BUSINESS at OECD

Business at OECD (BIAC) Written Input on Draft Revisions to the G20/OECD Principles of Corporate Governance

21 October 2022

*Please note that, in this document, sentences and paragraphs where we suggest specific wording changes are highlighted in yellow.

General Comments

We are grateful for the opportunity to provide our comments on the Draft Revisions to the G20/OECD Principles of Corporate Governance. We are pleased to note that new issues, such as sustainability and resilience, digitalization, and bondholder rights, have been addressed and that existing issues, such as those relating to the external auditors, stewardship codes, company groups, board diversity, board committees, and board risk management oversight, have been examined in greater depth, to ensure that the Principles remain relevant and up-to-date.

In general, we are of the opinion that the OECD has made encouraging steps toward an effective revision of the Principles. Following an examination of the consultation document, we propose below several central ideas which we suggest the OECD consider during the remainder of the revision process.

I. Sustainability

We are pleased with the draft revisions and the addition of new Chapter VI, which addresses the critical topic of sustainability. Other chapters, however, continue to emphasize a shareholder-only approach (i.e., an investor-focused approach) rather than a stakeholder approach. We suggest more fully integrating the long-term value creation approach into the Principles, including sustainability. At the very least, we propose implementing improved cross-references to Chapter VI throughout the document. In addition, it could also be emphasized that suitable remuneration schemes, appropriately linked to sustainability, can help the company, its management, and its board achieve sustainability goals.

Further consideration can be given to the following three suggestions for integrating sustainability throughout the Principles:

(i) Board roles and responsibilities on sustainability

We suggest the Principles include provisions on board accountability, enforcement, and management oversight of sustainability as the board's roles and responsibilities are evolving, including more expansive oversight of sustainability.

- We suggest including guidance on how the board should integrate sustainability into its strategy and board duties. There should be a review of board members' expertise, experience, and mindset. We observe that provisions in the Principles on succession planning and board composition are quite modest and would benefit from guidance relating to talent management, assessing the current and future needs with respect to board composition.

- We anticipate that the board, and particularly the audit committee, will be assigned additional responsibilities in light of the emphasis on sustainability and related disclosures. We, therefore, suggest including guidance for the board and the audit committee roles. For instance, guidance on reporting procedures can stimulate the audit committee to monitor the sustainability reporting process, including the digital reporting process behind it, and the company's process for identifying information reported in accordance with applicable sustainability reporting standards. In terms of internal control, it should be emphasized in the guidance that the audit committee can monitor the effectiveness of the company's risk management and internal control systems (and internal audit, if applicable) in order to meet enhanced reporting and external assurance requirements.

(ii) ESG ratings

While ESG ratings are playing an increasingly important role in assessing corporate sustainability and ESG performance, it should be emphasized that ESG ratings may be based on different information than that required under sustainability standards. We propose the Principles address whether and how ESG ratings comply with the taxonomies.

(iii) Assurance of sustainability disclosures

The assurance of sustainability disclosures is mandated in some jurisdictions, and stakeholders are increasingly considering the need for assurance over sustainability. We suggest the Principles acknowledge these developments and the benefits independent assurance brings to good corporate governance and include a more in-depth discussion of assurance over sustainability.

II. Risk management and internal control systems

It is crucial to note that in most jurisdictions, annual reporting now encompasses a broader range of corporate information than just financial performance. Expanded reporting requirements necessitate the evolution of the system that underpins risk identification, management, and control of the company, as well as the integrity of disclosed information; accordingly, the management, the board, and the audit committee's (if present) roles and responsibilities may expand significantly. To assist those charged with governance in taking on more responsibilities, risk management and internal control systems must evolve. We, therefore, suggest that the Principles place a greater emphasis on the role of risk management and internal control as a crucial system in assisting the management, the board, and the audit committees, as well as its wider set of stakeholders.

III. The role of the external auditor

Promoting a better understanding of the role of the external auditor in the corporate reporting ecosystem is essential to achieving the highest standards of corporate governance. We, therefore, suggest a more

explicit and holistic description of its role in the corporate governance framework (Note the corporate governance 'triangle' of stakeholder-company-external auditor). The current Principles focus on output of the external auditor and are process-oriented rather than explaining the relevance and added value that the external auditor can contribute. It should not just mention the opinion of whether the accounts represent a true and fair view, but also the broader elements of an external audit, which currently are not yet included, such as:

- o Key audit matters and the role of the company and its board in relation to these matters;
- o External auditor observations and recommendations with respect to internal control in management letters/board reports;
- o Role of the external auditor in connection with the board/directors' report (ISA 720), which is especially important given the integration of sustainability in the Principles (sustainability information)

IV. Clear language and definitions

Throughout the Principles, clear language and definitions assist users in interpreting the relevant guidance.

• We note that the 2015 version of the Principles uses directive language, including many examples of "companies should" – in order to express the Principles and sub-principles. This sets a firm tone, while the current draft document uses more cautious "may" clauses in several Principles and sub-principles, or otherwise, it offers descriptive comments on regulations that prevail in various jurisdictions. Where needed, we expect the OECD Corporate Governance Committee to clearly stress the need for principles/sub-principles considered essential for good governance.

• We suggest the term "sustainability" be used consistently throughout the Principles. It might also be useful to emphasize in the Principles that the notion of "sustainability" extends beyond climate change and includes pollution, biodiversity, social and governance-related issues. Furthermore, we suggest avoiding the term "non-financial information" as it may be misleading. After all, non-financial information that is material to the assessment of company value creation may well become financial information in the future, even if it is not now. "Pre-financial" or "sustainability information" would be preferable.

• Shareholder/stakeholder terminology: We appreciate the enhanced language on the role of broader stakeholders in corporate governance, particularly in Chapter VI. We believe it would be beneficial to review the draft holistically to promote consistent use of this new language throughout the Principles. Such a review would considerably assist the document's usability, readability, and potential for future use by mitigating language that might otherwise lead to inconsistent user comprehension.

• The proposed revisions emphasize that the Principles are designed for listed companies. Unlisted companies, which often contribute significantly to a country's economy, also need good governance. The same applies to corporate law and state-owned enterprises, which should be exemplary. We suggest these points be stressed in the Principles.

Specific Comments

Introduction & About the Principles section

Paragraph 3 (page 6)

We suggest not focusing on economics only but also including stainability here:

Well-designed corporate governance policies can play an important role in contributing to the achievement of broader economic objectives ..

The draft revisions emphasize that well-designed corporate governance policies assist companies in accessing financing from capital markets. The ease of access to the markets for companies with well-designed corporate governance policies is true for capital markets and credit lines, as banks and other financial institutions are more eager to provide credit lines to firms with better governance practices. This can be emphasized in the revisions as well.

We think that a crucial and overriding benefit of sound corporate governance frameworks is the creation of trust – in institutions, companies, and markets as a whole. The term "trust" is used just once in the Principles (outside of legal usage). Given the importance of established trust in achieving stated goals (such as capital accessibility) and with an enhanced focus on trust in institutions and markets, including metrics for measurement, the revisions should at a minimum acknowledge creation of trust as a goal and positive outcome. Therefore, we suggest introducing the creation and maintenance of trust as a key outcome of sound corporate governance frameworks in this paragraph - a point that should be repeated the Principles when discussing benefits.

Paragraph 4 (page 6)

We are of the opinion that a reference to attracting longer-term capital should be kept in Paragraph 4. Hence, we suggest the following changes:

If companies and countries are to reap the full benefits of global capital markets, and attract longer-term capital, their corporate governance frameworks must be credible, well understood both domestically and across borders, and aligned with internationally accepted principles.

Paragraph 5 (page 6)

We suggest focusing on long-term value creation rather than corporate wealth creation:

Providing them with a system in which they can share in ~~corporate wealth~~ long-term value creation, knowing their rights are protected, will give households access to investment opportunities that ~~may~~ should help them to achieve higher returns for their savings and retirement.

Paragraph 6 (page 7)

We believe that "non-financial" information can be clarified and that the importance of independent verification of information can be included here. We suggest the language as modified below:

Such a framework should include the disclosure of material financial and non-financial information, including about climate change and other sustainability factors, that is reliable, consistent, comparable, and subject to independent external assurance.

Paragraph 7 (page 7)

It would be beneficial if a definition of "semi-government" is provided.

Paragraph 8 (page 7)

We understand that the paragraph refers to companies with publicly traded equity by the phrase "*publicly traded companies*." However, we suggest here a reference also to companies with publicly traded debt, which have become especially relevant given the recognition of bondholder rights in Sub-principle VI.D.6.

Paragraph 10 (page 8)

The text emphasizes the guideline function of the Principles indicating that different jurisdictions can make different definitions with respect to a concept, taking into account the country-specific structures. "Non-executive director" can also be added as an example in this context, in addition to the "key executive" definition already available.

We think the distinction between shareholders and stakeholders is important. We believe the draft Principles appropriately address the interests of shareholders, while recognizing that, especially in some jurisdictions, the interests of other stakeholders, such as employees, customers, suppliers, and broader society, are also important to a company's long-term success. The term "stakeholders" as defined in paragraph 10 is helpful, and this distinction should be used throughout the Principles. Since this would be a significant change in the usage of a key term, we believe that it should be effectively communicated to the Principles' users so that they fully comprehend it without any misunderstanding.

I. Ensuring the basis for an effective corporate governance framework

Intro Paragraph 3 (page 10)

We believe the corporate governance framework should be monitored to maintain and strengthen its contribution to the "sustainability and resilience of corporations and, therefore, we suggest the language as modified below:

Countries seeking to implement the Principles should monitor their corporate governance framework with the objective of maintaining and strengthening its contribution to market integrity, access to capital markets, economic performance, the sustainability and resilience of corporations, and transparent and well-functioning markets.

I. A. (page 11)

The draft revisions still tend to focus on the financial and economic efficiency aspects, which are the shareholder approach. We suggest including the stakeholder approach and sustainability performance more explicitly in this and the other Principles.

The corporate governance framework impacts corporate access to finance not just via the public equity markets but in a rather broad manner via also the debt markets, banking sector, and credit facilities. There are jurisdictions where corporate governance requirements are explicitly sought by banks for credits above a certain threshold. As such, the guidelines can mention this general effect of corporate governance practices and its role via the public equity markets.

The following revision can be considered:

Where appropriate, corporate governance frameworks should therefore allow for proportionality, in particular with respect to the size of publicly traded companies or the structure of the company, such as private companies with or without debt securities issued, state-owned enterprises, etc. Other factors that may call for flexibility include the company's ownership and control structure, the presence and weight of institutional investors, geographical presence, sectors of activity, and the company's development stage.

I. B. -Header (page 11)

We appreciate the broader reference to corporate governance codes and thus a better recognition of their contribution to the definition of the corporate governance framework. In this light, we suggest recommending all OECD jurisdiction to promote the definition of code of conduct in the private sector. Therefore, we suggest the language as modified below:

The legal and regulatory requirements that affect corporate governance practices should be consistent with the rule of law, transparent and enforceable. Corporate governance codes may offer a complementary mechanism to support the development and evolution of companies' best practices, provided that their status and implementation is duly defined.

I. B. (page 11)

Section I.B, Paragraph 3 may include that independent assurance can enhance market credibility and promote certainty and trust in shareholders and stakeholders regarding progress and implementation of internal processes.

As a general remark with respect to "comply-or-explain" principle; though not a means of mandatory enforcement, "comply or explain" frameworks act as a catalyser to encourage and rather to oblige companies to comply, as anyone under normal circumstances would refrain from reporting non-compliance. Many jurisdictions have defined standard formats for reporting compliance, which allows ease of comparison between companies among the metrics in the formats. As such, these reporting schemes under the comply-or-explain allow for visibility and discourage reporting non-compliance even further. Accordingly, the role of "comply-or-explain" frameworks should not be understated and they shall not be characterized as a purely voluntary means of application.

I. C. (page 11)

The guidance under this Principle could also usefully cover topics such as, environmental law, health and safety, antitrust law. Also, the need for regulatory stability over time should also be mentioned, as too frequent changes are clearly detrimental.

I.E. (page 13)

As to definition of fees imposed on supervised entities, we suggest rephrasing the OECD statement introducing a reference to the transparency of the definition of such fees as well as to the criteria that are adopted for setting their amount and distribution among supervised entities.

The second paragraph of the annotations to supporting principle I.E. could be therefore amended as follows:

Many jurisdictions impose levies on supervised entities in combination with, or as an alternative to, government funding. This may support greater financial autonomy from governments to carry out their mandates, while structuring such fees to avoid impeding supervisory independence from regulated industry participants and providing adequate transparency on the criteria adopted to set the fees and their fair distribution among supervised entities. (…)

I.F (page 13)

Maintaining a human element in the supervisory process would not only safeguard against risks of incorporating existing biases in models but also help mitigate the risks of an over-reliance on models and digital technologies. We recommend the following edit to the annotations of Principle 1.F:

When artificial intelligence and algorithmic decision-making are used in supervisory processes, maintaining a human element in the process may help to safeguard against risks of incorporating existing biases in algorithmic models and mitigate the risks associated with an over-reliance on models and digital technologies.

I.H (page 13)

The draft revision introduces a number of relevant provisions with regard to company groups. Unlike for other issues, where the principles and the annotations describe the phenomenon, emphasise its positive effects and its drawbacks, and identify the goals to pursue, groups are mentioned within the G20/OECD Principles of Corporate Governance exclusively to highlight the associated risks. We therefore suggest adding a broader introduction to supporting principle I.H., whose wording could sound (in line with the findings of the OECD peer review on "Duties and responsibilities of boards in company groups", page 11) as follows:

Well-managed company groups, especially if distinguished by the adoption of protocols and governance guidelines at group level, can contribute significantly to economic development and employment through achievement of economies of scale, synergies and other efficiencies. Nevertheless, company groups present the potential for inequitable treatment of shareholders and other stakeholders and other negative consequences for the efficiency and development of capital markets and economies more broadly. The prevalence of company groups in many jurisdictions has therefore heightened the need for regulators ....

"*Publicly traded companies within group structures*" may be understood as "listed subsidiaries" while the listed company is generally holding the group companies.

It should be noted that for some jurisdictions, company groups are not a new item and could indeed be the general commercial structure. For instance **in Turkey**, where concentrated ownership by founder families and company group structures is common, a lot of regulations are in place legislating related party transactions and many of these cover the subsidiaries and joint ventures of the listed company also in addition to the company itself. Especially under such circumstances, a balanced approach shall be sought in terms of regulating company groups. To ensure that intragroup transactions are also made on an arm's length basis, an emphasis in the principles regarding these could be useful.

II. The rights and equitable treatment of shareholders and key ownership functions

Introduction – Header (page 15)

We propose the following addition so that the text explicitly mentions and emphasizes the ability of shareholders to exercise their rights efficiently:

All shareholders should therefore be able to exercise their rights efficiently and have the opportunity to obtain effective redress for violation of their rights, at a reasonable cost and without excessive delay.

Introduction Paragraph 3 (page 15)

For the sake of clarity, please consider the following amendments and changing "the ability to pledge shares" with "the ability to pledge significant assets," as it is unclear whether the pledged shares are in possession of the company or the controlling shareholder.

Additional rights have also been established in various jurisdictions, such as direct nomination of ~~individual~~ board members ~~or board member slates~~, the ability to pledge shares, the approval of distributions of profits, shareholder ability to vote on board member and/or key executive remuneration, approval of material related party transactions and others.

Introduction (page 15-16)

The introduction part may be read as suggesting that initial recourse for minority shareholders may be litigation or a form of combative arbitration. We believe the Principles should first emphasise that a core tenet of good corporate governance should be mechanisms for shareholder engagement with the company – it is only when these mechanisms have failed that litigation may be proper recourse.

Introduction (page 16)

Derivative lawsuits**. Canada, and other Commonwealth jurisdictions** include the oppression remedy as a tool for enforcing directors' fiduciary duties.

Introduction, 3rd paragraph from the last (page 16)

The substantive factual prerequisites of management and board members' liability do not generally pose a problem and are typically interpreted strictly enough within the national laws. However, the liability regime requires the effective assertion of liability claims. We, therefore, welcome the increased emphasis on derivative lawsuits in the draft revisions. We suggest following edit:

The confidence of minority investors is enhanced when the legal system provides mechanisms for minority shareholders to bring lawsuits when they have reasonable grounds to believe that their rights have been violated. Some countries have found that derivative lawsuits filed by minority shareholders on behalf of the company ~~may be~~ act as an efficient additional tool for enforcing directors' fiduciary duties, if the distribution of litigation costs is adequately set.

II. A. (page 16)

We support the recognition of the right to approve or elect the external auditor as a basic shareholder right. This is already a generally accepted practice, with 86% of surveyed jurisdictions assigning the primary responsibility for appointing and/or approving the external auditor to the shareholders (OECD Corporate Governance Factbook 2021).

However, we find the use of "may" in the statement "*Basic shareholder rights may also include the right to approve or elect the external auditor.*" too hesitant and suggest that the right to approve or elect the external auditor should be given equal priority as the other five basic shareholder rights.

Some of the mentioned basic shareholder rights relate to and are used directly by the shareholder (such as the right to convey or transfer shares), whereas some are used via the presence in the general assembly meetings (such as the right to elect and remove members of the board). Differentiation for the ones that will be used via participation and voting in the general assembly meetings could be useful. In this respect, it shall also be emphasized that the newly introduced right, i.e., the right to approve or elect the external auditor, is to be exercised via the resolutions at the general assembly.

II. B (page 16)

We suggest the language as modified below for the sake of further clarity:

3) extraordinary transactions, including the transfer of all or a substantial part of ~~substantially all~~ corporate assets, that in effect result in the sale of the company.

II. C. 3, Paragraph 1 (page 17)

We appreciate that general shareholder meetings in virtual or hybrid formats have been taken into the scope of the Principles. We suggest the following addition to the annotations to Sub-principle II.C.3:

However, due care is required to ensure that virtual or hybrid meetings do not decrease the possibility for *shareholders to engage with and ask questions to boards and management in comparison to physical meetings.*

II. C .3 paragraph 2 (page 17)

The reference to virtual and hybrid shareholders' meetings is important and well balanced. Nevertheless, it would be useful to stress more clearly, on one hand, that the adoption of such new formats requires the actual availability of cutting-edge and secure technologies and, on the other hand, that companies usually rely on technology vendors to handle virtual meetings, the latter being required to possess appropriate professionalism. It is therefore suggested to amend and supplement as follows:

The availability of a cutting-edge technology, able to assure a smooth and secure development of the meeting, is required when recourse is made to virtual or hybrid format. ~~Many~~ Companies usually rely on technology vendors to handle virtual or hybrid meetings. It is ~~important~~ therefore necessary that such vendors have the

~~necessary~~ appropriate professionalism, as well as data handling and digital security capacity to support the conduct of fair and transparent shareholder meetings that allow for shareholders' equal participation, identification as well as the confidentiality and security of votes cast prior to the meeting.

II. C. 5 (page 18)

According to the annotations of Principle V.E.3:

Disclosure about other board and committee memberships to shareholders is therefore a key instrument to improve board and committee nominations.

We understand that disclosure about committee memberships should not only cover memberships held within the same company but also those held on other companies' boards. We deduce this from the research output cited in the OECD issues paper (Rey, 2022), titled "The role of board-level committees in corporate governance", which states, "Research has shown that members who are members of several committees within the same firm (busy internally) can increase their performance if not over-stretched, while members who are members of committees in different companies (busy externally) may reduce their committee work."

To make Sub-principle II.C.5 consistent with Sub-principle V.E.3 and the research cited by Rey (2022), we suggest editing it to recommend disclosing information about any committee memberships (both internal and external) that nominees hold.

As quoted below, the annotations of Sub-principle II.C.5 refer to many different forms of say-on-pay.

The different forms of say-on-pay (binding or advisory vote, ex ante and/or ex post, board members and/or key executives covered, individual and/or aggregate compensation, remuneration policy and/or actual remuneration) play an important role in conveying the strength and tone of shareholder sentiment to the board.

Making room for such different forms is reasonable as there is yet no international consensus on how to structure say-on-pay. However, in the interests of good corporate governance, and to ensure consistency and comparability, we suggest that a move towards standardization should be stated and encouraged here.

We suggest considering that disclosure of directors' and officers' liability insurance coverage may entail a risk of abuse by litigators, as it provides them with an easily measurable target. Its necessity may also be easily misunderstood by shareholders.

II. C. 7 (page 18)

Sub-principle II.C.7 addresses the elimination of impediments to cross-border voting, which can be especially relevant for countries, where foreign holdings constitute a significant part of company

ownership. We propose the following addition to the annotations of the sub-principle to encourage the use of blockchain technologies as an additional method to eliminate impediments to cross-border voting:

The use of blockchain or similar technologies should be implemented on a global scale to ensure substantially expedited cross-border voting, particularly in countries with significant foreign holdings, so that also international shareholders can vote their shares shortly before or even at shareholder meetings.

II.D (page 19)

In addition to the concern that encouraging direct consultation between shareholders of listed companies may facilitate market manipulation, there is the concern that it may generate "factions" in unlisted companies defending their specific interests to the detriment of other shareholders and the corporate interest, while disclosure of concert action is not compulsory.

Considering that the co-ordination of investors' engagement is important for all companies, we suggest the deletion of the sentence regarding controlled companies:

(…) Some major institutional investors have created initiatives to facilitate the co-ordination of their engagement, for example to address climate-related concerns~~. In jurisdictions where publicly traded companies have controlling shareholders, these actions safeguard the interest of minority shareholders while increasing their voice in company matters.~~ (…)

II. F. 1 (page 21)

Some of our members pointed out that the description in yellow-highlighted below needs to be reconfirmed whether it is clear enough and whether it is mandatory from the intent of this section:

…, shareholders may also be given a say in approving certain transactions, in particular large transactions, those conducted outside the ordinary course of business or those not on market terms, ~~-~~with interested shareholders excluded from voting. Some jurisdictions also require an opinion or evaluation from an external auditor or outside specialist, in some cases as a precondition for shareholder approval.

II. F. 2 (page 21)

We suggest considering also the case of jurisdictions permitting the vote of the director having an interest in the transaction, provided that adequate information about his/her interest has been provided and timely disclosed to the whole board. This solution favours better accountability of the director, who is called to attend the meeting, provide necessary information and vote (if deemed advisable), bearing the responsibility for his/her behaviour. Therefore, we propose the following amendment:

(…) Where a material interest has been declared, it is required or considered good practice in some jurisdictions for that person not to be involved in any decision involving the transaction or matter and/or for the decision of the board …

II. H (page 22)

Markets for corporate control should be allowed to function in an efficient and transparent manner.

According to the OECD (2021b) study, several countries already had mechanisms to protect certain domestic strategic assets from foreign acquisitions before the COVID-19 crisis, and with the pandemic, some policymakers tightened their control rules and screening mechanisms for foreign direct investment (FDI). Notably, FDI screening mechanisms were tightened in 16 out of the 46 jurisdictions surveyed in the study. Such actions contradict Principle II.H. They constitute an impediment to the functioning of the market for corporate control, just like anti-take-over devices, which are mentioned in Sub-principle II.H.2.

We propose mentioning mechanisms such as FDI screening within the scope of this principle.

II.H.2 (page 22)

The Principles mention that some jurisdictions provide options for exit to dissenting shareholders in case of major corporate restructurings, including mergers and amalgamations. A reference to fair price provisions for such options could be useful.

III. Institutional investors, stock markets, and other intermediaries

Our members note that the OBO/NOBO system in place **in the United States and Canada** creates significant barriers between issuers and their shareholders.

Intro -Paragraph 3 (page 23)

Considering that codes are not adopted by jurisdictions, we suggest the language as modified below for the sake of clarity:

In ~~M~~many jurisdictions, as a complementary governance tool, ~~have adopted~~ codes on shareholder engagement ("stewardship codes") have been adopted with the aim of strengthening both institutional investor accountability and their role in holding company boards and management accountable.

III. A Paragraph 3 (page 24)

The emergence of stewardship codes as a complement to other disclosure requirements for institutional investors on their engagement and voting policies helps improve the corporate governance framework. Especially in jurisdictions where group structures are more common as compared to dispersed ownership structures and instructional investors are weak, controlling major shareholders may be able to pass resolutions without being effectively questioned by other stakeholders. In such cases, stewardship codes will contribute positively to the corporate governance environment.

III. B

The Principles state that custodian institutions holding securities as nominees for customers should not be permitted to cast the votes on those securities unless they have received specific instructions to do so. That being valid, it shall also be noted that standardized all-purpose power of attorneys will not contribute to overcome this issue. Delegation shall be made topic-based, ensuring that the shareholder is indeed informed of the subject matter.

III. D (page 25) and others

We note that ESG ratings may be based on different information than the information required based on sustainability standards. We suggest clarifying this in the Principles and to its users and to also address if and how ESG ratings are compliant with the taxonomies.

III. D (page 25)

The revised version of Principle III.D states:

The corporate governance framework should require that regulated entities that provide analysis or advice relevant to decisions by investors, such as proxy advisors, analysts, brokers, ESG and credit rating agencies, index providers and others, disclose and minimise conflicts of interest that might compromise the integrity of their analysis or advice.

Hence, the focus of the principle is the disclosure and minimization of conflicts of interest that the mentioned regulated entities may be subject to. However, we are of the opinion that the insertions made to the annotations of this principle have a broader scope than solely dealing with conflicts of interest. Rather, they encourage transparency and disclosure in a broader sense, which we support. We suggest the addition of a new principle or sub-principle for the general transparency requirements (other than those related to conflicts of interest) discussed in the annotations to this principle, possibly expressed as follows:

The methodologies used by ESG and credit rating agencies, index providers, and proxy advisors should be transparent and publicly available to clients, rated companies, and other market participants.

We acknowledge that the term "rating agencies" is well understood within the international policy arena. We believe that various service providers that offer "scoring" or other forms of evaluation of the level of sustainability of companies should not be intermixed/equated with rating agencies. Therefore, we suggest the language as modified below:

Considering the importance of – and sometimes dependence on – various services in corporate governance, the corporate governance framework should promote the integrity of regulated entities that provide analysis or advice relevant to decisions by investors, such as proxy advisors, analysts, brokers, credit rating agencies, ESG scoring/reporting services, ~~and credit rating agencies,~~ and index providers. These service providers, particularly ESG scoring or rating and index providers, can have significant impact on companies' governance and sustainability policies given their rating methodologies and index inclusion criterion. When properly constructed and managed, these can play an important role in shaping good corporate governance practices. Therefore, the methodologies used by service providers that produce ratings, scores, and indices should be transparent and publicly available to clients and market participants. This is particularly important when they are also referenced as metrics for regulatory purposes. Exclusive reliance on ratings or scores in regulation may raise questions, while the process for deciding which ratings or scores are eligible for use for regulatory purposes should be transparent and could be subject to evaluation at various levels of frequency.

The Principles emphasize the function of ESG rating providers as a catalyst to improve governance and sustainability policies, given their rating methodologies and index inclusion criterion. As such, we believe the knowledge and experience of these teams also stand as a major issue that the principles can highlight. In many jurisdictions, there are licensing requirements for credit rating providers and best-practice documents for corporate governance rating providers, whereas this has not yet been the case for ESG rating providers.

Any regulatory reliance on rating providers can introduce uncertainty (especially in case of very diversified ESG ratings) and new costs for companies and investors, with significant effects on smaller ones. We reiterate the concern that the annotations have already highlighted that "exclusive reliance on ratings in regulation may raise questions," and share that monitoring may be necessary to ensure that such a concern does not become reality.

The document should recommend regulation rather than noting that "many jurisdictions" regulate.

III.E (page 26)

The Principles emphasize that the effectiveness of prohibiting insider trading and market manipulation depends on vigorous enforcement action. Therefore, mentioning the importance of the effective use of digital tools and ensuring forceful and efficient supervision in this respect could be useful.

III. F (page 26)

Section III.F addresses the continued internationalisation of modern companies and correctly identifies key points to consider. However, additional language may be included to address how multi–jurisdictional conflicts affecting public companies may be best addressed. The most recent example is the US/China issue regarding US PCAOB access to audit working papers and the threat of non-compliant companies facing delisting on US exchanges. While language should be broader than the immediate example, the Principles could include direction on such occurrences if they arise in the future.

IV. Disclosure and transparency

Header (page 28)

We believe it is important to introduce sustainability into the header statement while retaining the appropriate balance between shareholder and stakeholder interests. Therefore, we suggest the language as modified below:

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial position and ~~situation,~~ performance, sustainability-related performance, ownership, risk management, and governance of the company.

We also note, more generally, that accepted terminology amongst current sustainability standard-setters, as well as IOSCO, differentiates between "sustainability reporting" – which is focused on inward-out impacts of companies on society vs. "sustainability-related reporting" – which is more inclusive and also includes outward-in impacts of ESG factors on company performance or enterprise value.

Intro (page 28)

It is suggested that, given the focus on sustainability and resilience, disclosure be required of the directors' estimate of the company's resilience in the short and medium term is particularly relevant to investors. The disclosure statement may consider and provide information on the directors' views about material uncertainties facing the company. Such a statement may consider issues highlighted during the COVID-19 pandemic and might include material matters that may challenge company resilience, such as business continuity policies and practices, supply chain resilience and/or issues with cyber security. Such a statement may be included in the Director's Statement, already required in many jurisdictions and be an extension of the assessment of 'going concern'. Given such a statement may be subject to uncertain future events, some 'safe harbour' provisions may be necessary for such disclosures (Noted later at Part V A 1).

Intro Paragraph 1 (page 28)

We suggest the language as modified below:

Public disclosure is typically required, at a minimum, on an annual basis though some countries require periodic disclosure on a semi-annual or quarterly basis, or ad hoc disclosure in the case of material related party transactions and other material developments affecting the company.

Intro Paragraph 3 (page 28)

We understand that the Principles highlight the effect on the investor's assessment of company value instead of the investor's economic decisions in assessing whether the information is material. The phrase can be revised as "*can reasonably be expected to influence a reasonable and knowledgeable investor's assessment.*" It should also be noted that, in this case, the value (as mentioned) shall be the long-term value as there could be cases where rumors or false news may cause short-term turbulences in the price of traded shares with no effect on long-term corporate value.

Disclosure requirements should not place unreasonable administrative or cost burdens on companies.

To clarify what is unreasonable, we suggest including wording around the balance between the need of the stakeholders of the company and the burden on the company. For example, not placing costs or burdens unless the benefits exceed the costs or otherwise public interest in imposing them.

Material information can be defined as information whose omission or misstatement can reasonably be expected to influence an investor's assessment of a company's value and likely future cashflows. This would typically include the company's own assessment of the value, timing and certainty of its future cash flows.

We suggest creating more congruence in this section with section VI as materiality should not just be about enterprise value in some markets, and corporate reporting is broader than reporting on financial (cash flow) performance only.

Paragraph 5 (page 28)

While corporate disclosure should focus on what is material to investors' investment decisions and may include an assessment of a company's value, it may also help improve public understanding of the structure and activities of companies, corporate policies and performance with respect to environmental and social and governance matters.

We disagree with the guidance that disclosures should focus on what is material to investors' investment decisions. We suggest emphasizing that the disclosures should be about corporate reporting – the full spectrum of company performance to all stakeholders

IV. A. 2 (page 29)

We suggest integrating this guidance with the financial guidance and not just refer to chapter VI as the current presentation creates an unbalance between financial and sustainability information.

Parts of the annotations of Sub-principle IV.A.2, which address disclosures on company objectives and sustainability information, have been deleted to refer the readers to the new chapter on sustainability and resilience. The clause below is among those deleted:

This may include disclosure of donations for political purposes, particularly where such information is not easily available through other disclosure channels.

Some countries require additional disclosures for large companies, for example net turnover figures or payments made to governments broken down by categories of activity and country (country-by-country reporting).

We suggest that the disclosure of "donations for political purposes" and "payments made to governments" continue to be explicitly mentioned in the text. Furthermore, we propose that lobbying activities, which are not coherent with companies' sustainability-related commitments, should also be disclosed. This should include donations to lobby organizations undermining the credibility of basic ESG

principles. We believe such a disclosure requirement would be a step consistent with Principle VI.C.1, which assigns boards the responsibility to "*ensure that companies' lobbying activities are coherent with their sustainability-related commitments*."

IV. A. 3 (page 29)

Disclosure of risk is typically driven by materiality. A risk that may be material to a subsidiary may not be material on a consolidated basis. We don't think it would be helpful to shareholders to disclose risk on an entity (or unconsolidated) basis as the disclosure would not be relevant to investment decisions and could obscure the information that is relevant to shareholders.

The Principles refer to shareholder agreements stating that some countries have found it necessary to closely monitor such agreements and to limit their duration. We believe an addition to the importance of disclosure requirements related to such agreements could be considered as some of the terms in these agreements may affect all investors rather than just the agreement parties.

When considering the disclosure of capital structures, we believe that the new reference to company groups appears redundant as it is already covered by the transparency issue regarding pyramid structures as well as the second and third sentences of sub-principle IV.A.4. We, therefore, suggest deleting the following addition:

~~*Company groups are often complex structures that involve several layers of subsidiaries, including across different sectors and jurisdictions. These structures may limit the ability of non-controlling shareholders of the parent and subsidiary companies to influence corporate policies and understand the risks involved.*~~

IV.A.4 (page 30)

The Principles state that it is also required or considered good practice in some jurisdictions to disclose shareholdings of directors, and it is good practice that such disclosure is made on an annual basis. We believe the addition of "disclosure on an annual basis" may cause ambiguity as the directors are expected to disclose changes to their shareholdings simultaneously with the transaction. The wording can be revised to include "ongoing" information.

The Principles incorporate the use a centralised company registry to facilitate access to up-to-date and accurate information on beneficial ownership. That being true, it could also be mentioned that as such registry will only report first-level ownership structures, even that may not be enough to understand the indirect shareholding structure fully, especially in cases where alternative mechanisms such as trust structures exist.

IV.A.5 (page 30)

We propose the following changes to the annotations of Sub-principle IV.A.5 to further clearly convey the intent of the section:

Information about board and executive remuneration is also ~~of~~ a significant concern ~~to~~ for shareholders. Of particular interest is the link between remuneration and long-term company performance. Companies ~~are generally expected to~~ should disclose information on the remuneration policies applied to board members and key executives as well as remuneration levels or amounts, so that investors can assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to company performance, including resilience and sustainability. Remuneration information should be disclosed in a way that allows a year-to-year comparison.

These policies, however, may not fulfil their goal if they are frequently adjusted in the absence of a significant change in the business strategy or a structural transformation of the context in which the company operates. Specifically, the likelihood of an economic downturn is a factor that corporate officers reasonably can consider when accepting their remuneration package and may not immediately justify an adjustment of the terms for their remuneration.

Adjustments to remuneration packages of the sort explained above were indeed carried out by companies during the COVID-19 crisis. Namely, some companies changed executive bonus plans, switched performance metrics, and ignored missed targets to avoid a significant drop in executive pay due to the pandemic (OECD, 2021b). We recommend that Sub-principle IV.A.5 encourage the timely disclosure of such changes to remuneration packages.

IV. A. 6 (page 30)

We appreciate that the principle now names "composition of boards" within the scope of disclosures to be made about board members. We think it would be a good practice if regulatory or listing authorities provide clear guidance to companies in their jurisdictions (with due regard to the fact that priorities given to diversity criteria may vary between jurisdictions) about which diversity statistics to disclose and their respective definitions. When companies are required to follow a clear-cut template in their disclosures, the overall data will be consistent and comparable across companies. The formation of reliable and useful statistics will only be possible if authorities provide clear guidance from the top.

IV.A.7. (page 31)

For sake of clarity, we suggest rephrasing the following sentence of the last paragraph of the annotations to sub-principle IV.A.7. regarding related party transactions as follows:

To be effective, disclosure thresholds may need to be based mainly on quantitative criteria~~, but avoidance of disclosure through splitting of transactions with the same related party should not be permitted~~ and good practice suggests aggregating transactions that are homogeneous or made under a unified purpose as far as they are carried out with the same related party over a certain period of time.

IV. A. 8 (page 32)

We believe the "foreseeable" terminology is problematic/vague. Therefore, we suggest that "materiality" is a more appropriate filter for identifying and addressing risk factors: "reasonably foreseeable" should be deleted from the title and text of this section.

The focus of this guidance is narrow. We suggest using the term corporate information instead. Also, the risks included could be taken to be essentially just the E of ESG (Environmental, Social and Governance), however all material sustainability risks should be included.

We suggest the language as modified below:

Users of financial information and market participants need information on reasonably foreseeable material risks that may include: risks that are specific to the industry or the geographical areas in which the company operates; dependence on commodities and value chains; financial market risks including interest rate or currency risk; risks related to derivatives and off-balance sheet transactions; business conduct risks; digital security risks; compliance risks; and sustainability risks, notably climate-related risks

IV. A. 9. (page 32)

Most jurisdictions publish a national report reviewing adherence to the code by publicly traded companies as a good practice to support effective disclosure and implementation of "comply or explain" codes.

We agree with the role that such national reports can play in supporting the effective disclosure and implementation of corporate governance codes. We encourage further emphasis in the annotations of Sub-principle IV.A.9 on the benefits of national reports and encouragement towards their production.

IV. A. 10 (page 32)

It would be helpful if the paper explained whether this should be part of the issuer's schedule disclosure or whether the disclosure obligation should only be triggered if there is a material change. We also propose the following edits to the last sentence of the annotations to Sub-principle IV.A.10 to further clarify:

As a consequence, the timely and sufficiently detailed disclosure of material information on debt contracts, including the impact of ~~the most significant~~ material risks related to an actual or imminent covenant breach and the likelihood of their occurrence, is necessary for investors to understand a company's business risks.

The Principles have been revised to incorporate the importance of timely disclosure of material information on debt contracts. Although investors may need such information to understand a company's business risks better, the scope of information required shall be defined in a careful manner in order to avoid excessive reporting requirements. Providing information on all material covenants may be

unnecessary and it shall be assessed whether the risk of a covenant breach shall be disclosed at all times or only when it is likely in the near future. The guidance in International Financial Reporting Principles on this matter may be used as a reference to define the reporting scope.

IV. B (page 33)

We suggest updating the title of this sub-principle to fully integrate financial and sustainability information as follows: *Corporate information should be prepared and disclosed using high quality standards, including standards for financial and sustainability reporting.*

This section contains the following language:

*Most countries mandate the use of **internationally recognised standards** for financial reporting, which can serve to improve transparency and the comparability of financial statements and other financial reporting **between countries.** Such standards should be developed through open, independent, and public processes involving the private sector and other interested parties such as professional associations and independent experts. **High quality domestic standards can be achieved by making them consistent with one of the internationally recognised accounting standards.***

We recommend that the importance of international standards for sustainability disclosures (e.g., the global baseline of sustainability disclosures being adopted by the ISSB) be incorporated into the Principles. Either include similar language in VI.A or broaden IV.B to also reference sustainability standards as follows:

Information should be prepared and disclosed in accordance with high-quality financial and sustainability-related reporting and disclosure standards

IV. C (page 33)

We welcome the call for independence of audits and their accountability to shareholders, but we suggest referencing auditors' ethical code/conduct more broadly. Therefore, we suggest the language as modified below:

The independence and ethical conduct of auditors and their accountability to shareholders and the public interest should be required.

Suggested changes below are intended to be more in conformance with accepted independence/ethical code terminology:

Provision of non-audit services by the external auditor to a company can ~~significantly~~ impair their independence and might involve them auditing their own work or present other threats to independence. To deal with such potentianl threats to independence, some jurisdictions require the disclosure of payments to external auditors for non-audit services ~~the skewed incentives which may arise, the disclosure of~~

~~payments to external auditors for non-audit services should be required~~ in accordance with a regulated definition of audit-services and non-audit services. Examples of other provisions designed to promote auditor independence include, a ~~total~~ ban or restrictions ~~severe limitation~~ on the nature of non-audit work which can be undertaken by an auditor for their audit client, periodic communications to the audit committee discussing the nature, timing and fees of the non-audit work (including the approval of such work), mandatory rotation of auditors (either partners or in some cases the audit company), a fixed tenure for auditors, joint audits, a temporary ban on the employment of an ex-auditor by the audited company and prohibiting auditors or their dependents from having a financial stake or management role in the companies they audit.

IV. C. (page 34)

This section indicates a system of audit oversight be introduced in accordance with IFIAR recommendations and should include an 'audit regulator, independent of the profession, who at a minimum, conducts recurring inspections of audit companies undertaking audits of PIEs'. This is a good suggestion but it should be noted that it may be difficult to implement, particularly in emerging markets.

IV. D (page 34)

Professional Accountants (including Auditors) are required under our code of ethics to act in the public interest. Therefore, we suggest the language of the sections' header as modified below:

IV.D. External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit in the public interest.

We need to note that while communication between shareholders and external auditors is a positive, legal protections and limitations may inhibit sharing of some information. It would be helpful to state that the primary responsibility for answering questions about the financial statements and the audit should be with the Board - reflecting its responsibilities

After the last sentence of this paragraph, we suggest to add the language below to further clarify how such communication shall take place:

In some jurisdictions, this is secured by mandating auditors to join the general assembly meetings and allowing shareholders to direct questions to the independent auditors during the meeting.

Direct communication between auditors and shareholders should respect the equality of information between shareholders.

IV.E (page 34)

Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

We agree with this principle. To create a level playing field for all information users, it is essential to ensure that each potential user can easily retrieve publicly available data, not only those with access to costly data vendor solutions. Although disclosure documents are typically available on company websites, it is often cumbersome to locate a document on these websites as each company has its own way of organizing its website and publishing its disclosures. We propose that the Principles explicitly encourage authorities to build a centralized system (such as SEC EDGAR in the US), which holds all types of filings made by all listed companies in their jurisdiction. Ideally, the database should be freely available to the public, easily searchable, and retrievable.

BUSINESS at OECD

V. The responsibilities of the board

Intro -Paragraph 1 (page 35)

Providing a generally accepted definition for "non-executive director" could be useful.

Intro -Paragraph2 (page 35)

We disagree that return to shareholders should be characterized as "adequate" and suggest the language as modified below:

Together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance and achieving a~~n adequate~~ return for shareholders as well as its purpose and strategic objetives, while preventing conflicts of interest and balancing competing demands on the corporation.

Another important board responsibility is to oversee the risk management system and mechanisms designed to ensure that the corporation obeys applicable laws, including relating to tax, competition, securities regulation, labour, environmental, equal opportunity, data privacy and digital security, and health and safety.

V. A. (page 35)

We believe the responsibility of the board should focus on the long-term success of the company and, therefore, suggest the language as modified below:

Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the long-term success of the company in the context of its engagement with ~~and the~~ shareholders~~,~~ and ~~taking into account the interests of~~ stakeholders.

V. A. (page 36)

We believe the final paragraph of this section is superfluous:

~~Where consistent with jurisdictional requirements, boards may take into account the interests of stakeholders, notably when making business decisions in the interest of the company's long-term success and performance. This may help companies, for example, to attract productive employees, to be supported by the communities in which they operate, and to have more loyal customers, thus creating value for their shareholders.~~

Otherwise, we suggest updating the text as follows:

boards should consider the interests of stakeholders, notably when making business decisions in the interest of the company's long-term success and performance. This may help companies, for example, to attract productive employees, to be supported by the communities in which they operate, and to have more loyal customers, thus creating value for their stakeholders.

V. A. 1 (page 36)

This new clause added to the Corporate Governance Principles, Part V Responsibilities of the Board, is supported. It is recommended, however, that some further emphasis and explanation in the paragraph be provided about detailed expectations of each of 'diligence, procedural due care, acting on a fully informed basis and without any conflict of interest'. These more detailed explanations should be incorporated in any explanatory materials regarding 'safe harbour'.

We support safe harbour protections for board members making decisions in good faith and with due diligence. However, the current language in Section V.A.1, appears to limit application. The section states "*Such a safe harbour would apply even if there are clear short-term costs and uncertain **long-term cash inflows**…*" (emphasis added). Cash inflows are just one measurement of long-term success or failure. We encourage wider terminology, such as '*long term negative impacts to the company*'

V.C. (page 36) & VI.D.1. (page 37)

Due diligence standards - Progression is made in the EU in developing a standard that deals with due diligence and the board's related responsibilities. Therefore, we suggest making, where possible, a cross reference to the European Corporate Sustainability Due Diligence Directive (CS3D), and possible other similar regional initiatives around the world.

V. D. (page 37)

We suggest including the sustainability element of the strategy amongst these responsibilities (e.g., climate impact, social matters etc.) and also overseeing the financial and sustainability operations, currently only financial operations are included.

V. D. 1 (page 37)

The first sentence refers to directors owing a fiduciary duty to the corporation and its shareholders. This concept occurs in other places in the paper. The distinction between the fiduciary duty to shareholders and to the company is a subject of debate in many jurisdictions, For instance, **the Supreme Court of Canada** has been clear that directors owe a fiduciary to the corporation and only to the corporation. They do not owe a duty to stakeholders, including shareholders. This is a clear distinction from U.S. law. **The Canadian** approach may also be the approach in other jurisdictions. To the extent the paper refers to a director's duty "to the corporation and its shareholders", it should be noted that it is not relevant **in Canada**.

V. D. 2 (page 37)

We suggest updating the wording to include internal control (i.e., risk management and internal control system (RMICS)). The green text in the consultation document refers to internal control (and risk

appetite) hence it should be explicitly mentioned here (and consistently throughout the Principles). V.E.2 includes internal controls; we suggest to also include risk management.

We understand specifically mentioning some risk types but suggest to do that in a separate section V.D 2a/b/c etc. We suggest to firstly focus on the RMICS as a whole and then address specific areas of focus separately.

With a view to increasing resilience, boards should also ensure that they have adequate processes in place within their risk management frameworks to handle non-operational, but company-relevant risks, such as health crises, supply chain disruptions and geopolitical tensions.

We believe it's important to recognise that businesses cannot manage every potential risk in areas of this kind; matters might be company-relevant but the company is often not in a position to influence prescriptive determinations by a regulator or standard setter.

V.D.2 includes examples of digital security risk and tax risk. While it is understandable that every risk cannot be included as an example, reference to additional commonly-faced risks, such as liquidity risk and fraud risk, would be beneficial inclusions, perhaps in another section.

In addition to emphasizing the need for the development of a tax risk management policy, we believe that incorporating management of compliance risks would be adequate. As a vital component of compliance, securities regulation shall also be taken into account in terms of risk management, especially considering the issues of minority rights and confidentiality.

Page 35 refers to the '*important board responsibility to oversee the risk management system…*'. However, P 37 Part V D 2 refers to '*reviewing and assessing risk management policies and procedures*'. It is suggested that the use of the word 'system' is important and should be included in the heading on p 37.

We also suggest rewording this into a recommendation possible by using some parameters that justify or require risk and/or audit committee.

V. D. 3 (page 37)

We suggest that the language in V.D.3 be reviewed and updated to provide a clearer understanding of what this means and what is included and excluded.

V. D. 4 (page 38)

This suggests a rather "reactive" role of the nomination committee i.e., initiated only when a board member or management resigns. We suggest more active involvement, also including active talent management and assessing needs of board now, next and long term plus managing board composition accordingly.

V. D. 5 (page 38)

We believe that Key Performance Indicators (KPIs) should not solely be financial but tied to the long-term value of the company across different forms of capital, e.g., human capital.

We believe the following text from the annotations of Sub-principle V.D.5 refers to remuneration package adjustments of the sort carried out by companies during the COVID-19 crisis, such as changing executive bonus plans, switching performance metrics, and ignoring missed targets to avoid a significant drop in executive pay due to the pandemic (OECD, 2021b). We propose the following changes to the text:

Specifically, the likelihood of a~~n~~ significant economic downturn is a factor that corporate officers reasonably should ~~can~~ consider when accepting their remuneration package and ~~may~~ does not immediately justify an adjustment of the terms for their remuneration.

The fact that, in many cases, non-executive directors receive only fixed fees, since arguably variable remuneration, especially if linked to the share price, may incite them to focalize on the short term, should be taken into consideration.

V. D. 6 (page 39)

Some of our members disagree that engagement and dialogue of the BoD with shareholders in the evaluation process is considered "good practice". It may be possible to discuss general principles, but to consult shareholders on specific proposals during the selection process may be out of touch with reality.

V. D. 8 (page 39)

We suggest including how to use internal independent assurance or even external assurance to ensure the integrity of the company's accounting and reporting systems for financial and sustainability disclosure.

Annotations of Sub-principle V.D.8 advise companies "*to establish and ensure the effectiveness of internal controls, ethics, and compliance programmes or measures to comply with applicable laws, regulations, and standards…*"

We propose a revision here to assign the board the responsibility of ensuring continued compliance with laws and regulations even when subject to fast-changing legal and regulatory environments. During the COVID-19 crisis, for example, companies faced severe difficulties in keeping up with the continuously changing health regulations or the new rules about virtual general shareholder meetings. Companies should have the mechanisms and policies ready in place to survive such challenging legal environments, and board members should be able to dedicate sufficient time to provide effective monitoring and advice

in times of crisis. We propose the following text as an addition to the annotations to address these concerns:

Compliance programmes or measures should be sufficiently adaptable to fast-changing legal and regulatory environments and board members should be able to dedicate adequate time to ensure continued compliance in such environments.

V.D.8./9. (page 39, 40)
We suggest including personal accountability for accurate corporate reporting and the monitoring, testing and reporting on internal controls structures.

V.D.9 (page 40)

In line with the common terminology, the "investment relations officer" shall be replaced with "investor relations officer."

In some jurisdictions, the appointment of an investor *relations officer who reports directly to the board is considered good practice for large listed companies.*

V. E. Paragraph 3

We suggest separating the reference to the company secretary from the consideration relating to 2-tier boards. Also, it should be taken into account that the issues posed by former chief executives taking over non-executive board chairmanship also occur in one-tier companies.

V.E, Paragraph 5 (page 40)

We welcome the clarification on what can constitute independence in the annotations to Principle V.E. In the last sentence of independence criteria, it is stated, "*It may also be considered good practice to limit the number of boards on which a director may serve*." The rationale for this criterion is not immediately clear; we suggest further clarification on why this criterion is relevant for independence.

V. E. (page 40)

We suggest that consideration be given to adding a statement regarding Chair's role.

V.E.1, V. E. 2 (page 41)

We think many of the specialised committees described in V. E. 2, such as audit committees, also need to be independent.

V. E. 2 (page 41-42)

We support the proper flexibility envisaged in the sub-principle V.E.2. regarding the possible establishment of board committees. For this purpose, we suggest some minor amendments that may ensure better clarity.

New third paragraph: *"According to company's size and stage of development, the tasks of the nomination and the remuneration committee can be entrusted to the whole board, provided that it has an adequate number of independent directors and that the board dedicates specific sessions to the fulfilment of those tasks*".

The first sentence of the second-last paragraph could be rephrased as follows: *"It remains at the discretion of the board to establish additional committees on specific issues."* And please delete the first sentence of the last paragraph (*"The establishment of additional committees remains at the discretion of the company and should be flexible according to the needs of the board."*), which would be incorporated in the above-mentioned amendment proposed to the second-last paragraph.

On the one hand, the recognition of a best practice regarding the separation of functions between the audit and the risk committees does not seem to reflect – especially for non-financial companies – current rules and best practices among OECD countries.
We therefore suggest deleting the following sentence in the second paragraph of the annotations to sub-principle V.E.2:

~~(…) The separation of functions of the audit committee and risk committees may be valuable given the greater recognition of risks beyond the financial risks, to avoid audit committee overload and to allow more time for risk management issues.~~

We suggest the following addition to the annotations to Sub-principle V.E.2:

The establishment of additional committees remains at the discretion of the company and should be flexible according to the corporation's business profile and the needs of the board.

We believe that "sustainability" should be added to the list of topics for which "other committees" may be formed to provide overall board support and that "opportunities" and "risks" should be highlighted in the third paragraph of this section. Therefore, we suggest the language as modified below:

Some boards have created a sustainability committee to advise the board on sustainability-related ~~analyse in particular climate-related~~ risks, opportunities, goals, and strategies.

It may be useful if the Principles refer to possibility of electing committee members from independent experts not associated with the company. Also, the principles may guide the companies by elaborating OECD's approach on whether management can assume duties in committees.

V. E. 3 (page 42)

When setting limits on the total number of board and committee memberships that directors can hold, we suggest that one should also consider the increased time demands on directors due to the

increasingly complex responsibilities faced by boards in recent years, such as the oversight of companies' sustainability policies and practices. Demands on boards could become especially pressing when there is an industry- or an economy-wide crisis such as the COVID-19 pandemic, and as a result, a large majority of companies need increased board oversight and guidance all at once. Accordingly, the maximum number of board and committee memberships may need to be adjusted downwards to allow for such cases.

V. E. 4 (page 42)

We appreciate the addition of new board diversity dimensions into the document. We think it could be helpful to provide further guidance in the annotations, for instance, by providing a discussion of the different forms of board diversity considered in the various jurisdictions, which have already adopted a broader view on diversity. We also suggest the addition of "international experience" to the list of possible diversity dimensions mentioned in the text.

V.F. (page 43)

We suggest the following addition to the directors' access to information in the first paragraph of the annotations to supporting principle V.F.: *"(…) The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company such as, for example, the company secretary, the internal auditor, and the head of risk management or chief risk officer, also by their attendance to board and board committees' meetings, and recourse to independent external advice at the expense of the company."*

We propose deleting the following sentence from the second paragraph of the annotations to supporting principle V.F~~.: "At the same time, the regulatory framework should maintain safeguards to ensure that insiders will not use such information for their personal gain or of others."~~

This deletion could provide just a better clarification, considering that this provision has a general range and shall not be limited to the group dimension.

V.G. (page 43)

In the first paragraph of the annotations to supporting principle V.G., we suggest deleting the reference to the "*independence*" as possible contribution of employee representatives on boards, considering that these directors (being usually workers) certainly can bring competence and information to the board decision making, but cannot be considered independent.

VI. Sustainability and resilience

VI. Intro Header (page 44)

The current draft may lead to a misunderstanding that, for exapmle, the Principles are only interested in 'outside in' effects and not 'inside out' (e.g., the corporation's impact on environment and society) which in the longer term could affect sustainability/resilience of the company. To avoid such misunderstanding, we suggest also using the term long-term value creation – the 'umbrella' term of sustainability:

The corporate governance framework should provide incentives for companies and their investors to make financing and investment decisions, as well as to manage their risks, in a way that contributes to the sustainability and resilience of the corporation.

VI. Intro (page 44)

To better convey the intent of this chapter to the Principle users, we suggest that the first paragraph be embedded in another paragraph with partial deletion.

~~*Companies play a central role in our economies by creating jobs, contributing to innovation, generating wealth, and providing essential goods and services.* ***Several jurisdictions have made commitments to transition to a net-zero/low-carbon economy, which will require companies to respond flexibly to rapidly changing regulatory and business circumstances. In addition, many companies are making voluntary commitments or otherwise taking steps to anticipate a future transition. A sound corporate governance framework would allow investors and companies to consider and manage the potential risks and opportunities from such transition pathways.***~~

~~*In addition, i*~~*Investors* and stakeholders *are increasingly considering disclosures about how companies assess and identify material climate change and other sustainability risks* and opportunities*. In response, many jurisdictions require or plan to require disclosures about companies' exposure to and management of* sustainability factors ~~*those risks*~~*. A core feature of these disclosures is to provide* ~~*investors*~~ *with a better understanding of the governance and management structures and processes for managing climate* and other sustainability-related matters ~~*risks*~~*. The corporate governance framework should support both the sound management of these risks and the consistent and reliable disclosure of material information. The combination of sound governance and clear disclosures will promote fair markets and the efficient allocation of capital, while supporting companies' long-term* value creation for all company's stakeholders ~~*growth*~~*.*

Several jurisdictions have oriented their capital market policies to foster a greener and more resilient corporate sector. In doing so, such policies should ~~*may*~~ *aim to also preserve access to capital markets by preventing prohibitively high costs of listing a company while still ensuring that investors have access to the information necessary to allocate capital efficiently to companies.* ***Several jurisdictions have made commitments to transition to a net-zero/low-carbon economy, which will require companies to respond*** ~~***flexibly***~~ ***to rapidly changing regulatory and business circumstances. In addition, many companies are making voluntary commitments or otherwise taking steps to anticipate a future transition. A sound corporate governance framework would allow stakeholders*** ~~***investors***~~ ***and companies to consider and manage the potential risks and opportunities associated with*** ~~***from***~~ ***such transition pathways.*** *Investors, directors and key executives must also be open to a constructive dialogue* ~~*on the best strategy*~~ *to support* the definition of the best strategy toward ~~*the company's*~~ *sustainability and resilience. A company that takes account of*

stakeholder interests may be better able to attract productive employees, support from the communities in which it operates, and more loyal customers.

VI. Intro (page 44-45)

We share the OECD statement that even "*in jurisdiction that allow for or require the consideration of stakeholders' interests, companies should still consider the financial interest of their shareholders*", which endorses an enlightened shareholder value approach rather than pure stakeholderism.

In this spirit, we suggest recalling explicitly in this introduction also some key references introduced in Chapters II and V, which provide a fundamental contribution and clarity in the sustainability debate. Accordingly, we suggest recalling in the annotations introducing Chapter VI the key statements acknowledging that "*the responsibility for corporate strategy and operations is typically entrusted to the board of directors and the management team*" (p. 15) and that "*board members … should act in the best interest of the company and the shareholders, taking into account the interests of stakeholders*" (principle V.A., p. 35).

4th paragraph of Intro (page 44)

We suggest updating this to focus more on sustainability and future-proofing the planet and its people (rather than a just safeguarding retirement plans).

Last paragraph of Intro (page 44-45)

We suggest reviewing this paragraph accordingly to further consider the externalities but also the corporation's impact on environment and society the costs of which are not fully borne yet by the company.

Header of VI. A. (page 45)

We suggest updating investor to stakeholder. In addition, we suggest replacing or adding other stakeholders such as consumers and employees that are not purely focused on investment or voting decisions.

VI. A. (page 45)

There are references to "environmental and social" throughout this section, implying that "ESG" is being redefined to be only "ES." We disagree this approach. The terms "sustainability" and "ESG" are used interchangeably to refer to environmental, social, and governance issues. Recognizing that this entire Principles document addresses "G"-related issues, the majority of which fall under the "G" of ESG, we caution against using language that implies governance issues are not part of sustainability.

We suggest using the term "sustainability" throughout the document as a substitute for references to just "environmental and social." For example,

With the emergence and greater awareness of sustainability *~~environmental and social~~ risks, investors have been demanding better disclosure from companies on governance, strategy, risk management (e.g. overall*

results of risk assessments for different climate change scenarios) and non-financial metrics (for example related to greenhouse gas emissions and biodiversity) that are relevant for investors when assessing a company's business perspectives and risks.

Also, in the final paragraph of this section, we suggest inserting "independent, external" to clarify assurance further.

This may justify prioritising disclosure requirements of some of the most relevant sustainability matters, phasing in other requirements such as for independent, external assurance, or establishing some recommendations in "comply or explain" corporate governance codes.

We share the approach toward the opportunities and the challenges of mandatory sustainability disclosure, including the prioritisation and the phasing-in preferences. We also agree that limiting the mandatory sustainability disclosure to listed companies might result in a disincentive for companies to go public.

Proposed amendment to third paragraph of the supporting principle VI.A.:

"(…) Limiting mandatory sustainability disclosure to listed companies might result in a disincentive for companies to go public. With these challenges in mind, policy makers may need to limit the scope of mandatory sustainability disclosure to companies of a certain size and/or operating in specific industry sectors that could be viewed as an indicator of their impact on relevant stakeholders, and devise sustainability disclosure requirements that are flexible with respect to the size of the company and its stage of development."

For sake of clarity, we suggest deleting in the second paragraph of annotations to supporting principle VI.A. the reference to a very specific example that appears to limit the broader consideration of stakeholder interest that can be found in some jurisdictions.
"In jurisdictions that allow or require the consideration of stakeholder interests, disclosures may benefit such stakeholders. ~~For instance, disclosure on collective bargaining coverage and mechanisms for employee representation may be both material for an investor's assessment of a company's value and relevant to its employees and other stakeholders.~~"

Annotations to Principle VI.A suggests policymakers consider devising sustainability disclosure requirements that are flexible with respect to the size of the company and its stage of development. In addition to this explicitly stated flexibility option, small companies always have the option not to comply with the recommendations of "comply or explain" corporate governance codes as long as they explain their reasons for noncompliance. Given the already available flexibility in the Principles, we think that there is no reason to single out "larger companies" in the following phrase:

~~Larger c~~Companies and their service providers, as well as regulators themselves, may face …

VI. A. 1 (page 45)

We suggest that this language addressing materiality be conformed with that of the ISSB once finalized.

We believe it is necessary to refer to the 'double materiality' concept in this context. The concept describes how corporate information can be important both for its implications about a firm's financial value, and about a firm's impact on the world at large. We suggest including/referring to double materiality definition here and what it means for the company and its stakeholders

VI.A.2 (page 46)

The Principles emphasize that the sustainability disclosure frameworks should be consistent with high quality, understandable, enforceable and internationally accepted core standards that facilitate the comparability of sustainability disclosure across markets. A list of internationally accepted standards may be useful in this respect, in terms of clarity.

VI. A. 3 (page 46)

For sake of clarity we suggest deleting the first two sentences as, being rather vague in their formulation and mainly centred on financial information, they could be misleading in this Chapter.

~~*Corporate disclosure frameworks, including financial reporting standards and regulatory filing requirements (e.g. public offering prospectuses), should have the same goal of providing information that a reasonable investor would consider important in making an investment and voting decision. It follows that information understood as material in a sustainability report should also be considered and assessed in the preparation and presentation of the financial statements.*~~

The Principles state that information understood as material in a sustainability report should also be considered and assessed in the preparation and presentation of the financial statements. Further guidance in this respect especially incorporated into IFRS would be useful in this regard. OECD can refer to IASB for further clearance.

The Principles emphasize that "to improve the credibility and reliability of sustainability information, effective governance and internal controls are needed." Further emphasis on how the companies can ensure effective governance and internal controls would be useful.

The Principles emphasize that governance over and disclosure of sustainability matters, financial reporting and other corporate information should be connected. Though agreed in principle, we believe a transitional period is necessary for the implementation of this clause, and accordingly mentioning at least a 2-year transition period in the text could be useful.

VI. A. 4 (page 46)

We believe that a link to remuneration and remuneration policies should be added here. Also, we suggest replacing investors with stakeholders.

The Principles state that if a company publicly sets a sustainability-related goal or target, the disclosure framework should require sufficient disclosure of consistent and verifiable metrics. The target setting shall indeed be conducted in a similar manner, accordingly a reference to internationally accepted frameworks such as SBTI or GHG may be considered to emphasize the approach at target setting stage. In this respect, it can be also be mentioned that it could be encouraged that targets such as net-zero emissions be validated by credible institutions.

According to our members' research, the terminology "net-zero" is not consistently used in company reporting. We, therefore, propose replacing "net-zero" with "emissions reduction targets."

VI. A. 5 (page 46)

We suggest considering referring to different levels of sustainability assurance in this context: Starting with limited assurance over sustainability reporting and moving to reasonable assurance (higher level of assurance) at a later stage.

VI. B. (page 47)

With regard to the dialogue with shareholders and stakeholders, we are formulating some amendment requests to ensure better clarity on the dialogue and its participants.

In particular, we propose to: (i) strengthen the importance of a dialogue that shall be not only allowed but also encouraged, at least at best practice level; (ii) clarify the role of the shareholders' meeting and (iii) clarify that the dialogue occurs between shareholders/stakeholders, on one side, and the company and its representatives, on the other. Having regard to this last point, the identification of the person representing the company shall follow the division of powers within the board and the power of attorney system adopted by each company.

Therefore, we propose the following amendments to the supporting principle VI.B.:

"VI.B. Corporate governance frameworks should ~~allow for~~ encourage the dialogue between companies ~~directors, key executives~~, shareholders and stakeholders to exchange views on sustainability matters as relevant for the company's business strategy and its assessment of what matters ought to be considered material.

The following amendments shall be considered in the annotations:

"While general shareholder meetings provide an important ~~forum for a structured decision-making process~~ informative opportunity for shareholders, dialogue between companies ~~directors, key executives~~, stakeholders and shareholders may play an essential role in informing management's decision-making process and in building investors' and stakeholders' trust in a long-term business strategy. (…)."

VI.B.1 (page 47)

The sub-principle VI.B.1. and the related annotations provide for a vague consideration of legal frameworks envisaging companies' possibility to pursue profit and non-profit objectives. We propose the deletion of this sub-principle and the related annotations, considering that this issue does not seem to fit with this part of the Chapter, dedicated to the dialogue with shareholders and stakeholders, and that examples of such legal institutes and arrangements are diversified and connected to the characteristics of each jurisdiction, where dissenting shareholders and their right of withdrawal is ensured where substantial conditions are met.

~~*VI.B.1. When corporate governance frameworks allow for existing companies to adopt both for-profit and public benefit objectives, such frameworks should provide for due consideration of dissenting shareholder rights.*~~

~~*A number of jurisdictions have frameworks that enable companies to incorporate both for-profit and public benefit objectives, which allow them to pursue explicit objectives related to environmental and social matters. In cases where an existing for-profit company adopts public benefit objectives, it is important to provide mechanisms providing for the due consideration of dissenting shareholder rights. Possible solutions to protect the interests of dissenting shareholders could include requiring the consent of minority shareholders or a supermajority shareholders' approval for a company to add non-financial goals to its articles of association, or by providing the right for dissenting shareholders to sell their shares back to the company at a fair price.*~~

VI. C. (page 47)

Boards should ensure that governance practices, strategy and risk management policies adequately consider material sustainability risks and opportunities, including climate- related physical and transition risks

This should be integrated into the overall risk management and internal control system. In addition, this guidance should not just focus on risk management policies but on the entire risk management and internal control system.

VI.C.1 (page 47)

The Principles emphasize that the Boards should ensure that companies' lobbying activities are coherent with their sustainability-related commitments. However, the indicator for this clause is unclear; therefore, a further explanation of the rationale could be useful. And, some of our members also pointed out that there may be more appropriate example for the following part if example is needed here.

For instance, lobbying against any carbon pricing policy may be expected to increase a company's short-term profits but not be in line with the company's commitment to make an orderly transition to a low carbon economy."

VI. D (page 48)

We suggest "Shareholders" to be included in the introductory section:

The corporate governance framework should consider the rights, roles and interests of shareholders and stakeholders consistent with jurisdictional requirements and encourage active co-operation between corporations, shareholders and stakeholders in creating value ~~wealth~~, jobs, and sustainable and resilient companies.

We suggest the final sentence of this section to be amended to avoid confusion regarding a multi-stakeholder capitalism approach:

Consistent with jurisdictional requirements, the governance framework should therefore consider the rights, roles and interests of stakeholders and their contribution to the long-term success of the corporation and long-term interest of shareholders.

VI. D. 6 (page 49)

In bond issuances offered to a large number of investors, an independent bond trustee is typically assigned to represent them, review instances of covenant default and protect the interests of minority bondholders during debt restructuring. While the exact scope of a trustee's activities is generally contractually defined, policy makers may enact regulation regarding the eligibility of a trustee and its duties prior to and during a default.

Although the bond trustee is typically tasked with representing bondholders and protecting their rights, the trustee actually has little incentive to actively engage in enforcing bondholder rights due to their fixed fee structure and weak legal obligations towards bondholders (Çelik, Demirtaş, and Isaksson, 2015). Accordingly, we propose that policymakers would be encouraged to also work towards aligning bond trustee and bondholder interests.

As regards the wording on bond governance, we suggest deleting the following sentence, considering the risk of problems with KPI-linked bonds:

~~The use of adjustable financial metrics that leave issuers the discretion to define whether they comply with covenants may need to be avoided.~~

VI. D. 7 (page 50)

Given the extended and substantial rise in the use of corporate bond financing, we greatly appreciate the addition of a new sub-principle to address bondholder rights. However, VI. D .7, which covers creditor rights in general, is less detailed and prescriptive than bondholder rights in VI. D. 6. Properly addressing creditor rights is especially relevant for many countries, where loans and other various types of debt financing form a significant percentage of debt financing. We suggest a review and update of Sub-principle VI.D.7 (or the introduction of a new sub-principle, if deemed necessary) to include further guidance on how to protect and enforce creditor rights, in general. Also, we propose the following edit to the annotations of Sub-principle VI.D.7:

Companies with a good corporate governance record are ~~often~~ generally able to borrow larger sums on more favourable terms than those with poor records or which operate in less transparent markets.

We suggest here a brief clarification about how an effective and efficient insolvency framework may contribute to improved access to capital and better capital allocation. A summary of the detailed discussion available in the OECD issues paper, titled "The role and rights of debtholders in corporate governance," could be considered (De Oliveira, Magnusson, and Mulazimoglu, 2022).