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ANNEX I. SAMPLE TASKS FOR A CONSULTANT CONTRACT

Following is a description of the key tasks included in the terms of reference for a consultant providing technical support to a code crafting committee in Sri Lanka:

Key Tasks

The advice and inputs expected from the Consultant engaged to provide technical support to develop a Code would be as follows:

- Advise the Code Crafting Committee on the present state-of-the-art internationally accepted Corporate Governance Principles and make recommendations as to which principles should be included in the host country's proposed Code.
- Assist in the preparation of the budget for the Code crafting process and assist the Committee to identify and access financing and/or funding sources, if necessary.
- Advise the Committee as to whether a suitable Code presently applicable in another part of the world or an internationally recognized set of principles such as the OECD Principles, could be used by the Committee as a basic guideline, and if so, decide upon the parameters for the “borrowing” and adapting of the principles.
- Advise the Committee as to how the proposed Code covers the major issues confronting the host country while responding to major international issues as well.
- Advise the Committee on planning the consultation process and hold discussions with the key stakeholders prior to the preparation of the Consultative document.
- Advise the Committee on how to draft and circulate a questionnaire to obtain the views of business, professional, and other stakeholders so that the survey results can become the foundation on which the proposed Code will be constructed.
- Advise the Committee on how to organize and co-ordinate a sufficient number of workshops to obtain responses, views, and comments.
- Advise the Committee on developing and maintaining an effective system of documentation
- Once responses from the consultation have been received, assist the Committee in considering the views, responses, and suggestions made by different stakeholder groups and advise the Committee on the relevance and validity of such submissions. Thereafter, provide professional inputs to enable the Committee to consider whether any modifications are required and if so, assist the Committee in making amendments.
- Advise the Committee on any legal recommendations, Stock Exchange or [regulatory] implications, and any other type of institutional or investor support, etc.
- Advise the Committee on suitable mechanisms to ensure that target companies disclose their compliance with the proposed Code as well as explain the methods by which they have implemented the provisions of the proposed Code.
- At the final draft stage of the proposed Code, critically assess every clause of the proposed Code to ascertain...whether each recommendation contained in the Code would contribute towards improving the corporate governance practices in the country and provide the Committee with brief comments on the effectiveness of each clause.
- Advise the Committee as to how the proposed Code could be enforced among different stakeholders.
- Assist the Committee to convene the “public” events to release the Code and to explain the provisions of the Code to stakeholders.
- Undertake any other matters that the Committee may entrust to the Consultant, and to advise the Committee as and when the Committee seeks the views and/or advice from the Consultant.

ANNEX 2. SAMPLE ENGAGEMENT LETTER FOR A CONSULTANT

Following is a sample letter, from Sri Lanka , for engaging a consultant to support the work of the code crafting committee:

.....

(give name and address of consultant)

.....

Dear.....(give name of consultant)

Consultancy assignment re: developing a Code of Best Practice on Corporate Governance

On [date], upon the recommendation of, you have been appointed as[title]. I am writing to set out the terms of your appointment.

It is agreed that this is a contract for services and is not a contract of employment.

You will be responsible to the Corporate Governance Code Crafting Committee set up under the auspices of [state the name of the group/organization initiating the Code Development Process] and you will be expected to function and discharge your services in accordance with the agreed time table to be developed in consultation with the Chairman and the Committee.

Appointment

Your appointment will be for a term of months commencing on [date], unless otherwise terminated earlier by and at the discretion of either party upon [one month's] written notice.

Time commitment

We require you to attend all meetings of the Committee which will be on a monthly basis, and we expect you to provide advice to the Committee expeditiously in order to ensure that the Code Crafting exercise is completed within a period not exceeding X months from the date of commencement of this assignment. The completion of the Code crafting exercise will be marked by the release of the Code.

Fees

You will be paid a total fee of, which would be settled in stages, as follows:

At the time of:

Commencement of assignment (10%)

The Consultative document being ready for issue to Stakeholders (50%)

The Code being published (40%)

Total =====

Outside interests

In the event that you become aware of any potential conflicts of interest, these should be disclosed to the chairman and secretary as soon as apparent.

Confidentiality

All information acquired during your appointment is confidential and should not be released, either during your appointment or following termination (by whatever means), to third parties without prior clearance from the chairman.

We look forward to your close co-operation towards the crafting of our country's Code of Best Practice on Corporate Governance.

Thanking you,
Yours sincerely,

Chairman
Corporate Governance Code Crafting Committee

ANNEX 3. EVALUATING THE COMMITTEE'S PERFORMANCE

Following are some of the questions that have been used in the United Kingdom by chairmen to help them in evaluating the performance of their committee:

- How well has the committee been performing against the performance objectives that have been set?
- Is the composition of the committee appropriate, with the right mix of knowledge and skills to maximize performance?
- Are relationships inside and outside the committee working effectively?
- Has the committee responded to any problems or crises that have emerged, and could or should these have been foreseen?
- Are the terms of reference for the committee the right ones?
- How well does the committee communicate with the secretariat and the project manager?
- Is the committee up to date with the latest developments in corporate governance?
- Are relationships and communications with key stakeholders managed effectively?
- Are the processes for setting the agenda effective? Do they enable committee members to raise issues and concerns?
- Is the project manager being used appropriately and to maximum value?
- How well prepared and informed are the committee members?
- Do committee members demonstrate a willingness to devote time and effort to understand the issues and a readiness to participate in events outside the meetings, such as forums, conferences, and workshops?
- What has been the value and quality of contribution of the various committee members at meetings?
- How effective and successful are their relationships with fellow committee members, the project manager, and the secretariat?
- Does the performance and behavior of each committee member engender mutual trust and respect within the committee?
- How well do the committee members communicate with key stakeholders?
- Are the committee members able to present their views convincingly yet diplomatically, and do they listen and take on board the views of others?
- Is appropriate, timely information of the right length and quality provided to the committee?
- Is the secretariat responsive to requests for clarification and amplification?
- Does the committee provide useful feedback to the project manager on its requirements?

ANNEX 4. SAMPLE LETTER FOR TELEPHONE INTERVIEW

Following is an example of a letter sent to individuals to be interviewed by telephone. The letter was used by the Higgs Committee in the United Kingdom for a survey it conducted in 2002.

Salutation

You may know that the Chancellor, Gordon Brown, and Secretary of State for Trade and Industry, Patricia Hewitt, have asked me to conduct an independent review of the role and effectiveness of non executive directors.

I attach great importance to building a detailed understanding of the role of the director through primary research. I have therefore asked MORI to conduct, on my behalf, a survey to collect views from a representative cross section of non executive directors active in corporate governance today. I regard this research as crucial to the Review. I therefore very much hope that you will be able to contribute and find time to speak with MORI.

The research will be in the form of a telephone interview, which should take no longer than 10 to 15 minutes to complete, conducted at a time convenient to you. One of the MORI team will be in touch with you shortly regarding your participation. As with all MORI studies, this survey will be conducted in accordance with the Market Research Society Code of Conduct. **This ensures that all answers and comments are confidential and non attributable.**

Thank you in anticipation for your contribution to this works. If you have any queries please contact [give name] from the MORI team on [telephone number].

Yours sincerely

Derek Higgs, Non Executive Directors Review
Robert M Worcester, MORI Chairman

ANNEX 5. SPECIMEN LETTER OF APPRECIATION

Following is an example, from Sri Lanka, of a letter of appreciation to be sent by the chairman of the code crafting committee to participants at consultation events.

Dear [give name],

CONSULTATIVE FORUM ON CORPORATE GOVERNANCE

We write to express our sincere appreciation of your active participation at the above forum held on (give date). Your participation was a source of great encouragement and assistance to us in our effort to formulate the Code of Best Practice on Corporate Governance and we value your contribution very much.

Our Committee will be taking serious note of all representations made and views expressed at these seminars/workshops as well as of other submissions made directly to us. Our endeavor to craft the Code of Best Practice on Corporate Governance over the next few weeks will benefit immensely by such inputs and the fruits of our combined efforts will certainly be of significance to the capital market development initiative in our country.

We look forward to your continued co-operation and support in the future, and assure you of our highest consideration at all times.

Thanking you,
Yours sincerely,

Chairman
Corporate Governance Committee

ANNEX 6. SAMPLE PRESS RELEASE

Following is an example of a press release on the work of the Copenhagen Stock Exchange Committee on Corporate Governance.


KOBENHAVNS FONDSBØRS
COPENHAGEN STOCK EXCHANGE

PRESS RELEASE

Copenhagen Stock Exchange Committee on Corporate Governance to continue its work

The supervisory board has asked the Committee to complete a set of recommendations suitable for the 'comply or explain' principle.

The Copenhagen Stock Exchange Committee on Corporate Governance has received a large number of comments in response to its report published in January 2004. The Committee has evaluated the comments and will complete the consultation process by publishing its conclusion.

However, corporate governance is developing rapidly. Hence, the European Commission is likely to present two recommendations next autumn which, among other innovations, are set to introduce the 'comply or explain' principle.

Against this background, the supervisory board of the Copenhagen Stock Exchange has requested the Committee to continue its work to complete a proposal for revised recommendations that, in the eyes of the Committee, will be suitable for application according to the 'comply or explain' principle. The proposal for revised recommendations will be submitted for consultation beforehand.

The Committee has undertaken to assume this work and expects to complete it in late 2004.

The comments received in response to the report of January 2004 and their conclusion are available at www.cse.dk and www.corporategovernance.dk.

The Copenhagen Stock Exchange has decided that the conclusion of the consultation process in the spring of 2004 shall not form part of its disclosure requirements for issuers of shares. This being the case, only the

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ANNEX 6. SAMPLE PRESS RELEASE (CONT.)



recommendations following from the Nerby Committee's report from 2001 are covered by the Copenhagen Stock Exchange's recommendation.

President and CEO Hans-Ole Jochumsen says: *"For many years, the Copenhagen Stock Exchange has strived to ensure best practice in the Danish equity market to attract more investors to the market. It is therefore vital that Denmark sends a message signalling that we consider the debate on corporate governance a top priority. The 'comply or explain' principle is already widespread in the EU Member States, making it an obvious road for us to take. The 'comply or explain' principle is preferable to the introduction of corporate governance structures in legislation since the 'comply or explain' principle allows the companies to do as they please as long as they explain the background to their actions."*

Chairman of the Committee Lars Nerby Johansen adds: *"The Committee is of the opinion that the process implemented by the Committee with the report of January 2004 and the subsequent consultation process have been crucial to the Danish debate on corporate governance. The report and the consultation process have enabled us to follow up the viewpoints that have emerged since the first report from the end of 2001. In light of the Copenhagen Stock Exchange's preparation to introduce the 'comply or explain' principle, we will now consider the recommendations, meaning that we will be able to make our proposal for a set of recommendations, which, in our opinion, will work under this principle."*

The Committee's members include:

Lars Nerby Johansen, Chairman (President & CEO of Group 4 Falck A/S), Mads Øvlisen (Chairman of the Board of Directors of e.g. Novo Nordisk A/S), Sten Scheibye (CEO of Coloplast A/S), Peter Ravn (Managing Director of SimCorp A/S), Henrik Stenbjerg (attorney-at-law and partner of Kromann Reumert), Finn L. Meyer (state-authorised public accountant and senior partner of KPMG) and Lars Rohde (CEO of the Danish Labour Market Supplementary Pension Fund).

For further information please contact:

Hans-Ole Jochumsen, President and CEO, tel. +45 33 93 33 66 or
Lars Nerby Johansen, Chairman of the Committee, tel. +45 33 15 83 20

ANNEX 7. U.K. CODE OF PRACTICE ON CONSULTATION

Following are extracts from the United Kingdom's Code of Practice on Consultation (Crown copyright 2004). Although the six consultation criteria in this code apply to public consultations for developing policy by officials in the British government, they provide a useful framework for consideration by committees when developing a corporate governance code of best practice.

CRITERION 1

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development [of the corporate governance code]
 - 1.1 Consultation is a continuous process that needs to be started early in the [code] development process.
 - 1.2 It is important to identify proactively relevant interested parties and those whom the [corporate governance code] will be likely to affect. These groups should be contacted and engaged in discussions as early as possible in the [code] development process.
 - 1.3 Informal consultation with these stakeholders should be conducted prior to the written consultation period. Not only does this lead to a more informed consultation exercise but it also ensures that stakeholders are engaged early and have a better understanding of the [corporate governance code].
 - 1.4 The formal consultation period should always include a written consultation exercise. This written consultation period should be a minimum of 12 weeks. [Crafting committees] should consider the specific circumstances of their stakeholders and consider longer consultation periods at certain times, for example during the summer holiday period....
 - 1.6 Where a consultation takes place over a holiday period or lasts less than 12 weeks, extra effort should be made to ensure that the consultation is still effective, by supplementing the written exercise with other methods of consultation....
 - 1.8 ... It is important to engage proactively with individuals [and] organizations ... Written consultation is not the only or even always the most effective means of consultation. Other forms of consultation may help this process. These might include:
 - Stakeholder meetings;
 - Public meetings;
 - Web forum;
 - Public surveys;
 - Focus groups;
 - Regional events; and
 - Targeted leaflet campaigns.

ANNEX 7. U.K. CODE OF PRACTICE ON CONSULTATION (CONT.)

CRITERION 2

2. Be clear about what your proposals are, who may be affected [target companies], what questions are being asked and the timescale for responses.
 - 2.1 Ask focused questions, and be clear about the areas of [corporate governance] on which you are seeking views. Responses that do not refer to the specific questions asked should still be accepted. Encourage respondents to provide evidence, where appropriate, to support their responses.
 - 2.2 Explicitly state any assumptions made about those who are likely to be affected by the proposed [code]. Encourage respondents to challenge these assumptions.
 - 2.3 As far as possible, consultation should be completely open, with no options ruled out. However, if there are things that cannot be changed because, for example, they are part of [the country's legal requirements] , then make this clear. ...
 - 2.4 If there are particular areas where respondents' input would be especially valuable, make this clear as well. Responses are likely to be more useful and focused if respondents know where to concentrate their efforts.
 - 2.5 Representative groups should be asked when responding to give a summary of the people and organizations they represent.
 - 2.6 Provide a list of consultees as an annex to your consultation document and ask for suggestions of other interested parties who should be consulted. It may also be helpful to refer to any earlier or informal consultation.
 - 2.7 Clearly state the deadline for responses and any alternative ways of contributing to the process in the consultation document.
 - 2.8 Explicitly state both who to respond to and who to direct queries to, giving a name, address, telephone number and e-mail address. This may be the same person.

CRITERION 3

3. Ensure that your consultation is clear, concise and widely accessible.

3.1 Clear

Use plain language: avoid jargon and only use technical terms where absolutely necessary. A consultation should be as accessible as possible. Explain complicated concepts as clearly as possible and, where there are technical terms, use a glossary.

3.2 Concise

Provide an executive summary to the written consultation document that covers the main points of the document, preferably no longer than two pages. Even if the document is technical, ensure that the executive summary is accessible to all. ...

3.3 Accessible

Ensure that the consultation documents are available in paper format and with the fullest use of electronic means. They should be available and easily found on the internet from the day that the consultation is launched.

3.4 Efforts should be made to bring the consultation to the attention of all interested parties. As well as using the internet you should consider publicizing the consultation in ways most appropriate for the groups you wish to reach.

3.5 Respondents should be able to respond electronically if they chose. Produce documents in electronic formats appropriate to achieving wide accessibility. Consider the range of electronic response methods to ensure that providing a response is simple, engages a broad range of people and encourages deliberation. Costs to users should never be such that they are an obstacle to effective consultation.

...

3.8 ... Certain issues may demand particular approaches to consultation: for example, discussion groups or meetings may be appropriate, especially where representative groups' capacity to respond to formal consultation is limited....

...

ANNEX 7. U.K. CODE OF PRACTICE ON CONSULTATION (CONT.)

CRITERION 4

4. Give feedback regarding the responses received and how the consultation process influenced the [corporate governance code].
 - 4.1 Responses should be carefully and open-mindedly analyzed.... Particular attention may need to be given to representatives bodies, such as business associations, trade unions, ... and other organizations representing groups especially affected. In order to ensure that responses are analyzed correctly, it is important to understand whom different bodies represent, and the methodology used to gain members' input into the response.
 - 4.2 Particular attention should be paid to:
 - Possible new approaches to the question consulted on;
 - Further evidence of the impact of the proposals; and
 - Strength of feeling among the particular groups.
 - 4.3 The consultation document should state the date when, and the web address where, the summary of responses will be published. As far as possible this should be within three months of the closing date of the consultation. Those without web access should be able to request a paper copy of this summary....
 - 4.4 The summary should give an analysis of the responses to questions asked: for each question there should be a summary of responses to that question and then an explanation of how it is proposed to change the [draft code] in light of the responses received. There should also be information provided on themes that came out of the consultation which were not covered by the questions.
 - 4.5 Wherever possible the summary of responses should also include a summary of the next steps for the [corporate governance code], including reasons for decisions taken.
 - 4.6 Explain who will use the responses and for what purpose, and make it clear that responses, including the name and addresses of respondents, may be made public unless confidentiality is specifically requested. ...

...

CRITERION 5

5. Monitor your [committee's] effectiveness, including through the use of a designated consultation co-ordinator.

5.1 Each [committee] should have a nominated consultation co-ordinator
They should act as an adviser to those conducting consultation exercises.

5.2 Consultation should be evaluated for effectiveness, looking at numbers and types of responses, whether some methods of consultation were more successful than others, and how the consultation responses clarified the ... options and affected the final [version of the corporate governance code].

...

ANNEX 7. U.K. CODE OF PRACTICE ON CONSULTATION (CONT.)

CRITERION 6

Ensure your consultation follows...best practice....

6.1 When consulting on a review of a [corporate governance code], ensure consideration is given to opportunities for reducing bureaucracy and regulatory burdens ...

...

6.4 Consider any unintended consequences of the [draft code] and ask respondents to highlight these in their responses.

6.5 When consulting, ensure that you ask about the practical enforcement and implication issues of your [corporate governance code], including asking respondents for alternative approaches to implementation....

...

ANNEX 8. THE MILLSTEIN REPORT (1997)

In 1997 Ira Millstein wrote a report for the Organisation for Economic Co-operation and Development that provides a set of 25 “policy objectives.” These include 20 “Perspectives for Public Policy Improvement” designed to assist policymakers and regulators in shaping the corporate governance environment. The perspectives listed in the Millstein Report provide a framework for policymakers to benchmark their corporate governance practices in their own country. Although these policy objectives were formulated in 1997, they are as pertinent and challenging as when they were first written and provide excellent guidance for developing a code.

THE MILLSTEIN PERSPECTIVES FOR PUBLIC POLICY IMPROVEMENT

1. Flexibility

Policy makers and regulators should be sensitive to corporations’ need for flexibility in responding to the changing competitive environment and the related need for flexible adaptive governance structures. Regulation should support a range of ownership and governance forms so that a market for governance arrangements develops.

2. Regulatory impact

Policy makers and regulators should consider the impact of any proposed regulatory initiative on the ability of the corporate sector to respond to competitive market environments. They should avoid those regulations that threaten to unduly interfere with market mechanisms.

3. Regulatory focus

Regulatory intervention in the area of corporate governance is likely to be most effective if limited to:

- **Fairness** – ensuring the protection of shareholder rights and the enforceability of contracts with resource providers
- **Transparency** – requiring timely disclosure of adequate information concerning financial performance
- **Accountability** – clarifying governance roles and responsibilities and supporting voluntary efforts to ensure the alignment of managerial and shareholder interests as monitored by boards of directors—or in certain nations boards of auditors—having some independent members.
- **Responsibility** – ensuring corporate compliance with the other laws and regulations that reflect the respective society’s values

4. Clarity, consistency, enforceability

Policy makers and regulators should provide clear, consistent, and enforceable securities and capital market regulations designed to protect shareholder rights and create legal systems capable of enforcing such regulations. Such regulations should seek to treat all equity investors including minority shareholders fairly and should include protections against fraud, dilution, self dealing, and insider dealing.

ANNEX 8. THE MILLSTEIN REPORT (1997) (CONT.)

5. Litigation abuse

Regulations aimed at protecting shareholder rights should be designed to protect against litigation abuse.

6. Basic contract, commercial and consumer law

Policy makers and regulators should ensure that an adequate system of contract, commercial, and basic consumer protection law is in place so that contractual relationships are enforceable.

7. Regulatory impact on active investors

Policy makers and regulators should review whether their securities, tax, and other regulations unduly hinder active investors and whether their regulations concerning institutional investors inappropriately inhibit them from participating as active investors.

8. Corruption and bribery

Policy makers and regulators should ensure that corporations function in an environment that is free from bribery and corruption.

9. Accurate and timely disclosure

Regulators should require that corporations disclose accurate and timely information concerning corporate financial performance. Adequate enforcement mechanisms should be provided.

10. Consistent, comparable disclosure

Regulators should cooperate internationally in developing clear, consistent, and comparable standards for disclosure of corporate financial performance including accounting standards

11. Ownership disclosure

Regulators should extend such disclosure requirements to the corporate ownership structure including disclosure of any special voting rights and of the beneficial ownership of controlling or major blocks of shares

12. Disclosure improvement

Regulators should encourage ongoing improvements in both disclosure techniques and formats.

13. Corporate governance legal standards

Policy makers and regulators should articulate clearly the legal standards that govern shareholder, director, and management authority and accountability including fiduciary roles and legal liabilities. However because corporate governance and expectations concerning roles and liabilities continue to evolve, legal standards should be flexible and permissive of evolution.

14. Shareholder protection

Policy makers and regulators should protect and enforce shareholder rights to vote and participate in annual shareholder meetings.

15. Independent boards

Policy makers and regulators should encourage some degree of independence in the composition of corporate boards.

16. Sound audit practices

Policy makers and regulators should encourage sound audit practices, which include board selection of and reliance on an independent auditor.

17. Investor competition

Governments should avoid regulations that unduly inhibit the ability of institutional investors to compete with one another.

18. Law-abiding corporations

Policy makers and regulators should ensure that corporations abide by laws that uphold the respective society's values such as criminal, tax, antitrust, labor, environmental protection, equal opportunity, and health and safety laws.

19. Individual welfare

Policy makers and regulators should support and encourage education and training efforts, the provision of unemployment benefits, and other similar efforts aimed at promoting the welfare of individuals.

20. Income and opportunity divergence

Policy makers and regulators may wish to consider the implications of significant divergence in income and opportunity paths.

ANNEX 9. SUMMARY OF A CORPORATE GOVERNANCE COUNTRY ASSESSMENT

Following are the key findings of a corporate governance Report on the Observance of Standards and Codes (ROSC) conducted by the World Bank in India. The report was issued and published in 2004.

The 2004 ROSC assessed the observance of OECD Corporate Governance Principles in India using the criteria:

- Observed (O)
- Largely observed (LO)
- Partially observed (PO)
- Materially not observed (MO)
- Not observed (NO)

I. THE RIGHTS OF SHAREHOLDERS

IA	Basic shareholder rights	O	<ul style="list-style-type: none"> • Shares traded through a stock exchange are held in dematerialized form in the two depositories: National Securities Depository and Central Depository Services. • Registration in a depository is proof of ownership. • Companies must maintain a register of shareholders or outsource this function to a share transfer agent. • Shares traded through stock exchanges are transferred through book entry at the depositories. • Cash settlement occurs at designated clearing banks of stock exchange clearing houses. Clearance/settlement occurs in DVP2 on T+2. • Novation exists at National Stock Exchange (NSE), but not Stock Exchange, Mumbai (BSE). • Guarantee funds have largely eliminated settlement risk. Central Bank plans to introduce real time gross settlement in 2004. • Annual and half yearly accounts are mailed to shareholders; quarterly accounts are published in newspapers and posted on web pages of issuers and stock exchanges. • Companies must file memorandum, articles of association and periodic financial information with a Registrar of Companies (ROC). Investors can access this information for nominal fee (about USD 1). • Usually, directors are proposed by board and elected by shareholders. Shareholders can propose candidates up to fourteen days before AGM [annual general meeting], but shareholders seldom use this right. • Board proposes dividend, and AGM approves it.
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I. THE RIGHTS OF SHAREHOLDERS (CONT.)

IB	Rights to participate in fundamental decisions.	O	<ul style="list-style-type: none"> • Certain fundamental corporate decisions are the exclusive power of AGM and require 75 percent majority: • changing registered office; • authorizing capital increases; • waiving pre-emptive rights; buying back shares; • amending articles of association; • delisting; • acquisitions, disposals, mergers and takeovers; • changes to company business or objectives; • making loans and investments beyond limits prescribed under CA Section 372A, • authorizing board to: (i) sell or lease major assets; (ii) borrow money in excess of paid-up capital and free reserves, and (iii) appoint sole selling agents and apply to the court for the winding up of company.
IC	Shareholders' AGM rights	O	<ul style="list-style-type: none"> • AGM mandatory, according to Companies Act (CA). • 21 day AGM notice (meeting place, time, agenda) sent to all shareholders. • In case of special business, agenda must set out material facts, including nature of concern or interest of any director or manager. • Some companies reportedly hold AGMs in remote locations. • Quorum is five shareholders. If quorum is not met after half an hour, meeting is dissolved if called by shareholders, or postponed for one week if called by board. • Shareholders may vote in person or proxy. • CA allows postal voting for fundamental situations. • Any shareholder may apply to Company Law Board (CLB) to call AGM. • Shareholders with 10 percent of paid-up voting capital can call EGM [exceptional general meeting]. • Shareholders can vote by show of hands or demand poll, if they own at least 10 percent of voting rights.

I. THE RIGHTS OF SHAREHOLDERS (CONT.)

ID	Disproportionate control disclosure	LO	No nominee accounts. Shareholder agreements need not be disclosed to company/shareholders. Prevalence of complex cross-holdings across family or business groups still fails to provide a fully transparent picture for shareholders.
IE	Markets for corporate control should be allowed to function	O	SEBI [Securities and Exchange Board of India] Takeover Code has been successfully tested in 25 + hostile bids. Takeover Code requires anyone whose holdings cross 15 percent threshold to make offer for at least 20 percent more of shares.
IF	Cost/benefit to voting	MO	Pension funds seldom exercise voting rights, instead exert influence through nominee directors on the board of their portfolio companies.

II. EQUITABLE TREATMENT OF SHAREHOLDERS

IIA	All shareholders should be treated equally	PO	Shareholders can apply [to] the CLB, SEBI or the company "Grievance Committee" for redress. Derivative and class action suits exist. Doubts persist about the effectiveness of legal remedies in practice.
IIB	Prohibit insider trading	PO	Insider trading is a criminal offense, but enforcement is problematic. Senior management must disclose to board potential conflicts of interest. Directors must disclose share dealings beyond certain threshold.
IIC	Board/Mgrs. disclose interests	PO	Reportedly, misuse of corporate assets and abuse in related party transactions remain problems.

III. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

IIIA	Stakeholder rights respected	O	Board is required to discuss material issues regarding stakeholders.
IIIB	Redress for violation of rights	PO	Redress can be sought through civil and high courts; however, there are long delays and backlogs.
IIIC	Performance enhancement	O	SEBI has issued detailed guidelines on the issue of stock options.
IIID	Access to information	O	Relevant information is posted on company and stock exchange websites, but quality of info varies among companies.

IV. DISCLOSURE AND TRANSPARENCY

IVA	Disclosure standards	LO	Companies must send annual report to shareholders, stock exchanges, DCA [Department of company Affairs] and ROC; content regulated by statute. Disclosure does not extend to level of ultimate beneficiary and structure of business groups. Quality of financial reporting improving, but stock exchanges lack sufficient resources to ensure compliance and rely heavily on auditors.
IVB	Standards of accounting & audit	LO	Quality of financial disclosure determined by DCA, SEBI and ICAI [Institute of Chartered Accountants of India]. ICAI says India conforms with ISA [International Standards of Auditing]. Judicial delays diminish deterrence factor of some penalties.
IVC	Independent audit annually	PO	Auditors can provide consulting services to the company they audit up to the level of the audit fee, and fees disclosed in the annual report. Disciplinary proceedings can be lengthy.
IVD	Fair & timely dissemination	O	Dissemination channels include direct mailing, company websites, the stock exchange, and press announcements. Printing/distribution of annual report to all shareholders and necessity of publishing accounts of all subsidiaries add greatly to issuer costs.

V. RESPONSIBILITIES OF THE BOARD

VA	Acts with due diligence, care	LO	Unitary board structure. Basic fiduciary duties are not spelled out in legislation, but embedded in sparse existing jurisprudence.
VB	Treat all shareholders fairly	LO	Board members have a fiduciary obligation to treat shareholders fairly. Shareholders can appeal to SEBI or the courts At least 2/3 of board rotational.
VC	Ensure compliance w/ law	O	The company secretary ensures the board complies with its statutory duties and obligations.
VD	The board should fulfill certain key functions	LO	There is no rule vesting the responsibility of overseeing the process of disclosure and communication with the board. Small companies practice "box-ticking."
VE	The board should be able to exercise objective judgment	PO	Audit and remuneration committees are common. Audit committee has three members, all non-executive and a majority of them independent. Director may have membership on 15 boards and ten committees and may chair five committees.
VF	Access to information	O	Clause 49 mandates information to be placed before the board; it is sufficient to inform directors about firm's financial/non-financial situation.

*A Summary of Policy Recommendations for India (ROSC, 2004)***I. THE RIGHTS OF SHAREHOLDERS**

IA	Basic shareholder rights	NA
IB	Rights to participate in fundamental decisions.	The provision dealing with the selling or leasing of major assets should be further refined to avoid any abuse.
IC	Shareholders AGM rights	<ul style="list-style-type: none"> • NA
ID	Disproportionate control disclosure	<ul style="list-style-type: none"> • Shareholder agreements should be disclosed.
IE	Control arrangements should be allowed to function.	<ul style="list-style-type: none"> • NA
IF	Cost/benefit to voting	<p>Regulators should consider introducing an obligation that institutional investors acting in a fiduciary capacity adopt and disclose their corporate governance and voting policy.</p> <p>Regulators should also disclose to the public how they manage material conflicts of interest that may affect the exercise of their corporate governance rights.</p> <p>Shareholder activism among retail investors should be encouraged.</p>

II. EQUITABLE TREATMENT OF SHAREHOLDERS

IIA	All shareholders should be treated equally	<p>Depository receipt contracts should provide owners with same rights to vote as are accorded to holders of underlying shares.</p> <p>Consider strengthening regulators' enforcement power to offset backlog and delays of court procedures.</p>
IIB	Prohibit insider trading	<p>Implement SEBI's initiative of a unique client code for each investor.</p> <p>There should be greater cooperation between NSE and BSE on surveillance.</p> <p>Publish share trading by directors and senior management in the newspaper.</p> <p>Successfully prosecute one insider trading case to enhance perception of market integrity.</p>
IIC	Board/Mgrs. disclose interests	<p>While audit committees should pre-vet related party transactions, ultimate responsibility of judging whether a related party transaction is in the best interest of the company should remain with the board.</p>

III. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

IIIA	Stakeholder rights respected	• NA
IIIB	Redress for violation of rights	Refer to Insolvency and Creditor Rights ROSC.
IIIC	Performance enhancement	Closely follow the international debate on good practices regarding the treatment of stock options.
IIID	Access to information	NA

IV. DISCLOSURE AND TRANSPARENCY

IVA	Disclosure standards	SEBI and stock exchanges need to cooperate more closely to effectively monitor and enforce compliance with listing agreement. Steps must be taken to clarify division of responsibilities among stock exchanges, SEBI and DCA to avoid unintentional regulatory overlap and potential conflicts.
IVB	Standards of accounting & audit	See Accounting and Auditing ROSC. Significantly enhance fines to act as credible deterrents.
IVC	Independent audit annually	Recommendations of Naresh Chandra Committee on Corporate Audit and Governance are included in pending legislation, which should go forward. Consider different options to subject auditors to an auditor oversight body that operates in the public interest and that is not under the control of the auditing profession.
IVD	Fair & timely dissemination	Give shareholders option to decline full annual report in lieu of summary, whose content would be regulated by SEBI.

V. RESPONSIBILITIES OF THE BOARD		
VA	Acts with due diligence, care	<p>The fiduciary obligations should be clearly spelled out in the legal or regulatory framework.</p> <p>Have same standards of care for executive and independent directors, with few exceptions.</p> <p>Provide directors with access to training.</p>
VB	Treat all shareholders fairly	<p>Have DFIs [development finance institutions] nominate expert independent directors on their behalf.</p> <p>Maximum term of independent directors should be capped.</p>
VC	Ensure compliance w/ law	NA
VD	The board should fulfill certain key functions	<p>Consider consulting shareholders with regard to general compensation policy for senior management, rather than individual packages.</p> <p>The department in charge of corporate communication should have a direct reporting line to the board.</p> <p>Clearly-defined board procedures are needed to allow board to effectively exercise its oversight function on risk management.</p>
VE	The board should be able to exercise objective judgment	<p>Given that multiple board memberships by one person can interfere with performance of directors, companies and shareholders should consider desirability of such a situation.</p> <p>Consider special training and certification program for audit committee members.</p> <p>Adequate across-the-board compensation for independent directors will help increase supply of high quality candidates and ensure sufficient time is devoted to their responsibilities.</p> <p>Compliance with the audit committee requirement should be monitored closely by regulators.</p>

ANNEX 10. CORPORATE GOVERNANCE CHALLENGES IDENTIFIED BY THE REGIONAL CORPORATE GOVERNANCE ROUNDTABLES (2004)

Following is a summary of the key findings from a series of regional corporate governance roundtables conducted by the Organisation of Economic co-operation and Development in partnership with the World Bank and the International Finance Corporation with the support of various other organizations including the Global Corporate Governance Forum. Each regional roundtable has issued a white paper that can serve as background reference for developing a country code. The white papers can be downloaded from the OECD website at www.oecd.org

The roundtables have revealed a wide range of corporate governance challenges across the five regions including:

Enforcement

Perhaps the most widespread sentiment expressed in the roundtables was the importance of improving the enforcement of existing law and regulations. While legal traditions vary across countries, there is a broad recognition that the structure, vigilance, and capacity of the regulatory and judicial framework form an integral part of the corporate governance environment. All roundtables have emphasized the need to “close the gap” between formal provisions and actual implementation.

Ownership and control

In many parts of the world, ownership and control is highly concentrated in individual companies or groups of companies. Concentrated ownership is often seen as a solution to the fundamental principal-agent problem of corporate governance. In the absence of a credible legal and regulatory framework, however, the expected benefits may not be realized. (This is especially true when control is also kept through control pyramids and cross-holdings, which lead to a separation of ownership and control). The situation is often further aggravated by insufficient information about ultimate ownership and the use of opaque control structures.

The potential problems that arise from this combination of concentrated ownership, weak shareholder protection and insufficient disclosure has been highlighted in all the regional roundtables. The white papers recommend that policymakers should focus on improving transparency and disclosure and making boards more effective as well as developing and protecting the rights and equitable treatment of shareholders.

Shareholder rights and equitable treatment

Perhaps the most important problem that follows directly from the combination of concentrated ownership, opaque control structures, weak minority protection, and insufficient disclosure is the frequent abuse of related-party transactions. Curbing such transactions should be one of the top priorities for corporate governance reform and a prerequisite for attracting minority investors on a long-term basis.

Improving Board Effectiveness

Roundtable participants described most company boards as either:

- passive rubber stamps or
- active participants in furthering the interest of the controlling shareholder.

While most countries have established the legal duties of board members to exercise care and act in the interest of the company and all shareholders, these legal requirements often have limited influence on actual board practices. This issue reflects the limitations of the judicial system. It has been noted that in many countries participating in the roundtables minority shareholders have never filed a successful suit against a board member.

The role of banks

In many of the roundtable countries, banks have ownership structures that may create conflicts of interest and undermine their own governance as well as their role as monitor.

The role of stakeholders

The regional roundtables revealed that the mechanisms for stakeholder involvement in the governance of companies did not always work as hoped and that stakeholders sometimes faced abusive actions by corporate insiders that impeded their ability to take action illegal operations or seek effective redress for violations of their rights.

Transparency and disclosure

International accounting standards now influence disclosure requirements in all regions covered by the roundtables. These require all companies to take the steps needed to implement these standards.

As a direct consequence of the efforts to curb abusive related-party transactions, the roundtables have called for improvements in the disclosure of ownership to encompass beneficial owners.

ANNEX 11. MONITORING AND ENFORCING CORPORATE GOVERNANCE BEST PRACTICES IN THE UNITED KINGDOM

Following is a summary of the roles and responsibilities of the United Kingdom's Financial Reporting Council, the agency that monitors the country's corporate governance system.

The United Kingdom established the Financial Reporting Council (FRC) in 1990 to promote good financial reporting through its subsidiaries, the Accounting Standards Board and the Financial Reporting Review Panel. In 2003 the government announced reforms of the council designed to create independent regulation of the accountancy and audit profession and to raise corporate governance standards. In 2004 the "new" FRC became operational.

The aim of the FRC is to promote public and investor confidence in corporate reporting and governance. It has the following roles and responsibilities:

- Sets, monitors, and enforces accounting and auditing standards
- Oversees the regulatory activities of the professional accountancy bodies and regulating audit
- Promotes high standards of corporate governance.

The FRC :

- Maintains and monitors the effectiveness of the Combined Code.
- Ensures that the guidance on internal control (the Turnbull Guidance) is up to date
- Influences EU and global developments in corporate governance.

The Financial Reporting Council's functions cover the entire length of the corporate reporting and governance chain. Its remit is much wider than that of any previous regime in the United Kingdom or any equivalent regime in countries with major financial markets. This wide remit allows the council to look at issues affecting corporate reporting in a more coherent way than was possible in the past. The council intends to target its resources on the links in the chain that present the greatest risk to confidence in corporate reporting and governance.

In addition, the Financial Reporting Council oversees:

- **The Accounting Standards Board (ASB)**

The ASB:

- Provides a framework within which others can exercise judgment in resolving accounting issues
- Issues or amends accounting standards and
- Works in collaboration with the International Accounting Standards Board, national standard setters, and EU institutions to develop international standards.
- **Auditing Practices Board (APB)**

This board develops standards and guidance to underpin good auditing practices.

- **Professional Oversight Board for Accountancy (POBA)**

This board is responsible for the independent oversight of the regulation of the accountancy profession and for the regulation of audits, including the monitoring of audit quality.

- **The Financial Reporting Review Panel (FRRP)**

This panel reviews the financial information provided by public and large private companies to determine compliance with relevant accounting requirements.

- **The Accountancy Investigation and Discipline Board (AIDB)**

This board operates an independent and transparent investigation and disciplinary scheme to handle public interest cases.

In carrying out its regulatory functions, the FRC states that

- It has a preference for market-based solutions
- Where it chooses to intervene in the operation of the market, it will do so with as light as touch as possible.
- It intends its interventions to send strong signals to the market

This philosophy conforms with the Better Regulation Task Force Principles of:

- Proportionality
- Accountability
- Consistency
- Transparency

The council considers three questions when advising on new proposals for corporate governance or company law.

- Will change promote enterprise, investment, and the free flow of capital in support of growth and innovation?
- Will change maintain the right balance between oversight by shareholders and the directors' ability to drive the business?
- Will the market be enabled to reward strong performers and punish those who do not serve investors' interests, or will the regulatory authorities become, de facto, the judges of performance?

The FRC's goal is to ensure that enterprise continues to flourish, that the capital markets remain effective, and that people have trust and confidence in business. The council sees the role of the state not as judging corporate performance but as enabling the market—most particularly shareholders—to do so. The council's approach is to give shareholders the opportunity, and the means, to make their own judgements and hold management to account.

ANNEX 12. THE REVIEW OF THE OECD PRINCIPLES OF CORPORATE GOVERNANCE

Following is a summary of the amendments made by the Organisation of Economic Co-operation and Development to its Principles of Corporate Governance in 2004 after a careful review.

The review process was carried out by the Steering Group on Corporate Governance and involved:

- Consultations with a wide group of interested parties, with non-OECD countries, and with several high-level roundtables chaired by the Secretary General.
- A survey of corporate governance developments since 1999
- Draft revised principles were placed on the website for comment in January 2004 and resulted in 100 replies, which were posted on the website.

The major changes in the Principles involved:

- A new chapter on implementation and enforcement
- Stronger shareholder rights
- Improved disclosure
- Whistleblower protection
- Tightened responsibilities of boards

The revisions tackled major issues that included:

- **Controlling executive and director remuneration**
 - boards to align key executive and board remuneration with the long-term interests of company and shareholders and establish a remuneration policy (chapter VI)
 - statement that special remuneration committee with independent directors regarded as best practice in more countries (chapter VI)
 - the remuneration policy to be disclosed (chapter V)
 - shareholders to have ability to make their views known on the policy and to approve equity components of the scheme. (chapter II)
- **Abuse in company groups**
 - clear statement on fiduciary duties of board members to the company and not to the company group (chapter VI)
 - explicit statement that boards to review related-party transactions using independent directors (chapter VI)
 - make general statement of board independence to cover those in a position to influence the company and not just management (chapter VI)
 - stronger annotations to disclosure of related-party transactions (chapter V)
 - stronger principle on board and executive disclosure of material interests (chapter III)
 - stronger call for protection of minority shareholders. (chapter III)
- **Self-dealing and abuse by insiders**
 - strengthened principle calling for boards to establish ethical guidelines and effective compliance procedures (chapter VI)

- boards to oversee internal controls and provide confidential access to whistleblowers (chapter VI)
- tightened disclosure standards to the board and to the market (chapter V)
- strengthened criteria for board independence and greater possibilities for shareholders to question boards and to participate (chapters VI and II)
- **Improved financial market integrity**
 - better disclosure by the company, including related-party transactions
 - boards to focus on overseeing internal controls and major accounting assumptions through independent audit committee (chapter V)
 - more emphasis on auditor independence and reference to IOSCO standards (chapter VI)
 - accountability of external auditors to shareholders and duty of professional care to the company (chapter V)
 - those providing analysis and advice to be free of conflicts of interest (chapter V)
 - improved enforcement (chapter I)
- **Improved enforcement**
 - greater role for shareholders and improved transparency
 - tightening of fiduciary responsibilities of boards
 - improved financial integrity
 - clear objectives for policy in establishing a system leading to transparent and efficient markets
 - legal and regulatory instruments to be transparent and enforceable
 - clear division of responsibilities between domestic authorities
 - supervisory, regulatory, and enforcement authorities should have authority, integrity, and resources to fulfill duties
- **Better exercise of ownership**
 - call for effective shareholder participation in key decisions such as the nomination and election of board members proposing resolutions and making views known on compensation policy (chapter II)
 - call for institutional investors acting in a fiduciary capacity to declare voting policies and how they handle conflict of interests (chapter II)
 - improved possibilities for shareholders to consult with each other on key governance issues (chapter II)
 - eliminating impediments to cross-border voting (chapter III)
 - more detailed annotations covering use of proxy voting and conduct of shareholder meetings (chapter II)



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Co-founded by the World Bank Group and the Organisation for Economic Co-operation and Development, the Global Corporate Governance Forum is an advocate, a supporter, and a disseminator of high standards and practices of corporate governance in developing countries and transition economies. The Forum's donors include the International Finance Corporation and the governments of France, India, Luxembourg, Norway, Sweden, Switzerland, and the United States.

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