on an informed and prudent basis in decisions with respect to the company. Often interpreted as requiring the board member to approach the affairs of the company in the same way that a “prudent man” would approach their own affairs. Liability under the duty of care is frequently mitigated by the business judgement rule.

Duty of loyalty: The duty of the board member to act in the interest of the company and shareholders. The duty of loyalty should prevent individual board members from acting in their own interest, or the interest of another individual or group, at the expense of the company and all shareholders.

Executive board member: A board member who has a senior management position as well as being a member of the board. As managers or executives, they are paid employees of the company. In addition they have full board responsibilities.

Executive committee: A committee formed from the board's executive members. Like members of a management board, members of the executive committee may be titled “directors” and may have similar powers, however unlike the management board the committee is not a separate board tier.

Generally Accepted Accounting Principles (GAAP): US standards for financial reporting. Set by the Financial Accounting Standards Board.

General meeting: Meeting of shareholders, at which board members may be elected and shareholder resolutions, items requiring shareholder approval (i.e. a merger) and external or statutory auditors may also be approved or rejected. Shareholders may also have the opportunity to put questions to the company's management at the general meeting.

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Independent board member: Typically refers to a non-executive board member who has no business or contractual relationship (other than a service agreement as a board member) with the company, is not under the undue influence of any other board member or group of shareholders, and who is generally capable of acting in an informed and objective manner. However, criteria for independence may vary among countries and companies, depending on the patterns of control and affiliations with other companies. The definition of independence for an individual company can usefully be defined with reference to national codes, regulations or best-practice guidelines that reflect national circumstances.

Insider: A company board member, official, or a controlling shareholder. Can also refer to other *de facto* insiders, e.g. a shadow director or someone else who exerts control over day-to-day operations of the company.

Institute of Directors (IoD): An organisation for board members that normally provides training along with other services. The original IoD was founded in the United Kingdom in 1903 and currently has over 50,000 members.

International Financial Reporting Standards (IFRS): The financial reporting standards created by the London based International Accounting Standards Committee (IASC). Dozens of countries have adopted IFRS, or actively harmonise their accounting rules with IFRS. These standards are also commonly referred to as International Accounting Standards (IAS).

Management Board: A board tier composed of the senior managers of the company. Companies with a management board will normally also have a supervisory board that oversees the management board (and may also have an audit board). None, or only a limited number, of the directors on the management board may serve on the companies supervisory board.

Minority shareholder: A shareholder whose stake in the company is too small to allow them to have a direct influence on the company's board or management. A shareholder who is not a controlling shareholder.

Non-Executive Board Member: A board member who, broadly speaking, does not take part in the day-to-day operations of the company, and is not an employee of the company.

Pierce the Corporate Veil: The ability of a company's debtors and sometimes others to hold that company's shareholders liable in response to fraud or other abusive actions.

Proxy: Someone empowered to vote on behalf of other shareholders at the general meeting. Also refers to the mail -in ballot that shareholders in some countries can use to vote in the general meeting without attending.

Pre-emptive rights: The right of existing shareholders to participate in any capital increase. Pre-emptive rights should preclude the company selling new shares on favourable terms to only some shareholders or to non-shareholders.

Related party transaction: A transaction carried out between the company and one or more of its officers, board members, or significant shareholders, their close relatives or associates, or an entity in which they have an interest.

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Self-dealing: Board members, company officers, or significant shareholders engaging in related party transactions with their company. Abusive self-dealing is synonymous with tunnelling.

Staggered board: A board where the members have multiyear terms, with only a fraction of board members elected at each general meeting, e.g. board members have three year terms, and one third are elected each year at the AGM. Also known as classified boards.

Shadow director: a common law designation for someone who does not serve on the board, but exerts considerable influence on its deliberations.

Stakeholders: Individuals or groups, in addition to shareholders, who have a significant interest in, and/or influence over, the company's operations and the achievement of the company's goals. Such groups include employees, creditors, suppliers, customers, and the community.

Statutory auditor: Elected by shareholders to oversee the internal auditing and financial reporting of the company and in some cases compliance with regulation and shareholder resolutions. Statutory auditors make up the company's audit board.

Supermajority requirement: A requirement for certain items to be approved by the board or general meeting. May require two thirds, three quarters, or more of votes, instead of a simple majority.

Supervisory board: A board tier of non-executives that oversee the company and the company's management board. Used in two tier or (if there is also an audit board) three tier boards.

Triple bottom line: Measures of a company's environmental and social impact, in addition to its earnings.

Tunnelling: The use of self-dealing by board members, company officers, or significant shareholders to divert resources from the company to themselves. Also known as abusive self-dealing.

Unitary Board: A single tier board, i.e. no separate management board or audit board. A unitary board may still have specialised committees.

Tag-along rights: When a controlling shareholder sells enough equity to control the company to a new owner, the right of other shareholders to sell their shares, usually on the same terms as the controlling shareholder; i.e. a requirement for someone seeking to acquire a control stake to offer to buy equity from all shareholders, not just the controlling shareholder.