



ICGN

International Corporate Governance Network

Membership Consultation

ICGN Global Corporate Governance Principles: Revised (2009)

03 June 2009

Invitation to comment

These draft Principles are the third generation of the ICGN's attempt to gather the best practice experience of its members about what corporate governance structures and practices are most likely to lead to sustainable value creation over the long-term. They have been developed by a Working Group (see annex 2) based on a review and reconsideration of the ICGN's existing Principles in the light of what we have learned since they were agreed in 2005, not least through the most recent turbulent times.

We the Working Group are sharing this current draft with the wider ICGN membership and inviting your input to improve and develop this document further. We would welcome comments and thoughts on any and every aspect that ICGN members choose to identify and we are particularly interested in your answers to the questions included at the end of each section of this consultation paper and as summarised in annex 1, which also highlight the most significant developments in the current draft from its predecessor.

The revised ICGN Global Corporate Governance Principles will be put forward for approval by the ICGN membership at the next ICGN Annual General Meeting (AGM) being held on 15 July 2009 in Sydney, Australia, subject to comments arising from the consultation and email ratification of the final document by the ICGN membership.

A number of consultation questions are outlined throughout this paper at the end of each section and summarised in Annex 1. Responses are requested to be submitted to: Paul Lee, Chair, ICGN Global Corporate Governance Principles Review Working Group, c/o ICGN Secretariat by **Wednesday 1 July 2009**.

Responses can be posted:

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For more information about the ICGN Global Corporate Governance Principles, visit the ICGN website at:

<http://icgn.mwdev.co.uk/best-practice/icgn-global-corporate-governance-principles/>

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Questions: Structure of the Principles

As with the previous Principles, and in common with many sets of principles around the world, this draft considers corporate governance from the inside outwards – concentrating first on the issues within companies and working out through various aspects, and considering the role of shareholders last.

Q1. Do you agree that this approach is appropriate?

Q2. Do you agree that the draft structure achieves this? If not, how can it be improved?

Preamble

The International Corporate Governance Network (ICGN), founded in 1995 at the instigation of major institutional investors, represents investors, companies, financial intermediaries, academics and other parties interested in the development of global corporate governance practices. One of its objectives is to facilitate international dialogue on issues of concern to investors. High standards of corporate governance, including effective dialogue between companies and their shareholders, the ICGN believes, are a prerequisite for companies to compete effectively and for economies to prosper. The ICGN also believes that it is in the public interest to encourage and enable the owners of corporations to participate in their governance.

The ICGN has in the past developed Global Corporate Governance Principles to contribute to achieving these objectives, and particularly to fulfil its objective to promote high standards of corporate governance. These Principles are the third generation.

The aim of these Principles is to contribute to the global debate on corporate governance and clearly to express the expectations and concerns of international investors with regard to the governance of companies in which they invest, and to express their commitment to play their role in the governance of those companies. The Principles are intended to apply to public companies predominantly, providing them with guidance as to the behaviour which will influence investors' investment decisions; they will also be of value for companies seeking investment from the international investment community. Aspects of the Principles will also be of relevance to governments, legislators, regulators, operators of investment markets, audit firms and investment intermediaries.

These Principles are the ICGN's overarching set of Principles. Under them sit a variety of other best practice guidelines; these are cross-referenced within this document.

The Principles are intended to be of general application around the world, irrespective of legislative background or listing rules. As global guidelines, they need to be read with an understanding that local rules and structures may lead to different approaches to these concepts. Members of the ICGN are strong supporters of the concepts of flexible application of standards (known variously around the world as apply or explain, comply or explain or if not, why not), and will expect to apply these Principles with flexibility and understanding of the specific circumstances of individual companies and their markets.

The ICGN strongly believes that dialogue between shareholders on the one hand and senior executives and board members (both executive and non-executive) on the other is a necessary part of effective corporate governance and it will continue to encourage steps towards more effective dialogue, particularly in those markets where it is not so well developed. Such dialogue will start from a more productive base where companies make public disclosures which are substantive and company-specific rather than boilerplate. Where these Principles call for disclosures it is substantive and company-specific disclosures which are sought.

The ICGN will also seek change to legislation, regulation or guidance in particular markets where it believes that this will be helpful to generating corporate governance improvements and particularly where such change will facilitate dialogue and accountability. For the ICGN, the core aspects of corporate governance are the accountability of board members to shareholders and alignment between the interests of management and investors. These core aspects inform the Principles which follow.

Questions: Preamble

The working group has tried to create a practical introduction to the Principles, providing an overview of the ICGN itself and its objectives, the organisation's aims in creating these Principles, and a consideration of how the Principles should be considered and used.

Q3. Do you believe that the Preamble captures the crucial elements of the objectives of the ICGN and its aim in generating these Principles?

Q4. Do you believe that the Preamble captures the appropriate tone with regard to the Principles as best practice guidelines and the ICGN members' approach to their application?

There is now a greater body of ICGN guidance than was the case in 2005. The working group has attempted to deal with this consistently: including key high level Principles regarding the relevant issues without duplicating the depth of those pieces of guidance and referring readers to them for further detail and information.

Q5. Do you agree that this is the appropriate approach?

Q6. Do you believe that we have succeeded in putting this approach into effect, and do you have suggestions as to how these sections can be improved?

ICGN Global Corporate Governance Principles

1. Corporate objective

1.1 Sustainable value creation

The objective of companies is to generate sustainable shareholder value over the long term. Sustainability implies that the company must manage effectively the economic, social and environmental aspects of the business.

Companies will only succeed in achieving this in the long run if they manage effectively their relationships with stakeholders such as employees, suppliers, customers, local communities and the environment as a whole.

Questions: Corporate objective

The working group has attempted to make the section on the corporate objective more clearly long-term and inclusive of wider responsibilities.

Q7. Do you agree that this is an appropriate attempt?

Q8. Do you believe that the draft succeeds in this, and do you have suggestions as to how this section can be improved?

2. Corporate boards

2.1 Directors as fiduciaries

Members of company boards are fiduciaries who must act in the best interests of the company and its shareholders and are accountable to the shareholder body as a whole. As fiduciaries, directors owe a duty of care and diligence to, and must act in the best interests of, the company.

2.2 Effective board behaviour

Boards need to generate effective debate and discussion around current operations, potential risks and proposed developments. Effective debate and discussion requires:

- (a) that the board has independent leadership;
- (b) that the chair works to create and maintain a culture of openness and constructive challenge which allows a diversity of views to be expressed;
- (c) that there is a sufficient mix of relevant skills and diversity of perspectives within the board to generate appropriate challenge and discussion;
- (d) that the independent element of the board is sufficiently objective in relation to the executives and dominant shareholders to provide robust challenge without undermining the spirit of collective endeavour on the board;
- (e) that the non-executive element of the board have enough knowledge of the business and sources of information about its operations to understand the company sufficiently to contribute effectively to its development;
- (f) that the board is provided with enough information about the performance of the company and matters to be discussed at the board, and enough time to consider it properly; and
- (g) that the board feels accountable to shareholders for its actions

2.3 Responsibilities of the board

The board's duties and responsibilities and key functions, for which they are accountable, include:

- (a) Reviewing, approving and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.
- (b) Overseeing the integrity of the company's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, financial and operational control, and compliance with the law and relevant standards.
- (c) Ensuring a formal and transparent board nomination and election process.

(d) Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.

(e) Aligning key executive and board remuneration with the longer term interests of the company and its shareholders.

(f) Overseeing a formal risk management process, including holding an overall risk assessment at least annually.

(g) Monitoring and managing potential conflicts of interest of management, board members, shareholders, external advisors and other service providers, including misuse of corporate assets and related party transactions.

(h) Monitoring the effectiveness of the company's governance practices and making changes as needed to align the company's governance system with current best practices.

(i) Overseeing the process of disclosure and communications, and being available for dialogue with shareholders.

2.4 Composition and structure of the board

2.4.1 Skills and experience

The board should consist of directors with the requisite range of skills, knowledge, experience and approach, as well as a diversity of perspectives, to enable it to discharge its duties and responsibilities effectively.

2.4.2 Time commitment

All directors need to be able to allocate sufficient time to the board to perform their responsibilities effectively. They should assess on an ongoing basis if new activities may limit their ability to carry out their role at the company, and boards should make substantive disclosures regarding the results of these regular assessments.

2.4.3 Independence

One of the principal features of a well-governed corporation is the exercise by its board of directors of independent judgement, meaning judgement in the best interests of the corporation free of any external influence on any individual director or the board as a whole. In order to provide this independent judgement, and to generate confidence that independent judgement is being applied, a board should include a strong presence of independent non-executive directors with appropriate competencies including key industry sector knowledge and experience. There should be at least a majority of independent directors on each board.

Not all non-executive directors will be fully independent of the executives or from dominant shareholders. Among the factors which can impact the independence of non-executive directors are the following:

(a) former employment with the company, unless there is an appropriate gap between the end of the executive role and joining the board;

(b) personal, business or financial relationships between the directors and the company, its key executives or large shareholders;

(c) length of tenure; and

(d) the receipt of incentive pay which aligns the director's interests with those of the executives rather than the shareholders.

Every company should make substantive disclosures as to its definition of independence and its determination as to whether each member of its board is independent. Any deviation from local best practice on independence should be disclosed and explained. Notwithstanding any perceived lack of independence, all directors are fiduciaries and so are obliged to exercise objective judgement in the best interests of the company. All are expected to bring independence of mind to board decisions.

2.4.4 Composition of board committees

Every company should establish separate board subcommittees for audit, compensation and governance or nomination matters. Companies should also consider establishing a separate and independent risk committee. The remit, composition, accountability and working procedures of all board subcommittees should be well-defined and disclosed.

By establishing such subcommittees, a board does not delegate its obligations in respect of the issues covered. Subcommittees are established to assist the board to consider effectively these issues which require special competence and independence. Thus the subcommittees should report regularly and formally to the board as a whole, and the board as a whole will need to challenge and debate key issues in order to assure itself that the issues are handled appropriately.

The members of these key board committees should be solely non-executive directors, and in the case of the audit and compensation committees, solely independent directors. All members of the nominations committee should be independent from management and at least a majority independent from dominant owners.

2.5 Role of the chair

The chair has the crucial function of setting the right context in terms of board agenda, the provision of information to directors, and open boardroom discussions, to enable the directors to generate the effective board debate and discussion and to provide the constructive challenge which the company needs. The chair should work to create and maintain the culture of openness and constructive challenge which allows a diversity of views to be expressed.

Effective functioning in this role requires that the chair of the board should neither be the CEO nor a former CEO and should be independent on the date of appointment as chair and not participate in executive compensation plans.

If the chair is not independent, the company should adopt an appropriate structure to mitigate the problems arising from this. This will include appointing an independent deputy chair or senior independent director, who will have powers to call board meetings and otherwise provide independent leadership. Where the chair is not independent, the

company should explain the reasons why this leadership structure is appropriate, and keep the structure under review.

The chair should be available to shareholders for dialogue on key matters of the company's governance and where shareholders have particular concerns. Such meetings may need to be held with the deputy chair or senior independent director either as an alternative or additionally. All board members should make themselves available for meetings with shareholders when an appropriate request is made.

A non-executive chair should chair meetings of the non-executive directors in the absence of executives of the company as often as required and on a regular basis. If the chair is not independent, these meetings should be chaired by the deputy chair or senior independent director.

2.6 Information provided to the board

To function effectively, all directors need appropriate knowledge of the company and access to its operations and staff. Directors should make sufficient visits to company operations to gain appropriate insight into the culture and performance of the organisation. Board meetings should also include time to challenge an appropriate range of senior executives. Directors also need sufficient and appropriate information about the performance of the company and other matters to be considered at the board with sufficient time to consider it properly.

Where the position exists, the company secretary or general counsel is a crucial resource for the chair and for the board as a whole, providing practical guidance as to their duties and responsibilities under relevant law and regulation. The company secretary plays a critical role in ensuring that the board members receive the information that they need properly to understand the company's operations and progress, and is also a channel for directors and board subcommittees to seek independent advice where appropriate.

2.7 Appointment of directors and evaluation

2.7.1 Election of directors

Each director should stand for election on a regular basis, preferably annually, but in any event at least once every three years. Shareholders should have a separate vote on the election of each director, with each candidate approved by a simple majority of shares voted, and sufficient time and information to make a considered voting decision. Information on the appointment procedure should also be disclosed at least annually.

Shareholders should be able to nominate directors to the board both by proposing prospective candidates to the appropriate board committee and by directly nominating candidates on the company's proxy.

2.7.2 Information on board nominees

Companies should disclose upon nomination or appointment to the board and thereafter at least annually information on the identities, core competencies, professional or other backgrounds, recent and current board and management mandates at other companies, factors affecting independence, board and committee meeting attendance and overall

qualifications of board members and nominees so as to enable investors to weigh the value they add to the company.

2.8 Board and director evaluation

Every board of directors should evaluate its performance and the performance of individual directors on a regular basis and should consider engaging an outside consultant to assist in the process. The performance of individual directors should be assessed at least prior to each proposed re-nomination. Companies should disclose the process for such evaluations and any changes to board processes which result from an evaluation.

2.9 Related party transactions and conflicts

2.9.1 Related Party Transactions

Companies should have a process for reviewing and monitoring any related party transaction. Typically, a committee of independent directors should review significant related party transactions to determine whether they are in the best interests of the company and if so to determine what terms are fair. The company should disclose details of all material related party transactions in its annual report.

2.9.2 Director Conflicts of Interest

Companies should have a process for identifying and managing conflicts of interest directors may have. If a director has an interest in a matter under consideration by the board, then the director should not participate in those discussions and the board should follow any further appropriate processes. Individual directors should be conscious of shareholder and public perceptions and seek to avoid situations where there might be an appearance of a conflict of interest.

Questions: Corporate boards

The working group believes that among the lessons to emerge from the current crisis is the central importance of the behavioural aspects of corporate governance. We have seen boards fail when they have had apparently strong and effective structures but where the individual members and the board as a whole did not behave in a way which made them effective. Hence the section on the corporate board begins with a consideration of the behaviours which make a board effective in practice before considering more structural matters.

Q9. Do you agree that this is a lesson of the crisis, and do you believe that we have succeeded in reflecting this lesson in the draft text? Do you have suggestions as to how this section can be improved?

There has been a lively debate among the working group on a number of issues in this section. We would welcome the ICGN members' views on these issues in particular:

Q10. Director independence. Are you supportive of including an outline of the factors impacting the independence of non-executive directors and do you believe that the

outline is appropriate?

Q11. Overall board structure. Do you agree with the assertion that a majority of the board should be independent non-executive directors?

Q12. Composition of the nominations committee. Do you agree that the majority of the nominations committee should be independent, or do you believe that the ICGN Principles should state that every member of the nominations committee should be independent both of management and of dominant shareholders?

Q13. Role of the company secretary or general counsel. While this role is of central importance to the functioning of boards where it exists, it is not one which is applied throughout the world. Should we include a section on the role of the company secretary? Currently, the role of the company secretary is included in the context of wider information flows to the board. If you believe that this section should be retained, do you have suggestions as to how it can be improved? Do you think it should be separated out as a section in its own right, say as 2.10?

The election of directors is the one area where the working party failed to reach consensus and the current draft reflects this failure. Some of the working party believe strongly that the ICGN should be calling for annual election of all directors, seeing this is a crucial way of ensuring proper accountability and that members of a good and effective board will have nothing to fear from an annual opportunity for shareholders to endorse them; others believe that this is potentially destabilising and could have an effect contrary to our aim of long-term value creation, not least as it could lead to good non-executives being ousted by weak or conflicted boards using an annual opportunity to remove thorns in their sides.

Q14. Election of directors. Do you believe that the ICGN Principles should call for annual elections of all directors or for a maximum of three years or are you content with the compromise between the two positions? Do you have suggestions as to how this section can be improved?

3. Corporate culture

3.1 Culture and ethical behaviour

Companies should generate a corporate culture which ensures that employees understand their responsibility for appropriate behaviour. The board should seek actively to cultivate and sustain an ethical corporate culture in the company. The company should take active measures to ensure that its ethical standards are adhered to in all aspects of its business.

3.2 Integrity

The board is responsible for overseeing the implementation and maintenance of a culture of integrity. The board should encourage a culture of integrity permeating all aspects of the company, and ensure that its vision, mission and objectives are ethically sound.

3.3 Codes of ethics and conduct

Companies should develop a code of ethics and/or a code of conduct which will apply across the organisation. The code should stipulate the ethical values of the organisation as well as include more specific guidelines for the company in its interaction with its internal and external stakeholders. Such codes must be actively and effectively communicated across the company, and should be integrated into the company's strategy and operations. There should be appropriate training programmes in place to enable staff to understand such codes and apply them effectively.

Boards should regularly consider whether such codes remain complete and appropriate. Any decision to set aside such codes in particular circumstances should be formally considered at board level. Codes of ethics and codes of conduct should also be made available to shareholders.

3.4 Bribery and corruption

Companies should avoid involvement in any bribery and corruption. The board should create and sustain appropriate policies and procedures to ensure corporate behaviour which avoids such involvement. The expectations of ICGN members in this regard are set out in detail in the ICGN Statement and Guidance on Anti-Corruption Practices.

3.5 Employee share dealing

Companies should have clear rules regarding any trading by directors and employees in the company's own securities. Among other issues, these must seek to ensure that individuals do not benefit from knowledge which is not generally available to the market.

3.6 Compliance with Laws

Companies should adhere to all applicable laws of the jurisdictions in which they operate. Exceptions permitted in the law and shortcomings in the law should be handled in a responsible manner.

3.7 Whistle-blowing

The board should ensure that the company has in place a mechanism whereby an employee can raise issues of particular concern with regard to potential or suspected breaches of a company's code of ethics or conduct, or any other failure to comply with laws or standards. The board should assure itself that any concerns raised in such a way are handled appropriately.

Questions: Corporate culture

The working group believes that another of the lessons to emerge from the current crisis is the importance of developing and sustaining a strong corporate culture. This draft therefore introduces a new section devoted to corporate culture; aspects of this issue are also referred to elsewhere.

Q15. Do you agree that this is a lesson of the crisis and do you believe that we have succeeded in putting this lesson into effect? Do you have suggestions as to how this section can be improved?

4. Risk management

4.1 Effective and appropriate risk management

Companies need to take risks, for without risks there will be no returns. However, boards need to understand and ensure that proper risk management is put in place for all material and relevant risks that the company faces.

4.2 Dynamic management process

The board has the responsibility to ensure that the company has implemented an effective and dynamic ongoing process to identify risks, measure their potential outcomes, and proactively manage those risks to the extent appropriate. The board should also determine the company's risk-bearing capacity and the tolerance limits for key risks, to avoid the company exceeding an appropriate risk appetite. This process needs to be a dynamic one to respond to risks as they develop and as the company's business and marketplace develops.

4.3 Board oversight

Companies should maintain a documented risk management plan. The board should approve the risk management plan at least annually.

4.4 Comprehensive approach

Risk identification should adopt a broad approach and not be limited to financial reporting.

Questions: Risk management

The current crisis has also taught us that effective risk management is an essential element of good corporate governance. Again, this is reflected in a new section devoted to this topic, as well as the issue featuring throughout other sections of the draft.

Q16. Do you agree that this is a lesson of the crisis?

Q17. Do you believe that we have succeeded in putting this lesson into effect, and do you have suggestions as to how this section can be improved?

5. Remuneration

5.1 Alignment with long term

Remuneration structures for senior management should be appropriately aligned with the drivers of value-creation over time-scales appropriate both for a company's business and for its shareholders.

5.2 Link to value-creation

Executive pay should incentivise value-creation within companies and should effectively align the interests of executives with those of shareholders. Remuneration structures and frameworks should reinforce, not undermine, the corporate culture. Performance measurement should incorporate risk considerations so that there are no rewards for taking inappropriate risks at the expense of the company and its shareholders, and performance should be measured over timescales which are sufficient to determine that value has in fact been added for the company and its shareholders. The expectations of ICGN members in this regard are set out in detail in the ICGN Remuneration Guidelines.

5.3 Pay for non-executive directors

Pay for non-executive directors should not be structured in a way which risks compromising their independence from management or from controlling shareholders. The expectations of ICGN members in this regard are set out in detail in the ICGN Guidelines in this regard [forthcoming].

5.4 Transparency

The company should make substantive disclosure of all significant aspects of remuneration policies and structures for key executives, and in particular the performance metrics which are in place to incentivise value-creation, to incorporate risk management considerations and to align the interests of executives with those of shareholders. Disclosure should include how the awards made in a given year were determined and how they are appropriate in the context of the company's underlying financial performance. The company should also disclose any advisers to the remuneration committee and whether they are deemed independent.

5.5 Shareholder approval

The equity-linked compensation for key executives should always be subject to shareholder approval. Furthermore, because remuneration is an area of particular controversy and where there is a particular risk of conflicts of interest, the introduction of advisory or binding votes on remuneration packages and/or remuneration policies should be encouraged in markets around the world.

5.6 Share ownership

Every company should have and disclose a policy concerning ownership of shares of the company by senior managers and executive directors with the objective of aligning the interests of these key executives with those of shareholders.

5.7 Employee remuneration

Employee remuneration is a driver of corporate culture as the pay for the majority of staff is a significant factor in determining and developing a company's culture. As with senior management, remuneration structures and frameworks should reinforce, not undermine, the corporate culture. Again as with senior management, performance measurement for staff remuneration should incorporate risk considerations so that there are no rewards for taking inappropriate risks at the expense of the company and its shareholders, and performance should be measured over timescales which are sufficient to determine that value has in fact been added for the company and its shareholders.

Questions: Remuneration

The draft includes a call for annual votes in relation to remuneration. This is stated in general terms as being either an advisory or a binding resolution, and applying either to packages or to remuneration policies as a whole. This openness reflects the variety of versions of such resolutions around the world.

Q18. Do you agree that the ICGN should make a call for an annual vote on remuneration?

Q19. If so, do you believe that the call should be in general terms as in the current draft or should it favour advisory or binding resolutions, and votes on packages or policies?

6. Audit

6.1 Robust and independent audit

Companies should aspire to robust, independent and efficient audit processes using external auditors in combination with the internal audit function.

6.2 Annual audit

The annual audit carried out on behalf of shareholders is an essential part of the checks and balances required at a company. It should provide an independent and objective opinion that the financial statements fairly represent the financial position and performance of the company in all material respects, give a true and fair view of the affairs of the company and are in compliance with applicable laws and regulations.

6.3 Scope of audit

The minimum scope of the audit will be as prescribed by applicable law, and the audit committee of the board should agree a scope that is sufficient for the company's purposes. Shareholders should also have the right to expand the scope of the audit.

6.4 Independent audit

Annual audits should be carried out by an independent, external audit firm which should be proposed by or with the assistance of the audit committee of the board for approval by the shareholders.

Any resignation of an auditor should be publicly disclosed. The departing auditor should publicly communicate the reasons for such a resignation where appropriate.

6.5 Auditing standards

The auditors should observe high-quality auditing and ethical standards. To limit the risk of possible conflicts of interest, non-audit services and fees paid to auditors for non-audit services should be both approved in advance by the audit committee and disclosed in the annual report. No audit firm staff involved in the audit should be rewarded in any way for selling or the provision of non-audit services.

6.6 Internal audit

Companies should establish and maintain an effective internal audit function that has the respect, confidence and co-operation of both the board and management. Where the board decides not to establish such a function, full reasons for this should be disclosed in the annual report, as well as an explanation of how adequate assurance has been maintained in its absence.

The internal audit function should have a functional reporting line to the audit committee chair. The audit committee should be ultimately responsible for the appointment, performance assessment and dismissal of the head of internal audit or outsourced internal audit provider.

The external auditor should not provide internal audit services to the company.

6.7 Audit committee role

The company's interaction with the external auditor should be overseen by the audit committee of the board on behalf of the shareholders. The audit committee seeks to assure itself and shareholders of the quality of the audit carried out by the auditors as well as overseeing their independence. The audit committee should maintain oversight of key auditing decisions as well as key accounting decisions. The audit committee should recommend to the board for consideration and acceptance by shareholders the appointment, reappointment and, if necessary, the removal of the external auditors. The board should disclose and explain this process and the process by which the audit committee assures itself of the ongoing independence of the external auditors.

Questions: Audit

Q20. Do you agree with the drafting of this section? How could it be improved?

7. Disclosure and transparency

7.1 Transparent and open communication

Companies should aspire to transparent and open communication about its aims, its challenges, its achievements and its failures.

7.2 Timely disclosure

Companies should disclose relevant and material information concerning the company on a timely basis, in particular meeting market guidelines where they exist, so as to allow investors to make informed decisions about the acquisition, ownership obligations and rights, and sale of shares.

7.3 Affirmation of financial statements

The board of directors and the appropriate officers of the company should affirm at least annually the accuracy of the company's financial statements or financial accounts.

7.4 Accounting standards

To attract international investors, companies should apply accounting and financial reporting standards which are generally accepted high-quality international accounting standards.

The audit committee of the board should maintain oversight of key accounting policies and key accounting judgements taken under those policies. The accounting policies should be disclosed in the company's annual report.

7.5 Non-financial business reporting

The reporting of relevant and material non-financial information is an essential part of the disclosure required to enable shareowners and investors to make informed decisions on their investments. The expectations of its members in this regard are set out in detail in the ICGN Statement and Guidance on Non-financial Business Reporting.

7.6 Disclosure of ownership

In addition to financial and operating results, company objectives, risk factors, stakeholder issues and governance structures, the disclosures should include a description of the relationship of the company to other companies in the corporate group, data on major shareholders and any other information necessary for a proper understanding of the company's relationships with its public shareholders.

Questions: Disclosure and transparency

Q21. Do you agree with the drafting of this section? How could it be improved?

8. Shareholder rights

8.1 Accountability

Shareholders expect to have appropriate rights to ensure that boards are accountable for their actions.

8.2 Shareholder protections

Boards should treat all the company's shareholders equitably and should respect and not prejudice the rights of all investors. Boards should do their utmost to enable shareholders to exercise their rights, especially the right to vote, and should not impose unnecessary hurdles.

8.2.1 Unequal voting rights

Companies' ordinary or common shares should feature one vote for each share. Divergence from a 'one-share, one-vote' standard which gives certain shareholders power disproportionate to their equity ownership should be both disclosed and justified. Companies should keep such structures under regular review. Any such structures should be accompanied by commensurate extra protections for minority shareholders.

8.2.2 Shareholder participation in governance

Shareholders should have the right to participate in key corporate governance decisions, such as the right to nominate, appoint and remove directors on an individual basis and also the right to appoint the external auditor.

8.2.3 Major decisions

The nature of a company that shareholders have invested in should not change without shareholders having the opportunity to give their approval to that change. Such changes include major transactions, the issue of significant portions of shares, particularly if on a non-pre-emptive basis, and changes to the articles or by-laws. Further, companies should not implement shareholder rights plans or so called 'poison pills', nor any other structures that have the effect of anti-takeover mechanisms, without shareholder approval. Not only should there be a shareholder vote with regards to any significant related party transaction, but only non-conflicted shareholders should be able to vote on it.

8.2.4 Shareholders' right to call a meeting of shareholders

Companies should enable holders of a specified portion not greater than 10% of its outstanding shares to call a meeting of shareholders for the purpose of transacting the legitimate business of the company.

8.2.5 Shareholder resolutions

Companies should enable holders of a specified portion of its outstanding shares to put resolutions to a shareholders meeting. The level set for this purpose should be high enough to limit inappropriate resolutions but low enough to enable appropriate debate and discussion on issues of importance to shareholders.

8.2.6 Shareholder questions

Shareholders should be provided with the right to ask questions of the board, management and the external auditor both before and at meetings of shareholders, including questions relating to the board, its governance and the external audit.

8.2.7 Consultation among institutional shareholders

Institutional shareholders should not face regulatory barriers to discussions regarding forthcoming voting decisions or concerning other basic shareholder rights.

8.3 Voting-related rights

8.3.1 Shareholder ownership rights

The exercise of ownership rights by all shareholders should be facilitated, including giving shareholders timely and adequate notice of all matters proposed for shareholder vote.

8.3.2 Vote execution

Votes cast by intermediaries should be cast only in accordance with the instructions of the beneficial owner or its authorized agent.

8.3.3 Vote count

Equal effect should be given to votes whether cast in person or in absentia and meeting procedures should ensure that all votes are properly counted and recorded.

8.3.4 Disclosing voting results

Companies should make a timely announcement of the outcome of a vote and publish voting levels for each resolution promptly after the meeting.

8.4 Shareholder rights of action

Shareholders should be afforded rights of action and remedies which are readily accessible in order to redress conduct of a company which treats them inequitably. Minority shareholders should be afforded protection and remedies against abusive or oppressive conduct.

8.5 Record of ownership of a company's shares

Every company should maintain a record of the registered owners of its shares or those holding voting rights over its shares. Every company should be entitled to require registered owners to provide the company with the identity of beneficial owners or holders of voting rights. Shareholders should be able to review this record of registered owners of shares or those holding voting rights over shares.

8.6 Promoting shareholder rights

Where the rights discussed above are not available in particular jurisdictions, local regulators are to be encouraged to put these rights in place. Where local law does not prevent it, companies should themselves enable shareholders to exercise these rights.

Questions: Shareholder rights

Shareholding percentages for calling meetings and for proposing resolutions. As with the previous generation of these Principles, they specify that the percentage shareholding required to call an EGM should not be greater than 10%, but do not specify any such percentage shareholding for proposing a shareholder resolution. The working group gave some consideration to including a specified percentage for proposing resolutions, of no more than 5%. Even though this would have been clearly stated as a level which should not be exceeded by jurisdictions for such rights (implying that some jurisdictions might set the threshold significantly lower), in the end the working group agreed not to include this because it might be seen as a relatively high hurdle and thus be seen to limit appropriate resolutions.

Q22. Do you believe that the proposed approach to rights to call an EGM is appropriate? Are you supportive of the proposed maximum hurdle of 10% or would you favour a different hurdle?

Q23. Do you believe that the proposed approach to rights to propose a shareholder resolution is appropriate? Would you favour including a maximum hurdle for this, and do you believe it should be stated as 5% or some other number?

9. Shareholder responsibilities

9.1 Alignment

Shareholders should act in a responsible way aligned with the company's objective of long-term value creation. Institutional shareholders must recognise their responsibility to generate long term value on behalf of their beneficiaries, the savers and pensioners for whom they are ultimately working.

9.2 Integration into mandates

Pension funds and those in a similar position of hiring fund managers should insist that fund managers put sufficient resource into governance analysis and engagement which delivers long term value.

9.3 Integration into investment decision-making

Shareholders should take governance factors into account and consider the riskiness of a company's business model as part of their investment decision-making. Moreover, shareholders should develop and improve their capacity to analyse and influence governance risks and opportunities at investee companies for the benefit of their own beneficiaries, as well as acting with fiduciary responsibility to promote better governance at those companies. To exercise this responsibility, shareholders should contribute to the improvement in the functioning of boards of directors, to strengthening the accountability of management and to promoting information disclosure and transparency.

9.4 Collaboration

Where appropriate, shareholders should collaborate where this will enable them to achieve results most effectively.

9.5 Active and reasoned voting

Shareholders should actively participate in Annual and Extraordinary General Meetings and vote their shares in a reasoned way.

They should recognise that they lose their voting rights when they lend stock. Where it is important to vote, the stock should be recalled. It is also important to monitor stock lending in connection with short selling. The ICGN has a code of practice on the issue, ICGN Securities Lending Code of Best Practice.

9.6 Commitment to Principles

Institutional shareholders should formally commit to the principles laid out in the ICGN Statement of Principles on Institutional Shareholder Responsibilities (2007). The ICGN encourages investors in major markets to develop local principles, to be applied on a comply or explain basis, to further promote transparency and accountability across the investment chain.

9.7 Internal corporate governance

Institutional shareholders should consider their own internal corporate governance, ensuring the proper oversight of their management, acting in the interests of their beneficiaries and managing conflicts of interest.

Questions: Shareholder responsibilities

Q 24. Do you agree with the drafting of this section? How could it be improved?

Annex 1: Summary of consultation questions

Structure of the principles

Q1. Do you agree that this approach is appropriate?

Q2. Do you agree that the draft structure achieves this? If not, how can it be improved?

Preamble

Q3. Do you believe that the Preamble captures the crucial elements of the objectives of the ICGN and its aim in generating these Principles?

Q4. Do you believe that the Preamble captures the appropriate tone with regard to the Principles as best practice guidelines and the ICGN members' approach to their application?

Q5. Do you agree that this is the appropriate approach?

Q6. Do you believe that we have succeeded in putting this approach into effect, and do you have suggestions as to how these sections can be improved?

Corporate objective

Q7. Do you agree that this is an appropriate attempt?

Q8. Do you believe that the draft succeeds in this, and do you have suggestions as to how this section can be improved?

Corporate boards

Q9. Do you agree that this is a lesson of the crisis, and do you believe that we have succeeded in reflecting this lesson in the draft text? Do you have suggestions as to how this section can be improved?

Q10. Director independence. Are you supportive of including an outline of the factors impacting the independence of non-executive directors and do you believe that the outline is appropriate?

Q11. Overall board structure. Do you agree with the assertion that a majority of the board should be independent non-executive directors?

Q12. Composition of the nominations committee. Do you agree that the majority of the nominations committee should be independent, or do you believe that the ICGN Principles should state that every member of the nominations committee should be independent both of management and of dominant shareholders?

Q13. Role of the company secretary or general counsel. While this role is of central importance to the functioning of boards where it exists, it is not one which is applied throughout the world. Should we include a section on the role of the company secretary? Currently, the role of the company secretary is included in the context of wider

information flows to the board. If you believe that this section should be retained, do you have suggestions as to how it can be improved? Do you think it should be separated out as a section in its own right, say as 2.10?

Q14. Election of directors. Do you believe that the ICGN Principles should call for annual elections of all directors or for a maximum of three years or are you content with the compromise between the two positions? Do you have suggestions as to how this section can be improved?

Corporate culture

Q15. Do you agree that this is a lesson of the crisis and do you believe that we have succeeded in putting this lesson into effect? Do you have suggestions as to how this section can be improved?

Risk management

Q16. Do you agree that this is a lesson of the crisis?

Q17. Do you believe that we have succeeded in putting this lesson into effect, and do you have suggestions as to how this section can be improved?

Remuneration

Q18. Do you agree that the ICGN should make a call for an annual vote on remuneration?

Q19. If so, do you believe that the call should be in general terms as in the current draft or should it favour advisory or binding resolutions, and votes on packages or policies?

Audit

Q20. Do you agree with the drafting of this section? How could it be improved?

Disclosure and transparency

Q21. Do you agree with the drafting of this section? How could it be improved?

Shareholder rights

Q22. Do you believe that the proposed approach to rights to call an EGM is appropriate? Are you supportive of the proposed maximum hurdle of 10% or would you favour a different hurdle?

Q23. Do you believe that the proposed approach to rights to propose a shareholder resolution is appropriate? Would you favour including a maximum hurdle for this, and do you believe it should be stated as 5% or some other number?

Shareholder responsibilities

Q24. Do you agree with the drafting of this section? How could it be improved?

Annex 2: About the Working Group

The ICGN Global Corporate Governance Principles Review Working Group ('Working Group') was formed out of discussions with ICGN members at the 2008 ICGN Annual Conference in Seoul, South Korea.

The Working Group was tasked with producing a revised set of Principles for approval at the next AGM. As such the Working Group has been holding regular conference calls in order to achieve the following objectives:

- Review the Principles in light of current market conditions;
- Draft a new set of Principles based on deliberations arising from the Working Group;
- Consult with ICGN members on proposed revisions;
- Put forward a draft for approval by ICGN Members at the AGM, subject to consideration of comments arising from the consultation;
- Produce a final re-draft of the Principles; and
- Seek ICGN member email ratification to approve the final document.

Working Group membership

Paul Lee, Director, Hermes Equity Ownership Services, UK (Chair)
Rick Bennett, President and CEO, The Corporate Library, US
Aruna Collendavelloo, Chief Legal Executive, Rogers Group, Mauritius
Rob Elliott, General Manager, Policy & General Counsel, Australian Institute of Company Directors, Australia
Sandra Guerra, Principal, Better Governance, Brazil
Marcel Jeucken, Head of Responsible Investment, PGGM, Netherlands
Bess Joffe, Associate Director, Hermes Equity Ownership Services, Canada
Mike Lubrano, Managing Director, Corporate Governance, Cartica Capital, US
Visit Tantisunthorn, Secretary General, Government Pension Fund, Thailand
Runa Urheim, Senior Analyst Corporate Governance, Norges Bank, Norway
Kerrie Waring, Chief Operating Officer, ICGN (ex-officio)