

Vietnam Corporate Governance Project

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In Partnership with: 



Assisting

Companies and banks in implementing good corporate governance practices

Establishing

Effective corporate governance regulatory frameworks

Increasing

Training capacities of educational institutions

Raising

Public awareness of corporate governance issues



**International
Finance Corporation**
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Dear Reader,



Welcome to our second Vietnam Corporate Governance Project Newsletter. In our inaugural issue, we shared a snapshot on where corporate governance standards and awareness stand in Vietnam. We move from the broad to the specific in this issue by focusing content on the latest progress and new projects that are pushing business and capital market improvements in Vietnam.

A recent highlight in raising awareness was the dual launch of the Corporate Governance Scorecard and the Corporate Governance Manual in December 2010. Both projects were a result of strong cooperation with the State Securities Commission of Vietnam and the Global Corporate Governance Forum.

The Manual closely examines all applicable Vietnamese laws and regulations and international standards and practices, and provides steps and recommendations for implementation, monitoring and accountability to shareholders, corporations, and the government. The Scorecard is a review of the corporate governance practices of the 100 largest listed companies in Hanoi and Ho Chi Minh City Stock Exchanges as of January 1, 2009. It aims to develop a benchmark of corporate governance practices by exploring compliance with laws and regulations, including local governance regulations and globally recognized governance practices. We hope that you will take advantage of these publications and the wealth of their information so that we can all come to a common understanding of where we are and what needs to be done to establish a vibrant corporate governance culture here in Vietnam.

We also want to update progress we've made with project components, including the Training of Trainers for Corporate Governance coursework, and legal work on Decree 102.

We would like to acknowledge and thank our donor partners including Finland, Ireland, the Netherlands, New Zealand, and Switzerland for their generous support to the advisory services that IFC is delivering in Vietnam.

Sincerely,

Simon Andrews
IFC Regional Manager,
Cambodia, Lao PDR, Thailand, and Vietnam

About IFC

IFC, a member of the World Bank Group, is the largest global development institution focused on the private sector in developing countries. We create opportunity for people to escape poverty and improve their lives. We do so by providing financing to help businesses employ more people and supply essential services, by mobilizing capital from others, and by delivering advisory services to ensure sustainable development. In a time of global economic uncertainty, our new investments climbed to a record \$18 billion in fiscal 2010. For more information, visit www.ifc.org.

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Awareness Raising

THE CORPORATE GOVERNANCE SCORECARD

A brief overview

The launch of the Vietnam Corporate Governance Scorecard and the associated Scorecard Report is part of IFC's efforts to assist the regulator, companies, and organizations by illustrating the value in applying international corporate governance standards and practices. The project was conducted by IFC and the Global Corporate Governance Forum in coordination with the State Securities Commission of Vietnam. In addition to continued support from IFC's donor partners, the project received a special contribution from the Government of Japan.

One way to ensure implementation of corporate governance is through analysis and publication of the results of the analysis. At the same time, it is intended that Vietnamese corporations move beyond compliance to willingly install and develop their own effective governance systems. In order to expedite such development, the Corporate Governance Scorecard was established to act as a benchmark for corporate governance in Vietnam. The Scorecard reviewed the top 100 listed companies representing some 90% of the total market capitalization on the Hanoi and HCMC Stock Exchanges. The companies were assessed against the five key areas, which are recognized by the OECD Principles as the keys to good corporate governance:

- The rights of shareholders
- Equitable treatment of shareholders
- Role of stakeholders in corporate governance
- Disclosure and transparency
- The responsibilities of the board.

The review sourced publicly available materials covering the 2009 reporting period.

While scorecards have been used as mechanisms to improve governance in China, Hong Kong, Singapore, Thailand, the Philippines, and Indonesia for several years now, this was the first review in Vietnam to explore compliance with laws and regulations, including CG Regulations and globally recognized practices. As such, the review subsequently identifies opportunities for regulatory clarification and greater guidance from the SSC and the Stock Exchanges on thresholds and definitions.

“Vietnamese companies with good corporate governance are better positioned to attract external financing, increase profitability and hire and maintain a quality workforce. We expect that the scorecard will help both the public and private sectors adopt transparent, timely, and standardized practices that will enable them to integrate into an increasingly selective and competitive global market.”

Simon Andrews,
IFC Regional manager for Vietnam, Lao, Cambodia and Thailand



Scorecard goals:

- Provide a standardized, systematic framework that assesses a company’s corporate governance and the overall level of corporate governance in Vietnam
- Enable a company to assess the quality of its corporate governance and thereby stimulate companies to improve their practices
- Provide a systematic way to analyze CG across industries
- Assist regulatory groups in identifying strengths and weaknesses in CG practices and thereby encourage further reforms
- Be made available as a tool to raise awareness and understanding of CG

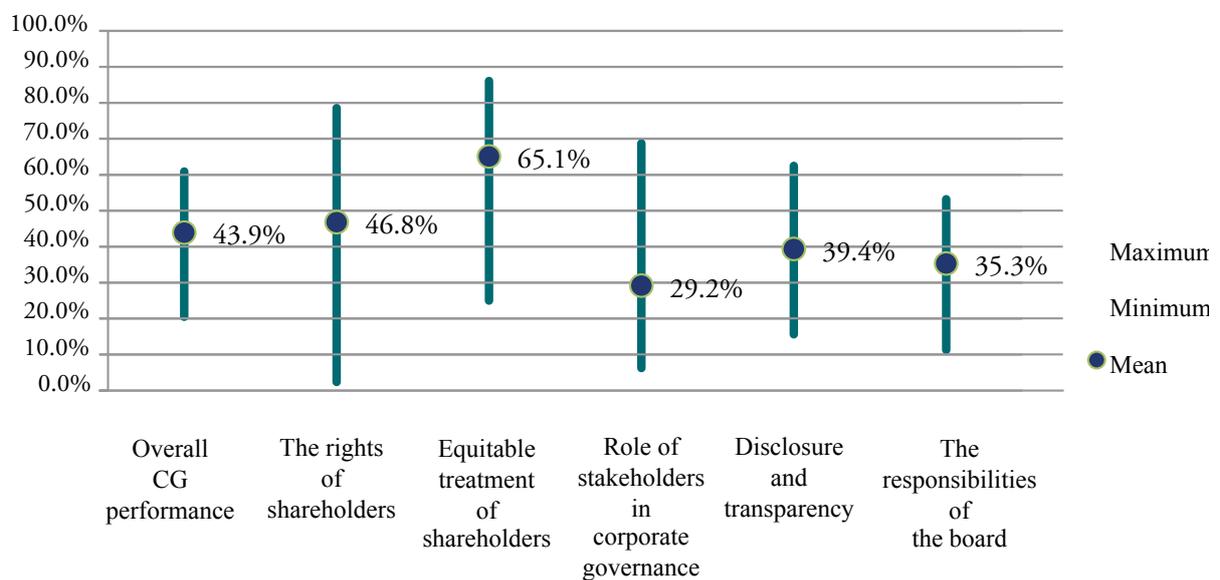
Scorecard findings:

The baseline survey results confirm that corporate governance is in the early stages in Vietnam. Many companies received low scores on subjects of disclosure, transparency, and responsibilities of the board. Within the companies themselves, while corporate governance has been implemented on a basic level, a more sophisticated and deeper knowledge of CG practices is generally lacking. Furthermore, CG developments seem to be led by investment in regulatory and legislative developments, rather than from the companies themselves; issues that are not provided for in laws or regulations (e.g. external auditor independence, stakeholder roles) are not given proper attention, and thus the conclusion that Vietnamese companies have not embraced the arguments for sound governance - this despite the survey also illustrating a positive relationship between company market performance and profitability.

The review also analyzed performance by sector. The healthcare industry, comprised of healthcare equipment and services, pharmaceutical and biotechnology companies, achieved the highest sector score, albeit due to a relatively strong performance of one of the five sector companies. The financial sector was second overall, with the most companies ranked in the top quartile, followed by industrials, with oil and gas last.

Lastly, the review revealed that the area of best compliance with global good practices was the equitable treatment of shareholders. The area of least compliance was the role of stakeholders. This is not surprising, as the role of stakeholders in CG is a relatively new concept in Vietnam, even newer than the concept of CG. But international emphasis on adoption of good practices relating to environmental and social development and governance is increasingly cited as a catalyst for CG reform.

Overall results in corporate governance categories



Recommendations

Two key areas to improve individual company performance would be to focus on disclosure and transparency and board responsibilities. Enhanced and more visible monitoring and enforcement of corporate governance requirements is necessary. Of course, in order to achieve any sort of progress, there must be commitment from the director and board to training, implementation and evaluation at all levels. For example: training for directors on global good practices and Vietnamese regulatory requirements, and training for shareholders on exercising and enforcing their rights.

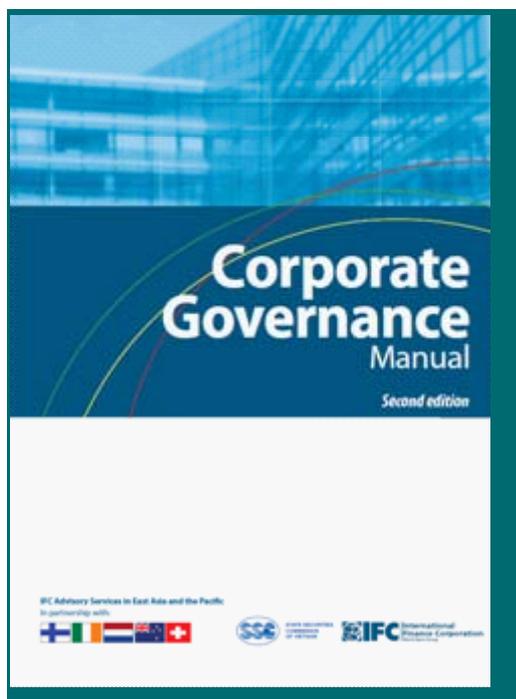
In addition, media should be trained to a level where they can appropriately comment on CG practices and assist in raising of public awareness. At the same time, public awareness programs that better enable and explain the importance of shareholder participation in company activities should be promoted. Other recommendations include mandating a company's corporate governance report, actual auditor election at the General Meeting of Shareholders, and the establishment of an audit committee.

The Scorecard is expected to be regularly re-assessed and published. The full report can be downloaded at the IFC website:

<http://www.ifc.org/ifcext/mekongpsdf.nsf/Content/CG-Pubs>



The Corporate Governance Manual



In partnership with the State Securities Commission, the Vietnam Corporate Governance Project has published a comprehensive CG manual for Vietnam. Launched in early December 2010 in both Hanoi and Ho Chi Minh City, the manual is available in both English and Vietnamese.

The manual is a comprehensive, easy-to-understand reference on Vietnam's corporate governance legal framework and international best practices. It is expected that the manual will serve as an effective guide for companies and all other interested stakeholders to improve their knowledge on good corporate governance practices and their willingness to translate knowledge into action. The Manual also provides government officials, lawyers, judges, investors and others with a framework for assessing the level of corporate governance practices in Vietnamese companies. Finally, it serves as a reference tool for educational institutions that will train the next generation of Vietnamese managers, investors, and policy makers on good corporate governance practices.

“We hope the manual will be a useful tool for public holding companies, especially publicly listed companies, giving them the knowledge to enhance their professionalism and value in the securities market,” said Vu Thi Kim Lien, Vice Chairwoman of the State Securities Commission of Vietnam. “The enhanced capacity to apply corporate-governance principles also helps state regulators enhance the application of international standards and best practices.”

By the end of February, the Project had distributed more than 800 copies of the manual in both English and Vietnamese. The e-versions of the manual in English and Vietnamese were uploaded on IFC's website in December 2010. Please go to:

<http://www.ifc.org/ifcext/mekongpsdf.nsf/Content/CG-Pubs>

An interview with

MR. PHAN DUC HIEU

DEPUTY HEAD

BUSINESS ENVIRONMENT AND COMPETITIVENESS

CENTRAL INSTITUTE FOR ECONOMICS MANAGEMENT



Mr. Hieu played a key role in the drafting of the newly issued Decree No 102/2010/ND-CP for implementing the Law on Enterprises.

The Decree improves upon and replaces the outdated Decree No 139/2007/ND-CP. It contains important provisions on corporate governance.

What were your objectives in replacing Decree 139 with Decree 102?

Decree 102 provides more and clearer guidance for implementing the Law on Enterprises by addressing the following key issues:

- Authorization of enterprises' legal representatives
- Capital contributions using intellectual property rights
- Capital contributions and share purchase rights
- Shareholder actions against a company's directors and managers
- Company meetings and decisions
- Disclosure of related persons and their transactions with enterprises
- Dissolution of enterprises
- Establishment of foreign enterprises.

With regard to corporate governance, what is new in Decree 102 and do you expect any new provisions to offer better minority protection?

Decree 102 provides provisions that “untie the strings” for resolving certain internal conflicts and differences. It specifies the rights and obligations of different parties in a company and this will indirectly help reduce potential conflicts of interest in the company. It also contains provisions on shareholders' rights to institute legal proceedings against directors and the CEO. And it supplements provisions that directly facilitate resolutions to prolonged differences among various parties in a company. For example, with the registration of membership or shareholder changes, Decree 139 required that the company must submit a list of members signed by all members. A non-cooperative member might not sign the list which could prevent the company from registering a change in membership. Decree 102 rectifies this by stipulating that the Registrar can make the change without the signatures of uncooperative members.

Could you expand further on the new provisions on shareholders' rights to institute legal proceedings?

A shareholders' right to institute legal proceedings against company directors and officers is an important right commonly provided in the company law of many other countries. But it is new to Vietnam. The Decree's new provisions on shareholders' rights to institute legal proceedings aim to prevent abuses of power by directors and CEOs and protect the interests of the company, shareholders, and members of the firm.

Decree 102 specifies that any member of a limited liability company may institute legal proceedings, in their own name or in the name of the company, against the chairman of the members' council and CEO. One or more shareholders holding at least 1% of ordinary shares in a joint stock company for a period of six consecutive months may institute legal proceedings against the company's directors and CEO. In this case, shareholders must first request the Supervisory Board to initiate legal action. If it fails to do so, then they may do it themselves.

Could you explain the rationale behind the stipulation that only a shareholder or group of shareholders holding at least 1% of shares are allowed to initiate legal action against directors and a CEO?

International experience shows that in many cases, a company's competitor may take advantage of the right of shareholders to sue directors and officers to disturb the company's operations. This is done through individuals owning a small number of company shares exercising their rights, such as calling for general shareholder meetings or instituting legal proceedings. The requirement of shareholders to hold at least 1% of shares would help prevent this unhealthy practice.

In addition, the requirement that shareholders first request the Supervisory Board institute legal proceedings will allow for internal conflicts to be resolved efficiently. This provides opportunities for parties to informally resolve internal conflicts with the facilitation of the Supervisory Board before going to court as a last resort. Going to court is expensive, time consuming and may also damage the reputations of the company and the parties involved.

Shareholders must first request the Supervisory Board to institute legal proceedings. This will allow for internal conflicts to be resolved efficiently by providing opportunity for informal resolution of internal conflicts with the help of the Supervisory Board. Going to court is expensive, time consuming and may do reputational damage and should be considered a last resort.

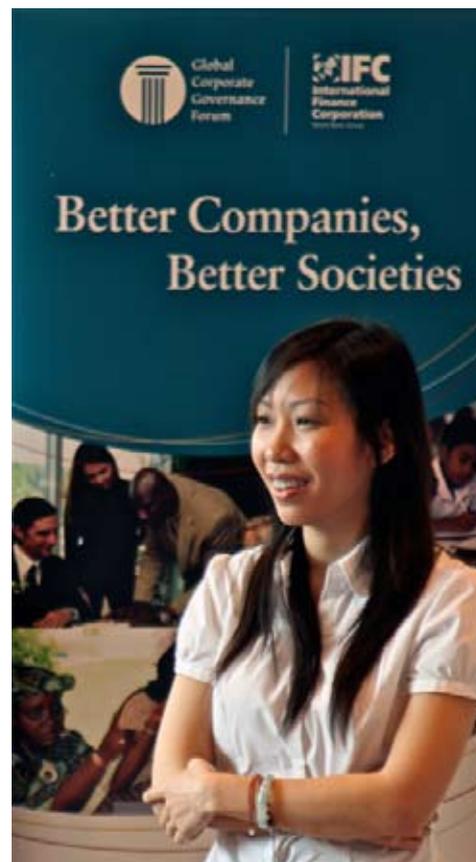
Regarding derivative actions, why does the Decree not provide shareholder derivative suits?

Decree 102 specifies shareholders' rights to sue directors and CEO in their own name, but not under the name of the company. In other words, there are no provisions for shareholder derivative suits. There are concerns that as shareholder suits are new to Vietnam, derivative actions would be too complicated and difficult to implement at this development stage. We will certainly continue to closely look at this issue and may consider introducing it in the new Law on Enterprises, scheduled to be submitted to the National Assembly in 2012.

What about related party transactions, which are new in the Decree?

Decree 102 further specifies the requirement of disclosure of related party transactions. Specifically, the Decree requires that companies must maintain and update a list of related persons of a company and their corresponding transactions with the company. Such list must be kept at the head office of the company and where necessary all or part of the contents may be kept at company branches and made accessible to all shareholders, managers, Supervisory Board members and their authorized representatives. This provision is a positive step for increasing transparency and reducing corruption.

“The Decree requires that companies must maintain and update a list of related persons of a company and their corresponding transactions with the company... this is a positive step for increasing transparency and reducing corruption.”



In our first Newsletter we highlighted the Training of Trainers on Corporate Governance Board Leadership. We go back for a second look, this time focusing just as much on the need to know how to teach CG as the CG subject itself.

As a teacher, knowing your subject is only half the job. The other half, equally important, is ensuring that you transmit your knowledge to your students in a way they will retain and respond to. It is this other half that gets special attention in the Training of Trainers course, last held in Ho Chi Minh City in December 2010. Participants in the course reinforced that the best way to ensure that awareness of CG is raised and maintained is through engaging, tailored seminars and trainings that present CG issues to the different audiences in a way that encourages people to attend and return for more education.

“Even those with previous experience as lecturers should find this training valuable, because we should always be looking to add new skills and share insights on how to deliver a lesson”, said Tran Anh Dao of the HCMC Stock Exchange. “In the past, knowledge of CG came from policy-makers, so we learned where and how CG affects only our particular area of business. CG was not widely understood as a subject in itself. It was therefore very common for directors and company stakeholders to be uninformed.”

The reality is that CG needs to be taught both in a very general, introductory sense, and a very specifically tailored sense. Lecturers need to be able to lesson plan for both, and to move from the general to specific and back again depending on the needs of the audience. Classes must target specific subjects (e.g., BOD responsibilities, conflict resolution between BOD and BOM, building procedures to prevent risk, improving Annual Reporting in line with financial reporting) and ideally could also target specific companies. But as CG is still working to get a foothold in the broader business community, it must also be introduced at the University level and available to those outside the listed companies and policy makers.

According to Dao, “These trainings, which bring together professionals from various parts of the economy, encourage knowledge sharing both in the broad sense of CG and the best ways to get the audience to understand why the subject is important. The reality is that directors and shareholders are generally too busy or less than enthusiastic about taking time out to travel and attend such seminars. Trainers need to excel at how they transfer knowledge; they need to make the experience worthwhile, in order for interest in CG to spread by word of mouth and motivation. They should also capitalize on the seminar as a networking opportunity.”



“Trainers need to excel at how they transfer knowledge; they need to make the experience worthwhile in order for interest in CG to spread...”

- Tran Anh Dao, HCMC Stock Exchange

An interview with

MR. THOMAS LANYI

DIRECTOR

MEKONG CAPITAL



How do you see CG impacting the business landscape of Vietnam?

While I do see an increasing number of companies proactively reaching out to bring back home best practices, including those in CG. We very proactively seek out companies that do have such patterns, and companies that do recognize and acknowledge that they do not have all the answers and are reaching out to acquire these best practices. I would say that the tendency is positive, but I would not say there is a massive trend in that direction.

Do you see more companies outside the financial sector willing to adopt CG?

Yes. Those companies that do adopt better practices and codes have generally seen the connection between a better access to capital and a better access to better capital. I think that is a critical distinction to make: the ability to attract a lower cost of capital but also a higher quality of capital into your company by playing according to international rules. We have certainly found companies willing to play that game.

It is said that a hot market tends to make CG a harder sell, but once the money trail dries up, companies realize they need to adhere to higher standards in order to compete for capital. Do you see this?

Absolutely, but I think this is a natural behavior you can see everywhere in the world and not just in Vietnam. When there is a scarcity of capital, the balance of power shifts towards companies that are more willing to adopt higher standards. However, this is a recurring pattern, and it is not good to rely on this for making improvements, as it would mean that behavior would revert back once the economic situation changed.

We are trying to work with the education sector to get CG-related courses into the classroom in order to build better educated managers and business people. What are you seeing when you hire your staff?

From a technical standpoint, the pool is growing gradually with each year that the private economy continues to exist, and education standards are increasing, and people are gathering experience working for multinationals with values and structures already in place. We are also getting better at looking in the right places, filtering prospects, but we are not aware of many places having a similar culture to ours. If there were, it would make the hiring easier. At the same time, many of the values we have created and the culture we have developed is one we are happy to have people grow into. So we have developed a comprehensive orientation program, taking a lot of time to introduce our culture and integrating people. These values may be easier to take on by people who have already worked in companies similar to ours: results-oriented companies, companies that value leadership, merit-based companies, etc.

So it is more from career experience than educational training?

Yes, more career experience and one's environment. It can also depend on the personality: are you results-oriented, do you embrace leadership, do you have a strong sense of responsibility and integrity?

One thing to clarify is the separation of corporate culture and corporate governance. Our culture is not built around compliance, transparency; these are side effects from our culture, so transparency, compliance, etc are a naturally outcome of us practicing our values - and not the other way around.

How do you see CG affecting the capital market in terms of the regulatory requirements and companies looking to list?

I would generally think that the awareness of the benefits of good CG, and from a regulated standpoint, the intention of improving CG is probably there. Where things slow down is in implementation and execution. I think the awareness is generally increasing, but I have not seen much to say that it is being implemented on a wide scale.

Mekong capital has invested in affiliate companies. How do you see the CG in your investment entities?

We set very high CG standards for these companies, and those standards are usually anchored in an investment agreement that we have underlying each investment. So we ensure that there is a commitment by the company about raising CG standards to a certain level that would include reporting standards, etc. In addition, we also introduce a charter template that we have designed based on global best practices, that would list the company automatically for the next level of an investment, and then over the next coming years we train that company to comply with that charter and we hold them accountable to living by that charter until the company is ready to list, by when they would have to comply with an even higher standard.

So we set very high standards from day one, and we work with our companies to meet these standards, and generally speaking, I would say our companies have all been compliant for the most part for most of the time. I would assert that on average, our companies have CG standards higher than the market average.



Are you an institutional investor and how long of a horizon do you take with your investments?

About five years.

We are fully aware that a company's value creation is to a large extent subject to good CG. If the company is not transparent or has not had audited financials or conducting business according to the charter or best practices in CG, the company will not end up increasing in value as much as it should. Neither a strategic buyer nor a financial investor would pay a premium or even fair value for a business that is not transparent. So we are fully aware that if we do not manage to have our companies reach the highest possible level, we will pay the price in the final evaluation.

What do make of the potential to work with IFC on CG?

We are certainly welcoming any efforts to be improving CG standards countrywide and IFC as a very credible organization is certainly one that is well positioned to do so successfully. We would also cooperate with anyone on that front and are aware of other fund organizations that are making CG a big part of their own strategy: Dragon Capital has been supporting good CG for a long time. So anyone is welcome, really.

We have been conducting training sessions with IFC in the past and I do not see why we should not continue to do so.



OECD principles of corporate governance

The OECD Principles have advanced the corporate governance agenda and provided specific guidance for legislative and regulatory initiatives in both OECD and non OECD countries. The Financial Stability Forum has designated the Principles as one of the 12 key standards for sound financial systems. The Principles also provide the basis for an extensive program of cooperation between OECD and non-OECD countries and underpin the corporate governance component of World Bank/IMF Reports on the Observance of Standards and Codes (ROSC). The OECD Principles serve as an international benchmark for policy makers, investors, corporations and other stakeholders worldwide.

I. Ensuring the Basis for an Effective Corporate Governance Framework

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

II. The Rights of Shareholders and Key Ownership Functions

The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

III. The Equitable Treatment of Shareholders

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

IV. The Role of Stakeholders in Corporate Governance

The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

V. Disclosure and Transparency

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

VI. The Responsibilities of the Board

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

The full document is available at:

<http://www.oecd.org/> and <http://www.ifc.org/ifcext/mekongpsdf.nsf/Content/CG-Pubs>.

OECD guidelines on corporate governance for State Owned Enterprises (SOEs)

These Guidelines should be viewed as a complement to the OECD Principles of Corporate Governance on which they are based and with which they are fully compatible. The Guidelines are explicitly oriented to issues that are specific to corporate governance of State-Owned Enterprises and consequently take the perspective of the state as an owner, focusing on policies that would ensure good corporate governance.

I. Ensuring an Effective Legal and Regulatory Framework for SOEs

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

II. The State Acting as an Owner

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

III. Equitable Treatment of Shareholders

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

IV. Relations with Stakeholders

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

V. Transparency and Disclosure

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

VI. The Responsibilities of the Boards of State-Owned Enterprises

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

The full document is available at:

<http://www.oecd.org/> and <http://www.ifc.org/ifcext/mekongpsdf.nsf/Content/CG-Pubs>.

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