

ANNEX A

Questionnaire of the OECD Corporate Governance Committee

Theme 1.1. Board practices: incentives and governing risks

The completed questionnaire should be returned to the Secretariat (James.Colvin@oecd.org cc Ruth.Fishwick@oecd.org) by the end of January 2010. Any questions of procedure or content should also be addressed to them.

About the current theme

There was a consensus in November 2009 to look at Board Practices that are extensively covered by Chapter VI of the Principles and in the *Conclusions* report. This is identified as **Theme 1**. Within this overall heading, several themes were noted: compensation of executives, boards and management, risk management, relations with shareholders and balancing competing interests of stakeholders. In line with *Corporate Governance and the Financial Crisis: Conclusions*, the Committee decided that remuneration needed to be placed in a wider context of incentives and risk. If incentives are not structured well there is a possibility that that companies will not be managed with a view to the long term including with due regard to the board's chosen business model and risk appetite. It is not a study of risk management per se that was discussed by the Group as part of its Strategic Response, but is simply one, less granular aspect of it.

The concern of the review is with board practices and therefore not only with the legal and regulatory framework. As noted in the Methodology, this means that information and responses to questions might be in the form of how widespread are thought to be certain practices. It is thus a macro structural study since it is the contours of the corporate governance landscape that are relevant.

The thematic review will be concerned with listed companies. However, it will not go into any detail for financial companies with respect to remuneration since this is subject to other reviews by *inter alia*, the FSB and the Basel Committee. For many countries a focus on larger listed companies might be sufficient. In some cases there might well be significant concentration of small caps so that respondents should note this and the difference with large caps in their response.

For each country being reviewed, there will need to be a description of the legal, regulatory and code requirements as an input to understanding the market context that is covered throughout the Principles but especially by Chapter I. However, this is not a detailed review of the legal framework. There will also need to be a description of the

market for executives in which context individual boards operate. This might include the extent to which the market is international (relevant in the UK and in Japan, but polar opposites), mobility between firms etc. Data about the composition of remuneration and levels should also be considered. This would complement the work of the FSB/BCBS. There might also be reference to whether compensation is considered a problem and, if so, why.

The relevant Principles

The principal outcome involved is given by principle VI.D.4: the board should fulfil certain key functions including...aligning key executive and board remuneration with the longer term interests of the company and its shareholders. In addition, the Conclusions note that the policy needs to be consistent with the strategic objectives of the company and its risk appetite as also set by the board. The duties of the board to the company are further developed in principles VI.B and VI.C that recognise different shareholder groups and the interests of stakeholders¹

A number of other principles are to a greater or lesser extent process or instrument oriented and as such will form a key part of the response. The questions are designed to provide information relevant to these principles. The principles are VI.E.1, V.A.4, and II.C.3, covering board processes, transparency and shareholder input respectively². In reality, other processes may be equally if not more important and documenting these will be an important objective of the review: it is of lesser importance how the outcome is achieved so long as it works in a given market context.

Who should complete the Questionnaire

The questionnaire is intended to provide relevant information to the Secretariat including academic and other studies. It is not expected that replies should be long and detailed. For example, we do not expect long translations of legal documents as required for FSAP and FATF reviews. We are only interested in the content of the law and not a review of the legal framework. For those countries only replying to Question 1, several pages should point the Secretariat to the main features of the corporate governance framework and to appropriate studies. For those countries being reviewed, it is suggested that a response to questions II and III might be around 3-5 pages each.

With the emphasis on board practices, incentive systems and the overall economic and regulatory framework, it is suggested that the stock exchange, and any code oversight body, might be an appropriate body to make a first reply with Committee members reviewing the response and adding any additional material. Alternatively, an academic, research organisation, director's institute or a corporate governance organisation might also be appropriate respondents.

The Secretariat will follow up responses with short visits to each review country to obtain additional insights from experts.

Question I. What is the corporate governance framework influencing board oversight of the remuneration and incentive systems and its compatibility with corporate objectives?

All countries are requested to reply. Please describe briefly in a page or two the duties of board members with respect to setting the remuneration of executives, board members and management as specified in codes, company law, jurisprudence and other regulation such as listing

requirements. Is there a code covering executive remuneration (apart from any special code covering the banking system) and what is its nature? Are there plans to change any of these instruments and for what reason? Is the remuneration and incentive system regarded as an issue in your country and for what reasons? Do executives and CEOs move frequently between companies so that there is a market for managerial talent or do they tend to stay for long periods in the same company so that there is instead an internal labour market?

Note: Question I will be complemented with data from, *inter alia*, IOSCO and compensation and board practice surveys by *inter alia*, GIM/Risk Metrics.

(The following two questions are to be completed by Brazil, Japan, Portugal, Sweden and UK).

Question II. What is the market and corporate context influencing whether incentive structures are in the long term interest of the company and its shareholders?

Please provide a detailed description of the nature of any general and/or specific duties of the board to the company and/or to shareholders in your jurisdiction, and the means by which these duties are defined and enforced, including information about of relevant laws and jurisprudence? This should include, in particular, any body of law and jurisprudence defining what is meant by “long term” and “the company”.

In the following questions please indicate which factors cover the whole jurisdiction and which vary across companies, indicating whether the practice is widespread, sector specific etc. Please describe the nature of market norms and incentives motivating board members, executives and lower level management (e.g. including internal promotion, guaranteed employment etc) and how these incentives impact on the structure of remuneration? What role is played by performance- related remuneration and what is the nature of such compensation (e.g. shares, options)? In what manner is the incentive system affected by taxation provisions? Is there a general feeling that incentives are short- term in nature? What form do these take? If the system is considered to provide long term incentives, what form do these take and how does it promote or affect risk taking?

Question III. How do boards influence incentives and what role is played by transparency and by shareholders?

*In the following questions please indicate which factors cover the whole jurisdiction and which vary across companies, indicating whether the practice is widespread, sector specific etc. Please provide data about board composition in general (e.g. executive members, outside directors, independent board members, and audit boards) and its variability across companies. Please describe what is known about board processes covering remuneration and incentive systems for executives and lower levels of management. How does the composition and structure of boards impact on these processes (e.g. what is the role of board committees and independent board members)? What are the requirements covering transparency of remuneration and incentives? Do companies generally exceed these requirements? What is the *de jure* and *de facto* role of shareholders in influencing remuneration and other incentive schemes?? Which types of shareholders appear to be most active? What is the role of other stakeholders?*

Notes

1. Principle VI.B: Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly; and Principle VI.C: The board should apply high ethical standards. It should take into account the interests of stakeholders.
2. Principle VI.E.1: The board should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are... board remuneration; Principle V.A.4: Disclosure should include material information on... remuneration policy for members of the board and key executives; and Principle II.C.3: Shareholders should be able to make their views known on the remuneration policy for board members and key executives. The equity component of compensation schemes for board members and employees should be subject to shareholder approval.



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