

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

7 March 2023

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

We are grateful for the opportunity to provide our input on the Fourth Draft Revisions to the G20/OECD Corporate Governance Principles. We acknowledge the importance of the Principles in promoting good corporate governance practices worldwide, and we are pleased to see the efforts made by the OECD Corporate Governance Committee to enhance the Principles and incorporate feedback from various stakeholders, including us.

In this round of feedback, we would like to reiterate some of our previous suggestions to enhance the Principles. Specifically, we believe greater emphasis should be placed on sustainability and its role in good corporate governance. Sustainability should be viewed not just as a means of risk control, but also as a source of opportunities for businesses. We also stress the importance of effective risk management and internal control systems as well as external auditors in ensuring transparency and accountability in corporate governance.

We are pleased and grateful that the OECD has included some of our previous input and has improved the draft text to clearer language. It is essential that the Principles are easily understood and can be appropriately implemented by companies. We urge the OECD to continue to use clear language in the Principles. We believe that the Principles need to address existing and emerging issues business faces now and in the future in a comprehensive and effective manner in order to truly promote good corporate governance practices globally.

We look forward to continuing our cooperation with the OECD Corporate Governance Committee to implement and promote good corporate governance practices worldwide.

Introduction & About the Principles section

Section 3.

We welcome the fourth draft's additional statement to this section, stating *"The Principles are not a substitute for nor should they be considered to override domestic law and regulation."* We appreciate that all remaining conditional statements, similar to *"where a jurisdiction's legal and regulatory framework permit,"* have been deleted in the fourth draft.

Section 7.

The fourth draft has replaced *"verifiable"* with *"reliable,"* and we support the importance of being reliable. Given the possible importance of assurance over sustainability-related disclosures, we suggest including both *"reliable and verifiable."* Please note we make a similar proposal to Chapter VI.

*.. A sound framework for corporate governance with respect to sustainability matters can help companies recognise and respond to the interests of shareholders and different stakeholders, as well as ~~manage~~ contribute to their own long term success. Such a framework should include the disclosure of material sustainability-related information that is ~~verifiable~~ reliable, **verifiable**, consistent and comparable, including ~~on~~ related to climate change. ..*

Section 8.

We welcome explanations/definitions as to what semi-government means.

Section 9.

We welcome the addition of companies *"that issue bonds"* to the statement below. Taking into account of countries where debt instruments other than bonds form a substantial part of the financing, we suggest the following amendment.

*While some of the Principles may be more appropriate for larger companies than for smaller ones, policy makers may wish to raise awareness of good corporate governance for all companies, including smaller and unlisted companies as well as those that ~~issue bonds~~ **raise capital through debt instruments.***

Section 11.

In some jurisdictions, the collegiality of the Board (i.e., all decisions are taken collectively) is a key principle. Providing accountability of individuals comprising board members would be contrary to some corporate law regimes. Bearing in mind that corporate law is a local regulation, we recommend avoiding jeopardizing this key principle.

I. Ensuring the basis for an effective corporate governance framework

I. Preamble

We suggest replacing *desirable* with *appropriate* as follow:

.. The **desirable appropriate** mix between these elements will therefore vary from country to country. ..

I.C.

Based on the growing need for assurance over sustainability-related disclosures, we suggest the following amendment.

*Corporate governance requirements and practices are typically influenced by an array of legal domains, such as company law, securities regulation, accounting, ~~and auditing~~ **and assurance** standards, listing rules, insolvency law, contract law, labour law, and tax law, as well as potentially international law.*

I.C.

We recommend that antitrust and sectorial laws be added to the list of legal domains. We also propose mentioning the need for long-term regulatory stability as frequent changes are detrimental.

.. *It is important that policy makers are aware of this risk and take measures to ensure a coherent **and stable** institutional and regulatory framework. ..*

I.F.

As the human element is indispensable for the usage of artificial intelligence and algorithmic decision-making, we suggest the following amendment:

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

I.H.

We express appreciation for the amendments to the first and second sentence of sub-principle I.H, insofar they stress on the one hand the benefits associated with the activities of company groups and, on the other hand, the fact that only in some cases the same groups may be associated with risks of inequitable treatment of shareholders and stakeholders.

Nevertheless, we are concerned about the deletion of the previous mention of “*protocols and governance guidelines at group level,*” which has been replaced by a more general reference to “*adequate corporate governance frameworks.*” While positively appraising this reference, we point out at the same time the advisability of restoring mention of group protocols, policies and guidelines as a useful tool to achieve a proper and safe running of company groups.

This supplement would be in line with the findings of the peer review on “duties and responsibilities of boards in company groups” carried out by OECD in 2020, which highlights (page 20) that some countries (Colombia, India, Japan and Spain) expressly emphasize the usefulness of such tools. It is worth mentioning that also in Italy, where there isn’t a formal recommendation of soft law to adopt such tools, group’s protocols, policies and guidelines are often used in order to prevent the liability for mismanagement of subsidiaries stemming from Italian Civil Code provisions on direction and coordination of companies (to which reference is made at page 19 of the aforesaid OECD peer review).

Finally, this supplement would have the merit of highlighting a corporate governance best practice without imposing any specific obligation concerning its adoption, according to the spirit of the G20/OECD Principles of Corporate Governance.

It is therefore suggested to supplement sub-principle I.H as follows:

*Well-managed company groups that operate under adequate corporate governance frameworks, can help to achieve benefits based on economies of scale, synergies and other efficiencies. **In this regard, the adoption of suitable protocols, governance policies or guidelines can help to achieve the proper running of company groups..***

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

II. Preamble

“As a practical matter, however, the corporation cannot be managed by shareholder referendum.”

This suggests that the only reason that shareholders do not run the corporation is that it is not practical for them to do so. The reason for the corporate form is to protect shareholders from liability for the corporation's actions – as part of that structure, shareholders elect directors who run the business (including through delegation for management). We have concerns that the current statement distorts the basic rationale for the corporate form.

II. Preamble

We suggest clarifying that litigation is a last resort solution for shareholders, who first have a (generally very broad) right to dismiss the directors.

II.A

The reference to the “election” of the external auditor is not clear: in fact, considering OECD Factbook results, its appointment or approval are very common, while the “election” is never mentioned. For the sake of clarity, we, therefore, suggest the following deletion:

*“II.A. Basic shareholder rights should include the right to: 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant and material information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5) elect and remove members of the board; and 6) share in the profits of the corporation; 7) **elect**, appoint or approve the external auditor.”*

II.A

We suggest clarifying that these shareholder rights are not necessarily associated with each class of shares.

II.B

Since it is not reasonable to state that shareholders should approve any transfer of corporate assets irrespective of size, we recommend mentioning that certain thresholds can be considered.

II.C.3

It is important to implement the authorization of jurisdictions for remote or hybrid shareholder participation in general shareholder meetings as a means to facilitate and reduce the costs to shareholders of participation and engagement.

II.C.4

We suggest the following amendment to expand shareholder right to question sustainability-related assurance reports.

.. Shareholders should also be able to ask questions relating to the external audit report as well as other assurance engagement reports with respect to material information such as sustainability-related disclosures. ..

II.C.5

The declaration of independence made by the individual candidate could be mentioned as an important information for the board election. To further clarify and emphasize those points, we suggest the following amendments:

.. It is required or considered good practice in some jurisdictions to also disclose information about any other board positions or committee memberships that nominees hold, and in some jurisdictions also positions that they are nominated for. This information may also contain candidates' own declaration of independence and the relevant criteria used when the nomination concerns an independent board member.

II.C.5

We propose keeping the reference to “relevant sustainability indicators,” which has been eliminated in the fourth draft, to support the practice of linking remuneration to sustainability indicators. This would also improve consistency with annotations to Sub-principle IV.A.6, which state, “*Information about board and executive remuneration is also of concern to shareholders, including the link between remuneration and the company’s long-term performance, sustainability and resilience... The use of sustainability indicators in remuneration may also warrant disclosure that allows investors to assess whether indicators are linked to material sustainability risks and incentivise a long-term view.*”

.. Shareholders also have an interest in how remuneration and company performance, including on relevant sustainability indicators, are linked when they assess the capability of the board and the qualities they should seek in nominees for the board. ..

II.C.7

The problems described here in respect of cross-border voting exist in all cases for voting under the OBO/NOBO system.

II.C.7

To eliminate impediments to cross-border voting and to achieve intensive and cost-effective cross-border voting, we propose the addition of a note encouraging the use of appropriate and available technology, such as blockchain technologies.

II.D

The challenges posed by consultation between shareholders are not limited to listed companies: the coalition of interests between minority shareholders in privately owned companies may be to the detriment of the corporate interest.

II.E

Transparency and disclosure are essential for the correct functioning of capital markets. This is even more so in cases of adoption of certain capital structures that allow shareholders to exercise a degree of control over the corporation disproportionate to their equity ownership in the company, which may entail the risk of extracting private benefits of control at the detriment of minority shareholders and the market as a whole as also recognized in IV.A.3. Therefore, we would suggest reinserting the phrase “*Capital structures and arrangements that enable certain shareholders to obtain a degree of influence or control disproportionate to their equity ownership should be disclosed,*” which has been removed in the fourth draft.

II.E. All shareholders of the same series of a class should be treated equally. **Capital structures and arrangements that enable certain shareholders to obtain a degree of influence or control disproportionate to their equity ownership should be disclosed.**

III. Institutional investors, stock markets, and other intermediaries

III.A

We welcome that some “may” clauses have been removed in the fourth draft. The introduction of stewardship codes (III.A), which is an important tool for improving corporate governance, deserves a “should” clause rather than a “may” clause. We propose reviewing the remaining may/could clauses to see if they can be strengthened in the final text.

*.. Stewardship codes **may should** offer a complementary mechanism to support encourage such engagement. ..*

III.D

We share the importance given to the requirements aimed at ensuring the integrity of different providers of advice, analysis and rating.

Nevertheless: (i) we would suggest the OECD to consider some guidelines about the definition and the application of the methodology used by such service providers, that shall adequately consider the legal features of the jurisdiction in which the company has the legal seat, taking into account both binding and non-binding rules that necessarily influence its governance; (ii) we are concerned with the annotations to supporting principle III.D., where the disclosure of the methodology used by rating and index providers is considered particularly relevant when these ratings and indexes are “also referenced as metrics for regulatory purposes”: although the annotations underline that “exclusive reliance on ratings in regulation may raise questions”, it also recognises that “the process for deciding which ratings are eligible for use for regulatory purposes should be transparent and could be subject to evaluation at various level of frequency”. On the one hand, the transparency of the methodology is key for market participant, with likely positive effects on the competition and the quality of the ratings, while their use for regulatory purposes could lack of an appropriate justification. On the other hand, 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. These additional burdens appear particularly difficult to explain especially in jurisdictions with relevant regulations on the same issues covered by such providers.

We would suggest the following amendments to the annotations to supporting principle III.D:

*.. Therefore, the methodologies used by regulated service providers that produce ratings, indices and data should be transparent and publicly available to clients and market participants., **and shall find application having due regard to the specific rules of the jurisdiction of the individual company. This is particularly important when they are also referenced as metrics for regulatory purposes.** ..*

III.D

We suggest mentioning that some jurisdictions require the disclosure of information about the dialogue that occurred between proxy advisors and companies.

We therefore suggest mentioning it in the last paragraph of the annotations to supporting principle III.D:

.. Some jurisdictions require that proxy advisors apply and disclose a code of conduct, and disclose information on their research, advice and voting recommendations, **whether they have dialogues with the companies that are the object of their research, advice or voting recommendations and with the stakeholders of the company, and, if so, the extent and nature thereof,** and any conflict of interest or business relationships that may influence their research, advice or voting recommendations and the actions they have undertaken to eliminate, mitigate or manage the actual or potential conflicts of interest. In some cases, requirements for proxy advisors include developing appropriate human and operational resources to effectively perform their functions. ..

III.G

We welcome explanations as to what price discovery means.

IV. Disclosure and transparency

IV. Preamble

Disclosure recommendations must be implementable for companies and consistent between the Principles and the MNE Guidelines.

IV.A.2

We reiterate our caution regarding separating our “*environmental and social*” from governance and broader sustainability-related disclosure. Therefore, we suggest the following amendment.

In addition to their commercial objectives, companies should disclose material policies and performance metrics that include related to environmental and social matters, amongst others, as elaborated on sustainability disclosure in Chapter VI. ..

IV.A.4

We recommend emphasizing the importance of full disclosure of group ownership structures, which is necessary to deal the conflicts of interest correctly.

IV.A.4

The recommended disclosure requirements should be limited to what is material. Any corporation may have numerous subsidiaries that play no significant role in the business.

IV. A.6

It should be noted that jurisdictions may have different thoughts and implementations about requiring disclosure of the D&O insurance to the shareholders. Shareholders may not understand its necessity, consider it as a perk and believe it just reduces the directors’ accountability; on the other hand, disclosing the coverage limit offers professional or systematic litigators a clear target to aim at for negotiating an easy settlement.

IV. A. 8

We suggest the deletion of “reasonably foreseeable” to identify and address risk factors.

The Principles envision the disclosure of sufficient and comprehensive information to fully inform investors and other users of ~~reasonably foreseeable~~ material risks of the company.

IV.C.

We suggest the following amendment to enhance specificity on “qualified”:

*IV.C. An annual external audit should be conducted by an independent, competent and qualified **by an appropriate professional body**, auditor in accordance with internationally recognised auditing, ethical and independence standards in order to provide reasonable assurance to the board and shareholders that the financial statements present fairly, in all material respects, the financial position and financial performance of the company.*

IV.E.

We welcome the new amendment to the annotations, which now encourage company websites to be “easily accessible and user friendly.” We also believe that creating a centralized system (such as SEC EDGAR in the US) holding all types of filings made by all listed companies in each jurisdiction would be another important step to creating a level playing field for all information users. Ideally, the database should be freely available to the public, easily searchable, and retrievable. Therefore, we suggest the following amendment:

*.. Filing of statutory reports has been greatly enhanced in some jurisdictions by electronic filing and data retrieval systems. Jurisdictions should move to the next stage by integrating different sources of company information, including shareholder filings **in a centralised database and making this information freely available to the public in an easily searchable and retrievable format.** ..*

V. The responsibilities of the board

V. Preamble

With careful consideration of the circumstances in some jurisdictions, we suggest the following amendment.

.. The board is not only accountable to the company and its shareholders, but also has a duty to act in their best interests. Some jurisdictions stipulate that the board is accountable to the company rather than the shareholders only. In any case, ~~In addition,~~ boards are expected ..

V.D.5

It should be noted that many non-executive directors are paid only fixed fees, which is a commendable means of preventing them from focusing on the company's short-term profitability. Therefore, we suggest the following amendment:

.. Such policy statements may specify, especially with respect to executive directors, the relationship between remuneration and performance ..

V.D.7

Direct access of the whistleblowers to the audit committee is not always useful as many such claims prove frivolous or related to personal griefs. The audit committee needs to refer to management for investigation. The wording in the last sentence might be too prescriptive, and we propose to replace “should” with “may”:

.. A contact point for employees who wish to confidentially report concerns about unethical or illegal behaviour that might also compromise the integrity of financial statements ~~should~~ may be offered by the audit committee or by an ethics committee or equivalent body. ..

V.D.8

We suggest the following amendment:

.. The role and functions of internal audit vary across jurisdictions, but they can include assessment and evaluation of ~~governance,~~ risk management, and internal control processes. ..

V.E.

“In such systems, consideration should be given to whether corporate governance concerns might arise if there is a tradition for the head of the lower board becoming the chair of the supervisory board on retirement.”

The issues posed by former chief executives taking over non-executive board chairmanship are not specific to two-tier companies. Therefore, we suggest the following amendment.

.. ~~In such systems,~~ Consideration should be given to whether corporate governance concerns might arise if there is a tradition for **the chief executive becoming the chair of the board or (in the case of two-tier systems) the head of the lower board becoming the chair of the supervisory board on retirement.** ..

V.E.2

We support the proper flexibility envisaged in the sub-principle V.E.2., regarding the possible establishment of board committees; however, we would like to even enhance it, at least, with regard to the nomination and remuneration committee, also at principle level as follows:

V.E.2. Boards should consider setting up specialised committees to support the full board in performing its functions, in particular the audit committee – or equivalent body – for overseeing disclosure, internal controls and audit-related matters. Other ~~tasks regarding committees, such as~~ remuneration, nomination or risk management, may be entrusted to the whole board or to board committees ~~that provide support to the board~~ depending upon the company’s size, structure, complexity and risk profile. Where such committees are established, ~~t~~ Their mandate, composition and working procedures should be well defined and disclosed by the board which retains full responsibility for the decisions taken.

V.E.4

We welcome the addition of new text on the complementary measures that can be taken to strengthen the female talent pipeline. As the appropriate design of childcare and family policies is also a very important factor affecting female employment, we suggest the following addition to the text.

.. *Complementary measures may emanate from government, private and public-private initiatives and may, for example, take the form of advocacy and awareness-raising activities; networking, mentorship and training programmes; establishment of supporting bodies (women business associations); certification, awards or compliant company lists to activate peer pressure; **review and design of childcare and family policies;** the review of the role of the nomination committee and of recruitment methods.* ..

VI. Sustainability and resilience

VI. Preamble

We suggest replacing “wealth” with “value” to ensure consistency with VI.D.

Companies play a central role in our economies by creating jobs, contributing to innovation, generating **wealth-value**, and providing essential goods and services.

..

A profitable company provides jobs for its workforce and creates **wealth-value** for investors, many of whom are part of the general public and have invested their retirement savings.

..

VI. Preamble, VI.A, VI.A.4

The fourth draft has replaced “verifiable” with “reliable,” and we support the importance of being *reliable*. Given the possible importance of assurance over sustainability-related disclosures, we suggest including both “reliable and verifiable.”

Preamble

.. In response, many jurisdictions require or plan to require disclosures about companies’ exposure to and management of sustainability matters. 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 risks and identifying related opportunities. The corporate governance framework should support both the sound management of these risks and the consistent, comparable, **and verifiable** reliable **and verifiable** disclosure of material information in order to support investors’ financial, investment and voting decisions. ..

VI.A

VI.A. Sustainability-related disclosure should be consistent, comparable, **and verifiable** reliable **and verifiable**, and include retrospective and forward-looking material information that a reasonable investor would consider important in making an investment or voting decision.

..

VI.A.4

.. Both from a market efficiency and an investor protection perspective, if a company publicly sets a sustainability-related goal or target, the disclosure framework should require sufficient disclosure of consistent, comparable, **and verifiable** reliable **and verifiable** metrics. ..

VI. A

Transparency is crucial to achieving the transformation to better sustainability for the coming generations. We suggest more guidance and clarity on sustainability disclosures and the use of more directive language. In this context, we propose a reversal of the text below to the previous version.

VI.A.1. Sustainability-related information **should** ~~could~~ be considered material if it can reasonably be expected to influence an investor's assessment of a company's value, investment or voting decisions. ..

Material sustainability-related information ~~could include~~ environmental and social issues that can reasonably be expected to affect a company's asset value and its ability to generate revenues, such as the physical impact of climate change.

VI.A.1

We suggest the following amendment to include governance-related in this list.

.. Material sustainability-related information could include environmental, ~~and~~ social **and governance-related** issues that can reasonably be expected to affect a company's asset value and its ability to generate revenues. ..

VI.D.6

As many privately-owned companies also issue bonds, we suggest the following amendment.

The extended and substantial rise in the use of ~~bond financing by publicly traded companies~~ **publicly traded bonds** and their subsidiaries warrants greater attention to the role and rights of bondholders in corporate governance, as well as its importance for the resilience of companies.

VI.D.7

Compared to how the Principles address bondholder rights, Sub-principle VI.D.7, which deals with creditor rights in general, remains undetailed and less prescriptive. We suggest including more detailed guidance on how to protect and enforce creditor rights in general. Properly addressing creditor rights is especially relevant for many countries, where loans and other various types of debt financing other than bonds form a significant percentage of debt financing.