

**INTERNATIONAL  
COMPARISON OF  
CORPORATE GOVERNANCE  
GUIDELINES AND  
CODES OF BEST PRACTICE**

**DEVELOPING AND  
EMERGING MARKETS**



**WEIL, GOTSHAL & MANGES<sub>LLP</sub>**

Holly J. Gregory

2000 Edition

## Corporate Governance Defined

*Corporate Governance refers to that blend of law, regulation, and appropriate voluntary private-sector practices which enables the corporation to attract financial and human capital, perform efficiently, and thereby perpetuate itself by generating long-term economic value for its shareholders, while respecting the interests of stakeholders and society as a whole.*

*The principal characteristics of effective corporate governance are: transparency (disclosure of relevant financial and operational information and internal processes of management oversight and control); protection and enforceability of the rights and prerogatives of all shareholders; and, directors capable of independently approving the corporation's strategy and major business plans and decisions, and of independently hiring management, monitoring management's performance and integrity, and replacing management when necessary.*

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# INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICES IN DEVELOPING AND EMERGING MARKETS

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\* This COMPARISON is organized along the same lines as Holly J. Gregory, INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE IN DEVELOPED MARKETS (1997, revised 2000). It relies on the General Motors Board of Directors Corporate Governance Guidelines on Significant Corporate Governance Issues as its “vertical axis” for Topic Headings 1 through 22. The remaining lettered Topic Headings A through K cover additional issues that were not addressed by the GM Guidelines.

# INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE IN DEVELOPING AND EMERGING MARKETS

Holly J. Gregory<sup>1</sup>  
2000 Edition

GM Board Guidelines <sup>2</sup>	Commonwealth Association Guidelines (International) <sup>3</sup>	IBGC Code of Best Practice (Brazil) <sup>4</sup>	Hong Kong Stock Exchange Code / Guide (Hong Kong) <sup>5</sup>
<b>OVERVIEW</b>			
<p><i>The General Motors' Board Guidelines, developed by the GM Board in 1994 (and regularly updated), are widely viewed as a seminal expression of a board's voluntary efforts to improve its own governance. The GM Guidelines have been widely discussed and emulated, and their influence has extended well beyond the U.S.A.</i></p>	<p><i>The Commonwealth Association for Corporate Governance, established in April 1998 in response to the Edinburgh Declaration of the Commonwealth Heads of Government meeting in 1997, has promulgated Guidelines for both state-owned and private sector companies in Commonwealth countries. Although these Guidelines are not legally binding, they are intended to facilitate best business practice and behavior throughout the entire Commonwealth.</i></p> <p><i>Note that many member countries of the Commonwealth have already established their own corporate governance codes (for example, the United Kingdom, Australia, Canada, India, Malaysia and South Africa.<sup>6</sup> Now the Commonwealth Association has issued "CACG Guidelines: Principles for Corporate Governance in the Commonwealth" (November 1999), consisting of 15 Principles and Commentary.</i></p>	<p><i>The Brazilian Institute of Corporate Governance (Instituto Brasileiro de Governança Corporativa – "IBGC"), formerly known as the Brazilian Institute of Corporate Directors (Instituto Brasileiro de Conselheiros Administração – "IBCA"), issued its "Code of Best Practice" on May 6, 1999 (hereinafter "the Code"). The IBGC Code builds upon the Preliminary Proposal for a Brazilian Code developed by the Top Management Summit held at Itú, Brazil, in 1997, with further reference to the INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE IN DEVELOPED MARKETS (1997, revised 2000) and the INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICES IN DEVELOPING AND EMERGING MARKETS (1998, revised 2000).</i></p> <p><i>The IBGC intends to expand the Code to deal with owners (many Brazilian corporations are controlled by family groups), board committees, the CEO, the independent auditors and the fiscal board. (Cf. letter from Bengt Hallqvist (IBGC) to Ira M. Millstein (WG&amp;M) dated May 8, 1999, and The Code, Introduction at 1.)</i></p>	<p><i>Prepared by the Stock Exchange of Hong Kong, "The Code of Best Practice" (1989, revised 1996) (hereinafter "the Code") and "The Guide for Directors of Listed Companies" (1995) (hereinafter "the Guide") are intended to furnish a "brief and practical introduction" to directors of listed companies concerning their responsibilities under the Rules Governing the Listing of Securities (Listing Rules).</i></p> <p><i>While the Code and Guide are not intended to amend or substitute for the Listing Rules, the Listing Rules require that all listed companies include a statement of compliance with the Code in their annual and interim reports.</i></p>

<sup>1</sup> Holly J. Gregory, a partner in the law firm of Weil, Gotshal & Manges LLP, practices in the Firm's corporate governance group, which is led by Ira M. Millstein. Frederick W. Philippi, a senior paralegal, assisted in this comparative analysis. See also INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE IN DEVELOPED MARKETS (revised 2000); INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE – INVESTOR VIEWPOINTS (revised 2000); COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE – EUROPEAN UNION MEMBER STATES & OECD (2000); COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE – EUROPEAN INVESTOR VIEWPOINTS & EASD (2000); and COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE – UNITED STATES (revised 2000).

<sup>2</sup> General Motors Board of Directors, GM Board of Directors Corporate Governance Guidelines on Significant Corporate Governance Issues (January 1994; revised August 1995, June 1997 March 1999 and June 2000).

<sup>3</sup> Commonwealth Association for Corporate Governance ("CACG"), CACG Guidelines: Principles for Corporate Governance in the Commonwealth (November 1999).

<sup>4</sup> Instituto Brasileiro de Governança Corporativa ("IBGC"), Code of Best Practice of Corporate Governance (May 6, 1999).

<sup>5</sup> The Stock Exchange of Hong Kong Ltd., Code of Best Practice (adopted December 1989; revised June 1996) & the Stock Exchange of Hong Kong Ltd., Guide for Directors of Listed Companies (July 1995).

<sup>6</sup> See both this COMPARISON and the INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE IN DEVELOPED MARKETS.

Confederation Code (India) <sup>7</sup>	Charter of a Shareholding Society (Kyrgyz Republic) <sup>8</sup>	Report on Corporate Governance (Malaysia) <sup>9</sup>	Code of Corporate Governance (Mexico) <sup>10</sup>
<b>OVERVIEW</b>			
<p><i>The Indian Confederation Code, entitled “Desirable Corporate Governance – A Code” (1998), consists of 17 Recommendations and Commentary. It is intended to build awareness within the corporate sector to implement board “best practices” in Indian business and industry.</i></p> <p><i>While compliance with the Code is voluntary, it urges major Indian stock exchanges to gradually implement a policy of insisting upon receipt of a compliance certificate from each listed company which will indicate the extent to which the company is implementing the Code.</i></p>	<p><i>“A Model Charter of a Shareholding Society of Open Type” was approved by a decree of the government of the Kyrgyz Republic in July 1997. It specifies the standards and procedures of corporate governance with which enterprises in the Kyrgyz Republic must comply. These standards were developed from international best practice but have been customized to the needs and conditions of the Kyrgyz Republic.</i></p> <p><i>The Model Charter provides for a two-tier board structure consisting of a Management Board and a Board of Directors.</i></p> <p><i>A Handbook accompanies the Model Charter. It provides the Charter’s rationale, explaining, among other things, what corporate governance is, and why it is important.</i></p> <p><i>All texts cited below are from the Model Charter.</i></p>	<p><i>The Malaysian government established the High Level Finance Committee in March 1998 as a partnership effort between the government and the private sector with the mandate of establishing a framework for corporate governance and setting best practices. The Committee published its “Report on Corporate Governance” in February 1999; Chapter 5 of the Report is the “Malaysian Code on Corporate Governance” (hereinafter “the Code”).</i></p> <p><i>The Report proposes that its Code be backed by the listing rules of the Kuala Lumpur Stock Exchange (“KLSE”). Under the proposal, companies listed on the KLSE would be required to disclose the extent of their compliance with the Principles and Best Practices of the Code.</i></p> <p><i>The Code is structured as follows:</i>  <i>Part 1: Principles of Corporate Governance;</i>  <i>Part 2: Best Practices in Corporate Governance;</i>  <i>Part 3: Principles &amp; Best Practices for Other Corporate Participants; and</i>  <i>Part 4: Explanatory Notes and certain other practices which are proposed merely for consideration.</i></p> <p><i>(Cf. Foreword by Datuk Dr. Aris Othman, Secretary General of the Treasury and Chairman of the Committee, and the Code, 1.)</i></p>	<p><i>El Consejo Coordinador Empresarial (“CCE”) and la Comisión Nacional Bancaria y de Valores (“CNBV”) issued a “Corporate Governance Code for Mexico” consisting of Principles and Recommendations on June 9, 1999. The document was prepared jointly by the Mexican Stock Exchange, the Mexican Bankers’ Association, the Mexican Institute of Finance Executives and the Mexican Institute of Public Accountants, as well as representatives from the industrial, retail and service sectors.</i></p> <p><i>The Code’s stated purpose is to encourage more transparent management practices in order to enhance the confidence of local and foreign investors and thus attract more investment to benefit the Mexican economy. In so doing, it recognizes the unique needs and context of Mexican corporations, including their stockholder structures.</i></p> <p><i>The Code consists of five sections:</i>  <i>I. Board of Directors;</i>  <i>II. Evaluating and Compensating Directors;</i>  <i>III. Auditing;</i>  <i>IV. Finances and Planning; and</i>  <i>V. Stockholder Information.</i></p> <p><i>The CNBV, which plays a role in Mexico analogous to the SEC in the United States, has announced that, commencing in 2001, all public companies will be required to disclose whether they are following these governance guidelines. Many companies are expected to begin voluntary compliance with the Code in 2000.</i></p>

<sup>7</sup> Confederation of Indian Industry, *Desirable Corporate Governance – A Code* (Final Report, April 1998).

<sup>8</sup> Prime Minister’s Office of the Kyrgyz Republic, Department of Economic Sectors Development, *A Model Charter of a Shareholding Society of Open Type* (July 1997).

<sup>9</sup> High Level Finance Committee on Corporate Governance (Malaysia), *Report on Corporate Governance* (March 9, 1999).

<sup>10</sup> El Consejo Coordinador Empresarial (“CCE”) y la Comisión Nacional Bancaria y de Valores (“CNBV”), *Código de Mejores Prácticas* (June 9, 1999). English translation available at [www.ecgn.org](http://www.ecgn.org), *Corporate Governance Code for Mexico*.

Corporate Governance Code (Romania) <sup>11</sup>	King Report (South Africa) <sup>12</sup>	Code of Best Practice (South Korea) <sup>13</sup>	The SET Code of Best Practice (Thailand) <sup>14</sup>
<b>OVERVIEW</b>			
<p><i>The International Center for Entrepreneurial Studies (Bucharest University) &amp; the Strategic Alliance of Business Associations (an ensemble of 37 Romanian business associations) issued “Corporate Governance Code: Corporate Governance Initiative and Economic Democracy in Romania” (hereinafter “the Code”) in March 2000.</i></p> <p><i>The Code is intended for use primarily by companies listed on Romanian stock exchanges, but also by unlisted companies. Compliance, although voluntary, is strongly advocated: compliance information should be provided in annual reports, and creditors are urged to request compliance information before extending financing. (Cf. II, VI.)</i></p> <p><i>A permanent Romanian entity is to be created to monitor the Code, supervise its observance, and record proposals for amendments. (Cf. VI.28.1)</i></p> <p><i>The Code states its fundamental principle at the outset:</i></p> <p style="padding-left: 20px;"><i>The major principle of corporate governance is related to the owners’ rights of using their property in order to make a profit as well as the control rights over their property. (p. 1)</i></p>	<p><i>The King Commission was formed by the Institute of Directors in Southern Africa (“IOD”), and supported by the South African Chamber of Business (“SACOB”) and the Johannesburg Stock Exchange (“JSE”), among other groups -- to draft corporate governance guidelines that would help South Africa re-enter the international community and address the emergence of previously disadvantaged communities into the business community. The Commission issued “The King Report on Corporate Governance” on November 29, 1994, Chapter 20 of which is “The Code of Corporate Practices &amp; Conduct” (hereinafter “the Code”).</i></p> <p><i>A new JSE listing requirement obliges companies listed on the Main Board to provide a statement commenting on the extent of their compliance with the Code; the statement may be contained in a separate section of the annual report. (JSE Listing Requirement 852(a) (1995).) The legislature, for its part, has amended the Companies Act to incorporate certain Code recommendations into law. (Letter from R.S. Wilkinson (Institute of Directors in South Africa) to Fred Philippi (WG&amp;M), April 8, 1999.)</i></p>	<p><i>The South Korean Committee on Corporate Governance, a non-governmental body convened in March 1999, issued its “Code of Best Practice for Corporate Governance” in September 1999. The Code is intended to serve as a model for Korean corporations to structure their own internal governance, and also as a standard for the review of Korean law to determine whether amendment is necessary.</i></p> <p><i>The Code is arranged as follows:</i></p> <p style="padding-left: 20px;"><i>Preamble</i></p> <p style="padding-left: 20px;"><i>I. Shareholders</i></p> <p style="padding-left: 20px;"><i>II. Board of Directors</i></p> <p style="padding-left: 20px;"><i>III. Audit Systems</i></p> <p style="padding-left: 20px;"><i>IV. Stakeholders</i></p> <p style="padding-left: 20px;"><i>V. Management Monitoring by the Market Recommendations.</i></p> <p><i>The Code is intended to apply to listed and other public companies, but non-public enterprises are urged to observe it as well, to the extent applicable.</i></p>	<p><i>The Stock Exchange of Thailand (“SET”) has issued a manual entitled “The Roles, Duties and Responsibilities of the Directors of Listed Companies (1997, revised 1998). Chapter 1 of this manual contains “The SET Code of Best Practice” (hereinafter “the Code”); Chapters 2 through 9 provide additional guidelines.</i></p> <p><i>The Code and the other Guidelines in the manual, while not intended to be legally binding, provide a standard for the boards of directors of companies listed on the SET and serve to improve understanding of the functions of directors. (Cf. Message from the President of the SET dated December 22, 1997, which appears as preface to the manual, and The Code, I.)</i></p>

<sup>11</sup> International Center for Entrepreneurial Studies (Bucharest University) & Strategic Alliance of Business Associations, Corporate Governance Code: Corporate Governance Initiative and Economic Democracy in Romania (draft March 24, 2000).

<sup>12</sup> The Institute of Directors in Southern Africa, The King Report on Corporate Governance (King Report) (Nov. 29, 1994).

<sup>13</sup> Committee on Corporate Governance (sponsored by the Korea Stock Exchange, *et al.*, Code of Best Practice for Corporate Governance (September 1999).

<sup>14</sup> The Stock Exchange of Thailand (“SET”), The SET Code of Best Practice for Directors of Listed Companies in THE ROLES, DUTIES AND RESPONSIBILITIES OF THE DIRECTORS OF LISTED COMPANIES (December 1997; revised October 1998).

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>1. The Mission of the Board of Directors</b>			
<p>The General Motors Board of Directors represents the owners' interest in perpetuating a successful business, including optimizing long term financial returns. The Board is responsible for determining that the Corporation is managed in such a way to ensure this result. This is an active, not a passive, responsibility. The Board has the responsibility to ensure that in good times, as well as difficult ones, management is capably executing its responsibilities. The Board's responsibility is to regularly monitor the effectiveness of management policies and decisions including the execution of its strategies.</p> <p>In addition to fulfilling its obligations for increased stockholder value, the Board has responsibility to GM's customers, employees, suppliers and to the communities where it operates – all of whom are essential to a successful business. All of these responsibilities, however, are founded upon the successful perpetuation of the business. (Introduction)</p>	<p>The board should exercise leadership, enterprise, integrity and judgment in directing the corporation so as to achieve continuing prosperity for the corporation and to act in the best interest of the business enterprise in a manner based on transparency, accountability and responsibility. (Principle 1)</p> <p>The board should determine the corporation's purpose and values, determine the strategy to achieve its purpose and to implement its values in order to ensure that it survives and thrives, and ensure that procedures and practices are in place that protect the corporation's assets and reputation. (Principle 3)</p> <p>The board should monitor and evaluate the implementation of strategies, policies, management performance criteria and business plans. (Principle 4)</p> <p>The board should ensure that the corporation complies with all relevant laws, regulations and codes of best business practice. (Principle 5)</p> <p>The board should ensure that the corporation communicates with shareholders and other stakeholders effectively. (Principle 6)</p> <p>The board should serve the legitimate interests of the shareholders of the corporation and account to them fully. (Principle 7)</p> <p>The board, under an effective Chairman, must be in a position to ensure a balance between enterprise and control in the direction it gives to the corporation.</p> <p>The fundamental responsibility of each board is to improve the economic and commercial prosperity of the corporation – regardless of whether it is a private sector or state-owned enterprise. (Commentary on Principle 1)</p>	<p>The mission of the board of directors is to maximize shareholder value. (p. 1)</p> <p>The board of directors should pursue the objectives, values and beliefs of the shareholders. (p. 1)</p> <p>It is the function of the board to evaluate officers and management. (p. 2)</p> <p>The board of directors supervises and controls the officers of the company. (p. 4)</p> <p><i>See p. 1</i> (The board of directors should stimulate the creation of a formal code of ethics for the company.).</p>	<p>A very basic responsibility of a listed company director is to become familiar with the Listing Rules, the terms of the Listing Agreement entered into between the company and the Exchange, and the Declaration and Undertaking with regard to Directors which every director must execute and lodge with the Exchange. (Guideline A.1)</p> <p><i>A Director should:</i></p> <ul style="list-style-type: none"> <li>▪ endeavour to procure the company's compliance with the Listing Rules;</li> <li>▪ comply, and use his best efforts to procure the company's compliance, with the Securities (Disclosure of interests) Ordinance, the Code on Takeovers and Mergers, the Code on Share Repurchases and all other relevant securities laws and regulations in Hong Kong; and</li> <li>▪ cooperate in any investigation conducted by the Listing Division and/or the Listing Committee.</li> </ul> <p>(Guideline B.1.1)</p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>1. The Mission of the Board of Directors</b>			
<p>[The board should] maximize long-term shareholder value. (Recommendation 1)</p> <p>The key to good corporate governance is a well functioning, informed board of directors. The board should have a core group of excellent, professionally acclaimed non-executive directors who understand their dual role: of appreciating the issues put forward by management, and of honestly discharging their fiduciary responsibilities towards the company's shareholders, as well as creditors. (p. 2)</p>	<p><u><i>Board of Directors</i></u></p> <p>The Board of Directors represents the shareholders of the Society, and it has the duty to act in the interests of the shareholders. (17.1)</p> <p>The Board of Directors has no right to act on behalf of the Society. The Board of Directors exercises control over the activity of management and implements other functions set out in this charter. (17.2; see 14.2)</p> <p>[T]he Board of Directors . . . give[s] its advice on all issues (including management) to the Management Board and the Audit Commission and to the General Meeting of Shareholders. (17.3)</p> <p>See 3.1 (The Society pursues profit as its main purpose.).</p> <p><i>For a list of transactions exclusively within the jurisdiction of the Board of Directors, see 17.2.</i></p> <p><u><i>Management Board</i></u></p> <p>[The Management Board] has all decision-making rights in the Society other than those exclusively reserved for other governing bodies. (14.3)</p> <p>[The Management Board] carries out current management of the Society and is subject to the General Meeting of Shareholders and to control by the Board of Directors and the Audit Commission. (18.1)</p> <p>The Management Board is competent to decide all questions related to the Society not given into the exclusive competence of the General Meeting of shareholders, the Board of Directors or the Audit Commission. (18.8)</p>	<p>Every listed company should be headed by an effective board which should lead and control the company. (Principle A.I)</p> <p>[Principle A.I] endorses the unitary board structure for Malaysian companies. (Explanatory Note 4.1 to Principle A.I at 75)</p> <p>The single overriding objective by all listed companies, whatever the size or type of business, is the preservation and enhancement over time of their shareholders' investment. All boards have this responsibility and their policies, structure, composition and governing processes should reflect this. (1.3.3)</p> <p>[T]he board's task is to approve appropriate policies and to approve the performance of management in implementing them. (1.3.4)</p> <p>While Directors as a board are responsible for relations with stakeholders, they are accountable to the shareholders. The policy considerations underlying such a definition of board responsibility are fundamental to capital formation and the financing of businesses. (1.3.5)</p> <p>[I]t is clear that the responsibility for good corporate governance rests primarily with the board of directors. . . . The recommendations in the Code reflect this balance. (1.3.8)</p> <p><i>See also</i> Topic Heading A, below.</p>	<p>In addition to the obligations stipulated in the General Mercantile Companies Law, the Credit Institutions Law, the Securities market Law and other specific laws, the following should be included in the functions of the Board of Directors:</p> <ol style="list-style-type: none"> <li>i. establish a strategic vision for the company;</li> <li>ii. ensure that stockholders and the market have access to public information about the company;</li> <li>iii. establish internal control mechanisms;</li> <li>iv. ensure that the company has the necessary mechanisms to prove that it complies the various legal provisions to which it is subject; and</li> <li>v. regularly evaluate the performance of the chief executive officer and other senior management of the company.</li> </ol> <p>(Principle at I.1)</p> <p>One [Board meeting each year] should be devoted to defining the company's medium- and long-term strategy. (Principle at I.4)</p> <p>[T]he definition of [the company's] strategic vision and approval of its management should be the responsibility of the Board of Directors. All the members of the Board share in the responsibility for these tasks. (Recommendation at I)</p>



Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>1. The Mission of the Board of Directors</b>			
<p>The Board of Directors has to secure and guarantee the management of the company, effectively exert control over it, supervise the executive managers and be certain that it exercises decision-making authority in the matters entrusted to it by the general assembly of shareholders. (III.15.1.A)</p> <p>The board should approve the viability or feasibility level of projects. (III.15.1.B)</p> <p>[T]he tasks and responsibilities of the executive managers will be established by the Board of Directors. (III.16.A)</p>	<p>The board must retain full and effective control over the company, monitor the executive management and ensure that the decision of material matters is in the hands of the board. (Ch. 20, The Code of Corporate Practices &amp; Conduct (hereinafter “The Code”), 2.3)</p> <p>The board must be in a position to lead, control and monitor the business of the company. The board has a collective responsibility to provide effective corporate governance. Shareholders should ensure that their boards are constituted in a manner that provides a balance between enterprise and control. (Ch. 4: 3)</p> <p>Directors must act with enterprise and always strive to increase shareholders’ value while having regard for the interests of all stakeholders. (Ch. 5: 2.7)</p> <p>Directors have to ensure that the business remains a going concern, <i>i.e.</i>, that it survives. They have to make the business thrive with enterprise and innovation. In short, directors’ duties in relation to their companies are to drive, strive, survive and thrive. (Ch. 5: 9)</p>	<p>The Board shall make the key management policy decisions in the best interests of the corporation and its shareholders, and shall perform effective supervision of the directors and management. (II.1)</p> <p>[I]t is highly advised that the Board concentrate on key management decision-making and mandate lesser or trivial matters to the respective director or management; or that the Board establish internal committees within itself to which a portion of the authority can be delegated. (Commentary on II.1.2)</p> <p>Directors shall perform their duties . . . in the best interests of the corporation and its shareholders. (II.7)</p>	<p><i>The board of directors should:</i></p> <p>Conduct their duties honestly, comply with all laws, the object[ive]s and the articles of association of the company, and the resolutions of any shareholder meetings in good faith, and with care to preserve the interests of the company. (Ch. 1, The SET Code of Best Practice (hereinafter “The Code”), 2.1)</p> <p>Implement and direct the company’s policies, as well as monitor and supervise its operations to maximize economic value and shareholders’ wealth. (The Code, 2.2)</p> <p>Ensure management’s accountability to shareholders: preserve their rights and interests, clearly and fully disclose information. (The Code, 2.3)</p> <p>Ensure that the company has management with the competency, knowledge and experience to run the business. (The Code, 3.2)</p> <p>Ensure the company is determined to carry on the business continuously. (The Code, 3.3)</p> <p>[Independent directors should d]emonstrate independent judgment to prevent any conflicts of interest. If they oppose any proposal, they should state their reasons for disagreeing in the minutes of the board meeting. (The Code, 6.1)</p> <p>A board of directors holds the power to manage the business of a listed company. Shareholder approval is, however, required for certain crucial decisions. (Ch. 2: 2.1)</p> <p><i>See Topic Headings A and H, below.</i></p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>1a. The Role of Stakeholders</b>			
<p>In addition to fulfilling its obligations for increased stockholder value, the Board has responsibility to GM’s customers, employees, suppliers and to the communities where it operates – all of whom are essential to a successful business. All of these responsibilities, however, are founded upon the successful perpetuation of the business. (Introduction)</p>	<p>The board should identify the corporation’s internal and external stakeholders and agree on a policy, or policies, determining how the corporation should relate to them. (Principle 8)</p> <p>[T]he board must take into account stakeholders who may have a direct or indirect interest in the achievement of the economic objectives of the corporation. The board should promote goodwill and a reciprocal relationship with these parties, and be prepared to outline a policy or policies determining and regulating its conduct and relationships with stakeholders identified as having a legitimate interest in the activities of the corporation – whether by way of contractual relationships or as a consequence of the impact of its activities.</p> <p>....</p> <p>It is important to reiterate that while the board remains accountable to its shareholders, it has a responsibility to develop relationships with other relevant stakeholders. This is the modern inclusive approach to directing the fortunes of a business enterprise. (Commentary on Principle 8)</p> <p><i>See</i> Commentary on Principle 3 (The board should monitor . . . the application by management of its policies towards the corporation’s shareholders and other stakeholders.).</p> <p><i>See also</i> Commentary on Principle 5 (While the board is accountable to the shareholders of the corporation as the owners of its capital, society expects a corporation to act responsibly in regard to aspects concerning its broader constituency such as the environment, health and safety, employee relations, equal opportunity for all employees, the effect of anti-competitive practices, ethical consumer conduct, etc.).</p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>1a. The Role of Stakeholders</b>			
<p>It would be desirable for [Financial Institutions] as pure creditors to re-write their covenants to eliminate having nominee directors except:</p> <p>a) in the event of serious and systemic debt default; and</p> <p>b) in the case of a debtor company not providing six-monthly or quarterly operational data to the concerned [Financial Institutions].</p> <p>(Recommendation 14)</p> <p>Companies that default on fixed deposits should not be permitted to:</p> <ul style="list-style-type: none"> <li>▪ accept further deposits and make inter-corporate loans or investments until the default is made good; and</li> <li>▪ declare dividends until the default is made good.</li> </ul> <p>(Recommendation 16)</p> <p>It is a universal axiom that creditors have a prior and pre-committed claim on the income of the company, and that this claim has to be satisfied irrespective of the state of affairs of the company. . . . [I]nsofar as creditors are not shareholders, and so long as their dues are being paid on time, they should desist from demanding a seat on the board of directors.</p> <p>(Commentary on Recommendation 14 at 9)</p> <p>Consider two facts:</p> <ol style="list-style-type: none"> <li>i. the largest debt-holders of private sector corporate India are public sector term-lending institutions such as IDBI, IFCI and ICICI; and</li> <li>ii. these institutions are also substantial shareholders and [currently] sit on boards as nominee directors. [In India,] corporate governance and careful monitoring do not [currently] happen as they are supposed to when a stakeholder is both creditor and owner of equity.</li> </ol> <p>(Commentary on Recommendation 16 at 10)</p>	<p>A reduction in capital . . . is possible only after all creditors are informed by letter delivered to their legal address at least one month before the reduction is to take place. Such creditors shall . . . have rights to demand early performance or termination of the obligations of the Society or compensation for losses and, if these requirements are not fulfilled, a General Meeting of Creditors of the Society must be called in order to decide upon its liquidation. If the reduction reduces the capital of the Society below the minimum amount required by legislation of the Kyrgyz Republic, the Society must be liquidated. (7.3)</p> <p>[T]he Management Board may [include] employees who are not shareholders. (18.1)</p> <p>The Management Board is responsible . . . for all matters relating to . . . employment [and] remuneration of employees. (18.10)</p> <p>[C]reditors have the right, within three months of the announcement of a forthcoming reorganization of the Society, to claim the demand to the Society about the preschedule termination or execution of the corresponding obligations and compensation of the losses to them (23.5)</p> <p><i>See 7.4</i> (The Society has the right to purchase its own shares on the securities markets, provided it makes a public announcement of this fact immediately after the purchase. . . . Disposal (including distribution of the shares among its own workers and canceling them) must take place in the year in which such purchase takes place. . . . While the shares are held by the Society and not cancelled, sold or distributed to employees, all profit calculations, voting and calculations of quorums at General Meetings of Shareholders are carried out without taking account of these shares.).</p>	<p>While directors as a board are <b>responsible for relations with stakeholders</b>, they are <b>accountable to the shareholders. . . . [I]n making decisions to enhance shareholder value, boards must develop and sustain these stakeholder relationships.</b> (1.3.5)</p> <p><i>See Best Practice CC.I</i> (Boards must maintain an effective communications policy that enables both the board and management to communicate effectively with its shareholders, stakeholders and the public generally.).</p>	<p><i>Not covered.</i></p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>1a. The Role of Stakeholders</b>			
<p>[T]he present Code is establishing a set of rules and standards which are . . . optimizing the interests of shareholders, creditors, customers, employers and employees. [It] is setting up . . . ethical rules the employees of a commercial company have to comply with. (I.1)</p> <p>Internal components [of the corporate governance structure include] employees of a company, creditors, investors, customers. (I.2.B.a)</p> <p>With the support of trade unions or of employees' representatives, the Board of Directors and the executive managers will introduce systems that should secure the achievement of the following goals:</p> <ul style="list-style-type: none"> <li>▪ improvements of the information flow within the company, so that employees can better know the company they are working for and its objectives;</li> <li>▪ periodical consultations between the executive manager and the employees or between the members of the Board of Directors and the employees, before making some decisions which directly regard the employees;</li> <li>▪ rapid and efficient identification and solution of labour conflicts.</li> </ul> <p>(IV.23)</p> <p><i>See I.2.C.e (environmental protection).</i></p> <p><i>See also I.2.D (description of creditors and financiers/investors).</i></p> <p><i>See Topic Heading 15, below (participation of stakeholders at board meetings).</i></p>	<p>It is the board's duty to present a balanced and understandable assessment of the company's position in reporting to stakeholders. The quality of information must be based on the guidelines of openness and substance over form. Reporting should address material matters of significant interest and concern to all stakeholders. (The Code, 9.1)</p> <p>There are three classes of stakeholders: shareholders, parties who contract with the company and parties who have a non-contractual nexus with the company. An example of a contracting party is the employee and a non-contracting party is the State. (Ch. 12: 2)</p> <p>The Institute of Directors adopts this constituency approach of dividing stakeholders into three categories. . . . [D]irectors ensure that customers are served, employment is secured, suppliers are paid, shareholders' capital is preserved, profits are made, dividends are distributed, taxes are paid, pollution is controlled, social responsibility programmes are introduced, etc. (Ch. 12: 3)</p> <p>The narrow view is that . . . it is to the shareholders only that the directors must account for their stewardship. The dynamic participation approach is that directors' reports should be directed at all stakeholders and should consequently address matters of concern and interest to all stakeholders. Society now expects greater accountability from companies in regard to their non-financial affairs, <i>e.g.</i>, in relation to their employees and to the environment. Statutes compel the stewardship of directors towards the shareholder, but statutory reports aside, the other stakeholders cannot be overlooked. (Ch. 12: 10.1)</p>	<p>The rights of stakeholders according to law and contract shall be protected, and stakeholders shall have appropriate means of redress for infringement of rights. (IV.1)</p> <p>Corporations shall observe creditor protection procedures concerning matters such as mergers, capital decrease and split mergers. (IV.1.1)</p> <p>Corporations shall . . . faithfully observ[e] labor-related statutes. (IV.1.2)</p> <p>Corporations shall not be negligent in their social responsibilities, such as consumer and environmental protection. (IV.1.3)</p> <p>When stakeholders hold the dual position of shareholders, each of the rights pertaining to stakeholders and shareholders is protected and can be exercised. (IV.1.4)</p> <p>The form and level of monitoring of management by stakeholders shall be determined separately by each corporation. (IV.2)</p> <p>The form and level of management monitoring by creditors shall be determined through discussion among the parties involved. (IV.2.1)</p> <p>The form and level of employee participation in corporate governance shall be determined so that the corporation may achieve sound development. (IV.2.2)</p> <p>The corporation shall . . . provide stakeholders with relevant information necessary for protecting their rights; and the stakeholders shall have access to relevant information. (IV.2.3)</p> <p>[M]anagement shall be supervised properly so that unilateral decisions of the management do not infringe upon the interests of corporate bondholders. (Recommendation 8)</p> <p><i>See generally IV. STAKEHOLDERS, Commentary at 28-31.</i></p>	<p><i>Not covered.</i></p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>2. Board Membership Criteria</b>			
<p>The Committee on Director Affairs is responsible for reviewing with the Board, on an annual basis, the appropriate skills and characteristics required of Board members in the context of the current make-up of the Board. This assessment should include issues of judgment, diversity, age, skills such as understanding of manufacturing technologies, international background, etc. – all in the context of an assessment of the perceived needs of the Board at that point in time. (Guideline 1)</p>	<p>The board should ensure that through a managed and effective process board appointments are made that provide a mix of proficient directors, each of whom is able to add value and to bring independent judgment to bear on the decision-making process. (Principle 2)</p> <p>The board should be composed of people of integrity who can bring a blend of knowledge, skills, objectivity, experience and commitment to the board which should be led by a capable Chairman who brings out the best in each director. (Commentary on Principle 2)</p>	<p><b>Personal characteristics of the board member[s]</b> Each board member should have:</p> <ul style="list-style-type: none"> <li>▪ personal integrity,</li> <li>▪ capacity to read and understand financial statements,</li> <li>▪ absence of conflicts of interest with the company,</li> <li>▪ time availability, and</li> <li>▪ motivation.</li> </ul> <p>(p. 2)</p> <p><b>Core competencies of the board of directors</b> The following experiences and competencies should be available among the members of the board of directors:</p> <ul style="list-style-type: none"> <li>▪ experience from good boards,</li> <li>▪ experience as chief executive officer,</li> <li>▪ experience of crisis management,</li> <li>▪ knowledge of finance,</li> <li>▪ knowledge of accounting,</li> <li>▪ knowledge of the industry of the company,</li> <li>▪ knowledge of the international market,</li> <li>▪ strategic vision, and</li> <li>▪ contacts of value for the company.</li> </ul> <p>(pp. 2-3)</p> <p>The board should have a diversity of background, knowledge and experience. (p. 3)</p>	<p>Every non-executive director must ensure that he can give sufficient time and attention to the affairs of the issuer and should not accept the appointment if he cannot. (Code of Best Practice (hereinafter “The Code”), 10)</p> <p>Every director, in the performance of his duties as a director, must</p> <ul style="list-style-type: none"> <li>▪ act honestly and in good faith in the interests of the company as a whole</li> <li>▪ act for proper purpose</li> <li>▪ be answerable to the company for the application or misapplication of its assets</li> <li>▪ avoid actual and potential conflicts of interest and duty</li> <li>▪ disclose fully and fairly his interests in contracts with the company</li> <li>▪ apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the company.</li> </ul> <p>(Guideline A.4)</p> <p>Every director of a company listed on the Exchange must satisfy the Exchange that he has the character, integrity, experience and competence to serve as a director of a listed company. The Exchange expects this requirement to be satisfied on a continuing basis. (Guideline A.5)</p>

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<b>2. Board Membership Criteria</b>			
<p>No single person should hold directorships in more than 10 listed companies. (Recommendation 3)</p> <p>For non-executive directors to play a material role in corporate decision-making and maximizing long term shareholder value, they need to:</p> <ul style="list-style-type: none"> <li>▪ become active . . . ;</li> <li>▪ have clearly defined responsibilities . . . ; and</li> <li>▪ know how to read a balance sheet, profit and loss account, cash flow statements and financial ratios and have some knowledge of various company laws. This, of course, excludes those who are invited to join boards as experts in other fields such as science and technology. (Recommendation 4) <p>[The Code recommends a] [r]eduction in the number of companies where there are nominee directors. It has been argued by [Financial Institutions] that there are too many companies where they are on the board, and too few competent officers to do the task properly. So, in the first instance, [Financial Institutions] should take a policy decision to withdraw from boards of companies where their individual shareholding is 5 percent or less, or [their] total holding is under 10 percent. (Recommendation 17)</p> </li></ul>	<p><i>Not covered directly, but see 17.5 (No member of the Management Board or the Independent Auditors may be a member of the Board of Directors.)</i></p>	<p>Non-executive directors should be persons of calibre, credibility and have the necessary skill and experience to bring an independent judgement to bear on the issues of strategy, performance and resources including key appointments and standards of conduct. (Best Practice AA.III)</p>	<p>Outside Board members are those selected for their professional prestige, experience and capacity. (Principle at I.2)</p> <p>It is also important that the Board include what are called owning Directors. This type of member has assumed the risk of a significant participation in the company's equity, and their presence on the Board is helpful because, as they keep a constant watch on their investment, they benefit the entire company. (Recommendation at I.2)</p> <p>It is . . . important that new board members are informed of the scope and the legal and statutory consequences of their position. (Recommendation at I.4)</p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>2. Board Membership Criteria</b>			
<p>General criteria:</p> <ul style="list-style-type: none"> <li>▪ . . . training in the economic or judicial fields, or in the field in which the company is carrying on its activity;</li> <li>▪ [holding] no more than 2 [director-ships] simultaneously;</li> <li>▪ . . . able to analyze . . . financial statements.</li> </ul> <p>(III.5.A)</p> <p>Special criteria:</p> <ul style="list-style-type: none"> <li>▪ . . . preferably not . . . shareholders/ associates, except [when] the company is organized as a limited liability company, a collective partnership or as a joint stock company . . . ;</li> <li>▪ . . . not [a] shareholder/associate , executive manager (employee), or auditor of a supplier or distributor of the company [or] of a company in competition.</li> </ul> <p>(III.5.B)</p> <p>[N]on-executive members can be appointed from the following categories of persons:</p> <ul style="list-style-type: none"> <li>▪ administrators or executive managers of the dominant company;</li> <li>▪ former executive managers . . . ;</li> <li>▪ executive managers of one of the branches of the mother company.</li> </ul> <p>(III.9.B)</p>	<p>Each board member must, of course, have absolute integrity. (The Code, 2)</p> <p>While it is preferable to balance the board, with an appropriate mix of skills and expertise among the non-executive directors, it must be accepted that it may not always be practical in South Africa because of the present skills shortage. (Ch. 4: 9)</p> <p>[A] candidate should have integrity and independence of thought; the courage to express their independent thought; a grasp of the realities of business operations; an understanding of the changes taking place regionally, nationally and internationally; an understanding of business and financial “language”. (Ch. 9: 8.2)</p>	<p>The Board shall . . . appoint[ ] competent professional directors. (II.3.3)</p> <p>[D]irectors shall be competent and professional. Such directors . . . possess[ ] the following qualities: a vision for and a strategic perception of corporate management; a level-headed and sound managerial judgment; an ability for managing and supervising an organization; a knowledge of law and finance; and some experience suitable for the corporation concerned. (Commentary on II.3.3)</p> <p><i>See</i> II.2 (The Board shall be composed so as to allow effective decision-making and supervision of management.).</p>	<p>[Board members must c]onduct themselves honestly and with integrity. (The Code, 3.1)</p> <p>[Potential directors should o]nly accept the position of director or non-executive director on the board of listed companies that he/she has the time to attend appropriately. (The Code, 4.3.1)</p> <p>All directors must be natural persons and:</p> <ul style="list-style-type: none"> <li>▪ be <i>sui juris</i>, <i>i.e.</i>, 20 years of age or older.</li> <li>▪ be solvent and not incompetent, or quasi-incompetent.</li> <li>▪ never been imprisoned based on a final judgement for a fraudulent offence related to property.</li> <li>▪ never been dismissed, or removed from government service, a government organization or agency due to dishonesty in the performance of their duties.</li> </ul> <p>Additionally, the director of a listed company involved in some businesses must have qualifications as prescribed by the laws governing such businesses, <i>i.e.</i>, the director of a bank or financial institution. (Ch. 2: 2.3)</p> <p>All directors need not have domicile in Thailand. However, not less than half of them shall reside within Thailand. (Ch. 2: 2.5)</p> <p>There are no restrictions on shareholders becoming directors of a listed company. (Ch. 2: 2.6)</p> <p><i>See</i> Message from the President of the SET, p. iii ([E]ach member of a board of directors must possess . . . a good education, a high standard of business knowledge and experience, and a company belief in ethical corporate behavior. [D]irector[s] must also perform their duties with care and loyalty and avoid any conflict of interest between the company and its management or the major shareholders.).</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>3. Selecting, Inviting and Orienting New Directors</b>			
<p>The Board itself should be responsible, in fact as well as procedure, for selecting its own members and in recommending them for election by the stockholders. The Board delegates the screening process involved to the Committee on Director Affairs with the direct input from the Chairman of the Board and the Chief Executive Officer. The Board and the Company have a complete orientation process for new Directors that includes background material, meetings with senior management and visits to Company facilities. (Guideline 2)</p> <p>The invitation to join the Board should be extended by the Board itself via the Chairman of the Board and Chief Executive Officer of the Company, together with an independent director, when appropriate. (Guideline 3)</p>	<p>The board should ensure that through a managed and effective process board appointments are made that provide a mix of proficient directors, each of whom is able to add value and to bring independent judgment to bear on the decision-making process. (Principle 2)</p> <p>The selection process must be managed by asking what skills are needed on the board to add value to the processes of the board in the context of the business of the corporation. Consequently, the composition of the board should be planned with strategic considerations and objectives of the corporation in mind.</p> <p>New directors should be familiarized with the corporation's operations, senior management and its business environment and be inducted in terms of their fiduciary duties and responsibilities as well as in respect of the board's expectations. If new directors have no board experience, they should receive training in their unaccustomed responsibility which carries with it significant personal liabilities.</p> <p>The board, as a whole, should be involved in the selection of directors. (Commentary on Principle 2)</p> <p>To remain effective, the board should select, appoint, induct and develop or remove board members as necessary from time to time. Incompetent or unsuitable directors should be removed, taking relevant legal and other matters into consideration. In practice, the Chairman will usually play a lead part in such issues. (Commentary on Principle 9)</p> <p>Training opportunities for existing and potential directors should be identified and appropriate development undertaken. (Commentary on Principle 11)</p>	<p>Each new board member should be exposed to an introduction program including a board file with a job description for board members, the last annual reports, the minutes from ordinary and extraordinary general assemblies, the minutes from the board meetings, and other information about the company. The new board member should be introduced to his or her colleagues, to the officers and to key personnel. There should be visits to factories and other places of business. Depending on the type of company, additional training should be included. (p. 6)</p>	<p>Every listed company director is required to execute and deliver to the Exchange a Declaration and Undertaking with regard to Directors (Guideline B.1)</p> <p>The Director's Declaration and Undertaking requests background information on the director or proposed director in order to assist the Exchange's assessment of the person's suitability to serve as a director of a listed company. (Guideline B.1.3)</p>



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<b>3. Selecting, Inviting and Orienting New Directors</b>			
<p>It would be desirable for [Financial Institutions] as pure creditors to re-write their covenants to eliminate having nominee directors except:</p> <p>a) in the event of serious and systematic debt default; and</p> <p>b) in case of the debtor company not providing six-monthly or quarterly operational data to the concerned [Financial Institutions]. (Recommendation 14)</p> <p>Securing the services of good, professionally competent, independent non-executive directors does not necessarily require the institutionalizing of nomination committees or search committees. (p. 2)</p> <p>[I]nsofar as creditors are not shareholders, and so long as their dues are being paid on time, they should desist from demanding a seat on the board of directors.</p> <p>This is an important point in the Indian context. Almost all term loans from [Financial Institutions currently] carry a covenant that [they] will be represented on the board of the debtor company via a nominee director. . . . It would be desirable for [them] to eliminate [this practice]. (p. 7)</p>	<p>Any two Minor shareholders may together nominate a candidate for election to the Board of Directors. (17.10)</p> <p>The AGM may elect one member of the Board of Directors from a list of one or more nominations provided by the employees of the Society. (17.11)</p> <p>The AGM may elect one member of the Board of Directors from a list of one or more nominations provided by the largest outstanding creditor of the Society. (17.12)</p> <p>The AGM may, where appropriate, elect one further member to the Board of Directors from nominations provided by other interested parties, <i>e.g.</i>, long-term suppliers or customers/ consumers, a second large creditor, etc. (17.13)</p>	<p>There should be a formal and transparent procedure for the appointment of new directors to the board. (Principle A.IV)</p> <p>As an integral element of the process of appointing new directors, each company should provide an orientation and education program for new recruits. (Best Practice AA.XIII)</p> <p>The board’s process for assessing existing directors and identifying, recruiting, nominating, appointing and orienting new directors is central to enhanced governance. This function can be performed by the board as a whole. But we endorse the view that the adoption of a formal procedure for appointments to the board, with a nomination committee making recommendations to the full board, should be recognized as good practice. (Explanatory Note 4.4 on Principle A.IV at 76)</p> <p>We endorse the view that it is the board’s responsibility to appoint new directors and the shareholders’ responsibility to re-elect them. Re-election at regular intervals not only promotes effective boards but affords shareholders the opportunity to review the directors’ performance in turn and where necessary to replace them. (Explanatory Note 4.5 on Principle A.V at 76)</p>	<p>When Board members are first appointed, they should be given proper orientation with regard to their new responsibilities. At the least, the company should supply them with information regarding the company and its environment, as well as the obligations, responsibilities and powers that accompany appointment to the Board. (Principle at I.4)</p> <p>New Board members should . . . have a broad knowledge of the business, including, among other aspects, the company’s position within its sector, its main competitors, clients and suppliers. (Recommendation at I.4)</p> <p>Board members are legally bound to perform their duties. Ignorance of their responsibilities does not exempt them from these duties. It is therefore important that new Board members are informed of the scope and the legal and statutory consequences of their position. (Recommendation at I.4)</p> <p>It is important . . . that stockholders receive all pertinent information on nominees to the Board of Directors, which can be contained in a brief résumé, so that they can assess the candidate’s profile and issue an informed vote. (Recommendation at V.1)</p> <p><i>See</i> Recommendation at I.2 (It is important to avoid situations in which regular members who are unable to attend meetings are replaced at random by any alternate member, because this dilutes his or her obligations to the rest of the Board. It is also important that the regular member and his or her alternate form a team in order to participate more effectively on the Board. For this reason, regular members should participate in the process of selecting their alternates.)</p>

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<b>3. Selecting, Inviting and Orienting New Directors</b>			
<p>The general assembly of shareholders/ associates can appoint to the Board of Directors an independent person – non-executive members of the company, recommended by one of the creditors or investors of the company, or by a shareholder. (III.10.1)</p>	<p>The selection and appointment of directors should be matters for the board as a whole and as such nomination committees are not recommended. (The Code, 5.1)</p> <p>In the event of there being a nomination committee, the selection process should be tabled and agreed by the whole board and not delegated to the nomination committee which should only make recommendations. (Ch. 9: 5)</p> <p>A new director needs to visit the company’s operations, meet senior executives and generally become familiar with the company. They should be told by the chair what is expected of them and there should be briefings on personal liability, dealing in the company’s shares and their responsibilities on any committee on which the director may be required to serve. If they have no board experience they should receive training. (Ch. 9: 8.4)</p> <p>Each newly appointed director should have proper internal training, <i>i.e.</i>, a proper process of induction into the company’s affairs. If a new director has no prior board experience they should undergo some training before taking their seat on the board. (Ch. 10: 3)</p> <p>The training and development of directors is important for good governance and needs to be uppermost in the minds of boards in making new appointments. (Ch. 10: 5)</p>	<p>Directors shall be appointed through a transparent procedure that reflects broadly the diverse opinions of shareholders. (II.3)</p> <p>It is advised that a committee be established and managed for the fair nomination of directors. The committee shall be organized such that the fairness and independence of the nomination process are ensured. (II.3.1)</p> <p>At least half of the nomination committee members should be outside directors. (Commentary on II.3.1)</p> <p>The opinions of shareholders other than the controlling shareholder shall also be reflected when appointing directors. (II.3.2)</p> <p>The corporation shall, by disclosing the nominated directors prior to the general shareholder meeting, ensure that shareholders exercise their voting rights with information on the nominees. (II.3.4)</p> <p>When minority shareholders are looking to nominate directors, such intentions shall be announced at the time the general shareholder meeting is notified; then the nominees shall be recommended and disclosed before the general shareholder meeting. (Commentary on II.3.4)</p>	<p>The Act [<i>i.e.</i>, the Public Limited Companies Act of 1992] prescribes that directors shall be elected at a shareholders’ meeting in accordance with the rules and procedures as prescribed in the Articles of Association. If the Articles of Association do not provide the rules and procedures for the appointment of directors, the Act states that cumulative voting should be applied. In the case of a vacancy on the board of directors for reasons other than the expiration of a director’s term in office, the board of directors shall elect another person as a substitute director. The substitute director shall hold office only for the remaining term of office of the director whom he or she replaced. However, in appointing a director, the board of directors should clearly specify the powers of the director in operating the businesses of the company. (Ch. 2: 2.7)</p> <p>In binding the company, the position of director shall be effective when a shareholders’ meeting passes a resolution appointing a person as a director.</p> <p>However, for binding a third party, the position of director shall be effective when such a director has been registered by the registrar in the Ministry of Commerce. (Ch. 2: 2.8).</p> <p><i>See</i> The Code, 4.3.3 ([Directors should a]void any other positions or jobs that may lead to conflicts of interest.).</p>

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<b>4. Separation of Chairman and CEO</b>			
<p>The Board should be free to make this choice any way that seems best for the Company at a given point in time.</p> <p>Therefore, the Board does not have a policy, one way or the other, on whether or not the role of the Chief Executive and Chairman should be separate or combined and, if it is to be separate, whether the Chairman should be selected from the non-employee Directors or be an employee. (Guideline 4)</p>	<p>The board should . . . separat[e] the roles of the chief executive officer and Chairman. (Principle 9)</p> <p>The firm and objective leadership of a chairman, preferably non-executive, who accepts the duties and responsibilities which the post entails, should provide the direction necessary for an effective board. (Commentary on Principle 1)</p>	<p>It is a typical situation of conflict of interest if you supervise and control yourself. Consequently, one should avoid situations when the same person is both officer and board member.</p> <p>One should try to avoid situations where the same person is the chairman of the board and chief executive officer. The logic here is the same as the case above when the same person is both officer and board member. (p. 4)</p>	<p><i>Not covered.</i></p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>4. Separation of Chairman and CEO</b>			
<p><i>Not covered directly, but see Recommendation 2 (Any listed companies with a turnover of Rs.100 crores and above should have professionally competent, independent, non-executive directors, who should constitute:</i></p> <ul style="list-style-type: none"> <li>▪ at least 30 percent of the board if the Chairman of the company is a non-executive director, or</li> <li>▪ at least 50 percent of the board if the Chairman and Managing Director is the same person.)</li> </ul>	<p>The members of the Board of Directors shall elect its Chairman, but the election may be overturned by a two-thirds majority of the votes of shareholders at a General Meeting of Shareholders. (17.17)</p> <p>The Chairman of the Management Board [<i>i.e.</i>, CEO] cannot be a member of the Board of Directors. (18.19)</p> <p>The Chief Executive Officer . . . has the right to attend and speak at all meetings of the Board of Directors but has no vote on it. When a vote is taken, he must withdraw from the meeting unless requested by the Board of Directors to remain. (17.6)</p>	<p>There should be a clearly accepted division of responsibilities at the head of the company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision. Where the roles are combined there should be a strong independent element on the board. A decision to combine the roles of Chairman and Chief Executive should be publicly explained. (Best Practice AA.II)</p> <p>Given the importance and particular nature of the Chairman's role, it should in principle be separate from that of the Chief Executive. (Explanatory Note 4.20 on Best Practice AA.II at 82)</p>	<p><i>Not covered.</i></p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>4. Separation of Chairman and CEO</b>			
<p>[T]he general assembly of shareholders can decide that the chairman . . . should have the right at any time to appoint another person as [CEO]. In this case, the Board of Directors will appoint a Managing Committee from among its members [and] establish the limits of the representative activity and the decision-making competence between the chairman of the board and the [CEO]. (III.8)</p>	<p>The chair should, unless it is considered by the board not to be in the company’s interests, be a non-executive director of the company and should not also be the chief executive. (The Code, 3.1)</p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>5. Lead Director</b>			
<p>The Chairman of the Committee on Director Affairs will be an independent Director responsible for chairing the regular sessions of the independent Directors and communicating the Board's annual evaluation of the chairman and the CEO to those individuals. The chairman of the Committee, together with the members of that Committee, will develop the agendas for those regular sessions and periodically review the Board's governance procedures (guidelines). (Guideline 5)</p>	<p>Where the roles of the Chairman and chief executive officer are combined, it is important to ensure that the non-executive directors are of sufficient calibre to bring an independent judgment to bear on issues of strategy, performance, resources and standards of conduct and evaluation of performance. Courage, wisdom and independence should be the hallmark of any non-executive director, so that he or she acts in the best interests of the corporation. (Commentary on Principle 9)</p>	<p>In the case when the chairman of the board and the chief executive officer is the same person, it is vital that there be a strong independent board member who is respected by colleagues and by the industry and who can serve as a lead director to counterbalance the power of the chairman/CEO. (p. 4)</p>	<p><i>Not covered.</i></p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>5. Lead Director</b>			
<i>Not covered.</i>	<p>The members of the Board of Directors shall elect its Chairman, but the election may be overturned by a two-thirds majority of the votes of shareholders at a General Meeting of Shareholders. (17.17)</p> <p><i>See</i> 18.19 (The Chairman of the Management Board [<i>i.e.</i>, CEO] cannot be a member of the Board of Directors.).</p>	<p>There should be a clearly accepted division of responsibilities at the head of the company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision. Where the roles are combined there should be a strong independent element on the board. (Best Practice AA.II)</p> <p>Given the importance and particular nature of the Chairman's role, it should in principle be separate from that of the Chief Executive. (Explanatory Note 4.20 on Best Practice AA.II at 82)</p>	<i>Not covered.</i>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>5. Lead Director</b>			
<i>Not covered.</i>	<i>Not covered.</i>	Meetings for outside directors only shall be held regularly; a representative shall be appointed among the outside directors to supervise such a meeting and to handle important issues delegated to them. (Commentary on II.4.5)	<i>Not covered.</i>



GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>6. Board Size</b>			
<p>The Board in recent years has averaged fifteen members. It is the sense of the Board that this size is about right. However, the Board would be willing to go to a somewhat larger size in order to accommodate the availability of an outstanding candidate(s). (Guideline 6)</p>	<p><i>Not covered.</i></p>	<p>The size of the board of directors should be as small as possible and, depending on the requirements of the company, should vary between 5 and 9 members. (p. 2)</p>	<p><i>Not covered.</i></p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>6. Board Size</b>			
<i>Not covered.</i>	<p>There shall be not less than 3 members of the Board of Directors. (17.4)</p> <p>A quorum shall be set by the Board of Directors but shall not be less than 2 members of the Board of Directors. (17.31)</p>	<p>Every board should examine its size, with a view to determining the impact of the number upon its effectiveness. (Best Practice AA.XII)</p>	<p>It is recommended that the Board of Directors consist of between 5 and 15 members. (Principle at 3)</p> <p>It is recommended that there be no alternate Board members. However, if alternates are chosen, they can act only in place of their specific respective Director. In this case, it is recommended that each Director be able to propose his/her alternate. (Principle at 4)</p> <p>Establishing a minimum number of Board members is necessary in order to generate a plurality of opinions among Board members. Establishing a maximum number is necessary in order to assure that Directors will be able to effectively express and discuss their points of view without the inefficiency that might result from having too many Board members. (Recommendation at 3)</p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>6. Board Size</b>			
<p>Except for the case in which the incorporation document of the company provides otherwise, . . . the Board of Directors can be composed of 2 non-executive members and 3 executive members – appointed in the Managing Committee. In small commercial companies, such a structure is not necessary. In large enterprises, the number of board members can be increased, but not more than 7, to assure decision-making within an optimal time. (III.9.A)</p>	<p><i>Not covered directly, but note that the Report states that there should be a balance of executive and non-executive directors, and also that there should never be less than two non-executive directors on the board in addition to the Chair who, by preference, should also be non-executive. (See Ch. 6, including 6:16, 6:17)</i></p>	<p>There is no perfect number of directors appropriate for all the different circumstances of corporations. The reason lies with the many different factors that may influence the Board’s size, e.g., the corporation’s size, the business environment, and special characteristics. Nevertheless, the Board’s size shall be such that it allows the discussions to be fruitful and the decisions made to be appropriate, swift and prudent.  . . . .  For large public corporations, it is highly advised that the number of directors on the Board be appropriate for effectively managing internal committees. (II.2.1)</p>	<p>The number of directors comprising the board of directors of a company is set out in the Articles of Association as being no less than 5 directors. (Ch. 2: 2.2)</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>7. Mix of Inside and Outside Directors</b>			
<p>The Board believes that as a matter of policy, there should be a majority of independent Directors on the GM Board (as defined in By-law 2.12). The Board believes that management should encourage senior managers to understand that Board membership is not necessary or a prerequisite to any higher management position in the Company. Managers other than the Chairman and Chief Executive Officer and the Vice Chairman currently attend Board meetings on a regular basis even though they are not members of the Board.</p> <p>On matters of corporate governance, the Board assumes decisions will be made by the independent Directors. (Guideline 7)</p>	<p>The board should ensure that no one person or block of persons has unfettered power and that there is an appropriate balance of power and authority on the board which is, <i>inter alia</i>, usually reflected by . . . having a balance between executive and non-executive directors. (Principle 9)</p> <p>The board should, preferably, be balanced as between executive and non-executive directors. The actual proportion will depend on the circumstances and business of each enterprise, and may well be influenced by local law and regulations. (Commentary on Principle 1)</p>	<p>A majority of the board members should be independent. (p. 3; <i>see also</i> p. 4)</p> <p>The fundamental reason for the importance of independence is to avoid conflicts of interest. (p. 4)</p> <p>There are three classes of board members:</p> <ul style="list-style-type: none"> <li>▪ independent,</li> <li>▪ external (board members who do not work in the company but who are not independent), and</li> <li>▪ internal (board members who are employed by the company or its subsidiaries or associates).</li> </ul> <p>(p. 4)</p>	<p><i>Not covered directly, but see The Code, 12 which implies that the Hong Kong Stock Exchange has some requirement for service by non-executive or independent directors on the Board. (If an independent non-executive director resigns or is removed from office, the Exchange should be notified of the reasons why.).</i></p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>7. Mix of Inside and Outside Directors</b>			
<p>Any listed companies with a turnover of Rs.100 crores and above should have professionally competent, independent, non-executive directors, who should constitute</p> <ul style="list-style-type: none"> <li>▪ at least 30 percent of the board if the Chairman of the company is a non-executive director, or</li> <li>▪ at least 50 percent of the board if the Chairman and Managing Director is the same person.</li> </ul> <p>(Recommendation 2)</p> <p>[T]he quality of the board – and, hence, corporate governance – improves with the induction of outside professionals as non-executive directors. (p. 2)</p> <p>The board should have a core group of excellent, professionally acclaimed non-executive directors. (p. 2)</p>	<p>Members of the Management Board and the Audit Commission cannot simultaneously be members of the Board of Directors. (14.5)</p> <p><i>See Topic Headings 4 and 5, above, and Topic Heading G, below.</i></p>	<p>The board should include a balance of executive directors and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board’s decision-making. (Principle A.II)</p> <p>To be effective, independent non-executive directors need to make up at least one-third of the membership of the board. (Best Practice AA.III)</p> <p>In circumstances where a company has a significant shareholder, in addition to the requirement that one-third of the board should comprise independent directors, the board should include a number of directors which fairly reflects the investment in the company by shareholders other than the significant shareholder. For this purpose, a “significant shareholder” is defined as a shareholder with the ability to exercise a majority of votes for the election of directors. (Best Practice AA.IV)</p> <p>In circumstances where the shareholder holds less than the majority but is still the largest shareholder, the board will have to exercise judgment in determining what is the appropriate number of directors which fairly reflects the investment in the company by the remaining holders of the shares. (Best Practice AA.V)</p>	<p>Patrimonial Board members are those who are selected because they are significant stockholders or agents of significant stockholders. Depending on whether significant stockholders or their agents comply with the characteristics of an Independent member of the Board, they may be Patrimonial Directors, Independent Directors, or Related Patrimonial Directors. (Principle at 5)</p> <p>Related Directors are all other Directors who do not fall into the definitions mentioned above. (Principle at 5)</p> <p>It is suggested that Independent Directors and Patrimonial Directors jointly represent at least 40% of the Board of Directors. Furthermore, it is recommended that Independent Directors represent at least 20% of the total number of Board members. (Principle at 6)</p> <p>To comply with its purpose, it is recommended that the Board have members who are not involved in the daily operations of the corporation and who may contribute with an external and independent vision. (Recommendation at 2)</p> <p>In order for the Independent Directors and Patrimonial Directors to fulfill their intended roles, it is necessary that they have a sufficient percentage of representation on the Board. (Recommendation at 5)</p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>7. Mix of Inside and Outside Directors</b>			
<p>The Board of Directors will have in its composition members with representation and executive functions, as well as non-executive members, so that such a board should have an odd number of non-executive members, organized as a Managing Committee, and an even number of executive members. (III.4.A)</p>	<p>No board should have less than two non-executive directors of sufficient calibre that their views will carry significant weight in board decisions. (The Code, 2.2)</p> <p>Non-executive directors should bring an independent judgment to bear on issues of strategy, performance and resources, including key appointments and standards of conduct. (The Code, 4.1)</p> <p>A board needs to be balanced with at least an equal number of executive and non-executive directors. (Ch. 4: 9)</p>	<p>The Board shall include outside directors capable of performing their duties independently from management, controlling shareholders and the corporation. The number of outside directors shall be such that the Board is able to maintain practical independence. Particularly, it is recommended that financial institutions and large-scale public corporations gradually increase the ratio of outside directors to more than half of the total number of directors (minimum three outside directors). (II.2.2)</p> <p>To raise the transparency of corporate management and to improve corporate governance, stock-listed corporations shall appoint outside directors to fill a minimum one-quarter of the total; banks and public sector corporations, a minimum one-half.</p> <p>....</p> <p>For outside directors to perform their functions properly, it is important that the number of outside directors appointed is sufficient for them to exercise real influence in the Board's decision-making process. Therefore, the proportion of outside directors shall be decided at the level where the Board would be able to maintain actual independence from management and controlling shareholders while exercising influential authority over management decisions. (Commentary on II.2.2)</p> <p>Outside directors shall be able to independently participate in important corporate management decision-making, and to supervise and support the management as Board members. (II.4)</p>	<p>[A]t least two . . . directors must be independent directors. Additional independent director(s) must be appointed within three months if there are ever less than two independent directors. (Ch. 2: 2.2)</p> <p>The Act [<i>i.e.</i>, the Public Limited Companies Act of 1992] does not provide for independent directors and their qualifications. It is the SET's regulations which require the board of directors of a listed company to comprise at least two independent directors. (Ch. 2: 2.4)</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>8. Definition of “Independence”</b>			
<p>GM’s By-law 2.12, defining independent Directors, was approved by the Board in January 1991. The Board believes there is no current relationship between any independent Director and GM that would be construed in any way to compromise any Board member being designated independent. Compliance with the By-law is reviewed annually by the Committee on Director Affairs. (Guideline 8)</p> <p><i>By-law 2.12(c) provides:</i></p> <p>For purposes of this by-law, the term “Independent Director” shall mean a director who:</p> <ul style="list-style-type: none"> <li>i. is not and has not been employed by the corporation or its subsidiaries in an executive capacity within the five years immediately prior to the annual meeting at which the nominees of the board of directors will be voted upon;</li> <li>ii. is not (and is not affiliated with a company or a firm that is) a significant advisor or consultant to the corporation or its subsidiaries;</li> <li>iii. is not affiliated with a significant customer or supplier of the corporation or its subsidiaries;</li> <li>iv. does not have significant personal services contract(s) with the corporation or its subsidiaries;</li> <li>v. is not affiliated with a tax-exempt entity that received significant contributions from the corporation or its subsidiaries; and</li> <li>vi. is not a spouse, parent, sibling or child of any person described by (i) through (v).</li> </ul>	<p>Non-executive directors, desirably, should be free from any business or other relationship which could interfere materially with the exercise of their independent judgment. (Commentary on Principle 9)</p> <p><i>See</i> Commentary on Principle 3 (The board should be able to exercise objective judgment on the corporate affairs of the business enterprise, independent from management.).</p> <p><i>See also</i> Commentary on Principle 7 (A director should avoid conflicts of interests. Full and timely disclosure of any conflict, or potential conflict, must be made known to the board. Where an actual or potential conflict does arise, a director should at least refrain from participating in the debate and/or voting on the matter. In the extreme case of continuing material conflict of interest, the director should consider resigning from the board. Any director who is appointed to a board at the instigation of a party with a substantial interest in the corporation, such as a major shareholder or a substantial creditor, should recognize the potential for a conflict of interests and accept that their primary responsibility is to always act in the interests of the corporation.).</p> <p><i>See also</i> Topic Heading 7, above .</p>	<p>A board member is independent if he or she:</p> <ul style="list-style-type: none"> <li>▪ has no link to the company besides the board position and the possession of shares of the company,</li> <li>▪ has never been employed by the company or any of its subsidiaries or associate companies,</li> <li>▪ provides no services or products to the company,</li> <li>▪ is not employed by any firm providing major services or products to the company,</li> <li>▪ is not the spouse or first or second degree relative to any officer, manager or the ultimate controller of the company,</li> <li>▪ is not receiving any compensation from the company other than board remuneration and dividends, if a shareholder.</li> </ul> <p>(p. 4)</p>	<p><i>Not covered.</i></p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>8. Definition of “Independence”</b>			
<p><i>Although the Code calls for “professionally competent, independent, non-executive directors,” it does not define the term “independent.”</i></p>	<p><i>Not covered directly, but see 14.5 (Members of the Management Board and the Audit Commission cannot simultaneously be members of the Board of Directors.)</i></p> <p><i>See also 20.2 (An official should not use in personal interests opportunities opening in the sphere of the purposes of activity of the Society, without observance of conditions contained in this article.). (For a list of conditions, see 20.3-20.8)</i></p> <p><i>See also 18.19 (The Chairman of the Management Board [i.e., CEO] cannot be a member of the Board of Directors.).</i></p>	<p>The term “independent” is defined under Rule 9 of the Listing Requirements as follows:</p> <p>The composition of the board of directors should reflect the ownership structure of the company. Every listed company should have independent directors, <i>i.e.</i>, directors that are not officers of the company; who are neither related to its officers nor represent concentrated or family holdings of its shares; who, in the view of the company’s board of directors, represent the interests of public shareholders, and are free of any relationship that would interfere with the exercise of independent judgement.</p> <p>(Explanatory Note 4.23 on Best Practice AA.III at 82-83)</p> <p>There are two features to this definition that the Committee endorses:</p> <ul style="list-style-type: none"> <li>▪ First, that it incorporates an imprecise definition of independence. It is not practicable to lay more precise criteria of independence. It should be for the board to take a view as to whether a particular director is independent in the above sense. . . .</li> <li>▪ Second, the term “independence” refers to two crucial aspects – independence from management and independence from a significant shareholder.</li> </ul> <p>(Explanatory Note 4.24 on Best Practice AA.III at 83)</p> <p><i>See Explanatory Notes 4.70 – 4.77 on Best Practice CC at 96-97 (interests represented by the board).</i></p>	<p>Independent Directors are persons selected for their abilities, experience and professional recognition, and who at the time of their designation are <u>not</u>:</p> <ol style="list-style-type: none"> <li>i. employees or officers of the corporation;</li> <li>ii. stockholders of the corporation having authority over officers of the corporation;</li> <li>iii. consultants to the corporation . . . whose incomes depend significantly on such contractual relationships;</li> <li>iv. clients, suppliers, debtors or creditors of the corporation . . . ;</li> <li>v. employees of a charitable institution, university or entity that receives significant contributions from the corporation;</li> <li>vi. the <i>Director General</i> or a high-ranking officer on the Board of Directors of another corporation in which the <i>Director General</i> or a high-ranking officer of this corporation is/are Directors; or</li> <li>vii. family to any of the persons mentioned above.</li> </ol> <p>(Principle at 4-5)</p> <p>[I]t is important to create the concept of the Independent Director. The term Independent Director is used to identify such persons as are not related to the management team of the corporation. They are called to be Directors because of their personal and professional recognition. Their main duty is to contribute with an impartial vision to the corporation’s strategies, planning and other duties of the Board. (Recommendation at 4)</p>



Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>8. Definition of “Independence”</b>			
<p><i>Not covered directly, but see III.5.B</i> ([M]embers of the Board of Directors should preferably not be shareholders/associates, except [when] the company is organized as a limited liability company, a collective partnership or a joint stock company. . . . [Nor should they] be a shareholder/associate, executive manager (employee) or auditor of a supplier or distributor [or] competitor.).</p> <p><i>See also III.9.B</i> ([N]on-executive members can be appointed from the following categories of persons:</p> <ul style="list-style-type: none"> <li>▪ administrators or executive managers of the dominant company;</li> <li>▪ former executive managers . . . ;</li> <li>▪ executive managers of one of the branches of the mother company.).</li> </ul> <p><i>See also III.10.1</i> (The general assembly of shareholders/associates can appoint to the Board of Directors an independent person – non-executive members of the company, recommended by one of the creditors or investors of the company, or by a shareholder.).</p>	<p><i>Non-executive directors should be:</i></p> <ul style="list-style-type: none"> <li>▪ [I]ndependent of management and . . . not [receive] any benefits from the company other than their fee. This is not intended to exclude . . . non-executive director[s] who have a contractual nexus with the company for reward or to prevent a non-executive director from acquiring shares in the company by means independent from the company;</li> <li>▪ Directors and managers of the company’s holding company, or major investor, who have no executive responsibilities in the company;</li> <li>▪ Former executive directors who are no longer employed on a full-time basis but nevertheless are capable of giving valuable input to the board arising from their past experience;</li> <li>▪ Senior executive directors of major listed subsidiaries and associates of the holding company, who have no executive responsibilities in the holding company.</li> </ul> <p>(The Code, 4.2.1 – 4.2.4)</p>	<p><i>Not covered directly, but see II.4.1</i> (Outside directors shall hold no interests that may hinder their independence from the corporation, management or controlling shareholder. The outside director shall submit a letter of confirmation, which the corporation shall disclose, stating that he holds no interests affiliated with the corporation, management or controlling shareholder at the time of his consent to the appointment.).</p> <p><i>See also</i> Korean Stock Exchange Listing Regulation, Article 48-5 (<i>listing requirement for outside directors to comprise at least one-quarter of the board members; persons who do not qualify as “outside directors” include: controlling shareholders; a spouse or a family member of a director who is not an outsider; current or recent officers and employees of the company, its affiliates, or of corporations that have “important business relations” with the corporation; and persons who serve as outside directors on three or more listed companies.</i>).</p>	<p>Independent directors must be independent of any major shareholder and not involved in the day-to-day operations of the listed company. (The Code, 5.1)</p> <p>[A]n independent director must meet all of the following requirements:</p> <ol style="list-style-type: none"> <li>i. Be independent from the major shareholders of the company or any shareholder in their group.</li> <li>ii. Not be an employee, staff member or an adviser receiving a regular salary or other regular benefit from the company or its affiliated company, associated company or related company.</li> <li>iii. Have no shares in their own name, or in a related person’s name, representing more than 0.5% of the respective paid up capital of the company, an affiliated company, associated company or related company.</li> <li>iv. Be able to protect the interests of all shareholders of the company equally.</li> <li>v. Be able to prevent conflicts of interest between the company and its management or major shareholders or other companies which have the same management group, or major shareholders, as the company.</li> <li>vi. Be able to attend board meetings to make decisions on significant company activities.</li> </ol> <p>(Ch. 2: 2.4, <i>citing</i> SET Notification Governing Qualifications of Independent Directors dated October 28, 1993)</p> <p><i>See also</i> Ch. 2: 7.2(a) <i>regarding conflicts of interest.</i></p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>9. Commitment / Changes in Job Responsibility</b>			
<p><b>Former Chairman/Chief Executive Officer's Board Membership.</b></p> <p>The Board believes this is a matter to be decided in each individual instance. It is assumed that when the Chairman or Chief Executive Officer resigns from that position, he/she should submit his/her resignation from the Board at the same time. Whether the individual continues to serve on the Board is a matter for discussion at that time with the new Chief Executive Officer and the Board. A former Chairman or Chief Executive Officer serving on the Board will not be considered an independent Director for purposes of voting on matters of corporate governance. (Guideline 9)</p> <p>It is the sense of the Board that individual Directors who change the responsibility they held when they were elected to the Board should submit a letter of resignation to the Board.</p> <p>It is not the sense of the Board that in every instance the Directors who retire or change from the position they held when they came on the Board should necessarily leave the Board. There should, however, be an opportunity for the Board, via the Committee on Director Affairs, to review the continued appropriateness of Board membership under these circumstances. Independent Directors are encouraged to limit the number of other boards on which they serve, taking into account potential board attendance, participation and effectiveness on these boards. Independent Directors should also advise the Chairman of the Board and the Chairman of the Committee on Director Affairs in advance of accepting an invitation to serve on another board. (Guideline 10)</p>	<p><i>Not covered.</i></p>	<p>A board member's primary occupation is often an important factor in his or her recruitment. When there is a change in the main occupation, the board member should resign. The nominating committee should weigh the suitability of re-election. (p. 3)</p>	<p>Every non-executive director must ensure that he can give sufficient time and attention to the affairs of the issuer and should not accept the appointment if he cannot. (The Code, 10)</p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>9. Commitment / Changes in Job Responsibility</b>			
<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>9. Commitment / Changes in Job Responsibility</b>			
<i>Not covered.</i>	<i>Not covered.</i>	<p>[S]hould there be any change in the information stated in the letter [which a nominee for outside director is required to present confirming his or her independence] following inauguration into office, the outside director shall immediately submit a corrected letter, which the corporation shall disclose. (II.4.1)</p> <p>Outside directors shall allot sufficient time towards performing their duties. (II.4.3)</p>	<i>Not covered directly, but see The Code, 4.3.3 ([Directors will a]void any other positions or jobs that may lead to conflicts of interest.).</i>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>10. Election Term / Term Limits / Mandatory Retirement</b>			
<p>The Board does not believe it should establish term limits. While term limits could help insure that there are fresh ideas and viewpoints available to the Board, they hold the disadvantage of losing the contribution of Directors who have been able to develop, over a period of time, increasing insight into the company and its operations and, therefore, provide an increasing contribution to the Board as a whole.</p> <p>As an alternative to term limits, the Committee on Director Affairs, in conjunction with the Chief Executive Officer, will formally review each Director's continuation on the Board every five years. This will also allow each Director the opportunity to conveniently confirm his/her desire to continue as a member of the Board. (Guideline 11)</p> <p>It is the sense of the Board that the current retirement age of 70 is appropriate. (Guideline 12)</p>	<p><i>Not covered.</i></p>	<p>The length of service should be defined. The term should be short, varying between one and three years. Re-election should be possible after a formal performance evaluation. Re-election should not be automatic. (p. 3)</p> <p>If the term is short, and the formal performance evaluation efficient, there is no reason for having an age limit. (p. 3)</p>	<p>Non-executive directors should be appointed for a specific term and that term should be disclosed in the annual report and accounts of the issuer. (The Code, 7)</p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>10. Election Term / Term Limits / Mandatory Retirement</b>			
<p><i>Not covered.</i></p>	<p>Any member of the Board of Directors may stand for re-election at the end of their term of office. (17.15)</p> <p>The initial appointments to the Board of Directors shall be for 1 and 2 years in order to establish continuity in the operations of the Board of Directors as members join and leave. Subsequent appointments shall be for periods of 3 years. (17.14)</p> <p>Members of the Board of Directors are appointed for a period not exceeding 3 years, but are renewable. (17.25, 18.3)</p> <p><i>See also</i> 17.16, 17.26 (No member of the Board of Directors may be dismissed except by a decision of a General Meeting of Shareholders or for good cause.).</p>	<p>All directors should be required to submit themselves for re-election at regular intervals and at least every three years. (Principle A.V)</p> <p>Re-Election at regular intervals not only promotes effective boards but affords shareholders the opportunity to review the directors' performance in turn and, where necessary, to replace them. This is consistent with Rule 309 of the Listing Requirements which requires that a publicly listed company must have provisions in its articles of association for election of directors to take place every year. The Listing Requirements go on to require all directors, except the managing director, to retire from office once at least in each 3 years, but shall be eligible for re-election. This principle goes beyond the listing rule by including the managing director to submit himself for re-election at least every 3 years. (Explanatory Note on Principle A.V at 76)</p>	<p><i>Not covered.</i></p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>10. Election Term / Term Limits / Mandatory Retirement</b>			
<p><i>Not covered.</i></p>	<p>It should be the duty of the Chair, with the support of the majority of the board members, to ensure that any non-executive director who is not contributing to the decision of the board should not be re-elected or should have their services terminated. (The Code, 4.3)</p> <p>An executive director's service contract, if any, should not exceed five years in duration. (The Code, 5.2)</p> <p>The Committee does not believe that non-executive directors should be appointed for a specified term. . . . If the Chair and the board believe that after a sufficient apprenticeship the appointee is not making a contribution, the Chair has a duty to tell the appointee so and they should resign and if necessary be removed. If on the other hand a non-executive director is making a contribution, why should their term end after three, five or ten years? (Ch. 6: 18)</p>	<p>The Board shall . . . respect the appointed directors' term of office. (II.3.3)</p> <p><i>See</i> Commentary on II.3.3 ([T]he term of office for the director – appointed through due process at a general shareholder meeting – shall be respected so that his functions as managing agent for all shareholders may be performed dutifully. The exceptions are the following: the director is found liable for any illegal act; gross violation is made of the statutes or the Articles of Incorporation; or the director is deemed quite inept for office.)</p> <p><i>See also</i> Commentary on II.8.1 (If a director does not perform his duties properly, he may not be re-appointed or may even be dismissed.).</p>	<p><i>Not covered directly, but see</i> The Code, 5.2 ([R]e-appointment [of independent directors] will not be automatic.).</p> <p><i>See also</i> The Code, 5.3 (Ensure a full explanation is given to the SET if [independent directors] are dismissed or resign their positions.).</p> <p><i>See also</i> Ch. 2: 2.8 (In the case of a vacancy on the board of directors, the company shall apply to register the changing of a director within 14 days of the date of the vacancy. If not, the company may not take any benefits from any third persons until the changing of its directors has been registered by the Registrar. On the other hand, the third person may take benefits even though the company has not registered the changing of its director.).</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>11. Board Compensation Review</b>			
<p>It is appropriate for the staff of the Company to report once a year to the Committee on Director Affairs the status of GM Board compensation in relation to other large U.S. companies. As part of a Director's total compensation and to create a direct linkage with corporate performance, the Board believes that a meaningful portion of a Director's compensation should be provided and held in common stock units.</p> <p>Changes in Board compensation, if any, should come at the suggestion of the Committee on Director Affairs, but with full discussion and concurrence by the Board. (Guideline 13)</p> <p>The full Board (independent Directors) should make this evaluation [of the Chairman of the Board] annually . . . . The evaluation will be used by the Executive Compensation Committee in the course of its deliberations when considering the compensation of the Chairman. (Guideline 26)</p>	<i>Not covered.</i>	<p>A board member should be remunerated based on time dedicated to the company. His or her hourly rate should be comparable with the theoretically calculated hourly rate of the chief executive officer. (p. 3)</p>	<i>Not covered.</i>



Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>11. Board Compensation Review</b>			
<p>To secure better effort from non-executive directors, companies should:</p> <ul style="list-style-type: none"> <li>▪ Pay a commission over and above the sitting fees [maximum Rs.2,000 per meeting] for the use of the professional inputs. The present commission of 1% of net profits (if the company has a managing director), or 3% (if there is no managing director) is sufficient.</li> <li>▪ Consider offering stock options, so as to relate rewards to performance. Commissions are rewards on current profits. Stock options are rewards contingent upon future appreciation of corporate value. An appropriate mix of the two can align a non-executive director towards keeping an eye on short-term profits as well as longer term shareholder value.</li> </ul> <p>(Recommendation 5)</p> <p>The above recommendation can be easily achieved without the necessity of any formalized remuneration committee of the board. (p. 3)</p>	<p>The method and level of remuneration of the members of the Board of Directors shall be set each year by the shareholders at the AGM. The cost will be borne by the Society. (17.20)</p> <p>No member of the Board of Directors may receive any benefit in any form from the Society other than his remuneration, as determined by the AGM, return on any shares owned by the member, and reasonable expenses. (17.21)</p> <p><i>See 17.19 (Members of the Board of Directors may be full-time or part-time, as determined by shareholders at an AGM.).</i></p>	<p>Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully. The component parts of remuneration should be structured so as to link rewards to corporate and individual performance, in the case of executive directors. In the case of non-executive directors, the level of remuneration should reflect the experience and level of responsibilities undertaken by the particular non-executive concerned. (Principle B.I)</p> <p>Boards should appoint remuneration committees, consisting wholly or mainly of non-executive directors, to recommend to the board the remuneration of the executive directors in all its forms, drawing from outside advice as necessary. Executive directors should play no part in decisions on their own remuneration. Membership of the remuneration committee should appear in the directors' report.</p> <p>The determination of remuneration packages of non-executive directors, including non-executive chairmen, should be a matter for the board as a whole. The individuals concerned should abstain from discussion of their own remuneration. (Best Practice AA.XXIV)</p>	<p><i>Not covered.</i></p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>11. Board Compensation Review</b>			
<p>The members of the Board of Directors will receive a monthly fee and a meeting fee. The amounts of the monthly fee and the meeting fee are negotiated between the shareholders' representatives and the person appointed as administrator. The fees are given only according to presence at board meetings and depending on the company's financial condition. In the case of small- and medium-sized commercial enterprises, the use of quotas is not recommended. The use of quotas is also not recommended in the case of large enterprises in which the state is the shareholder. (III.18.A)</p> <p><i>See I.2.G</i> (The quota refers to a sum of money received by each member of the Board of Directors for participation in the Board of Directors meetings. Quotas can be given either in addition to the attendance fee or the dividends, or instead of the attendance fee, according to the financial condition of the commercial company, and are calculated as a percentage of its net profits.).</p>	<p>Directors' remuneration, including that of the non-executive directors, should be the subject of recommendations to the board of a Remuneration Committee. (The Code, 6.1)</p> <p>A remuneration committee will not necessarily, however, reflect the view of the shareholders. At the AGM the chair of the remuneration committee should be present to motivate remuneration decisions. (Ch. 8: 6)</p> <p>In discussing remuneration the committee and shareholders must be mindful of the fact that a director's remuneration is a reward for enterprise so that there should be an incentive for superior enterprising performance but likewise there should not be rewards for failure. (Ch. 8: 7)</p>	<p>To promote active performance of duties by management, outside directors and the Board, their activities shall undergo fair evaluation; based on such results, the matters of remuneration and reappointment shall be decided. (II.9)</p> <p>The activities of an outside director should be evaluated fairly, with the remuneration being commensurate to the evaluation results. (II.9.2)</p>	<p>The remuneration of directors as approved by a shareholder meeting should be fully disclosed in the company's annual report. (The Code, 4.4)</p> <p>The directors' remuneration shall be as prescribed in the Articles of Association. If the Articles of Association do not provide for the directors' remuneration, a shareholders' meeting of the company may fix the directors' remuneration. Such a resolution requires an affirmative vote of at least two-thirds of the total number of voting shareholders present at the meeting. The company may not pay any money or convey any property to directors except when making payment of remuneration to them in the manner set out in the Articles of Association or by a resolution of a shareholders' meeting, as the case may be. (Ch. 2: 7.2(e))</p> <p><i>Re: company loans to directors, see Ch. 2: 7.2(d).</i></p> <p><i>See also Ch. 6, Securities Dealings by Directors and Executives.</i></p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>12. Executive Sessions of Outside Directors</b>			
<p>The independent Directors of the Board will meet in Executive Session two or three times each year. Executive Sessions will be chaired by the Chairman of the Committee on Director Affairs. The format of these meetings will include a discussion with the Chairman and the Chief Executive Officer on each occasion. (Guideline 14)</p>	<p><i>Not covered.</i></p>	<p>It is the function of the board to evaluate officers and management. Regularly scheduled executive sessions of the external and the independent board members should be held as a matter of course, thus disarming concern over an action that may otherwise be perceived as unusual and threatening. (p. 2)</p>	<p><i>Not covered.</i></p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>12. Executive Sessions of Outside Directors</b>			
<i>Not covered.</i>	<p><i>By design, the Charter distinguishes between the Board of Directors and the Management Board. Any person who is a member of one board may not be a member of the other.</i></p> <p><i>See 18.19 (The Chairman of the Management Board [i.e., CEO] cannot be a member of the Board of Directors.).</i></p> <p><i>See also 17.6 (The Chief Executive Officer (chairman) (CEO) of the Society has the right to attend and speak at all meetings of the Board of Directors but has no vote on it. When a vote is taken, he must withdraw from the meeting unless requested by the Board of Directors to remain.).</i></p> <p><i>See also 17.7 (The Board of Directors may, at its discretion, invite one or several members of the Management Board (financial manager, executive manager, Secretary) to attend meetings of the Board of Directors.).</i></p>	<p><i>Not covered directly, but see Introduction § 1, 3.3 ([T]he board's task is to approve appropriate policies and to approve the performance of management in implementing them.).</i></p>	<i>Not covered.</i>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>12. Executive Sessions of Outside Directors</b>			
<i>Not covered directly, but see III.4.A (The Board of Directors will have [its] non-executive members organized as a Managing Committee [unless the shareholders decide otherwise].).</i>	<i>Not covered.</i>	To raise the outside director’s management supervision and supporting functions, a regular meeting participated by outside directors only is recommended. Outside directors and management shall make every effort to provide opportunities for regular discussions on managerial issues. (II.4.5)	<i>Not covered.</i>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>13. Evaluating Board Performance</b>			
<p>The Committee on Director Affairs is responsible to report annually to the Board an assessment of the Board's performance. This will be discussed with the full Board. This should be done following the end of each fiscal year and at the same time as the report on Board membership criteria.</p> <p>This assessment should be of the Board's contribution as a whole and specifically review areas in which the Board and/or the Management believes a better contribution could be made. Its purpose is to increase the effectiveness of the Board, not to target individual Board members. (Guideline 15)</p> <p>The full Board (independent Directors) should make this evaluation [of the Chairman of the Board] annually, and it should be communicated to the Chairman . . . by the Chairman of the Committee on Director Affairs. The evaluation should be based on objective criteria including performance of the business, accomplishment of long-term strategic objectives, development of management, etc. (Guideline 26)</p>	<p>The board should regularly assess its performance and effectiveness as a whole, and that of the individual directors, including the chief executive officer. (Principle 11)</p> <p>The board should examine regularly the impact of the effectiveness of its directors – collectively and individually. It should set and achieve objectives for continuous improvement in the quality and effectiveness of the board's performance, including performance in a crisis. The board should review regularly the degree to which its objectives are achieved and the quality of the board's decisions.</p> <p>In order to maximize the efficiency and effectiveness of the board's work, each individual director's performance should be monitored and appraised on an annual basis.</p> <p>. . . .</p> <p>[T]he other members of the board should ensure that the Chairman's effectiveness is appraised annually. In practice, non-executive directors may take a lead role in this appraisal process.</p> <p>. . . .</p> <p>The evaluation of the board should be based on objective and tangible criteria, including the performance of the corporation, accomplishment of long-term strategic objectives and the development of management, etc. (Commentary on Principle 11)</p> <p>[T]he other members of the board should ensure that the Chairman's effectiveness is appraised annually. In practice, non-executive directors may take a lead role in this appraisal process. (Commentary on Principle 11)</p>	<p>Every year there should be a formal evaluation of the performance of the board as a whole, and of each individual board member. The evaluation system should be adapted to the needs of each company. (p. 2)</p> <p>See p. 3 (Re-election should be possible after a formal performance evaluation. Re-election should not be automatic.).</p>	<p><i>Not covered directly, but the Guide for Directors of Listed Companies indicates that directors must complete the Director's Declaration and Undertaking which requests background information on the director or proposed director in order to assist the Exchange's assessment of the person's suitability to serve as a director of a listed company. (Guideline B.1.3)</i></p> <p>If there are any changes to any of the details set out in the Director's Declaration and Undertaking, the director should ensure that the Exchange is notified of the changes. (Guideline B.1.3)</p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>13. Evaluating Board Performance</b>			
<p><i>Not covered directly, but the Code provides:</i> While re-appointing members of the board, companies should give the attendance records of the concerned directors [to the shareholders]. If a director has not been present (absent with or without leave) for 50 percent or more meetings, then this should be explicitly stated in the resolution that is put to vote. As a general practice, one should not re-appoint any director who has not had the time to attend even one-half of the meetings. (Recommendation 6)</p> <p>To ensure that non-executive directors properly discharge their fiduciary obligations, it is . . . necessary to give a record of their attendance to the shareholders. (p. 3)</p>	<p><i>Not covered.</i></p>	<p>The board, through its nominating committee, should annually review its required mix of skills and experiences and other qualities, including core competencies which non-executive directors should bring to the board. This should be disclosed in the annual report. (Best Practice AA.IX)</p> <p>The board should implement a process, to be carried out by the nominating committee annually, for assessing the effectiveness of the board as a whole, the committees of the board, and for assessing the contribution of each individual director. (Best Practice AA.X)</p>	<p><i>Not covered.</i></p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>13. Evaluating Board Performance</b>			
<i>Not covered.</i>	<p>[The] chair with the support of the majority of the board members [should] ensure that any non-executive director who is not contributing to the decisions of the board should not be re-elected or should have their services terminated. (The Code, 4.3)</p> <p>If the Chair and the board believe that after a sufficient apprenticeship [an] appointee is not making a contribution, the Chair has a duty to tell the appointee [who] should resign and if necessary be removed. (Ch. 6: 18)</p>	<p>To promote active performance of duties by management, outside directors and the Board, their activities shall undergo fair evaluation. (II.9)</p> <p>The activities of an outside director should be evaluated fairly, with remuneration being commensurate to the evaluation results. Activities and evaluation results of outside directors shall be disclosed. (II.9.2)</p> <p>Activities of the Board shall be evaluated fairly, the results of which shall be disclosed. (II.9.3)</p>	<i>Not covered.</i>



GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>14. Board Interaction with Institutional Investors, Press, Customers, etc.</b>			
<p>The Board believes that the Management speaks for General Motors. Individual Board members may, from time to time at the request of Management, meet or otherwise communicate with various constituencies that are involved with General Motors. If comments from the Board are appropriate, they should, in most circumstances, come from the Chairman. (Guideline 16)</p>	<p><i>Not covered directly, but see Principle 6 (The board should ensure that all communications with shareholders, employees and other relevant stakeholders are timely and accurate.).</i></p>	<p>The shareholders have the right to get timely and transparent information about the company in which they have invested. (p. 5)</p> <p>The board of directors should designate only one person to serve as spokesperson for the company, in order to avoid the risk of having contradictions between declarations by the by the chairman, the chief executive officer, and others. The executive who serves as liaison with the capital market has powers delegated by the spokesperson. (p. 5)</p> <p><i>See p. 5 (The efficiency of the capital market depends on transparent information on their listed companies.).</i></p>	<p>Timing of a disclosure is dependent upon the nature of the information and the particular situation. Generally, disclosure should be made as soon as reasonably practicable. If the information is expected to be price-sensitive and is the subject of a decision, then the information should be announced immediately. Before a decision is reached, directors must ensure that the utmost confidentiality is maintained. (Guideline B.2.2)</p> <p>When speaking with news reporters and analysts, directors should consider carefully their comments regarding price-sensitive matters which have not yet been made public and explained by the company. . . . Uneven and inaccurate reporting of a director's remarks may need to be clarified by an announcement from the company, and a temporary suspension of trading in the company's securities may be appropriate until the announcement is made. (Guideline B.2.4)</p> <p>If directors of a company are aware of any matter that might have relevance to unusual price movements or market rumours, then an announcement clarifying the situation should be issued. If it is not possible to make such an announcement . . . , then the directors should consider requesting a temporary suspension of dealings in the company's securities. (Guideline B.2.6)</p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>14. Board Interaction with Institutional Investors, Press, Customers, etc.</b>			
<p>It would be desirable for [Financial Institutions] as pure creditors to re-write their covenants to eliminate having nominee directors except:</p> <ul style="list-style-type: none"> <li>▪ in the event of serious and systematic debt default; and</li> <li>▪ in case of the debtor company not providing six-monthly or quarterly operational data to the concerned [Financial Institutions].</li> </ul> <p>(Recommendation 14)</p> <p>Insofar as creditors are not shareholders, and so long as their dues are being paid in time, they should desist from demanding a seat on the board of directors. (p. 9)</p>	<p>The AGM may elect one member of the Board of Directors from a list of one or more nominations provided by the largest outstanding creditor of the Society. (17.12)</p> <p>The AGM may, where appropriate, elect one further member to the Board of Directors from nominations provided by other interested parties, <i>e.g.</i>, long-term suppliers or customers/consumers, a second large creditor, <i>etc.</i> (17.13)</p>	<p>Companies and institutional shareholders should each be ready, where practicable, to enter into a dialogue based on the mutual understanding of objectives. (Principle C.I)</p> <p>Institutional investors should encourage direct contact with companies, including constructive communication with both senior management and board members, about performance, corporate governance and other matters affecting shareholders' interests. (Principles and Best Practices for Other Corporate Participants, II)</p> <p>When evaluating companies' governance arrangements, particularly those relating to board structure and composition, institutional investors and their advisers should give due weight to all relevant factors drawn to their attention. (Principles and Best Practices for Other Corporate Participants, III)</p> <p>A direct dialogue gives investors a better appreciation of a company's objectives, its potential problems and the quality of its management, while also making a company aware of the expectations and concerns of the shareholder. Two-way communication between companies and institutions is an important aspect of corporate governance because corporate managers need full information about the assessments of institutions that hold their shares. Two-way communication such as this helps create a more stable shareholder base. The belief is that shareholders will be willing to maintain their shareholding and take a longer-term view of their investment if they have a better understanding of the corporate strategy. (Explanatory Note 4.81 on Principles and Best Practices for Other Corporate Participants, II at 100-101)</p> <p>[N]either side should be required to enter into dialogue. Individual companies and investors must remain free to abstain from dialogue. (Explanatory Note 4.83 on Principles and Best Practices for Other Corporate Participants, II at 100-101)</p>	<p>[T]he powers of the Board of Directors include . . . assuring that the shareholders and the market have access to the public information on the corporation. (Principle at 3)</p> <p>It is suggested that each corporation have policies, mechanisms and responsible parties to inform investors in order to maintain communication channels with stockholders and potential investors. (Principle at 22)</p> <p>The lack of participation of all stockholders in the Stockholders Meeting, and the limitations of such meetings as a communication forum of the corporation with its investors, justify additional efforts to create other communication instruments which may allow such investors and the general public to obtain the required information in connection with the corporation. (Recommendation at 22)</p> <p><i>See</i> Recommendation at 11 (It is recommended that the existence of the mechanism [for executive compensation] be disclosed, and its operations be transparent, in order to increase investor confidence in the management of the corporation.).</p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>14. Board Interaction with Institutional Investors, Press, Customers, etc.</b>			
<p>The goals of corporate governance [include] actual and consistent communication between internal constituencies [including institutional investors]. (I.2.C.a)</p> <p><i>See</i> IV.22 (All shareholders should have access to the information held by the secretariat of the Board of Directors and should be able to address the chairman of the board or the [CEO].).</p>	<p>Reports and communications must be made in the context that society now demands greater transparency and accountability from corporations regarding their non-financial affairs, including for example, their employment policies and environmental issues. (The Code, 9.2)</p> <p>Reports should present a balance between the positive and negative aspects of the activities of the company. (The Code, 9.3)</p> <p>Perhaps management [should make] public announcements whenever anything untoward, unexpected or relevant to the stakeholder occurs. It [is] better to keep a link forged with all stakeholders rather than one or two institutions. (Ch. 12: 8)</p> <p>The narrow view is that as it is the shareholders who elect the board, approve the annual financial statements and ratify directors' actions, it is to the shareholders only that the directors must account for their stewardship. The dynamic participation approach is that directors reports should be directed at all stakeholders and should consequently address matters of concern and interest to all stakeholders. (Ch. 12: 10.1)</p>	<p>Institutional investors that manage trust assets shall actively exercise their shareholder rights and monitor corporate management. (Recommendation 5)</p> <p>Institutional investors, by exercising shareholder rights, shall enact and officially announce internal principles for exercising such rights to protect trust assets; and the rights shall be exercised actively and prudently according to the principle of good faith. (Recommendation 5.1)</p> <p>Institutional investors, in transactions with the corporation and all other acts, shall not engage in insider trading [activities] which abuse their position or use important undisclosed information. (Recommendation 5.2)</p> <p>Restrictions on the exercise of the shareholder rights of institutional investors that have a special relationship to the corporation should be clearly stated by law. (Recommendation 5.3)</p> <p>Institutional investors shall be equipped with internal control systems to ensure the fair exercise of their shareholder rights. (Recommendation 5.4)</p>	<p><i>Not covered directly, but see</i> The Code, 7.1 (Clearly report all details providing reasonable explanations and calculations to support the results of the company's business operations, policies, future trends and opportunities as well as risks and dangers.).</p> <p><i>See also</i> The Code, 7.4 (Include full details in the financial statement in such a way as to prevent any fraud or mismanagement of the company's assets.).</p> <p><i>See also</i> Ch. 5: 1 (To protect the interests of shareholders and keep investors informed about any transaction which may create a conflict of interest between a listed company and its management or connected persons of that listed company, the SET has issued a Notification Governing the Rules and Procedures for the Disclosure of Connected Transactions by Listed Companies, dated 17 February, 1993 (the "Connected Transaction Notification").).</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>15. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management</b>			
<p>The Board welcomes the regular attendance at each Board meeting of non-Board members who are in the most senior management positions of the company.</p> <p>Should the Chairman or the Chief Executive Officer want to add additional people as attendees on a regular basis, it is expected that this suggestion would be made to the Board for its concurrence. (Guideline 17)</p> <p>Board members have complete access to GM's management.</p> <p>It is assumed that Board members will use judgment to be sure that this contact is not distracting to the business operation of the Company and that such contact, if in writing, be copied to the Chairman or Chief Executive Officer, as appropriate.</p> <p>Furthermore, the Board encourages the Management to, from time to time, bring managers into Board meetings who: (a) can provide additional insight into the items being discussed because of personal involvement in these areas, and/or (b) are managers with future potential that the senior management believes should be given exposure to the Board. (Guideline 18)</p>	<p><i>Not covered directly, but see Commentary on Principle 3 (The board should be able to exercise objective judgment on the corporate affairs of the business enterprise, independent from management but with sufficient management information to enable a proper and objective assessment to be made by the directors.).</i></p>	<p>Key company personnel may occasionally be invited to a board meeting in order to make presentations relating to their activities. (p. 2)</p>	<p><i>Not covered.</i></p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>15. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management</b>			
<p><i>Not covered directly, but the Code recognizes that:</i> Under usual circumstances, non-executive directors in India suffer from lack of quality information. Simply put, the extent to which non-executive directors can play their role is determined by the quality of disclosures that are made by the management to the board. (pp. 3-4)</p>	<p>The Board of Directors may, at its discretion, invite one or several members of the Management Board (financial manager, executive manager, Secretary) to attend meetings of the Board of Directors. (17. 7)</p>	<p><i>Not covered.</i></p>	<p><i>Not covered for the Board as a whole, but see Principle at 8 (The Chairman [of a Board committee] may invite to [committee] meetings those officers of the corporation whose duties are related to the operations of the intermediate body.).</i></p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>15. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management</b>			
<p>The board meetings can be attended, as invited guests, by:</p> <ul style="list-style-type: none"> <li>▪ a representative of the shareholders, if the shareholders have specifically requested this. . . . ;</li> <li>▪ a representative of the customers, but only for those points on the agenda regarding business relations between the company and the respective customers;</li> <li>▪ a representative of the trade unions, or of the employees if there are no trade unions, but only for those points on the agenda which refer to salary or labour policies included in the strategic plans of the company, or in a restructuring plan. . . . ;</li> <li>▪ one or several executive managers. (III.14.1)</li> </ul> <p>[T]he Board of directors can decide that one or two persons from the creditors or the investors of the company attend the meetings of the Board of Directors, as invited guests. These persons are representatives of the banks, of the venture funds, who are not involved in the company's management, of the mutual funds and of the pension funds, or of other institutions of the financial or capital markets. At their appointment as representatives for the creditor or for the investor, a declaration will be forwarded to the secretariat of the Board of Directors confirming that they do not have the position of administrator, executive manager or auditor with a competitor, a supplier or a distributor of the company. (III.14.2)</p>	<p>It is . . . useful in monitoring management and the accuracy and quality of reports received by a board that at random and in no particular order, a general manager, a financial director and/or a managing director of an operating division be invited to attend a board meeting in order to comment on matters before the board, the progress of the group, or business unit. (Ch. 6: 6)</p> <p>In monitoring the activities of the executive management the checks and balances set up in a company by the board are important. It is one of the means of ensuring that the information which is considered at board meetings is as accurate as possible and not skewed by the wishes of a particular executive and, more importantly, is not false in any respect. (Ch. 4: 1)</p> <p>One of the ways of attaining accuracy of reporting is to have a senior member of management who is not a board member report on their sphere of operations. The board can then direct questions to them and check the answers against the content, trend or tone of the written reports before the board. (Ch. 4: 7)</p>	<p>The outside director may receive support from executives . . . through due process when necessary, for which the corporation shall cover any reasonable expense. (II.4.4)</p> <p>Outside directors and management shall make every effort to provide opportunities for regular discussions on matters concerning management. Through regular contact with management, outside directors will be better able to manage the Board by clearly grasping the managerial situation; management, on the other hand, will be able to gain the understanding and cooperation of outside directors concerning corporate management. (Commentary on II.4.5)</p>	<p><i>Not covered.</i></p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>16. Board Meetings and Agenda</b>			
<p>The Chairman of the Board/Chief Executive Officer will establish the agenda for each Board meeting. They will issue a schedule of agenda subjects to be discussed for the ensuing year at the beginning of each year (to the degree these can be foreseen). Each Board member is free to suggest the inclusion of item(s) on the agenda. (Guideline 19)</p>	<p>The board should determine a policy for the frequency, purpose, conduct and duration of its meetings. (Commentary on Principle 10)</p> <p>The chairman, whose role is crucial in ensuring that the board is properly led, is responsible primarily for the working of the board and for ensuring that all relevant issues are on the agenda and that all available information on an issue is before the board. (Commentary on Principle 11)</p>	<p>The agenda for the board meeting should be prepared by the chairman, with due consideration for suggestions from board members and officers. (p. 6)</p> <p>It is important to have a good secretary for the board meetings. All decisions should be registered. It is important that the minutes reflect the spirit and the letter of the proceedings. Board members should read the minutes with attention. (p. 6)</p>	<p>Full board meetings shall be held no less frequently than every six months. "Full" board meetings means meetings at which directors are physically present and not "paper" meetings or meetings by circulation. (The Code, 1)</p> <p>Except in emergencies adequate notice should be given of a board meeting to give all directors an opportunity to attend. (The Code, 3)</p> <p>If a matter to be considered by the board involves a conflict of interest for a substantial shareholder or a director, a full board meeting should be held and the matter should not be dealt with by circulation or by committee. (The Code, 11)</p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>16. Board Meetings and Agenda</b>			
<p>[T]he full board should meet a minimum of six times a year, preferably at an interval of two months, and each meeting should have agenda items that require at least half a day's discussion. Comment on Recommendation 1 (p. 2)</p> <p>In the interest of good governance, certain key information must be placed before the board, and must form part of the agenda papers. Comment on Recommendation 6 (p. 4)</p> <p><i>See also</i> Topic Heading 17, <i>below</i>.</p>	<p><i>Not covered.</i></p>	<p>The board should meet regularly, with due notice of issues to be discussed, and should record its conclusions in discharging its duties and responsibilities. The board should disclose the number of board meetings held per year and the details of attendance of each individual director in respect of meetings held. (Best Practice AA.XIV)</p> <p>The board should have a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the company is firmly in its hands. (Best Practice AA.XV)</p> <p>The chair of the board shall undertake primary responsibility for organizing information necessary for the board to deal with the agenda and for providing this information to directors on a timely basis. If the chair is also the Chief Executive Officer, the board should also have in place a procedure to ensure that its agenda items are placed on the agenda and for providing this information to directors. (Best Practice AA.XVIII)</p>	<p>It is suggested that the Board of Directors meet at least four times per year. It is recommended that one of these meetings be dedicated to the definition of the medium- and long-term strategy of the corporation. (Principle at 8)</p> <p>It is suggested that there be a process for convoking Board meetings when at least 25% of the Directors concur. (Principle at 8)</p> <p>The Board shall meet as frequently as necessary in order to assure an adequate and permanent follow-up of the operations of the corporation. (Recommendation at 8)</p> <p>It is also important that corporations have mechanisms that guarantee complete openness among Board members, in order that Board performance not depend on one person. (Recommendation at 8)</p> <p>The active participation and responsibility of the members of the Board of Directors translates into a more institutional organism. To support the foregoing, it is important to provide Directors with all information in timely fashion in order for them to fulfill their duties. (Recommendation at 9)</p>



Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>16. Board Meetings and Agenda</b>			
<p>In order to meet their incumbent obligations, the board members have to meet regularly, according to the company's incorporation document, or whenever necessary. Every Board of Directors will establish, by its own regulation and according to the law and the incorporation document of the company, the procedure of meeting, of communicating the agenda, of making decisions, of communicating the decisions, as well as the frequency of the meetings, according to the specific conditions of each commercial company. (III.13.A)</p>	<p>To carry out its functions, the board must meet regularly. How regularly or at what intervals must be determined by each board, [based on] its company's own circumstances. A board should, however, meet at least once a quarter. (The Code, 7.1)</p>	<p>The Board shall be operated efficiently and rationally to allow the best course for management to be decided in the interests of the corporation and shareholders. (II.5)</p> <p>Board meetings shall, in principle, be held regularly, at least once every quarter. (II.5.1)</p> <p>To efficiently operate Board meetings, the Board Operating Regulation shall be drafted that specifically states the Board's rights and responsibilities, along with the steering procedures. (II.5.2)</p> <p>Outside directors . . . shall review all related information before attending a Board meeting. Outside directors shall listen to the opinions of shareholders and shall make every effort to acquire information from various sources within and outside the corporation. (II.4.3)</p> <p>Outside directors shall . . . collect and review sufficient information on the agenda up for decision-making and shall make every effort to make the best decision in the interests of the corporation. For this, the outside director shall allot sufficient time towards performing his duties, attending all Board meetings, and reviewing the material provided carefully. If the material proves insufficient, the outside director shall collect the necessary material himself and review it, <i>e.g.</i>, reading the account books or related documents. (Commentary on II.4.3)</p> <p><i>See</i> II.5.3 (The Board shall draft minutes or audio record proceedings of the meeting each time.).</p>	<p>All directors should attend all board meetings, making decisions on any significant activities by a listed company concerning the acquisition and disposition of assets, investment project expansion, policy implementation, and/or risk management, etc. (The Code, 4.1.1)</p> <p>Send a written notice announcing a board meeting that includes the date and the agenda to every director within the period specified in the company's articles of association, except in some emergency cases to preserve the company's benefits. (The Code, 4.1.2)</p> <p>Ensure the company secretary completes the minutes for each board of directors and shareholder meetings within the period specified in the relevant laws. Carefully review all such minutes. (The Code, 4.1.6)</p> <p>Continuously follow and monitor the business performance and operations of the company, according to its laws and regulations. (The Code, 4.2.1)</p> <p>Appoint a company secretary to take care of all the directors' activities and to conduct the company's business in full compliance with all the relevant laws and related regulations. (The Code, 4.2.2)</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>17. Board Materials and Presentations</b>			
<p>Information and data that is important to the Board’s understanding of the business [should] be distributed in writing to the Board before the Board meets. The Management will make every attempt to see that this material is as brief as possible while still providing the desired information. (Guideline 20)</p> <p>As a general rule, presentations on specific subjects should be sent to the Board members in advance so that Board meeting time may be conserved and discussion time focused on questions that the Board has about the material. On those occasions in which the subject matter is too sensitive to put on paper, the presentation will be discussed at the meeting. (Guideline 21)</p>	<p>The strategies, policies, mutually agreed management performance criteria and business plans of the corporation must be clearly defined and measurable in a manner which is precise and tangible, both to the board and management. Each aspect requires a comprehensive assessment against accurate and relevant information, both financial and non-financial as appropriate, and should be obtained from the corporation’s own internal reporting systems as well as external sources so that an informed assessment can be made of all issues facing the board and the corporation in monitoring and evaluating the implementation of these objectives. It is within this context that the corporation’s governance structures should be monitored with constant vigilance to ensure that the business enterprise operates in a manner resulting in enhanced governance. (Commentary on Principle 4)</p> <p>[The board] should adopt efficient and timely methods for informing and briefing board members prior to meetings. The information needs of the board should be well defined and regularly monitored. Each board member has a responsibility to be satisfied that, objectively, they have been furnished with all the material facts before making a decision. (Commentary on Principle 10)</p> <p>The chairman, whose role is crucial in ensuring that the board is properly led, is responsible primarily for the working of the board and for ensuring that all relevant issues are on the agenda and that all available information on an issue is before the board. (Commentary on Principle 11)</p>	<p>The effectiveness of board meetings depends to a great extent on the documentation distributed to board members prior to the meeting. The proposals for decisions should be formulated. The documentation should be in the hands of board members well ahead of the weekend prior to the meeting. Each board member should read the documentation carefully and be well prepared for the meeting. (p. 6)</p>	<p>Except in emergencies, an agenda and accompanying board papers should be sent in full to all directors at least 2 days before the intended date of a board meeting (or such other period as the board agrees). (The Code, 2)</p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>17. Board Materials and Presentations</b>			
<p>Key information that must be reported to, and placed before, the board must contain:</p> <ul style="list-style-type: none"> <li>▪ Annual operating plans . . . .</li> <li>▪ Capital budgets . . . .</li> <li>▪ Quarterly results for the company as a whole and its operating divisions . . . .</li> <li>▪ Internal audit reports . . . .</li> <li>▪ Show cause, demand and prosecution notices received from revenue authorities which are considered to be materially important. . . .</li> <li>▪ Fatal or serious accidents . . . .</li> <li>▪ Default in payment of interest or non-payment of the principal . . . .</li> <li>▪ Defaults . . . .</li> <li>▪ Issues involving possible public or product liability claims . . . .</li> <li>▪ Details of any joint venture or collaboration agreement.</li> <li>▪ Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.</li> <li>▪ Recruitment and remuneration of senior officers just below the board level, including appointment or removal of the Chief Financial Officer and the Company Secretary.</li> <li>▪ Labor problems and proposed solutions.</li> <li>▪ Quarterly details of foreign exchange exposure . . . .</li> </ul> <p>(Recommendation 7)</p>	<p>The Board of Directors is responsible for ensuring that information systems are in place within the Society to allow the Board of Directors to have the information it requires to carry out its functions. (17.33)</p> <p>At each quarterly meeting, the Board of Directors shall consider and review an updated quarterly statement of the financial position of the Society, submitted by the Management Board to the members of the Board of Directors not less than 5 days before the meeting at which the quarterly statement will be considered. (17.34)</p> <p>The Management Board shall prepare an annual report, balance sheet and an income (profit and loss) statement for submission to the Board of Directors and to the Audit Commission and the AGM. (18.12)</p> <p>The Management Board shall prepare quarterly management accounts for submission to the Board of Directors, including details of sales revenue, costs, profitability, investment, interest, movements in working capital, depreciation and cash flow. (18.13)</p>	<p>The board should be supplied in a timely fashion with information in a form and of a quality appropriate to enable it to discharge its duties. (Principle A.III)</p> <p>The board should receive information that is not just historical or bottom line and financial-oriented, but information that goes beyond assessing the quantitative performance of the enterprise and looks at other performance factors such as customer satisfaction, product and service quality, market share, market reaction, environmental performance, and so on, when dealing with any item on the agenda. (Best Practice AA.XVII)</p> <p>The chair of the board shall undertake primary responsibility for organizing information necessary for the board to deal with the agenda and for providing this information to directors on a timely basis. If the chair is also the Chief Executive Officer, the board should also have in place a procedure to ensure that its agenda items are placed on the agenda and for providing this information to directors. (Best Practice AA.XVIII)</p> <p>Directors should have access to all information within a company, whether as a full board or in their individual capacity, in furtherance of their duties. (Best Practice AA.XIX)</p> <p>All directors should have access to the advice and services of the company secretary. (Best Practice AA.XXI)</p>	<p>It is suggested that Directors have access, at least five days prior to a [Board] meeting, to all information relevant to decisions to be made pursuant to the agenda included with the call for the meeting. The foregoing will not be applicable for strategic matters that require confidentiality; nevertheless, in this case a mechanism should be established for directors to adequately evaluate the proposal related to such strategic matters. (Principle at 9)</p> <p>[I]t is important to provide Directors with complete information, in a timely fashion, in order for them to fulfill their duties. (Recommendation at 9)</p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>17. Board Materials and Presentations</b>			
<p>[E]ssential information to be . . . put at the board’s disposal should include:</p> <ul style="list-style-type: none"> <li>▪ working plans and annual budgets [and] long-term, updated action plans;</li> <li>▪ capital funds . . . and incomes;</li> <li>▪ quarterly and half-year performance indicators . . . by the company as a whole and separately by divisions . . . ;</li> <li>▪ audit reports, including possible cases of fraud or relevant violations;</li> <li>▪ notifications . . . regarding . . . legal procedures for fiscal infringements;</li> <li>▪ incidents of, or serious danger of, accidents . . . ;</li> <li>▪ failure to make timely payments . . . ;</li> <li>▪ failure to collect receivables or overdue payments . . . ;</li> <li>▪ . . . complaints regarding reliability of products manufactured . . . or quality of services performed . . . ;</li> <li>▪ any decision . . . which resulted in constraints being imposed on the company’s activity . . . ;</li> <li>▪ proposals regarding the signing of . . . contracts with a third party;</li> <li>▪ marketing policy improvements. . . ;</li> <li>▪ transactions involving substantial payments . . . ;</li> <li>▪ labour conflicts and proposals for solving them;</li> <li>▪ solutions to cover up the financial risk by contractual clauses or stock exchange operations.</li> </ul> <p>(IV.20)</p>	<p><i>Not covered directly, but see Topic Heading 15, above.</i></p>	<p>The corporation shall, at the appropriate time, provide outside directors with information necessary to perform duties to allow accurate assessment of the corporation’s managerial situation. Particularly when a Board meeting is to be convened, information shall be provided beforehand so that the director may sufficiently review the agenda. Also, an outside director may request information necessary for performing duties, which should be swiftly provided. For important confidential information on the corporation, however, it shall be provided only at the request of the majority of outside directors, to which the management, barring any justifiable reason, shall comply. (II.4.2)</p> <p>[T]he corporation shall designate a division within the corporation to oversee [and] facilitate any request for information by outside directors. (Commentary on II.4.2)</p>	<p>Send documents relating to matters to be ratified or approved at the meeting to every director together with a written notice, except in some emergency circumstances. (The Code, 4.1.3)</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>18. Number, Structure and Independence of Committees</b>			
<p>From time to time, the Board may want to form a new committee or disband a current Committee depending upon the circumstances. The current six Committees are Audit, Capital Stock, Director Affairs, Executive Compensation, Investment Funds and Public Policy. Except for the Investment Funds Committee, committee membership will consist only of independent Directors as defined in By-law 2.12. (Guideline 22)</p>	<p>It is good practice for boards to create and maintain relevant board committees and to determine their terms of reference, life span, role and function. In doing so, the board should establish, maintain and develop appropriate reporting procedures and proper written mandates or charters for committees, such as the executive or management committee which usually oversees the day-to-day implementation of board policy and decisions, the remuneration committee which reviews executive and top management remuneration arrangements, the environmental committee where the corporation's operations warrant such a committee, and the audit committee which reviews amongst other things the internal audit function.</p> <p>....</p> <p>The board should implement a formal internal audit function. An audit committee should be established to keep under review the scope and effectiveness of the audit (both internal and external) and its relative cost efficiencies. (Commentary on Principle 10)</p>	<p>Many of the activities of the board of directors need detailed analysis that is not possible to do during the board meetings. Committees should therefore be formed with a few board members each, for example, committees for nominations, audit, remuneration, etc. Each committee studies its area and prepares proposals for decisions. Only the full board of directors can make decisions. (p. 1)</p>	<p><i>Not covered.</i></p>

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<b>18. Number, Structure and Independence of Committees</b>			

<p>Listed companies with either a turnover of over Rs.100 crores or a paid-up capital of Rs.20 crores should set up Audit Committees within two years. (Recommendation 8.1)</p> <p>Audit Committees should consist of at least three members, all drawn from a company's non-executive directors, who should have adequate knowledge of finance, accounts and basic elements of company law. (Recommendation 8.2)</p> <p>By fiscal year 1998-99, listed companies satisfying [the criteria in 8.1] should have in place a strong internal audit department, or an external auditor to do internal audits; without this, any Audit Committee will be toothless. (Recommendation 8.7)</p> <p>Securing . . . non-executive directors does not necessarily require the institutionalizing of nomination committees or search committees. (p. 2)</p> <p>[There is no] necessity of any formalized remuneration committee of the board. (p. 3)</p> <p>Audit Committees ensure long-term goodwill through transparency. (p. 5)</p> <p><i>See Recommendations 8.4, 8.5, 8.6 re: Audit Committee at Topic Heading 20, below.</i></p>	<p>[The Audit Commission] is formed at the General Meeting of Shareholders consisting of shareholders to control financial and economic activity of the Society. (14.4)</p> <p>[T]he Audit Commission shall comprise up to 5 shareholders. The Audit Commission is the control organ of the Society. (19.1)</p> <p><i>See 14.5 (Members of the Management Board and the Audit Commission cannot simultaneously be members of the Board of Directors.).</i></p>	<p>The board of every company should appoint a committee of directors composed exclusively of non-executive directors, a majority of whom are independent, with the responsibility for proposing new nominees for the board and for assessing directors on an ongoing basis. The actual decision as to who shall be nominated should be the responsibility of the full board after considering the recommendations of such a committee. (Best Practice AA.VII)</p> <p>Where the board appoints a committee, it should spell out the authority of the committee, and in particular, whether the committee has the authority to act on behalf of the board or simply has the authority to examine a particular issue and report back to the board with a recommendation. (Best Practice AA.XXIII)</p> <p>Boards should appoint remuneration committees, consisting wholly or mainly of non-executive directors, to recommend to the board the remuneration of the executive directors in all its forms, drawing from outside advice as necessary. Executive directors should play no part in decisions on their own remuneration. Membership of the remuneration committee should appear in the directors' report. (Best Practice AA.XXIV)</p> <p>The board should establish an audit committee of at least three non-executive directors, a majority of whom are independent, with written terms of reference which deal clearly with its authority and duties. The Chairman of the audit committee should be an independent non-executive director. (Best Practice BB.I)</p>	<p>It is recommended that, in order to make more informed decisions, the Board of Directors shall perform evaluation, compensation, audit, finance and planning functions (as further defined in the Code) through one or various intermediate bodies. (Principle at 7)</p> <p>In order to facilitate its tasks, the Board should rely on intermediate bodies whose job it is to evaluate information and propose tasks in specific areas of importance to the Board. (Recommendation at I)</p> <p>It is recommended that the following principles should apply to the intermediate bodies:</p> <ul style="list-style-type: none"> <li>▪ one or more may be created when they have a clear purpose and their members avoid conflicts of interest; . . . .</li> <li>▪ they consist of a minimum of three, and a maximum of seven, members; . . . .</li> <li>▪ the Chairman may invite to meetings those officers of the corporation whose duties are related to the operations of the intermediate body;</li> <li>▪ each Independent Director, in addition to fulfilling his/her basic Board duties, is urged to become involved in at least one intermediate body; and</li> <li>▪ the intermediate body in charge of auditing shall be presided over by an Independent Director.</li> </ul> <p>(Principle at 7-8)</p> <p>It is recommended that there be a mechanism that lends support to the Board in verifying compliance of the audit function, assuring that internal and external audits are performed with the highest objectivity possible and that the financial information is useful, trustworthy and accurate. (Recommendation at 12-13)</p> <p>It is recommended that there be a mechanism to assist the Board in its finance and planning function, especially for the evaluation of the long-term business strategy and the main policies on investment and finance. (Recommendation at 18)</p>
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Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>18. Number, Structure and Independence of Committees</b>			
<p>[A] board should have an odd number of non-executive members, organized as a Managing Committee. . . . However, if the shareholders so decide, the company can have a Board of Directors without having a Managing Committee. (III.4.A)</p> <p>[If the board chairman appoints someone other than himself or herself as CEO, then] the Board of Directors will appoint a Managing Committee from among its members [and] establish the limits of the representative activity and of the decision-making competence between the chairman of the board and the [CEO]. (III.8)</p> <p><i>See III.18.A (The members of the Board of Directors will receive a monthly fee and a meeting fee. The amounts of the monthly fee and the meeting fee are negotiated between the shareholders' representatives and the person appointed as administrator.)</i></p> <p><i>See also V.25.1-2 (guidelines for internal auditing).</i></p>	<p>Director's remuneration . . . should be the subject of recommendations to the board of a remuneration committee. Its membership should comprise persons who are competent to determine the appropriate remuneration of senior executives with the majority of its members (including the chair) being non-executive directors. (The Code, 6.1)</p> <p>The board should establish an Audit Committee with written terms of reference confirmed by the board. It should consist of at least two non-executive directors, of whom one should act as chair. (The Code, 10.3)</p> <p>As a result of the skills shortage in South Africa it is difficult enough to find a non-executive director of calibre to take an appointment to a board. In consequence, to recommend a nomination committee made up of non-executive directors in the majority would be impractical. (Ch. 9: 2)</p> <p>The board of directors might find it useful to establish sub-committees such as an agenda or a chair's committee. (Ch. 11: 1)</p> <p>The authority of such a committee should be in writing from the board setting out the parameters and context within which such powers are conferred. Strictly, this authority should also be incorporated in the corporation's Articles of Association. (Ch. 11: 3.3)</p>	<p>The Board may mandate its authority to an internal committee or to a respective director. Excluded, however, are key matters as stated in the articles of incorporation and the Board Operating Regulation. (II.1.2)</p> <p>The Board may, if necessary, establish internal committees . . . such as Audit, Operation and Remuneration Committees. (II.6.1)</p> <p>It is advisable that a committee be established and managed for the fair nomination of directors. (II.3.1)</p> <p>At least half of the nomination committee members should be outside directors. (Commentary on II.3.1)</p> <p>[A]n internal committee may evaluate the Board, and its results may be tendered to the Board for examination. (II.9.3)</p> <p>Internal auditing bodies, such as audit committees and auditors, shall perform auditing operations faithfully by maintaining independence from management and controlling shareholders. (III.1)</p> <p>The Boards of large public corporations, government-invested institutions and financial institutions shall establish an audit committee as an internal committee. A corporation establishing an audit committee shall not employ auditors. (III.1.1)</p> <p>An audit committee shall be composed of the following: a minimum of 3 Board members; a minimum two-thirds, including the committee chairperson, shall be outside directors; and one member shall be a person possessing professional knowledge of auditing. A corporation without an audit committee shall employ at least one standing auditor. (III.1.2)</p>	<p>Establish an Audit Committee, Nominating Committee, and Remuneration Committee in the listed company. (The Code, 4.2.3)</p> <p>[E]stablishment of an executive committee, to whom the board will delegate some of its duties, is recognized and, unless expressly provided otherwise under the Articles of Association, allowed under the Act [<i>i. e.</i>, the Public Limited Companies Act of 1992]. (Ch. 2: 3.1)</p> <p>[A] general meeting of shareholders must decide on the director, or directors, authorized to bind the company by his or her signatures (the "authorized directors"). (Ch. 2: 4.2)</p> <p>The SET regards it as good practice for the board of directors of a listed company to establish an audit committee and a remuneration committee for internal control purposes. (Ch. 8: 3.1)</p> <p>An audit committee should be composed solely of the independent directors of the company. (Ch. 8: 3.2)</p> <p>The remuneration committee should be composed solely of the independent directors of a company. (Ch. 8: 3.3)</p> <p>Special emphasis has been placed on the need for all listed company boards to establish audit committees to ensure the effective and efficient control and review of a company's administration, internal audit procedures, the preparation of financial statements and the general disclosure of material information to investors and shareholders. (Message from the President of the SET, pp. iv-v)</p>



GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>19. Assignment and Rotation of Committee Members</b>			
<p>The Committee on Director Affairs is responsible, after consultation with the Chairman of the Board and with consideration of the desires of individual Board members, for the assignment of Board members to various Committees.</p> <p>It is the sense of the Board that consideration should be given to rotating Committee members periodically at about a five year interval, but the Board does not feel that such a rotation should be mandated as a policy since there may be reasons at a given point in time to maintain an individual Director's Committee membership for a longer period. (Guideline 23)</p>	<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>19. Assignment and Rotation of Committee Members</b>			
<p>Audit Committees should consist of at least three members, all drawn from a company's non-executive directors, who should have adequate knowledge of finance, accounts and basic elements of company law. (Recommendation 8.2)</p>	<p>The members of the Audit Commission shall be elected by a majority of the votes of shareholders attending the AGM, for the purpose of monitoring the financial performance and business activities of the Society. (§ 19.2)</p>	<p>The nominating committee should . . . recommend to the board directors to fill the seats on board committees. (Best Practice AA.VIII)</p>	<p>Each Independent Director, in addition to fulfilling his/her basic Board duties, is urged to become involved in at least one intermediate body; the intermediate body in charge of auditing shall be presided over by an Independent Director. (Principle at 8)</p> <p>[I]t is important that the Patrimonial Directors and the Independent Directors participate in the activities performed by the intermediate bodies [<i>i.e.</i>, committees]. The Independent Directors were elected for their professional reputation and experience, and the Patrimonial Directors were designated because they have the incentives to become involved and resolve the matters addressed by the intermediate bodies. (Recommendation at 7)</p> <p><i>See</i> Principle at 14 (It is recommended that the Board arrange to rotate the partner in charge of preparing the audit report, in order to assure the objectivity of the reports. It is suggested that this rotation occur at least every six years.).</p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>19. Assignment and Rotation of Committee Members</b>			
<i>See Topic Heading 18, above.</i>	<i>Not covered.</i>	<p>[I]nternal committees, composed of directors with expertise and interest in the area concerned, shall enhance the effectiveness and expertness of the duties performed by the Board through division of labor, thereby creating effective control over management. (Commentary on II.1.2)</p> <p>[Committees] shall be established, and directors having expertise, or those who are interested, shall be assigned to [them]. [Each] committee shall then focus on studying the important issues that occur periodically or that need closer review. Through operating these types of internal committees, the Board shall be able to raise professionalism and efficiency in their performance of duties. (Commentary on II.6.1)</p>	<i>Not covered.</i>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>20. Committee Meeting Frequency, Length and Agenda</b> <sup>15</sup>			
<p>The Committee Chairman, in consultation with committee members, will determine the frequency and length of the meetings of the Committee. (Guideline 24)</p> <p>The Chairman of the Committee, in consultation with the appropriate members of Committee and management, will develop the Committee’s agenda.</p> <p>Each Committee will issue a schedule of agenda subjects to be discussed for the ensuing year at the beginning of each year (to the degree these can be foreseen). This forward agenda will also be shared with the Board. (Guideline 25)</p>	<p>The board should determine a policy for the frequency, purpose, conduct and duration of its meetings and those of its committees. (Commentary on Principle 10)</p>	<p>[The] audit committee (if one exists) negotiates with the independent auditors in order to establish the scope of the audit, time schedule and price. (p. 2)</p> <p>When there is a change in the main occupation, the board member should resign. The nominating committee should analyze the suitability of a re-election. (p. 3)</p>	<p><i>Not covered directly, but the Code notes that certain issues, such as conflicts of interest, should not be dealt with in committees. See the Code, 11.</i></p>

<sup>15</sup> See also ABA Guidebook at 20 & 25 (“Time at . . . committee meetings should be budgeted carefully. A balance should be sought between management presentations and discussion among directors and management. Written reports that can be given concisely and effectively in advance should be furnished. . . . The full board should satisfy itself that its committees are following an appropriate schedule of meetings and have agendas and procedures to enable them to fulfill their delegated functions. Furthermore, the full board should be kept informed of committee activities. This includes periodic reports at board meetings and circulation of committee minutes and reports of meetings to all directors.”).

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>20. Committee Meeting Frequency, Length and Agenda<sup>16</sup></b>			
<p>The executive committee could demonstrate its efficient management of the company, for example, by setting sound and reasonable objectives for the firm’s business affairs. (Ch. 1: Statement of Objectives)</p> <p>To be effective, the Audit Committees should have clearly defined Terms of Reference and its members must be willing to spend more time on the company’s work vis-à-vis other non-executive directors. (Recommendation 8.3)</p> <p>Audit Committees should assist the board in fulfilling its functions relating to corporate accounting and reporting practices, financial and accounting controls, and financial statements and proposals that accompany the public issue of any security – and thus provide effective supervision of the financial reporting process. (Recommendation 8.4)</p> <p>Audit Committees should periodically interact with the statutory auditors and the internal auditors to ascertain the quality and veracity of the company’s accounts as well as the capability of the auditors themselves. (Recommendation 8.5)</p> <p>For Audit Committees to discharge their fiduciary responsibilities with due diligence, it must be incumbent upon management to ensure that members of the committee have full access to financial data of the company, its subsidiary and associated companies, including data on contingent liabilities, debt exposure, current liabilities, loans and investments. (Recommendation 8.6)</p>	<p>Where [an] increase in nominal value is claimed to be justified by an increase in the value of the Society’s property or the volume of its services, then the new value of shares must correspond to the new value of the property or increased volume of the services provided by the Society. It must be estimated by an independent valuer or auditor. The Audit Commission of the Society shall review the value of the property or services and shall certify whether it was equal to the new nominal value of the shares issued. (6.6)</p> <p>The Management Board shall act on behalf of the Society and in particular has the authority, unless otherwise proscribed, to:</p> <ol style="list-style-type: none"> <li>i. represent the Society;</li> <li>ii. conclude transactions on behalf of the Society;</li> <li>iii. determine the allocation and use of all resources/assets owned or controlled by the Society.</li> </ol> <p>(18.9)</p> <p>The organization of effective and authentic bookkeeping and reporting is determined by the Management Board. (21.4)</p> <p>The Chairman of the Management Board of the Society and the chief accountant bear personal responsibility for the running and reliability of bookkeeping and reporting. (21.5)</p> <p>The Audit Commission shall carry out an audit of the performance and activities of the Society at least once a year. (19.4)</p> <p>An audit may cover any aspect of financial and business activities of the Society which the Audit Commission deems appropriate. (19.9)</p> <p><i>For a list of matters for which the Management Board is responsible, see 18.10.</i></p>	<p>The duties of the audit committee should include the following:</p> <ol style="list-style-type: none"> <li>(i) To consider the appointment of the external auditor, the audit fee and any questions of resignation or dismissal;</li> <li>(ii) To discuss with the external auditor, before the audit commences, the nature and scope of the audit, and ensure co-ordination where more than one audit firm is involved;</li> <li>(iii) To review the half-year and annual financial statements of the board, focusing particularly on: <ul style="list-style-type: none"> <li>▪ Any changes in accounting policies and practices;</li> <li>▪ Significant adjustments arising from the audit;</li> <li>▪ The going concern assumption;</li> <li>▪ Compliance with accounting standards and other legal requirements;</li> </ul> </li> <li>(iv) To discuss problems and reservations arising from the interim and final audits, and any matter the auditor may wish to discuss (in the absence of management where necessary);</li> <li>(v) To review the external auditor’s management letter and management’s response;</li> <li>(vi) Where an internal audit function exists, to ensure that it is adequately resourced and has appropriate standing within a company, and to review the internal audit program;</li> <li>(vii) To consider any related party transactions that may arise within the company or group;</li> <li>(viii) To consider the major findings of internal investigations and management’s response;</li> <li>(ix) To consider other topics as defined by the board.</li> </ol> <p>(Best Practice BB. II; <i>see also</i> Best Practices BB.III – V)</p> <p><i>For a description of nominating committee functions, see Best Practices AA.VII, AA.X.</i></p>	<p><i>It is recommended that the mechanism for assisting the Board with evaluation and compensation of executives:</i></p> <ol style="list-style-type: none"> <li>(i) suggest procedures to propose the Director General and high-level officers;</li> <li>(ii) propose evaluation criteria for the Director General and the high-level officers;</li> <li>(iii) analyze and submit for approval any proposal made by the Director General re: management structure and salaries.</li> </ol> <p>(Principle at 11)</p> <p><i>It is suggested that the mechanism for assisting the Board with the audit process:</i></p> <ol style="list-style-type: none"> <li>(i) recommend candidates for external auditors of the corporation;</li> <li>(ii) recommend terms and conditions upon which external auditors are hired;</li> <li>(iii) supervise the compliance of the audit;</li> <li>(iv) channel communications between the Board and the external auditors, as well as assure the independence and objectivity of such auditors;</li> <li>(v) review . . . auditing reports, and inform the Board accordingly;</li> <li>. . . .</li> <li>(viii) help draft general guidelines for the internal control system and its evaluation;</li> <li>(ix) coordinate and evaluate the annual programs of the internal audit;</li> <li>(x) coordinate the performance of the external auditor, internal auditor and Statutory Auditor;</li> <li>(xi) verify compliance by the corporation of all applicable legal provisions.</li> </ol> <p>(Principle at 13)</p> <p><i>For additional audit/finance-related Principles and Recommendations, see pp. 12, 14-18.</i></p> <p><i>Re: duties of the mechanism for assisting the Board in the finance and planning function, see Principles and Recommendations at 18-20.</i></p>

<sup>16</sup> See also ABA Guidebook at 20, 25 (“Time at . . . committee meetings should be budgeted carefully. A balance should be sought between management presentations and discussion among directors and management. Written reports that can be given concisely and effectively in advance should be furnished. . . . The full board should satisfy itself that its committees are following an appropriate schedule of meetings and have agendas and procedures to enable them to fulfill their delegated functions. Furthermore, the full board should be kept informed of committee activities. This includes periodic reports at board meetings and circulation of committee minutes and reports of meetings to all directors.”).

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>20. Committee Meeting Frequency, Length and Agenda</b>			
<p><i>Not covered directly, but see V.25.1.A (The [internal] auditors have to observe strictly the principles of professional ethics of licensed accounting experts, and to take guarantees from the shareholders as regards the independent development of their activity, according to the provisions of the Law.).</i></p> <p><i>See also V.25.2 (The [internal] auditors will have the right to check at any time the way in which the financial control was done, in which case they will have unconditional access to the company's ledgers as well as to the ledgers of the Board of Directors and of the Managing Committee.).</i></p>	<p>The [Audit] committee meetings should be attended by the head of internal audit, the external audit partner and the financial director. (The Code, 10.3)</p> <p>A chair's or executive committee can meet more often than the whole board and the benefit is that senior management and senior directors can discuss and agree on matters rather than management taking major decisions on their own. The board can delegate some of its functions to a chair's committee. Thus decisions can be taken when necessary without waiting for a board meeting. (Ch. 11: 3.2)</p>	<p>A committee's resolution on a matter mandated by the Board shall hold the same effect as the Board's resolution, and the committee shall report such resolutions to the Board. (II.6.2)</p> <p>If a committee centered on outside directors is established within the Board, then that committee may make decisions [regarding executive remuneration]. (II.9.1)</p> <p>Audit committees and auditors shall perform at least the following functions:</p> <ul style="list-style-type: none"> <li>▪ Audit the appropriateness of the manager's execution of operations;</li> <li>▪ Review the soundness and reasonableness of financial activities and the accuracy of the corporation's financial reports;</li> <li>▪ Review the adequacy of major accounting standards . . . ;</li> <li>▪ Evaluate internal control systems;</li> <li>▪ Approve appointment/dismissal of persons heading internal auditing divisions;</li> <li>▪ Evaluate the auditing activities of external auditors;</li> <li>▪ Recommend . . . external auditors;</li> <li>▪ Check measures on those matters corrected as a result of auditing.</li> </ul> <p>(III.1.3)</p> <p>The audit committee shall hold meetings at least once each quarter and, if the need arises, may allow the attendance of management, financial officers, the chairperson of an internal audit division or external auditors. (III.1.5)</p> <p>The audit committee shall draft minutes of proceedings each time a meeting is convened. (III.1.6)</p>	<p>[T]he executive committee shall be appointed by a resolution of the directors' meeting. The scope of the executive committee's power must also be clearly specified. (Ch. 2: 3.2)</p> <p>The audit committee should be the informed, vigilant and effective overseers of the company's financial reporting process and internal controls. In general, the audit committee should be responsible for reviewing a wide range of financial matters including the annual and half-year profit figures, financial statements and accompanying reports. It should also monitor the controls which are in force to ensure the integrity of the financial information reported to the company's shareholders.</p> <p>The audit committee should have explicit authority to investigate any matters within its duties, the resources which it needs to do so, and full access to information. The audit committee should also be able to obtain outside professional advice, if necessary, at the company's expense. (Ch. 8: 3.2)</p> <p>The remuneration committee is responsible for determining the remuneration and other benefits for ordinary directors, members of the executive committee and top executives of the company. (Ch. 8: 3.3)</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>21. Formal Evaluation of the Chief Executive Officer</b>			
<p>The full Board (independent Directors) should make this evaluation [of the CEO] annually, and it should be communicated to . . . the Chief Executive Officer by the Chairman of the Committee on Director Affairs. The evaluation should be based on objective criteria including performance of the business, accomplishment of long-term strategic objectives, development of management, etc. The evaluation will be used by the Executive Compensation Committee in the course of its deliberations when considering the compensation of the . . . Chief Executive Officer. (Guideline 26)</p>	<p>The board should regularly assess its performance and effectiveness as a whole, and that of the individual directors, including the chief executive officer. (Principle 11)</p> <p>The performance of the chief executive officer, whose principal function is to lead the corporation on a day-to-day basis, should be appraised annually. In practice, the Chairman may take a lead role in this process. (Commentary on Principle 11)</p> <p><i>See</i> Principle 4 (The board should monitor and evaluate the implementation of strategies, policies, management performance criteria and business plans.)</p> <p><i>See also</i> Commentary on Principle 4 (The board should define its own levels of materiality, reserving specific powers to itself and delegating other matters with the necessary authority to management. The implementation of these strategies, policies, mutually agreed management performance criteria and business plans must be monitored and evaluated to ensure that they remain relevant and dynamic. The board must ensure that internal control procedures provide reliable and valid information for this monitoring and evaluation process. . . .</p> <p>The strategies, policies, mutually agreed management performance criteria and business plans of the corporation must be clearly defined and measurable in a manner which is precise and tangible, both to the board and management. Each aspect requires a comprehensive assessment against accurate and relevant information.).</p>	<p>The board of directors should annually make a formal performance evaluation of the chief executive officer. (p. 6)</p>	<p><i>Not covered.</i></p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>21. Formal Evaluation of the Chief Executive Officer</b>			
<p><i>Not covered.</i></p>	<p><i>Not covered directly, but see 18.1</i> ([The Management Board, including the CEO] is subject to the General Meeting of Shareholders and to control by the Board of Directors and the Audit Commission.).</p>	<p>The board will assess the Chief Executive Officer’s performance against the objectives established by the board in cooperation with the Chief Executive Officer, and will assess his or her contribution on corporate strategy. (Explanatory Note 4.17 to Best Principle AA.I at 80)</p>	<p>It is recommended that . . . the Board of Directors perform its evaluation, compensation, audit, finance and planning functions (as further defined in the Code) through one or more intermediate bodies. (Principle at 7)</p> <p><i>It is recommended that an intermediate body:</i></p> <ul style="list-style-type: none"> <li>i. suggest procedures to propose the <i>Director General</i> and high-level officers;</li> <li>ii. propose evaluation criteria for the <i>Director General</i> and the high-level officers;</li> <li>iii. analyze and submit for approval any proposal made by the <i>Director General</i> re: management structure and salaries. (Principle at 11)</li> </ul> <p>It is suggested that the Board be supported by [an intermediate group’s] review of the terms and conditions on which the <i>Director General</i> and other high-level officers are hired, as well as the possible payments that will be made if they are separated from the corporation. Such terms and conditions should be within the general guidelines approved by the Board. (Principle at 12)</p> <p>[A] mechanism to assist the Board in the performance of its evaluation and compensation of the <i>Director General</i> and other high-level officers [is recommended]. (Recommendation at 11)</p> <p>The Board should be assisted in its analysis of policies for determining the salaries of the <i>Director General</i> and the high-level officers of the corporation. It is important that such policies take into consideration matters such as: previously established targets, individual performance, and corporate performance. (Recommendation at 12)</p>



Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>21. Formal Evaluation of the Chief Executive Officer</b>			
<p><i>Not covered directly, but see III.12 (A work agreement is concluded between the company, the chairman of the Board of Directors and the executive managers . . . establish[ing] the rights and obligations of the sides, according to labour legislation and the job description).</i></p> <p><i>See also III.15.1.A (The Board of directors [determines] the competencies and responsibilities of the executive managers.).</i></p> <p><i>See also III.16.A-B (CEO job description).</i></p>	<p><i>Not covered.</i></p>	<p><i>Not covered directly, but see II.9 (To promote active performance of duties by management, . . . their activities shall undergo fair evaluation.).</i></p> <p><i>See also Commentary on II.2.2 (The most important role of outside directors is to enable the Board to perform its management supervisory functions effectively. Such directors . . . mak[e] effective management supervision and objective management counseling possible.).</i></p>	<p><i>Not covered directly, but see The Code, 4.3.2 ([Directors will e]sure that the managing director of their listed company holds this position in only one company, so that he/she will have sufficient time to run the business as the company’s objectives require for maximizing shareholder wealth.).</i></p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>22. Succession Planning / Management Development</b>			
<p>There should be an annual report by the Chief Executive Officer to the Board on succession planning.</p> <p>There should also be available, on a continuing basis, the Chairman's and the Chief Executive Officer's recommendation as to a successor should he/she be unexpectedly disabled. (Guideline 27)</p> <p>There should be an annual report to the Board by the Chief Executive Officer on the Company's program for management development.</p> <p>This report should be given to the Board at the same time as the succession planning report noted previously. (Guideline 28)</p>	<p>The board should appoint the chief executive officer and at least participate in the appointment of senior management, ensure the motivation and protection of intellectual capital intrinsic to the corporation, ensure that there is adequate training in the corporation for management and employees, and a succession plan for senior management. (Principle 12)</p> <p>With the modern emphasis on human resource utilization, succession planning of senior management is an important board responsibility. (Commentary on Principle 12)</p>	<p>The board of directors should always have an up-to-date succession plan for the chief executive officer and other key personnel. (p. 6)</p>	<p><i>Not covered.</i></p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>22. Succession Planning / Management Development</b>			
<i>Not covered.</i>	<p>Every member of the Management Board must be nominated by either a Major shareholder, two or more Minor shareholders, or any member of the Board of Directors, and shall be elected by a General Meeting of Shareholders. (17.23)</p> <p>The Board of Directors shall appoint, by a majority of its members, to a vacant position on the Management Board until the appointment can be confirmed by the next General Meeting of Shareholders. (17.24)</p> <p>The Chairman of the Board of Directors is responsible for drawing up nominations for membership of the Management Board from any member of the Board of Directors, from two or more shareholders, or from current members of the Management Board. The full list of nominations must be provided in writing to all members of the Board of Directors not less than 10 days before the meeting of the Board of Directors at which it will vote on the appointment to the Management Board. (17.27)</p> <p>Where any member of the Management Board is absent for any reason which is temporary, the rest of the members of the Management Board shall nominate a temporary member of the Management Board who may be one of them or an additional member to fulfill the functions of the absent member, but this shall require the additional approval of the Board of Directors. Where the member of the Management Board is dismissed, then the Board of Directors may nominate a person to fulfill his functions, and this nomination shall be effective until a decision is made by the AGM in the established manner. (18.1)</p>	<p>The board should explicitly assume [responsibility for] succession planning, including appointing, training, fixing the compensation of and, where appropriate, replacing senior management. (Best Practice AA.I)</p> <p>[T]he board functions through delegation to management. The board must ensure management of the highest calibre in appointing, training, assessing and providing for succession. The key to the effective discharge of this job is to provide for the best Chief Executive Officer for the job, as the Chief Executive Officer is the company's business leader. . . . The board must also be satisfied that there are programmes in place to train and develop management and must also provide for the orderly succession of management. (Explanatory Note 4.17 to Best Practice AA.I at 80)</p>	<i>Not covered.</i>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>22. Succession Planning / Management Development</b>			
<i>Not covered.</i>	[The board should] select the chief executive, ensure succession and give guidance on the appointment of senior executives. (Ch. 4: 1.6)  [The board should] provide for succession of senior management. (Ch. 4: 1.9)	<i>Not covered.</i>	<i>Not covered.</i>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>A. Board Job Description</b>			
<p><i>Not covered directly, but see Topic Heading 1, above.</i></p>	<p>The board should appoint the chief executive officer and at least participate in the appointment of senior management. (Principle 12)</p> <p>The board should ensure that technology and systems used in the corporation are adequate to properly run the business and for it to remain a meaningful competitor. (Principle 13)</p> <p>The board must identify key risk areas and key performance indicators of the business enterprise and monitor these factors. (Principle 14)</p> <p>The board must ensure annually that the corporation will continue as a going concern for its next fiscal year. (Principle 15)</p> <p>The concept of a unitary board . . . is the favoured board structure. . . .</p> <p>The board should strive to focus on “performance” in directing the commercial and economic fortunes of the corporation, and not only concentrate on issues of “conformance.” . . .</p> <p>Each director should be diligent in discharging his or her duties to the corporation, endeavour to regularly attend meetings and must acquire a broad knowledge of the business of the corporation so that they can provide meaningful direction to it. Equally, every director should be aware and conversant with the statutory and regulatory requirements affecting the direction of the corporation. (Commentary on Principle 1)</p> <p>The board should monitor management and staff morale generally. (Commentary on Principle 12)</p>	<p>Article 142 of the Company Law determines the authority of the board of directors. Special emphasis should be given to strategy formulation, election and dismissal of officers, supervision and control of management, and selection and dismissal of independent auditors. (p. 1)</p> <p>The activities of the board of directors should be specified in writing, clarifying its authority and responsibilities, in order to avoid conflicts with the chief executive officer. (p. 1)</p> <p>The board of directors, having access to any company information, should avoid getting involved in the operating matters of the company. (p. 1)</p> <p>It is the function of the board to evaluate officers and management. (p. 2)</p> <p>The board of directors supervises and controls the officers of the company. It is a typical situation of conflict of interest if you supervise and control yourself. Consequently, one should avoid situations when the same person is both officer and board member. (p. 4)</p> <p>The board of directors should annually make a formal performance evaluation of the chief executive officer. (p. 6)</p> <p>The board of directors should always have an up-to-date succession plan for the chief executive officer. (p. 6)</p>	<p><i>See Topic Heading 1, above.</i></p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>A. Board Job Description</b>			
<p>For non-executive directors to play a material role in corporate decision-making and maximizing long-term shareholder value, they need to:</p> <ul style="list-style-type: none"> <li>▪ become active participants in boards, not passive advisors;</li> <li>▪ have clearly defined responsibilities within the board, such as the audit Committee; and</li> <li>▪ know how to read a balance sheet, profit and loss account, cash flow statements and financial ratios, and have some knowledge of various company laws. This, of course, excludes those who are invited to join boards as experts in other fields such as science and technology.</li> </ul> <p>(Recommendation 4)</p> <p>See Recommendation 1 (There is no need to adopt the German system of two-tier boards to ensure desirable corporate governance. A unitary board, if it performs well, can maximize long-term shareholder value just as well as a two- or multi-tiered board.).</p> <p>See also Topic Heading 1, above.</p>	<p><u>Board of Directors</u></p> <p>The Board of Directors is responsible for monitoring the employment policy of the Society and the internal control mechanisms established by the Management Board, in particular, the financial control mechanisms operated by the Management Board. (17.37)</p> <p>The Board of Directors may, through its Chairman, offer such advice as it thinks appropriate to the Management Board, and to the General Meeting of Shareholders and to the Audit Commission. (17.40)</p> <p><i>For a list of matters/situations requiring the approval of the Board of Directors, see 17.38.</i></p> <p><i>For a list of issues on which the Board of Directors must offer advice at a General Meeting of Shareholders, see 17.41.</i></p> <p><u>Management Board</u></p> <p>See Topic Heading 1, above.</p>	<p>The board should explicitly assume the following six specific responsibilities . . . :</p> <ul style="list-style-type: none"> <li>▪ Reviewing and adopting a strategic plan for the company;</li> <li>▪ Overseeing the conduct of the company’s business to evaluate whether the business is being properly managed;</li> <li>▪ Identifying principal risks and ensuring the implementation of appropriate systems to manage these risks;</li> <li>▪ Succession planning, including appointing, training, fixing the compensation of and, where appropriate, replacing senior management;</li> <li>▪ Developing and implementing an investor relations programme or shareholder communications policy for the company; and</li> <li>▪ Reviewing the adequacy and the integrity of the company’s internal control systems and management information systems, including systems for compliance with applicable laws, regulations, rules, directives and guidelines.</li> </ul> <p>(Best Practice AA.I)</p> <p>The board should meet regularly, with due notice of issues to be discussed, and should record its conclusions in discharging its duties and responsibilities. (Best Practice AA.XIV)</p> <p>The board, together with the Chief Executive Officer, should develop position descriptions for the board and for the Chief Executive Officer, involving definition of the limits to management’s responsibilities. In addition, the board should approve, or develop with the Chief Executive Officer, the corporate objectives, which the Chief Executive Officer is responsible for meeting. (Best Practice AA.XVI)</p>	<p>[I]t is considered important that the corporation have a general framework of rules governing board performance. It is recommended that Directors observe the following six Principles:</p> <ul style="list-style-type: none"> <li>▪ disclose to the Chairman and Secretary of the Board of Directors any situation that may result in a conflict of interest, and participate in any corresponding deliberations;</li> <li>▪ use the corporation’s assets or services only in compliance with its corporate purpose, and clearly define policies that, by exception, allow use of such assets for personal matters;</li> <li>▪ devote the time and attention necessary for the performance of duties, attending at least 70% of Board meetings;</li> <li>▪ maintain absolute confidentiality with regard to all information which may affect the operations of the corporation, as well as with regard to any deliberations that take place in Board meetings;</li> <li>▪ keep his/her respective alternate Director informed of matters discussed in Board meetings, to the extent necessary; and</li> <li>▪ support the Board of Directors with opinions, recommendations and suggestions based on analysis of the operations of the corporation, so that any decisions adopted by the Board will be based on professional and qualified personnel with broad and independent views on the operations of the corporation.</li> </ul> <p>(Principles at 10-11)</p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>A. Board Job Description</b>			
<p>The representation function refers to the right and obligation of a member of the Board of Directors to represent the company in its relations to third parties. . . . The non-executive members, even if they can make decisions in the Board of Directors, cannot represent the company in its relations with third parties. (III.4.B)</p> <p><i>In order to fulfill its mission of overseeing management and exercising its decision-making authority, the Board of Directors is occupied with:</i></p> <ol style="list-style-type: none"> <li>i. coordinating company activity based on development policy approved by the general assembly of shareholders;</li> <li>ii. establishing the flow chart of the company, the assignments of the departments or divisions of the company, and the relations between them;</li> <li>iii. establishing the assignments of the subsidiaries . . . and of other secondary units;</li> <li>iv. establishing the salary policy;</li> <li>v. setting up the competencies and responsibilities of the executive managers, of the branch managers or of other secondary units . . . ;</li> <li>vi. setting up the control system of the company, besides the one established by the auditor's commission;</li> <li>vii. elaborating and submitting to the approval of the general meeting of shareholders the annual activity report of the company.</li> </ol> <p>(III.15.1.A)</p> <p><i>For a list of additional board responsibilities, see III.15.1B, 15.2, 15.3, 16, 17 &amp; 18.</i></p>	<p><i>The main functions of a board are:</i></p> <ul style="list-style-type: none"> <li>▪ to direct the company both as to strategy and structure;</li> <li>▪ to establish from time to time a strategy for the company, including a determination of the businesses that the company should be in and those that it should not be in;</li> <li>▪ to ensure that the executive management implements the company's strategy as established from time to time;</li> <li>▪ to ensure that the company has adequate systems of internal controls both operational and financial;</li> <li>▪ to monitor the activities of the executive management;</li> <li>▪ to select the chief executive, ensure succession and give guidance on the appointment of senior executives;</li> <li>▪ to provide information on the activities of the company to those entitled to it;</li> <li>▪ to ensure that the company operates ethically;</li> <li>▪ to provide for succession of senior management;</li> <li>▪ to address the adequacy of retirement and health care benefits and funding.</li> </ul> <p>(Ch. 4: 1)</p> <p><i>See The Code, 2.1 (The unitary board structure is appropriate in South Africa rather than a management and supervisory board structure. The unitary board structure provides greater interaction among all board members when dealing with matters such as strategy, planning, performance, resources, standards of conduct and communication with stakeholders.).</i></p> <p><i>See also Topic Heading 1, above.</i></p>	<p>The Board, holding comprehensive power over corporate management, shall perform the following functions of decision-making and management supervision:</p> <ul style="list-style-type: none"> <li>▪ Setting business goals and strategies;</li> <li>▪ Approving business plans and budgets;</li> <li>▪ Supervising management and evaluating management performance;</li> <li>▪ Replacing the management and also reviewing the remuneration;</li> <li>▪ Monitoring major capital expenditures and corporate takeover;</li> <li>▪ Mediating the conflicting interests among directors, management and shareholders;</li> <li>▪ Ensuring integrity of the accounting and financial reporting systems;</li> <li>▪ Supervising risk management and financial control;</li> <li>▪ Supervising the compliance of statutes and ethics-related regulations;</li> <li>▪ Monitoring the effectiveness of governance practices;</li> <li>▪ Overseeing the process of information disclosure.</li> </ul> <p>(II.1.1)</p> <p>The most important role of outside directors is to enable the Board to perform its management supervisory functions effectively. Such directors . . . mak[e] effective management supervision and objective management counseling possible. (Commentary on II.2.2)</p> <p>Directors . . . shall not divulge or use, for their own or third parties' benefit, any corporate secret obtained. (II.7.3)</p> <p>Outside directors have the same rights and responsibilities as standing directors. However, considering the limitations on the actual performance of duties due to time constraints and the limitations of acquiring information as a non-standing director, outside directors shall be given responsibilities proportionate to the range of operations they can realistically perform. (Recommendation 6)</p>	<p><i>Directors should:</i></p> <p>Conduct themselves honestly and with integrity. (The Code, 3.1)</p> <p>Clearly understand the mission, objectives, capability and efficiency of the listed company and be prepared to devote their time and re-sources to attending and performing their du-ties at every board meeting. (The Code, 4.1.4)</p> <p>Ensure the company secretary completes the minutes for each board of directors and shareholder meeting within the period specified in the relevant laws. Carefully review such minutes. (The Code, 4.1.6)</p> <p>Continuously follow and monitor the business performance and operations of the company . . . . (The Code, 4.2.1)</p> <p>Appoint a company secretary to take care of all the directors' activities and to conduct the company's business in full compliance with all . . . laws and . . . regulations. (The Code, 4.2.2)</p> <p>In addition to the duty of care, and the duty of loyalty required from all directors (including independent directors), independent directors are expected to, in general, guard against any acts by the board of directors which may prejudice the interests of the company's minority shareholders. (Ch. 2: 10.1)</p> <p>[T]he board of directors may pay interim dividends to shareholders if it believes the company's profits justify such payment. (Ch. 3: 5.2)</p> <p>[D]irectors and executives of a listed company which is an acquirer should familiarize themselves with the SEC's Notification and the SET's Regulations Governing Takeovers and be assured that the contemplated transaction is conducted in strict compliance therewith. (Ch. 7: 5.3)</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>B. Outside Advice<sup>17</sup></b>			
<i>Not covered.</i>	<p>[I]nformation . . . should be obtained from the corporation’s own internal reporting systems as well as external sources so that an informed assessment can be made of all issues facing the board and the corporation. (Commentary on Principle 4)</p> <p>The board should make sure that access between itself and the corporation’s internal and external auditors is open and constructive. It should be satisfied that the scope of the audit is adequate, and that management and the internal auditors have cooperated fully. (Commentary on Principle 10)</p>	<p>The board of directors, or its audit committee (if one exists), negotiates with the independent auditors in order to establish the scope of the audit, time schedule and price. (p. 2)</p> <p>The board should have the possibility of getting independent advice from external professionals (lawyers, auditors, tax specialists, etc.), to be paid by the company, in order to obtain a second opinion. The board should prepare a written instruction for independent advice. (p. 3)</p>	<p>Arrangements shall be made in appropriate circumstances to enable the independent non-executive directors of the board, at their request, to seek separate professional advice at the expense of the issuer. (The Code, 9)</p>

<sup>17</sup> See also [ABA Guidebook](#) at 7 (“A director should be able to communicate directly with the corporation’s principal external and internal advisers, including its auditors, legal counsel, and, when such relationships exist, its investment banking and executive compensation advisers. Further, there may be occasions when an outside adviser should be specially retained to assist the board or a committee in connection with a particular matter.”).



Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>B. Outside Advice<sup>18</sup></b>			
<p><i>Not covered.</i></p>	<p>[If] capital contributions are made by contribution of property or of services, then the value of the property or services must be valued by an independent valuer, auditor or Audit Commission of the Society. (5.6)</p> <p>The Society must have a contractual relation with the following bodies:</p> <ul style="list-style-type: none"> <li>▪ a bank with which it shall open/maintain its main account;</li> <li>▪ a bank or other person/entity which is responsible for paying dividends;</li> <li>▪ an independent external auditor which shall conduct auditing of the Society;</li> <li>▪ a Registrar of shares which is responsible for maintaining the register of shareholders.</li> </ul> <p>(15.1)</p> <p>The Registrar, Audit Commission and independent auditor shall be given 20 days notice of the AGM and shall be entitled to attend. (16.9)</p> <p>The Management Board, in carrying out its duties, may involve the services of independent professional auditors to confirm the correctness of financial statements. (18.14)</p> <p>The Audit Commission may use the services of independent auditors, valuation or other experts in carrying out its duties, but the Audit Commission remains responsible to ensure the accuracy of the report in any case. (19.10)</p> <p>The Society must appoint an independent external auditor. (22.1)</p>	<p>There should be an agreed procedure for directors, whether as a full board or in their individual capacity, in furtherance of their duties to take independent professional advice at the company's expense, if necessary. (Best Practice AA.XX)</p> <p>Boards should appoint remuneration committees, consisting wholly or mainly of non-executive directors, to recommend to the board the remuneration of the executive directors in all its forms, drawing from outside advice as necessary. (Best Practice AA.XXIV)</p> <p>The duties of the audit committee should include . . . consider[ation of] the appointment of the external auditor, the audit fee and any questions of resignation or dismissal. (Best Practice BB.II)</p> <p>The Finance director, the Head of Internal Audit (if any), and a representative of the external auditors shall normally attend [audit committee] meetings. (Best Practice BB.III)</p> <p>The external auditors should independently report to shareholders in accordance with statutory and professional requirements, and independently assure the board on the discharge of its responsibilities . . . in accordance with professional guidance. (Principles and Best Practices for Other Corporate Participants IV)</p>	<p>For the external audit of financial statements and any other external review, it is suggested that no recommendation be given to the Board to hire consultant firms whose fees for services rendered to the corporation represent more than 20% of total income of such consultants. (Principle at 14)</p> <p>It is recommended that the Board arrange to rotate the partner in charge of preparing the audit report, in order to assure the objectivity of the reports. It is suggested that this rotation occur at least every six years. (Principle at 14)</p> <p>It is recommended that the person who signs the audit report of the corporation's annual financial statements not be the corporation's Statutory Auditor. Nevertheless, both persons may be partners of the same firm. (Principle at 15)</p> <p>[T]he technical capacity of the auditors, as well as their independence, should be considered. Careful analysis of circumstances that might affect the auditors' objectivity is required, including amount of income the auditors might derive from the corporation. (Recommendation at 14)</p> <p>If the auditors render other services to the corporation besides the audit, it is important to control the nature and scope of such services in order to assure that the objectivity of the auditors is not affected. (Recommendation at 14)</p>

<sup>18</sup> See also [ABA Guidebook](#) at 7 (“A director should be able to communicate directly with the corporation’s principal external and internal advisers, including its auditors, legal counsel, and, when such relationships exist, its investment banking and executive compensation advisers. Further, there may be occasions when an outside adviser should be specially retained to assist the board or a committee in connection with a particular matter.”).

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>B. Outside Advice</b>			
<p>The goals of corporate governance [include] financial discipline by . . . external audit of the company. (I.2.C.b)</p> <p>Any stock commercial company in the large enterprise category, especially those under state control, will be able to appoint an independent auditor. (V.26.1)</p> <p>The independent auditor will provide assistance to the company in keeping the accounting records, will certify the [internal] auditors' report, and will be able to make an annual report separate from [that of the internal] auditors which should show a most accurate financial performance of the company. The [outside] auditor will also analyze the practices and procedures of internal control and the [internal] auditors and, if he thinks they are not adequate, based on written conclusions, he will make recommendations to the shareholders and to the Board of Directors for their remedy. (V.26.2)</p> <p>Other commercial companies, in view of certifying the legal validity of the accounting balance sheet and of the profit and loss account, or of the [internal] auditors' activity, can also use the provisions of paragraphs 26.1 and 26.2. (V.26.3)</p>	<p>All directors should have access to the advice and services of the company secretary and be entitled to seek independent professional advice about the affairs of the company . . . at the company's expense. (The Code, 8.1)</p> <p>Before seeking such professional advice, however, the director concerned should discuss and clear the matter with the chair or company secretary. If to approach either of them is inappropriate in the circumstances of the matter, the director must act [in] the best interests of the company. . . . (The Code, 8.2)</p> <p>The [Audit] committee meetings should be attended by the head of internal audit, the external audit partner and the financial director. (The Code, 10.3)</p> <p>If a director is in doubt about any aspect of their duties they should obtain independent professional advice. (Ch. 5: 2.15)</p>	<p>External auditors shall perform fair audits independently from the corporation concerned, its management and controlling shareholders, so that shareholders and other users may maintain confidence in the corporation's accounting information. (III.2)</p> <p>External auditors shall maintain independence in reality and in appearance from the corporation subject to audit, its management, and controlling shareholders. (III.2.1)</p> <p>External auditors shall attend the general shareholder meeting and answer any shareholders' question on audit reports. (III.2.2)</p> <p>External auditors are liable for damages incurred from negligent accounting audit to the corporation concerned and to other information users. (III.2.3)</p> <p>External auditors shall make every effort to check the existence of any wrongdoing or law violation by the corporation during audits. (III.2.4)</p> <p>[O]utside director[s] may receive support from . . . outside professionals through due process when necessary, for which the corporation shall cover any reasonable expense. (II.4.4)</p> <p>Members of the audit committee and auditors shall be allowed full access to information necessary for audits and, if the need arises, may receive the advice of external experts. (III.1.7)</p> <p>See Recommendation 2 ([F]inancial institutions and credit rating agencies shall include . . . governance structure . . . when rating the credit of corporations.)</p> <p>See generally III.2, External Auditors, Commentary at 26-27.</p>	<p><i>Directors should:</i></p> <p>Request the opinion of an independent expert on any issues concerning company expenditures, if necessary. (The Code, 6.2)</p> <p>Understand the company's main businesses and not intervene in the objectives and work of any external auditors. (The Code, 7.2)</p> <p>If any external auditor resigns or is dismissed, fully explain the reasons why to the SET. (The Code, 7.3)</p> <p>[B]alance sheets and the profit and loss statements must be audited by the company's auditor and, thereafter, submitted to the shareholders at the annual general meeting of shareholders for their consideration and approval. (Ch. 2: 16.1)</p> <p>A listed company should have an auditor approved by the SET and the Office of the SEC. (Ch. 9: 2.1(iv))</p> <p>See Ch. 2: 10.1 ([Independent directors should] provide other opinions to the shareholders of the company if they disagree with the opinions of the independent financial advisors.).</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>C. Content and Character of Disclosure</b>			
<i>Not covered.</i>	<p><i>Not covered directly, but see</i> Commentary on Principle 6 (Shareholders and potential investors require access to regular, reliable and comparable information in sufficient detail for shareholders and potential investors to assess the stewardship of management to enable them to make informed investment decisions. . . . [I]n many circumstances, the requirements for communication with shareholders will be prescribed by statute and/or regulation. Regardless of the effectiveness or otherwise of such regulations, directors nevertheless have a responsibility to ensure that a corporation's communication is in the spirit outlined.).</p>	<p>The shareholder has the right to get timely and transparent information about the company in which they have invested. (p. 5)</p> <p>The efficiency of the capital market depends on transparent information on listed companies. (p. 5)</p>	<p>All directors, executive and non-executive, are entitled to have access to board papers and materials. Where queries are raised by non-executive directors, steps must be taken to respond as promptly and fully as possible. (The Code, 4)</p> <p>Full minutes shall be kept by a duly appointed secretary of the meeting and such minutes shall be open for inspection at any time in office hours on reasonable notice by any director. (The Code, 5)</p> <p>If, in respect of any matter discussed at a board meeting, the independent non-executive directors hold views contrary to those of the executive directors, the minutes should clearly reflect this. (The Code, 8)</p> <p>If an independent non-executive director resigns or is removed from office, the Exchange should be notified of the reasons why. (The Code, 12)</p> <p>Fair disclosure requires disclosure of information in such a way that it does not place any person in a privileged dealing position or result in share prices which do not reflect the latest available information. (Guideline B.2.1)</p>

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<b>C. Content and Character of Disclosure</b>			
<p>Under “Additional Shareholder’s Information,” listed public companies should give data on:</p> <ul style="list-style-type: none"> <li>▪ High and low monthly averages of share prices in a major Stock Exchange where the company is listed for the reporting year.</li> <li>▪ Greater detail on business segments, up to 10% of turnover, giving share in sales revenue, review of operations, analysis of markets and future prospects.</li> </ul> <p>(Recommendation 9)</p> <p>For all Companies with paid-up capital of Rs. 20 crores or more, the quality and quantity of disclosure that accompanies a GDR Issue should be the norm for any domestic issue. (Recommendation 12)</p> <p>A listed company must give certain key information on its divisions or business segments as a part of the Directors’ Report in the Annual Report. This should encompass (i) the share in total turnover, (ii) review of operations during the year in question, (iii) market conditions, and (iv) future prospects. For the present, the cut-off may be 10% of total turnover. (p. 6)</p> <p>The disclosure on debt exposure of the company should be strengthened. (p. 6)</p> <p>[The] greater the quality of disclosure, the more loyal are a company’s shareholders. (p. 7)</p>	<p>If, at the end of the second year and each following financial year, the value of the Society’s net assets is less than the amount of its charter capital, then in compliance with legislation of the Kyrgyz Republic the Society must inform all its creditors of this fact and at the Annual General Meeting of Shareholders at which these financial results are announced. The Society shall announce a reduction of its charter capital and shall register this fact in the prescribed form. (7.1)</p> <p>A reduction in capital is possible only after all creditors are informed by letter . . . Such creditors shall . . . have rights to demand early performance or termination of the obligations of the Society or compensation for losses and, if these requirements are not fulfilled, a general meeting of creditors of the Society must be called in order to decide upon its liquidation. (7.3)</p> <p>The Society has the right to purchase its own shares on the securities markets, provided that it makes a public announcement of this fact immediately after the purchase (and, if it purchases shares which are traded on the stock exchange, the rules of the exchange allow such purchases). (7.4)</p>	<p>The board should present a balanced and understandable assessment of the company’s position and prospects. (Principle D.I)</p> <p>[Principle D.I] is not limited to the statutory obligation to produce financial statements. The wording refers mainly to the annual report to shareholders, but the principle also covers interim and other price-sensitive public reports and reports to regulators. (Explanatory Note 4.13 on Principle D.I at 77)</p> <p>The board should disclose, in an informative way, details of the activities of audit committees, the number of audit meetings held each year, and details of attendance of each individual director in respect of meetings. (Best Practice BB.VI)</p>	<p>It is suggested that the annual report presented by the Board of Directors distinguish between Independent Directors and Patrimonial Directors, indicating for the latter the category to which they belong. (Principle at 6)</p> <p>It is suggested that the annual report presented by the Board of Directors should include a brief résumé of each member of the Board as of the date of such report. (Principle at 6)</p> <p>It is suggested that the Board of Directors include in its annual report to the Stockholders Meeting the relevant aspects of the tasks of each intermediate organism. It is suggested that all reports by each organism submitted to the Board be available to the stockholders together with all the materials for the Stockholders Meeting, with the exception of such information of a confidential nature as may affect the competitiveness of the corporation. In addition, it is recommended that the annual report include the names of the members of each intermediate organism. (Principle at 22)</p> <p>It is suggested that each corporation have policies, mechanisms and responsible parties to inform investors, in order to maintain communication channels with stockholders and potential investors. (Principle at 22)</p> <p>Lack of participation by all stockholders in the Stockholders Meeting, and the limitations of such meetings as a communication forum of the corporation with its investors, justify additional efforts to create other communication instruments which may allow investors and the general public to obtain required information in connection with the corporation. (Recommendation at 22)</p>

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<b>C. Content and Character of Disclosure</b>			
<p>The goals of corporate governance [include providing] consistent information to the public about the financial condition of the company and the goals it intends to achieve. (I.2.C.d)</p> <p>Any time there is a case which might be regarded as a conflict of interest . . . , the person in such a position will notify the other members of the Board of Directors and the shareholders' representatives. (III.C.7)</p> <p>Upon the written request of shareholders, the administrators are bound to make intermediate financial reports, or to supply additional information, on topics of interest to the shareholders. The administrators are also bound to disclose information to shareholders, without the latter's specific request, whenever one or several shareholders request an increase of share capital by contribution-in-kind with goods representing "secondhand" equipment or installation. (IV.19.2.B)</p> <p><i>For lists of kinds of reports and other information which can be disclosed to shareholders and/or stakeholders, in addition to those described above, see IV.19.3-4; IV.20-23.</i></p>	<p>It is the board's duty to present a balanced and understandable assessment of the company's position in reporting to stakeholders. The quality of the information must be based on the guidelines of openness and substance over form. Reporting should address material matters of significant interest and concern to all stakeholders. (The Code 9.1)</p> <p>The directors should report on the following matters in their annual report:</p> <ul style="list-style-type: none"> <li>▪ The directors' responsibility to prepare financial statements that fairly present the state of affairs of the company as at the end of the financial year and the profit or loss for that period.</li> <li>▪ The auditor is responsible for reporting on the financial statements.</li> <li>▪ The maintenance of adequate accounting records and an effective system of internal controls.</li> <li>▪ The consistent use of appropriate accounting policies supported by reasonable and prudent judgments and estimates.</li> <li>▪ Adherence with applicable accounting standards or, if there has been any departure in the interests of fair presentation, it must not only be disclosed and explained but quantified.</li> <li>▪ There is no reason to believe the business will not be a going concern in the year ahead or, an explanation of any reasons otherwise.</li> </ul> <p>(The Code, 9.5)</p>	<p>Shareholders shall be provided with all necessary information . . . from the corporation in a timely manner, and the corporation shall not show partiality to certain shareholders by providing undisclosed information. (I.2.2)</p> <p>The corporation shall disclose material information in a timely and accurate manner. (V.2)</p> <p>Corporations shall disclose any information, not limited only to what is required by law, that may materially influence the decision-making of shareholders and other stakeholders. (V.2.1)</p> <p><i>For a list of information to be disclosed in the annual report, see V.2.2.</i></p> <p>Corporations shall prepare and disclose semi-annual reports, apart from annual reports. If one corporation is in fact under the control of . . . another corporation, consolidated financial statements and combined financial statements, as determined by law, shall additionally be disclosed. (V.2.4)</p> <p>Corporations shall make timely and accurate disclosure when matters of importance have been decided. . . . If the decision has been made through a resolution of the Board, details on the attending directors and voting results shall also be disclosed. (V.2.5)</p> <p>Corporations shall prepare items for disclosure that may be easily understood, and shall assist so that access to them is possible at minimal cost. (V.2.6)</p> <p><i>See V.2. Disclosure, Commentary at 33-36.</i></p> <p><i>See also I.2.3 (Shareholders shall be protected from . . . insider trading and self-dealing.).</i></p>	<p><i>Directors should:</i></p> <p>Ensure management's accountability to shareholders, preserve their rights and interests, [and] clearly and fully disclose information. (The Code, 2.3)</p> <p>Clearly report all details, providing reasonable explanations and calculations to support the results of the company's business operations, policies, future trends and opportunities as well as risks and dangers. (The Code, 7.1)</p> <p>Understand the company's main businesses and not intervene in the objectives and work of any external auditors. (The Code, 7.2)</p> <p>If any external auditor resigns or is dismissed, [the board must] fully explain the reasons why to the SET. (The Code, 7.3)</p> <p><i>See Ch. 4, General Disclosure Requirements, including the following:</i></p> <p>Listed companies are required to disclose all necessary information to allow the general public to make informed investment decisions. Such disclosures also enable the SET to indirectly supervise the business activities of listed companies. The disclosed information must be correct, sufficiently detailed and promptly released to ensure active, fair and orderly trading on the SET. All investors must be provided with equal access to such information. (Ch. 4: 2.1)</p> <p><i>See also Ch. 5, Connected Transactions; SET Regulation Governing Rules, Conditions, and Procedures for the Disclosure of Information and Other Actions of Listed Companies ("Disclosure Regulation") dated 12 March 1993, amended 15 Sept. 1995; SET Notification Governing Guidelines for Practices in the Disclosure of Information ("Disclosure Guidelines") dated 30 April 1993.</i></p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>D. Disclosure Regarding Compensation and Director Assessment</b>			
<i>Not covered.</i>	<i>Not covered.</i>	Many foreign codes of best practice recommend that the number of shares and the remuneration of each board member and officer be made public in the annual report. (p. 5)	The directors' fees and any other reimbursement or emolument payable to an independent non-executive director shall be disclosed in full in the annual report and accounts of the issuer. (The Code, 6)

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>D. Disclosure Regarding Compensation and Director Assessment</b>			
<p>Financial disclosures recommended [include] details of each director’s remuneration and commission [which] should form a part of the Directors’ Report. (p. 6)</p>	<p><u><i>Board of Directors</i></u> The Annual Accounts of the Society shall record the total cost of remuneration and expenses of the Board of Directors. (17.22)</p> <p><u><i>Management Board</i></u> Full details of the form and level of the total remuneration of the Management Board members shall be presented to the AGM of Shareholders. (17.30)</p>	<p>Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. (Principle B.II)</p> <p>The company’s annual report should contain details of the remuneration of each director. (Principle B.III)</p> <p>We endorse the view that it is the board’s responsibility to appoint new directors and the shareholders’ responsibility to re-elect them. Re-election at regular intervals not only promotes effective boards but affords shareholders the opportunity to review the directors’ performance in turn and where necessary to replace them. (Explanatory Note 4.5 on Principle A.V at 76)</p> <p>See Explanatory Notes 4.6 - 4.10 on Principles B.I, B.II and B.III at 76-77 (<i>directors’ remuneration</i>).</p>	<p>It is suggested that the annual report presented by the Board of Directors contain disclosure on the policies used, and the terms and conditions that form, the salary packages of the Directors, the <i>Director General</i>, and the high-level officers of the corporation. (Principle at 12)</p> <p>It is recommended that the existence of the mechanism [for executive compensation] be disclosed, and its operations be transparent, in order to increase investor confidence in the management of the corporation. (Recommendation at 11)</p> <p>[R]emuneration policies established by the Board of Directors should be disclosed to the market. (Recommendation at 12)</p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>D. Disclosure Regarding Compensation and Director Assessment</b>			
<p>The annual income of the members of the Board of Directors will be made public by detailed reports, offering separate figures for each of the payment categories – fees, quotas, profit shares, bonuses. (III.18.B)</p>	<p>There should be a separate full and clear disclosure of the total of executive and non-executive directors’ earnings. Separate figures should be given for salary, fees, benefits, share options and bonuses. (The Code 6.2)</p> <p>The shareholders are entitled to openness and disclosure in regard to directors’ earnings so that they can see that the directors are being fully rewarded. They need consistent reports so that they can compare the year [to] year remuneration and a breakdown of the earnings. (Ch. 8: 8)</p>	<p>Activities and evaluation results of outside directors shall be disclosed. (II.9.2)</p> <p>Activities of the Board shall be evaluated fairly, the results of which shall be disclosed. (II.9.3)</p> <p>[The] activities and the evaluation results of the Board shall, through disclosure, assist in the decision-making by shareholders and shall be reflected in the business manager human resources market. Such disclosures presented in the annual report are also advisable. (Commentary on II.9.3)</p>	<p>The remuneration of directors as approved by a shareholder meeting should be fully disclosed in the company’s annual report. (The Code, 4.4)</p> <p><i>See</i> Ch. 6, Securities Dealings by Directors and Executives.</p>



GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>E. Disclosure Regarding Corporate Governance</b>			
<p><i>Not covered in the Guidelines, but the Guidelines are published by the company and widely available.</i></p>	<p><i>Not covered directly, but see Commentary on Principle 14 (Generating economic profit so as to enhance shareholder value in the long-term, by competing effectively, is the primary objective of a corporation and its board. The framework of good corporate governance practices in a corporation must be designed with this objective in mind, while fulfilling broader economic, social and other objectives in the environment and circumstances in which the corporation operates.</i></p> <p><i>These factors – business risk and key performance indicators – should be benchmarked against industry norms and best practice, so that the corporation’s performance can be effectively evaluated.)</i></p>	<p>The system for the evaluation of the board of directors, the individual board members, the chief executive officer and the officers should be explained in the annual report. (p. 5)</p> <p>The annual report should inform about which code of best practice has been used by the company and explain any deviation by the company from said code. (p. 5)</p> <p>It is important that the minutes reflect both the spirit and the letter of the proceedings. (p. 6)</p>	<p>Commencing with the directors’ report and annual accounts and interim reports for periods ending on or after 31st December, 1995, all listed companies must include in their annual and interim reports a statement of compliance with the Code of Best Practice. (Guideline 16.2)</p> <p>The statement to be included in the annual report should clearly indicate whether the company has complied with the Code of Best Practice during the accounting period covered and, if the company has not complied with any part of the Code of Best Practice, reasons must be given to explain the failure to comply. (Guideline 16.3)</p> <p>The statement to be included in the interim report must state whether any of the directors is aware of information that would reasonably indicate that the company is not, or was not for any part of the accounting period covered by the interim report, in compliance with the Code of Best Practice. (Guideline 16.4)</p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>E. Disclosure Regarding Corporate Governance</b>			
<p><i>Non-financial disclosures recommended:</i></p> <ul style="list-style-type: none"> <li>▪ Comprehensive report on the relatives of directors . . . .</li> <li>▪ [A] register which discloses interests of directors . . . .</li> <li>▪ [T]he existence of the directors' shareholding register . . . should be explicitly stated in the notice of the [Annual General Meeting] of all listed companies.</li> <li>▪ Details of loans to directors . . . .</li> <li>▪ Appointment of sole selling agents for India will require prior approval . . . of shareholders. The board may approve the appointment of sole selling agents in foreign markets, but the information must be divulged to shareholders . . . .</li> <li>▪ [T]here should be a Secretarial Compliance Certificate forming a part of the Annual Returns . . . which would certify . . . that the secretarial requirements under the Companies Act have been adhered to.</li> </ul> <p>(pp. 5-6)</p> <p>To nurture and strengthen [investors'] loyalty, our companies need to give a clear-cut signal that the words "your company" have real meaning. That requires well functioning boards, greater disclosure, better management practices, and a more open, interactive and dynamic corporate governance environment. (p. 12)</p> <p><i>See also</i> Topic Heading C, <i>above</i>.</p>	<p><i>Not covered directly, but see</i> 20.2 (The officials [Board of Directors, Management Board, and Audit Commission] are obliged to work in the interests of the shareholders. An official should not use, in personal interests, opportunities opening in the sphere of the purposes of activity of the Society, without observance of conditions contained in this article.). (<i>For the list of conditions, see</i> 20.3 – 20.8.)</p>	<p>The board should disclose on an annual basis whether one-third of the board is independent and, in circumstances where the company has a significant shareholder, whether it satisfies the requirement to fairly reflect, through board representation, the investment of the minority shareholders in a company. The board should disclose its analysis of the application of the best practices . . . to the circumstances of the board. (Best Practice AA.VI)</p> <p>The board, through the nominating committee, should annually review its required mix of skills and experience and other qualities, including core competencies which non-executive directors should bring to the board. This should be disclosed in the annual report. (Best Practice AA.IX)</p> <p>The board should disclose the number of board meetings held per year and the details of attendance of each individual director in respect of meetings held. (Best Practice AA.XIV)</p> <p>Directors should be required to disclose the number of audit committee meetings held each year, and the details of the attendance of each individual director, to enable shareholders to evaluate the commitment of a particular director. . . . [T]he obligation to disclose the activities of the audit committee lies with the board as a whole and not the audit committee separately. (Explanatory Note 4.66 on Best Practice BB.VI at 95)</p> <p><i>See</i> Principles and Best Practices for Other Corporate Participants, III (When evaluating companies' governance arrangements, particularly those relating to board structure and composition, institutional investors and their advisers should give due weight to all relevant factors drawn to their attention.).</p>	<p>It is suggested that the annual report presented by the Board of Directors distinguish between Independent Directors and Patrimonial Directors, indicating for the latter the category to which they belong. (Principle at 6)</p> <p>It is recommended that the annual report by the Board of Directors disclose applicable information regarding the professional profile of the Statutory Auditor. (Principle at 15)</p> <p>In order for the market to be in a position to evaluate the membership of the Board of Directors, it is necessary that the corporation disclose information in connection with the background and category to which they belong. (Recommendation at 6)</p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>E. Disclosure Regarding Corporate Governance</b>			
<p>Under the care of the managers, besides the present Code, each commercial company is bound to have its own code of ethics . . . based on the following criteria:</p> <ul style="list-style-type: none"> <li>▪ it is meeting the norms of corporate behavior of the present Code and the behavior guidelines of the employees;</li> <li>▪ it is unanimously accepted and approved by the board;</li> <li>▪ it is detailed so as to include behavior guidelines for all the company's employees.</li> </ul> <p>(III.15.3)</p> <p>The administrators have to present the shareholders, gathered in ordinary or extraordinary meeting, a report which should include the following:</p> <p>. . . .</p> <ul style="list-style-type: none"> <li>▪ a report on the efficiency of the internal regulations of the company;</li> <li>▪ an activity report of the executive managers;</li> <li>▪ a statement related to the inappropriateness of the Corporate Governance Code or any of its provisions.</li> </ul> <p>(IV.19.2.B)</p>	<p>[In the annual report, directors should report whether] The Code of Corporate Practices and Conduct has been adhered to or, if not, in what respects there has not been adherence. (The Code, 9.5.7)</p>	<p>The corporation shall, by disclosing nominated directors prior to the general shareholder meeting, ensure that shareholders [possess] information on the nominees. (II.3.4)</p> <p>[S]hould there be any change in the information stated in the letter [which a nominee for outside director is required to present confirming his or her independence] following inauguration into office, the outside director shall immediately submit a corrected letter, which the corporation shall disclose. (II.4.1)</p> <p>In the annual report, a public corporation shall explain any differences between its corporate governance and this Code, and the reasons for such; any plans for future changes should also be explained. (V.2.3)</p> <p>Corporations holding a significant portion of shares to enable foreigners to participate in corporate governance are advised to make disclosures in both English and Korean for audit reports and material timely disclosure. (V.2.7)</p> <p>The corporation shall designate a person to oversee disclosure matters. (V.2.8)</p> <p>Corporations shall disclose detailed information on the share ownership status of controlling shareholders and on persons of special relation to them. (V.2.9)</p> <p>See II.1.4 (Matters concerning the authority, responsibility and operation of the audit committee or auditors shall be stated in the corporation's by-laws.).</p>	<p><i>Directors should:</i></p> <p>Implement a Code of Corporate Conduct and Code of Ethics to be guidelines for the company. (The Code, 4.2.4)</p> <p>Ensure that an announcement of the precise time of [each independent director's] appointment is disclosed in the listed company's annual report. Their reappointment will not be automatic. (The Code, 5.2)</p> <p>Present a full statement on the responsibilities of the company's directors in the annual report together with the audited financial statements. (The Code, 7.4)</p> <p>The main aim [of the SET Code and Guidelines] is to make the management of all the companies listed on the SET more transparent, efficient and effective, and so increase the confidence of all investors in the securities of every listed company. (Message from the President of the SET, p. v)</p> <p>See Ch. 6, Securities Dealings by Directors and Executives, and Ch. 8, Company Inspections and Internal Controls .</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>F. Accuracy of Disclosure / Liability</b>			
<i>Not covered.</i>	<p>The board should regularly review processes and procedures to ensure the effectiveness of its internal systems of control, so that its decision-making capability and the accuracy of its reporting and financial results are maintained at a high level at all times. (Principle 10)</p> <p>The board should ensure that all communications with shareholders, employees and other relevant stakeholders are timely and accurate. Communication should be understandable and based on the guidelines of openness, with substance prevailing over form. The information provided should be reliable, frank and robust in times of crisis. The communication must enable the reader to evaluate the situation with all the facts in order to take appropriate action. (Commentary on Principle 6)</p>	<p>The board of directors should designate only one person to serve as the spokesman of the company in order to avoid the risk of having contradictions between declarations by the chairman, the chief executive officer and others. The executive who serves as a liaison with the capital market has powers delegated from the spokesman. (p. 5)</p> <p>The information distributed by companies should be balanced. They should cover both good and bad news in order for the reader to be able to evaluate the company correctly. (p. 5)</p> <p>The board of directors and the spokesman of the company have to make sure that the information to the shareholders and the capital market is truthful. The company may suffer punishment for false information. (p. 5)</p>	<p>Directors must be clear that they are individually and collectively responsible for the company's compliance with the Listing Rules. (Guideline A.2)</p> <p>Since every director accepts responsibility for the accuracy of all information contained in [listing] document[s], each director should ensure he is satisfied with the contents of the document. Every director should read the document in its entirety, consider each statement and satisfy himself that it has been the subject of sufficient verification to afford reasonable grounds to believe that the stated information is true, accurate and not misleading, and that no material information has been omitted. (Guideline B.8.3)</p>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>F. Accuracy of Disclosure / Liability</b>			
<p>[Major Indian stock exchanges should] gradually insist upon a compliance certificate, signed by the CEO and the CFO, which clearly states that:</p> <ul style="list-style-type: none"> <li>▪ The management is responsible for the preparation, integrity and fair presentation of the financial statements and other information in the Annual Report, and which also suggest that the company will continue in business in the course of the following year.</li> <li>▪ The accounting policies and principles conform to standard practice, and where they do not, full disclosure has been made of any material departures.</li> </ul> <p>The board has overseen the company’s system of internal accounting and administrative controls systems either directly or through its Audit Committee. (Recommendation 11)</p> <p><i>See Recommendations 8.4, 8.5 &amp; 8.6 (re: Audit Committees).</i></p> <p><i>See also Topic Heading 20, above.</i></p>	<p>The Society shall be legally liable for its obligations within the limits of its registration with the authorities responsible for state registration and is considered established from the moment of such state registration. (2.4)</p> <p>All accounting statements must be compiled in accordance with the authorized standard accounting principles. (17.36)</p> <p>The Management Board shall prepare an annual report, balance sheet and an income (profit and loss) statement for submission to the Board of Directors and to the Audit Commission and the AGM. The documents prepared by the Management Board for submission to the General Meeting must be signed by all its members, and also by all members of the Board of Directors and the Audit Commission. (18.12; <i>see also</i> 17.35)</p> <p>The Management Board, in carrying out its duties, may involve the services of independent professional auditors to confirm the correctness of financial statements. (18.14)</p> <p>The Audit Commission may use the services of independent auditors, valuation or other experts in carrying out its duties, but the Audit Commission remains responsible to ensure the accuracy of the report in any case. (19.10)</p> <p>The Society conducts accounting and operational reporting and also the statistical accounts and provides documentation required by the legislation of the Kyrgyz Republic to the appropriate state bodies in the established manner. (21.1)</p>	<p>The board should maintain a sound system of internal control to safeguard shareholders’ investment and the company’s assets. (Principle D.II)</p> <p>The board should establish formal and transparent arrangements for maintaining an appropriate relationship with the company’s auditors. (Principle D.III)</p> <p>The external auditors should independently report to shareholders in accordance with statutory and professional requirements and independently assure the board on the discharge of its responsibilities . . . in accordance with professional guidance. (Principles &amp; Best Practices for Other Corporate Participants, IV)</p> <p>[Principle D.II] covers not only financial controls but operational and compliance controls, and risk management, since there are potential threats to shareholders’ investment in each of these areas. (Explanatory Note 4.14 to Principle D.II at 78)</p> <p>The duties of the audit committee required by the Listing Requirements should include keeping under review the scope and results of the audit and its cost effectiveness, and the independence and objectivity of the auditors. (Explanatory Note 4.15 to Principle D.III at 78)</p>	<p>It is suggested that the accounting policies for the preparation of the financial information of the corporation be submitted for approval to the Board of Directors. (Principle at 16)</p> <p>Directors are legally responsible for the performance of their duties. Lack of knowledge of their obligations does not release Directors from their duties. (Recommendation at 9)</p> <p>It is recommended that there be a mechanism that lends support to the Board in verifying compliance of the audit function, assuring that internal and external audits are performed with the highest objectivity possible and that the financial information is useful, trustworthy and accurate; that is, that the information presented to the Board, to shareholders and the general public is transparent, sufficient, and adequately reflects the financial position of the corporation. (Recommendation at 12-13)</p> <p>[T]he Statutory Auditor of a corporation is designated by the stockholders and is charged, among other duties, with reviewing the financial statements as well as enforcing the accounting policies. (Recommendation at 14)</p> <p><i>See Topic Heading B, above.</i></p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>F. Accuracy of Disclosure / Liability</b>			
<p>The Board of Directors is bound to present . . . a financial report as complete as possible. The quality of information should be based on promptness and objectivity. (IV.19.1.A)</p> <p>When elaborating any report, administrators have to observe the transparency, objectivity and reliability of the disclosed information. (IV.19.1.C)</p> <p>[A]dministrators have to present the shareholders . . . a report which should include [a] financial statement made according to the accounting standards and practices in force in Romania, certified by auditors, [and a] report regarding the efficiency of internal financial control. (IV.19.1.A)</p> <p>The accounting standards based on which the company is operating and on which the auditors are making their report . . . have to be based on International Accounting Standards. (V.25.1.B)</p> <p><i>See V.24 (minimum standards for administrators/executive managers to maintain financial control of the company).</i></p> <p><i>See generally V.25 (internal auditors' standards) and Topic Heading B, above.</i></p>	<p>A director should not be liable for a breach of the duty of care and skill if they have exercised a business judgment in good faith in a matter in which the undermentioned three criteria are satisfied:</p> <ul style="list-style-type: none"> <li>▪ that the decision is an informed one based on all the facts of the case;</li> <li>▪ that the decision is a rational one; and</li> <li>▪ that there is no self-interest.</li> </ul> <p>[The Committee believes] that such an approach would encourage the competitiveness of South African companies and the standing Advisory Committee on Company Law should consider amending the Companies Act to provide that the duty of care and skill should be so limited by statute. (Ch. 5: 3.4)</p>	<p>When a director has violated the law or the articles of incorporation, or has neglected his duties, he may be liable for damages to the corporation or a third party. But managerial decisions by a director that are based on due process and also faithful and rational decision-making, shall be respected. (II.8)</p> <p>The corporation, to ensure the effectiveness of holding directors accountable and to attract competent persons as directors, may purchase, at its own expense, coverage for the directors with liability insurance. (II.8.3)</p> <p>Audit committees and auditors shall [review] the accuracy of the corporation's financial reports. (III.1.3)</p> <p>External auditors are liable for damages incurred from negligent accounting audit to the corporation concerned and to other information users. (III.2.3)</p> <p><i>See Commentary II.3.3 ([T]he term of office of director – appointed through due process at a general shareholder meeting – shall be respected [unless] the director is found liable for any illegal act.).</i></p>	<p>[Directors should e]xamine all documents relating to all matters that concern the board of directors. If something is suspected, management must be asked to explain as quickly and clearly as possible. (The Code, 4.1.5)</p> <p>[T]he company [will] be held liable to third parties for the actions of its directors and executive committee, if they act within the scope of the authority given to them. (Ch. 2: 4.1)</p> <p>Any action by a director, or any member of the executive committee, which is beyond the scope of his/her authority does not bind the company, unless the company has ratified such action. (Ch. 2: 4.3)</p> <p>In disclosing information in any documents to be filed with the registrar, directors must not present information which is false, or does not accurately reflect the information contained in the accounts, registers, or other company documents. (Ch. 2: 7.2(g))</p> <p>Directors must make sure that the balance sheets, profit and loss statements and minutes of shareholders' and board of directors' meetings do not contain any false information. (Ch. 2: 7.2(h))</p> <p>Directors are jointly liable for any damage to shareholders, or third parties concerned, caused by a breach of the duty of loyalty. (Ch. 2: 8.3)</p> <p><i>Regarding "good practice" for the preparation of financial statements, see Ch. 2: 16.</i></p> <p><i>For discussion of the duty of care incumbent upon directors, see Ch. 2: 5-6, 9, 11-12, 15.</i></p> <p><i>For discussion of the duty of loyalty incumbent upon directors, including the handling of conflicts of interest, see Ch. 2: 7-9; 13-15.</i></p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>G. Shareholder Voting Practices (Cumulative &amp; Confidential Voting, Broker Non-Votes, One Share/One Vote)</b>			
<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>G. Shareholder Voting Practices (Cumulative &amp; Confidential Voting, Broker Non-Votes, One Share/One Vote)</b>			
<p><i>Not covered.</i></p>	<p>All ordinary shares have one vote each. (5.1)</p> <p>The non-property rights of shareholders include . . . to vote by the principle of one share-one vote, except for the cases where cumulative voting is provided by this Charter. (9.3)</p> <p>The shareholders shall decide by majority vote of those attending an AGM whether to adopt majority voting for the election of members of the Board of Directors or cumulative voting. (17.8)</p> <p>If the AGM decides to adopt majority voting, the following rules shall apply:</p> <ul style="list-style-type: none"> <li>i. Each Major shareholder (<i>i.e.</i>, those individually holding more than 10% of the voting shares) shall have the right to appoint one member of the Board of Directors. Any shareholder holding more than 30% of the voting shares of the Society shall have the right to appoint two members, and a majority shareholder shall have the right to appoint three members.</li> <li>ii. Minor shareholders (<i>i.e.</i>, those individually holding less than 10% of the voting shares) shall together vote to elect members to the Board of Directors. If their total percentage holding of the voting shares is between 30% and 50%, they shall elect two members; if between 50% and 70%, they shall elect three members; and if more than 70%, they shall elect four members. If there are no Major shareholders holding more than 50% of shares, the Minor shareholders shall elect five members.</li> </ul> <p>(17.9)</p> <p><i>See 4.1.1 (state as majority owner), 10.1 (issuance of preferential shares) and 16.13 – 16.15 (AGM discussion and voting).</i></p>	<p><i>Not covered directly, but see Principles &amp; Best Practices for Other Corporate Participants, I (Institutional shareholders have a responsibility to make considered use of their votes.).</i></p>	<p>It is suggested that, through a form containing detailed information and possible voting alternatives for the items on the agenda, stockholders be able to instruct their representatives how to vote on each item at the stockholder meeting. (Principle at 21)</p>



Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>G. Shareholder Voting Practices (Cumulative &amp; Confidential Voting, Broker Non-Votes, One Share/One Vote)</b>			
<i>Not covered.</i>	<i>Not covered.</i>	<p>Shareholders shall hold fair voting rights according to the type and number of shares possessed, and all shareholders shall equally be in possession of corporate information. (I.2)</p> <p>Shareholders shall hold the right to one vote per share, and there shall be no infringement on basic shareholder rights. However, voting rights for certain shareholders may be somewhat restricted, as indicated by law. (I.2.1)</p> <p>The opinions of shareholders other than the controlling shareholder shall also be reflected when appointing directors. For this purpose, it is recommended that a cumulative voting system be adopted. (II.3.2)</p> <p>It would . . . be best to adopt the cumulative voting system, not just to ensure the independence of directors or to reflect the shareholders' diverse opinions when appointing directors, but also in consideration of the significant influence that controlling shareholders yield on management. To encourage adoption of this system, disclosure of whether it has been adopted by the corporation shall be made mandatory. (Commentary on II.3.2)</p>	<p>The Act [<i>i. e.</i>, the Public Limited Companies Act of 1992] prescribes that directors shall be elected at a shareholders' meeting in accordance with the rules and procedures as prescribed in the Articles of Association. If the Articles of Association do not provide the rules and procedures for the appointment of directors, the Act states that cumulative voting should be applied. (Ch. 2: 2.7)</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>H. Shareholder Voting Powers</b>			
<i>Not covered</i>	<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>H. Shareholder Voting Powers</b>			
<p><i>Not covered.</i></p>	<p><u><i>The following is a summary of 9.3</i></u>  <i>Shareholders' rights include:</i></p> <ul style="list-style-type: none"> <li>▪ <i>attendance at, and vocal participation in, General Meetings of Shareholders;</i></li> <li>▪ <i>exercise of voting rights of shares held;</i></li> <li>▪ <i>entitlement to dividends per shares held;</i></li> <li>▪ <i>to demand convocation of an Extraordinary General Meeting of Shareholders if one holds not less than 20% of shares;</i></li> <li>▪ <i>to require that any issue relevant to the operations of the Society be put on the agenda of an Annual General Meeting of Shareholders;</i></li> <li>▪ <i>to receive objective information about the activities of the Society, including minutes of General Meetings, and to review accounting reports and other documents at any General Meeting of the Society;</i></li> <li>▪ <i>to demand that an independent audit of the financial and economic activities of the Society be carried out, provided that holders of at least 10% of the voting shares give notice of this demand in writing to the Society's Secretary;</i></li> <li>▪ <i>to contest in court decision taken by the Society where the shareholders claims that any such decision contravenes the founders' agreement or the legislation of the Kyrgyz Republic.</i></li> </ul> <p>Any shareholder, through the Society's Secretary, has the right to inspect the latest accounts of the Society, together with a list of all members of the Board of Directors and MBD. (16.16)</p>	<p><i>Not covered directly, but see Best Practice AA.IV ([A] "significant shareholder" is defined as a shareholder with the ability to exercise a majority of votes for the election of directors.).</i></p>	<p><i>Not covered.</i></p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>H. Shareholder Voting Powers</b>			
<p>In case an executive manager or an employee of the company acting based on a decision of an executive manager – is selling or buying the shares of the company in which he is working, he is bound to notify the secretariat of the Board of Directors regarding this transaction and to make a written report immediately after the conclusion of the transaction, showing the date of the transaction, the price and the number of sold shares. The report should be presented during the board meeting convened immediately after the date of the respective transaction. This communication assures the protection of the new shareholder’s rights. (III.16.C)</p>	<p><i>Not covered directly, but see</i> Ch. 12: 6 (If institutional investors, who are not controlling shareholders and represented on the board, endeavor to play a more proactive role by having regular meetings with management and discussing strategy, performance, etc., two risky situations evolve. Firstly, management runs the danger of being guilty of giving superior information to one shareholder and, secondly, the institution could be guilty of insider trading if it deals in the company’s shares. It is a matter that has to be approached with the agility of a trapeze artist. These factors have to be kept in mind if institutional shareholders try to play a more constructive role as owners.).</p>	<p>Shareholders shall receive all necessary information prior to exercising their rights, and shall be able to exercise their rights through proper procedure. (I.1)</p> <p>Shareholders, as owners of the corporation, possess basic rights including the following:</p> <ul style="list-style-type: none"> <li>▪ A right to participate in profit sharing;</li> <li>▪ A right both to attend and to vote at general shareholder meetings;</li> <li>▪ A right to obtain relevant corporate information in a timely and regular manner.</li> </ul> <p>(I.1.1)</p> <p>Shareholders shall be able to exercise their voting rights, either directly or indirectly, in the simplest manner possible. (I.1.5)</p> <p><i>See</i> I.3.1, I.3.2 (<i>shareholders shall make efforts to exercise their vote in the best interests of the corporation</i>).</p>	<p>A board of directors holds the power to manage the business of the company. Shareholder approval is, however, required for certain crucial decisions. These decisions are set out in the Act [<i>i.e.</i>, the Public Limited Companies Act of 1992] and the Articles of Association. These include, among others, amendments to the company’s Memorandum of Association or Articles of Association, authorizing an increase or decrease in capital, appointment or removal of directors, sale of major assets or transfer of business, the purchasing or acquiring of another listed company’s or private company’s business, entering, amending or ceasing a major leasing agreement, authorizing other people to manage the company’s business, the payment of dividends, the issuance of debentures, a merger with another company, an amalgamation with another company and a company’s dissolution. (Ch. 2: 2.1)</p> <p><i>See</i> Ch. 2: 10:1 ([I]ndependent directors are expected to, in general, guard against any acts by the board of directors which may prejudice the interests of the company’s minority shareholders.).</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>I. Shareholder Meetings</b>			
<i>Not covered.</i>	Ultimately the shareholders, as owners of the capital of the corporation, have the jurisdiction and discretion to appoint or remove directors, but this should always be done through a transparent process at properly constituted meetings. (Commentary on Principle 2)	<i>Not covered.</i>	<i>Not covered.</i>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>I. Shareholder Meetings</b>			
<p><i>Not covered.</i></p>	<p>The General Meeting of Shareholders is the supreme body of governance with the right to make decisions on all issues of the Society. (16.1)</p> <p>The General Meetings of Shareholders consists of shareholders or their representatives. Any shareholder, including non-voting preference shareholders or other shareholders without voting shares, may attend. (16.4)</p> <p>The General Meeting of Shareholders has the right to decide on any other matters not within the exclusive jurisdiction of the General Meeting, and to overrule (cancel) the decisions of any other governing body of the Society . . . by a simple majority of shareholders present at the General Meeting. (16.7)</p> <p>A General Meeting of Shareholders is valid if shareholders or their representatives holding over 60% of the votes given by the total issued fully paid-up voting shares have registered their attendance at the meeting. (16.18)</p> <p>Every member of the Management Board must be nominated by either a Major shareholder, two or more Minor shareholders, or any member of the Board of Directors, and shall be elected by a General Meeting of Shareholders. (17.23; <i>see</i> 18.2)</p> <p><i>See also</i> 6.1, 6.7, 7.2, 8.2, 11.1, 11.2, 12.1, 14.1, 16.12 <i>and</i> Topic Heading H, <i>above</i>.</p> <p><i>For lists of issues and transactions that fall within the exclusive jurisdiction of the General Meeting of Shareholders, see</i> 16.4, 16.6.</p>	<p>Companies should use the AGM to communicate with private investors and encourage their participation. (Principle C.II)</p> <p>Private investors are able to make little contribution to corporate governance. The main way of achieving greater participation is through improved use of the AGM. (Explanatory Note 4.12 on Principle C.II at 77)</p> <p><i>For recommendations for improving the quality of AGMs, see</i> Explanatory Note 4.78 on Best Practice CC.I at 98-99.</p>	<p>It is suggested that the agenda of a Stockholders Meeting should avoid grouping different matters as a single item. (Principle at 21)</p> <p>It is suggested that all information on each item on the agenda of the Stockholders Meeting should be available 15 days prior to the date of the meeting. (Principle at 21)</p> <p>It is suggested that, through a format containing detailed information and possible voting alternatives for the items on the agenda, stockholders be able to instruct their representatives how to vote on each item at the stockholder meeting. (Principle at 21)</p> <p>It is suggested that information provided to shareholders include the proposal of the formation of the Board of Directors and a brief professional profile of the candidates. (Principle at 21)</p> <p>It is suggested that the Board of Directors include in its annual report to the Stockholders Meeting the relevant aspects of the tasks of each intermediate organism. It is suggested that all reports of each organism submitted to the Board be available to the stockholders together with all the material for the Stockholders Meeting, with the exception of information of a confidential nature which could affect the competitiveness of the corporation. In addition, it is recommended that the annual report include the names of the members of each intermediate organism. (Principle at 22)</p> <p>It is important that [prior to the annual meeting] shareholders receive all information in connection with the candidates to be Directors of the corporation, specifically, a brief résumé, in order to be able to evaluate their backgrounds and proceed with a more informed vote. (Recommendation at 21)</p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>I. Shareholder Meetings</b>			
<p>[T]he general assembly of shareholders can decide that the chairman . . . should have the right at any time to appoint another person as [CEO]. (III.8)</p> <p>The general assembly of shareholders/ associates can appoint to the Board of Directors an independent person – non-executive members of the company, recommended by one of the creditors or investors of the company, or by a shareholder. (III.10.1)</p> <p>The board should have clear policies as regards production, marketing, investments, authority levels, etc. The detailing rate of these policies will be decided by each general assembly of shareholders/associates separately. (III.15.1.B)</p> <p>The Board of Directors has to . . . be certain that it exercises decision-making authority in the matters entrusted to it by the general assembly of shareholders, to which end it . . . coordinat[es] company activity based on development policy approved by the general assembly of shareholders [and] submit[s] to the approval of the general meeting of shareholders the annual activity report of the company. (III.15.1.A)</p>	<p>At the AGM the chair of the remuneration committee should be present to motivate remuneration decisions. (Ch. 8: 6)</p> <p>While distinction between owners and managers is clear, a large company with thousands of shareholders and no controlling shareholder really does not have an owner who can exercise rights of ownership in their discretion. The right of ownership of the company in such a case is diluted by the democracy in the company and the need to call a shareholders’ meeting to exercise the rights of the owners. With a single or controlling shareholder the right and power of ownership vests in them. It is true that technically they have to act through a shareholders’ meeting to appoint, for example, a new director but once it is known that they will carry the vote they have the power to nominate and ensure the appointment of that new director. (Ch. 12: 4)</p> <p>The AGM must be properly used by shareholders by asking questions on the accounts and reports presented. Forms in annual reports should be provided on which shareholders could send in written questions in advance of the meeting. If matters of importance and substance are raised at the AGM a summary should be sent to shareholders. (Ch. 12: 11)</p> <p>The Annual Report, Interim Report and AGM are the main links between the company and shareholders. (Ch. 16: 1.1)</p> <p>Shareholders should be welcomed at Annual General Meetings and encouraged to ask questions. A form could be included in the Annual Report for written questions to be sent to the company secretary. (Ch. 16: 1.3)</p>	<p>To protect to the utmost the rights of shareholders, the following matters which cause fundamental corporate changes and shareholder rights shall be decided at the general shareholder meeting:</p> <ul style="list-style-type: none"> <li>▪ Amendments to articles of incorporation;</li> <li>▪ M&amp;A and business transfer;</li> <li>▪ Corporate disbanding and dissolution;</li> <li>▪ Capital reduction and others.</li> </ul> <p>(I.1.2)</p> <p>Resolutions from the general shareholder meeting shall be made through transparent and fair proceedings. Also, shareholders shall receive sufficient prior notice including the time, location and agenda of the meeting; such time and location shall be set so as to allow maximum shareholder participation. (I.1.3)</p> <p>Shareholders may submit items for the meeting agenda to the board of directors; they may raise questions and demand explanations as part of the agendas at the meetings. The corporation shall ensure that shareholders’ opinions are sufficiently reflected at the general shareholder meetings. (I.1.4)</p> <p>The corporation shall, by disclosing the nominated directors prior to the general shareholder meeting, ensure that shareholders exercise their voting rights with information on the nominees. (II.3.4)</p> <p>External auditors shall attend the general shareholder meeting and answer any shareholders’ question on audit reports. (III.2.2)</p>	<p>The remuneration of directors as approved by a shareholder meeting should be fully disclosed in the company’s annual report. (The Code, 4.4).</p> <p>[A] general meeting of shareholders must decide on the director, or directors, authorized to bind the company by his or her signatures (the “authorized directors”). (Ch. 2: 4.2)</p> <p>If the Articles of Association do not provide for the directors’ remuneration, a shareholders’ meeting of the company may fix the directors’ remuneration. (Ch. 2: 7.2(e))</p> <p>[B]alance sheets and the profit and loss statements must be audited by the company’s auditor and, thereafter, submitted to the shareholders at the annual general meeting of shareholders for their consideration and approval. (Ch. 2: 16.1)</p> <p>The issuing of new shares requires a special resolution at a shareholders’ general meeting. (Ch. 3: 2.1)</p> <p>Dividends are declared by an ordinary resolution from a shareholders’ general meeting. (Ch. 3: 5.2)</p> <p>[Acquisitions, takeovers and amalgamations require] a special resolution of a shareholders’ general meeting . . . . (Ch. 7: 3.1, 3.2)</p> <p>The Listed Target [<i>i.e.</i>, a company listed on the SET and the object of a takeover bid] must obtain approval from a general meeting of its shareholders . . . . (Ch. 7: 5.4(ii))</p> <p>The chairmen of the audit committee and the remuneration committee should be available to answer questions . . . at the annual general meeting of shareholders of the company. (Ch. 8: 3.2, 3.3)</p>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>J. Anti-Takeover Devices</b>			
<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>	<p><i>Not covered directly, but see the following:</i></p> <p>Guideline 10 (Takeover and merger transactions are governed by the Hong Kong Code on Takeovers and Mergers (the “Takeover Code”), the primary purpose of which is to afford fair treatment for shareholders who are affected by takeover and merger transactions.)</p> <p>Guideline 10.1 (Directors should familiarize themselves with the Takeover Code and, in particular, with the obligations imposed on their company to make an offer where it has acquired “control” (as defined in the Takeover Code). Directors should also be aware of their obligations where their company is the subject of a takeover offer.)</p> <p>Guideline 10.2 (Where any proposed transaction or any aspect thereof is governed by, or subject to, the Takeover Code, any announcement, advertisement or document to be issued in relation to the transaction should be simultaneously submitted to the Exchange and the Takeovers and Mergers Executive of the Securities and Futures Commission for clearance.)</p>



Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>J. Anti-Takeover Devices</b>			
<p>[C]ompany managers must perform to satisfy creditors' dues because of the disciplining device of debt, which carries with it the credible threat of management change via bankruptcy. Analogously, managers have to look after the right of shareholders to dividends and capital gains because if they do not do so over time, they face the real risk of takeover. An economic and legal environment that puts a brake on the threat of bankruptcy and prevents takeovers is a recipe for systematic corporate misgovernance. Introduction (p. 2)</p> <p>Growth of industry and business in most developed economies have been aided and accompanied by takeovers, mergers and strategic acquisitions.</p> <p>International data shows that takeovers usually serve three purposes: (i) create economies of scale and scope, (ii) impose a credible threat on management to perform for the shareholders, and (iii) enhance shareholder value in the short- and medium-term. Because the targets are typically under-performing companies, takeovers typically enhance short- as well as longer-term shareholder value. (p. 8)</p> <p>The new Takeover Code has been introduced in India. Although the code has its problems — especially after a 50% acquisition—it is a step in the right direction. However, the code is, at best, necessary for facilitating takeovers; it is hardly sufficient. There lies the basic problem with takeovers in India. One cannot have a dynamic market and a level playing field for takeovers when there are multiple restrictions on financing such acquisitions.</p> <ul style="list-style-type: none"> <li>▪ Banks do not lend for such activities. . . .</li> <li>▪ There is no securitization. . . .</li> <li>▪ [Financial institutions] do not finance takeovers.</li> <li>▪ There are not enough corporate debt instruments which a company could use to finance a takeover. (p. 8)</li> </ul>	<p><i>Not covered directly, but see 23.4 (The decision on reorganization of the Society is made by the General Meeting of Shareholders.).</i></p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>J. Anti-Takeover Devices</b>			
<i>Not covered.</i>	<i>Not covered.</i>	<p>Takeover shall be achieved without infringing on corporate value. (V.1)</p> <p>Acts that may lead to change in corporate control, such as takeovers, mergers, acquisitions, splits and transfers of business, shall occur through a transparent and fair procedure. (V.1.1)</p> <p>Acts of defending corporate control shall not involve sacrificing the profit of corporations and shareholders to maintain corporate control for only some shareholders or management. (V.1.2)</p> <p>Corporations shall, as determined by law, accept stock purchase requests from shareholders opposing material structural changes, such as mergers and business transfers, through fair prices that reflect the actual share value. (V.1.3)</p> <p>To protect to the utmost the rights of shareholders, the following matters which cause fundamental corporate changes and shareholder rights shall be decided at the general shareholder meeting: . . . M&amp;A and business transfer. (I.1.2)</p> <p>The Board, holding comprehensive power over corporate management, shall perform the following functions of decision-making and management supervision: . . . Monitoring . . . corporate takeover. (II.1.1)</p> <p><i>See generally</i> V. Management Monitoring by the Market, Commentary at 32-33.</p>	<i>Not covered.</i>

GM Board Guidelines	Commonwealth Association Guidelines (International)	IBGC Code of Best Practice (Brazil)	Hong Kong Stock Exchange Code / Guide (Hong Kong)
<b>K. Executive Compensation</b>			
<i>Not covered.</i>	<p>The board should promote a culture that supports enterprise and innovation, with appropriate short- and long-term performance-related rewards that are fair and achievable in motivating management and employees effectively and productively. It is imperative that the board seeks to drive the business enterprise proficiently through proper and considered decision-making processes, and recognizes entrepreneurial endeavour amongst its management without contravening laws and regulations. (Commentary on Principle 3)</p> <p>In matters of remuneration, the board should set and implement a remuneration policy that creates a reward system to recruit, retain and motivate high quality executive directors. (Commentary on Principle 7)</p>	<i>Not covered directly, but see p. 6 (The board of directors should annually make a formal performance evaluation of the chief executive officer.).</i>	<i>Not covered.</i>

Confederation Code (India)	Charter of a Shareholding Society (Kyrgyz Republic)	Report on Corporate Governance (Malaysia)	Code of Corporate Governance (Mexico)
<b>K. Executive Compensation</b>			
<p><i>Not covered.</i></p>	<p>The Board of Directors shall set the form and level of remuneration of each member of the Management Board on an annual basis. (17.28)</p> <p>Every member of the Management Board may receive remuneration in at least two parts: a fixed salary per annum as determined by the Board of Directors; and a performance-related element. The latter may be linked to sales, growth, profitability or any other performance measure set by the Board of Directors, and may be in the form of cash. (17.29)</p>	<p>The component parts of remuneration should be structured so as to link rewards to corporate and individual performance, in the case of executive directors. (Principle B.I)</p> <p>Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. (Principle B.II)</p> <p>The board should explicitly assume [responsibility for] fixing the compensation of . . . senior management. (Best Practice AA.I)</p> <p>Boards should appoint remuneration committees, consisting wholly or mainly of non-executive directors, to recommend to the board the remuneration of the executive directors in all its forms, drawing from outside advice as necessary. Executive directors should play no part in decisions on their own remuneration. Membership of the remuneration committee should appear in the directors' report. (Best Practice AA.XXIV)</p>	<p>It is recommended that . . . the Board of Directors perform its evaluation, compensation, audit, finance and planning functions (as further defined in the Code) through one or more intermediate bodies. (Principle at 7)</p> <p><i>It is recommended that an intermediate body:</i></p> <ol style="list-style-type: none"> <li>i. suggest procedures to propose the <i>Director General</i> and high-level officers;</li> <li>ii. propose evaluation criteria for the <i>Director General</i> and the high-level officers;</li> <li>iii. analyze and submit for approval any proposal made by the <i>Director General</i> re: management structure and salaries. (Principle at 11)</li> </ol> <p>It is suggested that the Board be supported by [an intermediate group's] review of the terms and conditions on which the <i>Director General</i> and other high-level officers are hired, as well as the possible payments that will be made if they are separated from the corporation. Such terms and conditions should be within the general guidelines approved by the Board. (Principle at 12)</p> <p>[A] mechanism to assist the Board in the performance of its evaluation and compensation of the <i>Director General</i> and other high-level officers [is recommended]. (Recommendation at 11)</p> <p>The Board should be assisted in its analysis of policies for determining the salaries of the <i>Director General</i> and the high-level officers of the corporation. It is important that such policies take into consideration matters such as: previously established targets, individual performance, and corporate performance. (Recommendation at 12)</p>

Corporate Governance Code (Romania)	King Report (South Africa)	Code of Best Practice (South Korea)	The SET Code of Best Practice (Thailand)
<b>K. Executive Compensation</b>			
<p>The management contract is a mandate of a double nature – contractual and legal. Based on this contract, the shareholders’ representative, on behalf of the company, and the appointed persons as managers, establish the rights and obligations incumbent. . . . The contract has to establish . . . the pays [and] quotas . . . of a manager. (III.11)</p> <p>The Board of Directors . . . establish[es] the salary policy. (III.15.1.A)</p> <p><i>See</i> I.2.G (The quota refers to a sum of money received . . . for participation in the Board of Directors meetings. Quotas can be given either in addition to the attendance fee or the dividends, or instead of the attendance fee, according to the financial condition of the commercial company, and are calculated as a percentage of its net profits.).</p> <p><i>See also</i> III.17 (The work agreement of an executive manager should not extend for more than four years without the shareholders’ approval. However, the work agreements can be concluded for shorter periods, unless the incorporation document of the company provides otherwise.).</p>	<p>There are three elements of compensation in an executive director’s remuneration. They are salary, performance bonus for surpassing the expected, and benefits. There is some debate as to whether share options should be included in a director’s emoluments. The benefits themselves can include many things such as a company car, holiday home, pension contributions, telephone accounts, clothing allowances, overseas holidays, club membership fees, etc. (Ch. 8: 1)</p> <p>It is said that scheme shares and a bonus are a double reward and the payment of a bonus plus shares is merely a carry-over of the days before scheme shares were introduced. Management, on occasion, does surpass the expected but because of factors beyond its control the price of the scheme shares does not move or sometimes falls below the issue price to the management. We consequently do not ascribe to the view that it is a double reward. (Ch. 8: 3)</p> <p>There should be a separate full and clear disclosure of the total of executive directors and non-executive directors earnings broken down into headings such as, fees, salary, share options, benefits, bonuses, etc. Directors’ remuneration, including that of non-executive directors, should be the subject of recommendations to the board by a Remuneration Committee with the majority of its members (including the chair) being non-executive directors. (Ch. 19: 17)</p>	<p>To promote active performance of duties by management, outside directors and the Board, their activities shall undergo fair evaluation; based on such results, the matters of remuneration and reappointment shall be decided. (II.9)</p> <p>Business activities of management shall be evaluated fairly, and the evaluation results shall be reflected appropriately in the remuneration. Remuneration for the management shall be decided by the Board, <i>i.e.</i>, within the limits approved by the general shareholder meeting. If a committee centered on outside directors is established within the Board, then that committee may make the decision. (II.9.1)</p>	<p><i>Not covered.</i></p>

## APPENDIX

### PARTIAL LISTING OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE

#### INTERNATIONAL ORGANIZATIONS

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\* Investor viewpoint.

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\* Investor viewpoint.

\*\* Hybrid consisting of investors, academics and private business sector representatives.

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### PARTIAL LISTING OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE

#### GERMANY

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\* Investor viewpoint.

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**APPENDIX II**  
**Commentary On Corporate Governance Guidelines & Codes of Best Practice  
In Developing & Emerging Markets**

**Holly J. Gregory**

When a firm's management is separate and distinct from the providers of the firm's capital, managers have a responsibility to use assets efficiently in pursuit of the firm's objective. Ensuring that they do so is important to a firm's successful economic performance as well as to its ability to attract long-term, stable, low-cost investment capital. This is true whether the firm is publicly traded, privately held, family-controlled or state-owned. (It is only when the managers of a firm themselves own the entire firm -- and are committed to relying solely on their own capital -- that managers generally are free to apply corporate assets (as their own private property) inefficiently or for non-productive uses.) The fundamental concern of corporate governance is to ensure the means by which a firm's managers are held accountable to capital providers for the use of assets.

The responsibilities and functions of the corporate board in both developed and developing nations are receiving greater attention as a result of the increasing recognition that a firm's corporate governance affects both its economic performance and its ability to access patient, low-cost capital. After all, the board of directors -- or, in two-tier systems, the supervisory board -- is the corporate organ designed to hold managers accountable to capital providers for the use of firm assets. The past five years has witnessed a proliferation of corporate governance guidelines and codes of "best practice" designed to improve the ability of corporate directors to hold managements accountable. This global movement to emphasize that boards have responsibilities separate and apart from management, and to describe the practices that best enable directors to carry out these responsibilities, is a manifestation of the importance now attributed to corporate governance generally and, more particularly, to the role of the board.

Corporate governance guidelines and codes of best practice arise in the context of, and are affected by, differing national frameworks of law, regulation and stock exchange listing rules, and differing societal values. Although boards of directors provide an important internal mechanism for holding management accountable, effective corporate governance is supported by and dependent on the market for corporate control, securities regulation, company law, accounting and auditing standards, bankruptcy laws, and judicial enforcement. Therefore, to understand one nation's corporate governance practices in

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relation to another's, one must understand not only the "best practice" documents but also the underlying legal and enforcement framework.

Some governance codes are linked to listing or legally mandated disclosure requirements. Others are purely voluntary in nature, but may be designed to help forestall further government or listing body regulation. In the developing nations, governance codes are more likely to address basic principles of corporate governance that tend to be more established in developed countries through company law and securities regulation, such as the equitable treatment of shareholders, the need for reliable and timely disclosure of information concerning corporate performance and ownership, and the holding of annual general meetings of shareholders. However, in both developed and developing nations, codes focus on boards of directors and attempt to describe ways in which boards can be positioned to provide some form of guidance and oversight to management, and accountability to shareholders and society at large.

### **Overview**

The modern trend of developing corporate governance guidelines and codes of best practice began in the early 1990's in the United Kingdom, the United States and Canada in response to problems in the corporate performance of leading companies, the perceived lack of effective board oversight that contributed to those performance problems, and pressure for change from institutional investors. The Cadbury Report in the U.K., the General Motors Board of Directors Guidelines in the U.S., and the Dey Report in Canada have each proved influential sources for other guideline and code efforts.

Over the past decade, governance guidelines and codes have issued from stock exchanges, corporations, institutional investors, and associations of directors and corporate managers. Compliance with these governance recommendations is generally not mandated by law, although the codes linked to stock exchanges may have a coercive effect. For example, listed companies on the London and Toronto Stock Exchanges need not follow the recommendations of the Cadbury Report (as amended in the Combined Code) and the Dey Report, but they must disclose whether they follow the recommendations in those documents and must provide an explanation concerning divergent practices. Such disclosure requirements exert a significant pressure for compliance. In contrast, the guidelines issued by associations of directors, corporate managers and individual companies tend to be wholly voluntary. For example, the GM Board Guidelines simply reflect an individual board's efforts to improve its own governance capacity. Such guidelines can have wide influence, however. In the case of the GM Guidelines, institutional investors encouraged other companies to adopt similar guidelines.

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In developing nations, both voluntary guidelines and more coercive codes of best practice have issued as well. For example, both the Code of Best Practices issued by the Brazilian Institute of Corporate Directors and the Code of Corporate Governance issued by the Corporate Governance Committee of the Mexican Business Coordinating Counsel are wholly aspirational and not linked to any listing requirements. Similarly, the Confederation of Indian Industry Code and the Stock Exchange of Thailand Code are designed to build awareness within the corporate sector of governance best practice, but are not, at this time, linked to stock exchange listing requirements. In contrast, Malaysia's Code on Corporate Governance, the Code of Best Practice issued by the Hong Kong Stock Exchange, and South Africa's King Commission Report on Corporate Governance, all contemplate mandatory disclosure concerning compliance with their recommendations.

Some of the key elements of governance guidelines and codes of best practice, particularly as issued in developing nations, are summarized below:

### **The Corporate Objective**

Variations in societal values lead different nations to view the corporate objective or "mission" distinctly. Expectations of how the corporation should prioritize the interests of shareholders and stakeholders such as employees, creditors and other constituents take two primary forms. In the Anglo-Saxon nations -- Australia, Canada, the U.K., and the U.S. -- maximizing the value of the owners' investment is considered the primary corporate objective. This objective is reflected in governance guidelines and codes that emphasize the duty of the board to represent shareholders' interests and maximize shareholder value. Among developing nations, the Brazilian Institute of Corporate Governance Code, the Confederation of Indian Industry Code, the Kyrgyz Republic Charter of a Shareholding Society, the Malaysian Report on Corporate Governance, and the Korean Stock Exchange Code of Best Practice all expressly recognize that the board's mission is to protect and enhance the shareholders' investment in the corporation.

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*The mission of the board of directors is to maximize shareholder value.*

Brazilian Institute of Corporate Governance Code of Best Practice at 1.

*The Board of Directors represents the shareholders of the Society, and it has a duty to act in the interests of the shareholders.*

Charter of a Shareholding Society (Kyrgyz Republic) 17.1.

*The single overriding objective [of] all listed companies . . . is the preservation and enhancement over time of their shareholders' investment.*

Report on Corporate Governance (Malaysia), Introduction § 1, 3.3.

In other countries, more emphasis is placed on a broader range of stakeholders. However, this view is not strongly advocated in the governance guidelines and codes emanating from developing nations, although some documents recognize that stakeholder interests should be considered. (For example, the King Report from South Africa states: “Directors must act with enterprise and always strive to increase shareholders’ value while having regard for the interests of all stakeholders.” (Ch. 5:27.7)) This may be due to a convergence in perceptions about the corporate objective. There is a growing recognition that shareholder expectations need to be met in order to attract patient, low-cost capital. Likewise, there is growing sensitivity to the need to address stakeholder interests in order to maximize shareholder value over the long term. As the General Motors Board of Directors Mission Statement recognizes, “the board’s responsibilities to shareholders as well as customers, employees, suppliers and the communities in which the corporation operates are all founded upon the successful perpetuation of the business.” Simply put, shareholder and stakeholder interests in the success of the corporation are compatible in the long run.

### **Board Responsibilities & Job Description**

Most governance guidelines and codes of best practice assert that the board assumes responsibility for the stewardship of the corporation and emphasize that board responsibilities are distinct from management responsibilities. However, the guidelines and codes differ in the level of specificity with which they explain the board’s role. For example, Canada’s Dey Report, France’s Vienot Report, Malaysia’s Report on Corporate Governance, Mexico’s Code of Corporate Governance, South

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Africa's King Report and the Korean Stock Exchange Code all specify board functions such as strategic planning; risk identification and management; selection, oversight and compensation of senior management; succession planning; communication with shareholders; integrity of financial controls; and general legal compliance, as distinct board functions. The Kyrgyz Republic Charter sets out a detailed list of matters requiring board approval. Other governance guidelines and codes of best practice are far less specific. For example, the Hong Kong Stock Exchange Code simply refers to directors' obligations to ensure compliance with listing rules as well as with the "declaration and undertaking" that directors are required to execute and lodge with the Exchange. The different approaches among codes on this point likely reflect variations in the degree to which company law or listing standards specify board responsibilities, rather than any significant substantive differences.

*The main functions of a board are. . . :*

- *to direct the company both as to strategy and structure;*
- *to establish from time to time a strategy for the company, including a determination of the businesses that the company should be in and those that it should not be in;*
- *to ensure that the executive management implements the company's strategy as established from time to time;*
- *to ensure that the company has adequate systems of internal controls both operational and financial;*
- *to monitor the activities of the executive management;*
- *to select the chief executive, ensure succession and give guidance on the appointment of senior executives;*
- *to provide information on the activities of the company to those entitled to it;*
- *to ensure that the company operates ethically;*
- *to provide for succession of senior management;*
- *to address the adequacy of retirement and health care benefits and funding.*

The King Report (South Africa), Ch. 4:1.

### **Board Composition**

Most governance guidelines and codes of best practice address topics related to board composition including director qualifications and membership criteria, the director nomination process, and board independence and leadership.

***Criteria.*** The quality, experience and independence of a board's membership directly affect board performance. Board membership criteria are described by various guidelines and codes with different levels of specificity, but tend to highlight issues such as experience, personal characteristics (including independence), core competencies and availability.



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*Every non-executive director must ensure that he can give sufficient time and attention to the affairs of the issuer . . . and satisfy the Exchange that he has the character, integrity, experience and competency to serve as a director of a listed company.*

The Hong Kong Stock Exchange Code, Code of Best Practice 10 and Guideline A.5.

*The board should have a diversity of background, knowledge and experience.*

The Brazilian Institute of Corporate Governance Code of Best Practice at 3.

*[Non-executive directors should] know how to read a balance sheet, profit and loss account, cash flow statements and financial ratios, and have some knowledge of various company laws.*

The Confederation of Indian Industry Code, Recommendation 4.

*[A] candidate should have integrity and independence of thought; the courage to express their independent thought; a grasp of the realities of business operations; an understanding of the changes taking place regionally, nationally and internationally; [and] an understanding of business and financial “language.”*

The King Report (South Africa), Ch. 9:8.2.

**Director Nomination.** The process by which directors are nominated has gained attention in many guidelines and codes, which tend to emphasize a formal and transparent process for appointing new directors. The use of nominating committees is favored in the U.S. and U.K. as a means of reducing the CEO’s influence in choosing the board that is charged with monitoring his or her performance. (See, in the U.S., the Report of the National Association of Corporate Directors Commission on Director Professionalism (1996), and the General Motors Board of Directors Guidelines (1994); in the U.K., the Hampel Committee Report (1998)). The Malaysian Corporate Governance Report expresses a similar view: “[T]he adoption of a formal procedure for appointments to the board, with a nomination committee making recommendations to the full board, should be recognized as good practice.” (Explanatory Note 4. See also Korean Stock Exchange Code of Best Practice II.3.) At the same time, however -- and as advocated by the King Report (South Africa) -- it is generally agreed that the board as a whole has the ultimate responsibility for nominating directors.

**Mix of Inside and Outside or “Independent” Directors.** Most governance guidelines and codes of best practice agree that some degree of director independence -- or the ability to exercise objective judgment of management’s performance -- is important to a board’s ability to exercise objective judgment concerning management performance. In the U.S., U.K., Canada and Australia, although not required by law or listing requirements, best practice recommendations generally agree that boards of publicly-traded corporations should include at least some independent directors. This viewpoint is the furthest developed in the U.S. and Canada, where best practice documents call for a “substantial” majority of the board to be comprised of independent

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directors. Elsewhere best practice recommendations are somewhat less stringent and seek to have a balance of executives and non-executives, with the non-executives including some truly independent directors. (Although “non-management” or “non-executive” directors may be more likely to be objective than members of management, many code documents recognize that a non-management director may still not be truly “independent” if he or she has significant financial or personal ties to management.) Nonetheless, a general consensus is developing throughout a number of countries that public company boards should include at least some non-executive members who lack significant family and business relationships with management.

*The board shall include outside directors capable of performing their duties independently from management, controlling shareholders and the corporation.*  
Korean Stock Exchange Code of Best Practice at II.2.2.

*The majority of the board members should be independent.*  
Brazilian Institute of Corporate Governance Code of Best Practice at 3.

*No board should have less than two non-executive directors of sufficient calibre that their views will carry significant weight in board decisions.*  
The King Report (South Africa) 2.2.

*[I]t is recommended that Independent Directors represent at least 20% of the total number of Board members.*  
Mexico Code of Corporate Governance, Principle at 6.

Definitions of “independence” vary. For example, according to the Brazilian Institute of Corporate Governance, a director is independent if he or she: has no link to the company besides board membership and share ownership and receives no compensation from the company other than director remuneration or shareholder dividends; has never been an employee of the company (or of an affiliate or subsidiary); provides no services or products to the company (and is not employed by a firm providing major services or products); and is not a close relative of any officer, manager or controlling shareholder.

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*Every listed company should have independent directors, i.e., directors that are not officers of the company; who are neither related to its officers nor represent concentrated or family holdings of its shares; who, in the view of the company's board of directors, represent the interests of public shareholders, and are free of any relationship that would interfere with the exercise of independent judgment."*

Malaysian Report on Corporate Governance, Explanatory Note 4.23.

*In February 1998, the Korean Stock Exchange adopted a listing requirement that will mandate that outside directors soon comprise at least a quarter of the board of every listed company. Included among the list of persons who do not qualify as "outside directors" are: controlling shareholders; a spouse or family member of a director who is not an outsider; current or recent officers and employees of the corporation, its affiliates, or of corporations that have "important business relations" with the corporation; and persons who serve as outside directors on three or more listed companies.*

Article 48-5 KSE Listing Regulation.

In comparison, the Cadbury Code simply refers to directors who -- apart from their fees and shareholdings -- are independent from management and free from any business or other relationship which could materially interfere with the exercise of independent judgment. And many of the best practice documents -- such as the Cadbury Report and the National Association of Corporate Directors Report on Director Professionalism (U.S.) -- view the ultimate determination of just what constitutes "independence" to be an issue for the board itself to determine.

***Independent Board Leadership.*** Independent board leadership is thought by some to encourage the non-executive directors' ability to work together to provide true oversight of management. As explained by the National Association of Corporate Directors (U.S.): "the purpose of creating [an independent] leader is not to add another layer of power but . . . to ensure organization of, and accountability for, the thoughtful execution of certain critical independent functions" -- such as evaluating the CEO; chairing sessions of the non-executive directors; setting the board agenda; and leading the board in responding to crisis.

Many guidelines and codes seek to institute independent leadership by recommending a clear division of responsibilities between Chairman and CEO. In this way, while the CEO can have a significant presence on the board, the non-executive directors will also have a formal independent leader to look to for authority on the board. Documents that place less emphasis on the need for a majority of independent directors seem to place more emphasis on the need for separating the role of Chairman and CEO. For example, the Indian Confederation Report expressly relates the two concepts -- recommending that if the

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Chairman and CEO (or managing director) are the same person, a greater percentage of non-executive directors is necessary. (Recommendation 2) The Malaysian Report on Corporate Governance similarly emphasizes that “[w]here the roles are combined there should be a strong independent element on the board.” (Best Practice AA.II) This is in accord with the Cadbury Report, which states that, where the Chairman is also the CEO “it is essential that there should be a strong and independent element on the board.” (Section 1.2)

### **Board Committees**

In developed nations, it is fairly well accepted that many board functions are carried out by board committees. For example, a nominating committee, an audit committee and a remuneration committee are recommended in Australia, Belgium, France, Japan, the Netherlands, Sweden, United Kingdom and the United States. While composition of these committees varies, it is generally recognized that non-executive directors have a special role.

The functioning and composition of the audit committee receives significant attention in most guideline and code documents because of the key role it plays in protecting shareholder interests and promoting investor confidence.

*Special emphasis has been placed on the need for all listed company boards to establish audit committees to ensure the effective and efficient control and review of a company’s administration, internal audit procedures, the preparation of financial statements and the general disclosure of material information to investors and shareholders.*

President’s Message, Stock Exchange of Thailand Code and Guidelines, pp. iv-v.

*[There should be] a mechanism that lends support to the Board in verifying compliance of the audit function, assuring that internal and external audits are performed with the highest objectivity possible and that the financial information is useful, trustworthy and accurate.*

Mexico Code of Corporate Governance, Recommendation at 12-13.

Certain countries specifically recommend the size of an audit committee. In India, the minimum size recommended is three members, as it is in Malaysia and the United Kingdom. Also, South Africa and India both emphasize the extra time requirements demanded of audit committee members, and the importance of written terms of reference for this committee. Malaysia also refers to the need for written terms of reference for audit and other board committees.

## APPENDIX II Commentary

### Disclosure Issues

Disclosure is an issue that is highly regulated under securities laws of many nations. However, there is room for voluntary disclosure by companies beyond what is mandated by law. Most countries generally agree on the need for directors to disclose their own relevant interests and to disclose financial performance in an annual report to shareholders. Generally this is required by law, but some guidelines and best practice documents address it as well. Similarly, even though directors are usually subject to legal requirements concerning the accuracy of disclosed information, a number of codes from both developed and developing nations describe the board's responsibility to disclose accurate information about the financial performance of the company, as well as information about agenda items, prior to the annual general meeting of shareholders. Many codes also itemize the issues reserved for shareholder decision at the AGM. Generally, guidelines and codes of best practice place heavy emphasis on the financial reporting obligations of the board, as well as board oversight of the audit function. Again, this is because these are key to investor confidence and the integrity of markets. South Africa lays out the key points that the directors must comment on, whereas other countries do not go to this level of detail, but the distinction is not necessarily substantive since disclosure tends to be heavily regulated in many nations through securities laws.

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This brief review of the primary principles addressed by various guidelines and codes indicates that there is no single agreed upon system of "good" governance. Each country has its own corporate culture, national personality and priorities. Likewise, each company has its own history, culture, goals and business cycle maturity. All of these factors need to be taken into consideration in crafting the optimal governance structure and practices for any country or any company. However, the influence of international capital markets will likely lead to some convergence of governance practices.

*As regulatory barriers between national economies fall and global competition for capital increases, investment capital will follow the path to those corporations that have adopted efficient governance standards, which include acceptable accounting and disclosure standards, satisfactory investor protections and board practices designed to provide independent, accountable oversight of managers.*

Report to the OECD by the Business Sector Advisory Group on Corporate Governance (April 1998) (the Millstein Report).

This convergence is evident in the growing consensus in both developed and developing nations that board structure and practice is key to providing corporate accountability -- of the management to the board and the board to the shareholders -- in the governance paradigm.

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