

corporate governance

better companies, better societies

Implementing Corporate Governance Codes in MENA

Interest in corporate governance was building throughout the Middle East and North Africa (MENA) as the region's countries and territories underwent rapid transition amid strong economic growth, financial sector reform, and rising demands for private sector development.

The Global Corporate Governance Forum saw a tremendous opportunity in 2006 to be a catalyst in fostering national codes of corporate governance in MENA. These codes are essential tools for enhancing corporate governance practices at the national and corporate levels, seeking to reconcile international standards and local practices in a way that improves investment prospects. World Bank corporate governance country assessments (CG ROSC) recommend the development of such codes.

To help developing countries and transition economies with this task, the Forum produced a toolkit on crafting, developing, and implementing corporate governance codes.

The product—translated into Arabic, French and Spanish—was widely disseminated, yet, very few countries in MENA had developed their own national codes.

To leverage existing resources and maximize the efficiency of delivering advisory work, the Forum with IFC's Private Enterprise Partnership for the Middle East and North Africa facility (PEP-MENA)¹ pursued a

"The Corporate Governance Code Development program in the MENA region was conceived at the outset of a wave of interest in corporate governance reform in the region. It has been highly successful in accelerating the early stages of this reform process and has been implemented in a manner to support national initiatives and to encourage national ownership."

Rajeev Pillay,
Independent Evaluation Consultant and
General Partner, Abacus International
Management L.L.C.

region-wide strategy that would encourage the sharing of one another's expertise, lessons learned, and private sector experts. The Forum's strategy stressed approaches that would foster ownership of the code development process within each country. Advisory services were targeted at those countries that sought assistance.

The 18-month effort surpassed expected results. Although the preliminary goal was to foster the development of three corporate governance codes in the region, 14 codes had been adopted or were being developed or revised when the workshops were completed.



The Global Corporate Governance Forum is an International Finance Corporation (IFC) multi-donor trust fund facility. The Forum was co-founded by the World Bank and the Organisation for Economic Co-operation and Development (OECD) in 1999.

Through its activities, the Forum aims to promote the private sector as an engine of growth, reduce the vulnerability of developing and transition economies to financial crisis, and provide incentives for corporations to invest and perform efficiently in a socially responsible manner. The Forum sponsors regional and local initiatives that address the corporate governance weaknesses of middle- and low-income countries in the context of broader national or regional economic reform programs.

Donors to the Forum include the IFC and the Governments of Canada, France, Luxembourg, the Netherlands, Norway, and Switzerland.

¹ PEP-MENA is a multi-donor facility that supports private sector development across the Middle East and North Africa. Covering 19 countries from its main office in Cairo, IFC PEP-MENA's mandate is to stimulate private sector growth and income opportunities throughout the region. IFC Advisory Services are an integral part of IFC activities in the region. IFC PEP-MENA is funded jointly by IFC and the following donors: Canada, France, the Islamic Development Bank, Japan, Kuwait, the Netherlands, the United Kingdom, and the United States.

STATUS OF CODES DEVELOPED WITH GLOBAL CORPORATE GOVERNANCE FORUM SUPPORT *

Country	Code Type	Status
Egypt	Code for State-Owned Enterprises	Passed
Egypt	Code for Listed Companies	Passed
Jordan	Code for Listed Companies	Passed
Lebanon	Code for Small and Medium Enterprises	Passed
Lebanon	Code for Listed Companies	In Process
West Bank and Gaza	Code for Listed Companies	In Process
Saudi Arabia	Regulation for Listed Companies	Passed
United Arab Emirates	Regulation for Listed Companies (Emirates Securities Commission Authority)	Passed
United Arab Emirates	Code For Listed Companies (Abu Dhabi Securities Market)	Passed
United Arab Emirates	Rules for Listed Companies (Abu Dhabi Securities Market)	Passed
Bahrain	Code for Listed Companies	In Process
Morocco	Code for Listed Companies	Passed
Tunisia	Code for Listed Companies	In Process
Algeria	Code for Family and State Owned Enterprises	In Process

*As of August 2008.

CASE STUDY: MOROCCO

The Forum was asked to provide technical assistance to the Moroccan Corporate Governance Commission and guide their development of a corporate governance code.

This commission was jointly established by CGEM and the Prime Minister's Economic Affairs department. Abdesslam Abouddrar, who heads the Ethics and Anti-Corruption Committee of CGEM, chaired the organization and Amina Benjeloun, from the Prime Minister's Department of Economic Affairs, served as the project's manager.

Commission members included the Stock Exchange, the Securities Commission (CDVM), and various business associations representing large and small companies.

This commission was a perfect example of a successful private-public partnership.

Building on the international expertise gained through its *Toolkit on Developing Corporate Governance Codes*, the Forum provided guidance and support to the Moroccan National Commission for more than a year. A Forum representative attended the monthly meetings, helped gather best practices, provided strategic advice, and coordinated an international consultation exercise (PSAG peer reviewers). The drafting of the code was nevertheless left to the Moroccan members of the commission to ensure strong ownership at the local level.

The code was completed in January 2008 after much public comment. It was formally launched on March 17 at a conference in Casablanca, where everyone involved in the code's development publicly expressed their commitment to put the code into practice. The stock exchange adopted the code and began requiring its listed companies to either comply or explain why they could not do so.

The drafting of the Moroccan Code has contributed to an important change in attitudes regarding what is possible to accomplish in improving governance in the country. An indicator of this attitude change is the decision by the CDVM on the day of the code's launch to publicly identify and sanction market intermediaries and an issuer for substandard issuance.



Regional Approach Flourished Amid Challenges of Diverse Economies

The region's diverse economic characteristics posed tremendous challenges for the project. At one end of the spectrum are Afghanistan, Iraq, and Yemen, with underdeveloped capital markets and a private sector dominated by small enterprises. At the other end are the Gulf Cooperation Council (GCC) countries. They are rich in resources, import labor, and have rapidly developing capital markets. In between are such countries as Egypt and Pakistan. They are poor in natural resources, have abundant labor, and thrive on a vibrant private sector that is heavily dominated by small and medium-sized family-owned enterprises. While some countries have numerous parastatal or state-owned enterprises (SOEs), small companies that have been transformed from being trading entities into manufacturing or service companies dominate the other countries' economies.

Notwithstanding these challenges, the Forum and PEP-MENA decided to roll out the project throughout the region. By doing so, they could involve the greatest number of clients. The team also believed that, by sharing experiences, lessons learned, challenges, and success stories within the region—no matter how diverse it is—they could build local ownership and strengthen peer networks that were needed to advance and support corporate governance reforms.

Prior to the roll-out, the project staff carefully selected country representatives to attend three workshops spread over 18 months. They targeted private and public sector stakeholders who had initiated or could start developing and implementing a corporate governance code in their respective countries.

The first workshop was held in Cairo, Egypt on March 14 and 15, 2006 and focused on "Drafting Corporate Governance Codes." The second in Amman, Jordan on December 12 and 13, 2006 guided participants through the "Content of Corporate Governance Codes and Consultation Mechanisms." The third and final workshop in Casablanca, Morocco on June 7 and 8, 2007 addressed "Implementing, Monitoring, and Reviewing Codes."

The workshops were conducted in countries that were prepared to take a lead role in preparing codes. The team initially targeted four countries (Egypt, Morocco, Jordan, Lebanon). Then, the number of participating countries grew as key local stakeholders expressed their willingness to improve corporate governance practices through codes.

Workshop participants were mostly the heads of stock exchanges or securities commissions, representatives of professional organizations, heads of institutes of directors, representatives of ministries, and private sector members of code crafting task forces. Drawn from the entire region, the workshop participants were selected based on their involvement with corporate governance reform initiatives in their respective countries and their ability to help disseminate information about the codes' substantive content and implementation process.

As a result of the work initiated through the workshops, the Forum and PEP-MENA received many follow-up requests for country-specific advisory services to develop and implement national codes.

Forum Toolkit Provided the Basis for Advisory Services

For the workshops and the MENA program generally, the Forum toolkit (*Developing Corporate Governance Codes of Best Practice*) provided practical tools and relevant examples. By translating this toolkit into the participants' working languages (Arabic and French), the Forum enhanced the participants' ability to more easily grasp the concepts. Further, they had language that could readily be used in drafting a code.

The toolkit outlines several options for code development. One section explains the role and benefits of codes. Another uses examples from around the world to outline a step-by-step approach that stakeholders could follow to develop, implement, and review a Corporate Governance Code of Best Practice.

"Without this toolkit, it would have been much more difficult to raise awareness about the codes' value, organize the workshops, and ensure involvement of high-caliber participants," said Marie-

"We thought that the workshops were not only relevant but responded to our immediate challenges. It provided us with actionable recommendations that we can implement right away to improve both the content of our code and the development process."

Chadia El Meouchi,
Member of the Lebanese Code
Development Task Force

Laurence Guy, a senior projects officer with the Forum. “The toolkit also provided the country task forces with a road map to move forward.”

The momentum created by the workshops led to the Forum and PEP-MENA being immediately swamped with requests for additional country-specific technical assistance. This demand was a clear sign of the project’s success, but it had not been initially foreseen by the project team. Such countries as Morocco, Algeria, Tunisia, Yemen, and Bahrain all requested specific technical assistance and advisory services to initiate or review codes at the same time.

Private Sector Advisory Group Emphasizes Practical, Achievable Steps

Beyond the series of technical assistance workshops, project participants were offered the opportunity to have their draft codes reviewed by a team of regional and international experts from the Forum’s Private Sector Advisory Group (PSAG). PSAG’s goal is to help developing countries improve their corporate governance practices. Providing their counsel pro bono, PSAG members are involved in the Forum’s international consultations, publications, toolkits, and capacity-building programs.

Those PSAG members who had specifically contributed to or led the drafting of codes in their respective countries were key assets for the MENA program. Mervyn King (chairman of the King Committee on Corporate Governance in South Africa), Christian Strenger (member of the German Corporate Governance Commission), and Patrick Zurstrassen (director of the Association Luxembourgeoise des Fonds d’Investissement, ALFI) participated in the workshops and commented on draft codes. They shared actionable, concrete, and practical examples from their global experiences. The use of PSAG members in MENA demonstrates the Forum’s ability to leverage its extensive relations with international and regional experts.

National Ownership Maximized

When the team moved to country-specific advisory work, local institutions were fully involved from inception. The emphasis was on maximizing national ownership and giving local institutions the lead role in developing and drafting their individual codes. From the start, the strategy was to help and advise clients but not to do the work for them.

The establishment of task forces and the drafting of the codes, for example, were left almost exclusively to national leaders. As a result, codes were better adapted to local needs and recognized by local stakeholders as their own.

Code-crafting task forces usually met monthly over 12 to 18 months until their codes were adopted. For Morocco and Algeria, for example, the Forum secured the services of a corporate governance expert, who walked the task forces

“The ‘toolkit’ for the development of corporate governance codes of best practice is the product upon which all other activities have been based, and much of the success of the program is due to the quality and wide applicability of the toolkit itself.”

Rajeev Pillay,
Independent Evaluation Consultant and General Partner, Abacus International Management L.L.C.

through the drafting process. As noted by an independent evaluation commissioned by the Forum, team members and international experts were inconspicuous throughout the process. Yet, they were highly appreciated and effective in their behind-the-scenes roles throughout the code design and drafting process in all the countries involved. When asked, the team provided clients with technical advice, information about comparative experience, and comments on drafts. However, the project team emphasized to national partners that they were free to accept or reject technical advice provided by the international experts.

“We were extremely pleased with the way in which the GCGF expert performed his function; he never interfered, but provided substantive advice upon request and supported us fully in our efforts.”

Member, Code Drafting Committee



Next Steps: Replicating MENA's Success in Other Regions

To manage the growing demand for advisory services and ensure the project's sustainability, the Forum will organize a knowledge management workshop in September 2008 for IFC operations officers and consultants. Participants from the MENA and Southern Europe Central Asia (SECA) regions will share their experiences.

The Forum will emphasize global knowledge transfer and staff training to ensure that, when demand grows, regional project teams will be well-equipped with the necessary capacity.

LESSONS LEARNED

- **Don't do all the work.** Maximizing national ownership is key to effective implementation.
- **Get pro bono support if you can.** Access to private sector experts helped eliminate miss-steps, sharpen focus on addressing practical, business-relevant issues.
- **Don't underestimate demand.** Be aware that countries want to move quickly, notwithstanding one's own resource constraints. Be prepared for handling a rapid escalation of demands as countries advance in code development and implementation.
- **Build staff capacity** to handle the surge in requests for assistance and recognize that as countries become more aware, the sophistication of requests for technical support will also increase.
- **Use the Forum's Toolkits** to provide a roadmap for drafting, implementing, and monitoring corporate governance codes.
- **Provide materials in the working language** of country pursuing code implementation. This facilitates understanding and expedites the process.
- **Encourage the sharing of experiences.** This helps build networks of peers for counsel and support in overcoming obstacles and reaching goals.
- **Realize that code drafting is best influenced by those involved in the process.** Local expertise, views on the value of corporate governance, and the importance that a country attaches to a code and how it integrates with the existing legal, policy, and regulatory environment in the country—all are key factors in determining success.

PERSPECTIVES

"The Forum provided access to some of the world's top experts in corporate governance. Nothing could have been more valuable than to have had their counsel based on the many efforts they've seen in surmounting the challenges and implementing corporate governance codes."

Ashraf Gamal

Executive Director, Egyptian Institute of Directors

"It helps enormously to have a network of peers you can contact to figure out how to address issues that emerge as you draft a code and build a consensus for its support."

Rachid Belkahia

President of the Ethics Committee, Confederation of Enterprises in Morocco

"Skepticism is high, particularly from state-owned and family-owned companies about the value of corporate governance. In seeing neighboring countries adopt corporate governance codes, it adds another element of competition in global markets. Your ability to succeed lies in how you set yourself apart. Hence, you are inspired if not compelled to do better than others in your region."

Slim Othmani

Chair of Code Drafting Committee, Algeria

"Code development and implementation is only part of the process. Monitoring compliance and evaluating the code's effectiveness are also key. Scorecards offer a rigorous, systematic approach to accomplish a thorough evaluation."

Christian Strenger

Deputy Chairman, PSAG

Developing and Implementing Corporate Governance Codes

By Simon C.Y. Wong

Head of Corporate Governance, Barclays Global Investors Limited
Adjunct Professor of Law, Northwestern University School of Law

Voluntary codes have been increasingly employed worldwide to drive corporate governance reform. More than 70 countries now have codes.

It is relatively straightforward to develop corporate governance codes. The challenge lies in ensuring their effective implementation and enforcement, as evidenced by the complaints heard in some countries that their governance codes have not lived up to their promise to spur enduring improvements in corporate practices. The concerns voiced range from poorly written guidelines to inadequate levels of compliance by companies to “box-ticking” by investors.

Governance codes have proved popular because they are seen as flexible instruments that rely on market mechanisms for their development, implementation, enforcement, and subsequent evolution. In contrast to the more rigid and prescriptive nature of mandatory legislation and regulation, corporate governance codes not only accommodate—but in fact expect—some degree of non-compliance with their provisions.

Due to differences in ownership structures, legal and regulatory frameworks, and the nature of agency issues confronted, the specific provisions of a corporate governance code will vary from one country to the next. Most, however, focus on the same overarching principles, which include fairness to all shareholders, clear accountability, transparency,

and responsibility for the interests of all stakeholders.

While codes can be used in place of regulation to address many issues, they do not supplant the law on all governance matters.

Yet, deciding where to draw the boundary between voluntary codes and mandatory law is not as straightforward as it may appear. This is due to, among other things, the contrasting approaches of countries on similar issues.*

At the end of the day, each country—whether developed or emerging—must devise its own approach to developing and successfully implementing corporate governance codes. While all governance codes should be benchmarked against international best practices to aid comparability, they must also be customized to work in the local environment. Careful consideration during the design phase of the principal objectives to be achieved, the broader societal and regulatory context, and the optimal allocation of monitoring and enforcement responsibilities—combined with periodic refinements after their introduction to remedy shortcomings and respond to new developments—will increase the likelihood that corporate governance codes will have the desired impact.

**Note: This is an excerpt from a forthcoming Forum Private Sector Opinion.*

LEARN MORE

**Global Corporate
Governance Forum**
2121 Pennsylvania Ave., NW
Washington, DC 20433 USA
Tel: +1 (202) 458-1857
Fax: +1 (202) 522-7588
cgsecretariat@ifc.org
www.gcgf.org

NEXT ISSUE:

The next issue will examine the challenges faced by securities regulators in South East Europe to improve their financial markets' integrity. The lessons learned are derived from a meeting held in June with representatives from eight countries in the region.