

報 道 資 料

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사용하여 주시기 바랍니다.

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제목: OECD Principles of Corporate Governance 草案

1. 제정 배경 및 목적

- ☐ 그 동안 OECD국가 등에서는 우수한 기업지배구조가 기업 경쟁력의 원천이며, 각국 경제의 장기안정성장의 기본요건이라는 인식이 확산
 - 경제 및 자본시장의 국제화가 가속화되어 기업지배에 관한 국제규범의 필요성이 대두
 - 이에 따라 OECD 각료이사회는 각국 정부, 국제기구 및 민간부문과 협력하여 OECD 차원에서 기업지배구조 개선방안을 강구하기로 결정(96.4)
- ☐ OECD의 「기업지배구조 기본원칙」은 각국이 자국의 기업 지배구조에 대한 법률·제도 등의 기본틀(Framework)을 평가하고 개선할 때 준거기준을 제시
 - 또한 증권거래소, 투자자, 기업 등에게 바람직한 기업지배 구조에 관한 지침(권고)을 제공

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2. 추진경과

☐ 기업지배구조 자문그룹의 조직과 조사보고서 제출

- 1996년 4월 OECD 각료이사회가 기업지배구조에 관한 조사연구를 요청함에 따라, 동 조사연구를 위해 기업 지배구조 자문그룹(Business Sector Advisory Group on Corporate Governance)을 조직

- 동 자문그룹은 1998년 4월 조사보고서*를 제출

* "Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets"

☐ "기업지배구조 특별작업반"의 조직 및 「기업지배구조 기본원칙」의 마련

- OECD 각료이사회는 99년 5월까지 기업지배구조 가이드라인을 제정하기로 결의하고, 이를 위해 "기업지배구조특별작업반"(Ad-Hoc Task Force on Corporate Governance)을 조직
- 동 작업반은 1998년 7월이후 우리나라를 포함한 OECD 회원국, BIS·IMF·세계은행 등 국제기구 및 민간전문가들이 참석한 3차례 회의를 통해 「기업지배구조 기본원칙」 초안(Draft OECD Principles of Corporate Governance)을 마련하여 1999.2.8 발표,

☐ OECD 기업지배구조 기본원칙의 공식 채택(계획)

- 1999.2.8에 발표된 「기업지배구조 기본원칙」은 오는 4월 "기업지배구조 특별작업반"의 제4차 회의를 거쳐, 99년 5월 OECD 각료회의에서 공식 채택될 예정

3. OECD 「기업지배구조 기본원칙」의 주요 특징

☐ 주주자본주의(Shareholder Capitalism)에 바탕을 둔 英美式 기업지배모형이 중심

- 이해관계자자본주의(Stakeholder Capitalism) 모델을 어느 정도 반영하고 있기는 하지만, 주주이익중시, 이사회회의 활성화, 자본시장의 역할 제고 등 기본적으로 영미식의 주주자본주의에 기초

* 이해관계자 : 채권자, 종업원, 공급업자, 소비자 등

☐ 「기업지배구조 기본원칙」은 주주의 권리 및 동등 대우, 이해관계자의 역할, 기업공시, 이사회회의 역할 등에 대해 우수한 기업지배구조의 기본틀(Corporate Governance Framework)이 갖추어야 할 기능을 다음과 같은 “핵심 원칙”을 통해 밝히고 있음

- 주주의 권리는 보호되어야 함
- 소액주주 및 외국인주주를 포함하여 모든 주주를 동등하게 대우해야 하며, 권리가 침해된 경우 주주는 이를 시정할 수 있는 기회를 가져야 함
- 법률에 의해 인정된 이해관계자의 권리를 인정하고, 기업과 이해관계자간의 활발한 협력을 촉진해야 함
- 기업의 재무상태, 성과, 소유권 및 지배에 관한 중요한 사안에 대해 적시에 정확한 정보가 공시되어야 함
- 이사회에 의한 효과적인 기업감시가 가능하고, 기업 및 주주에 대해 이사회가 책임질 수 있도록 해야 함

☐ 이사회 의 경영감독기능 및 책임강화를 기업지배구조의 핵심으로 간주

- 기업지배과정의 핵심 역할자로서 이사회를 지목하고 이사회가 기업전략수립, 성과평가, 경영감독, 경영책임 확보 등 중추적인 기능을 담당하도록 함

☐ 기업내용의 완전공시(Full Disclosure) 지향

- 미래의 주요 경영위험, 개별이사 및 집행임원에 대한 정보, 기업지배의 구조 및 정책, 종업원 및 기타 이해관계자에 관한 주요 사안 등을 공시하도록 하여 기업내용의 완전 공시를 지향하고 있음

☐ 非拘束的(Non-binding) 성격

- 「기업지배구조 기본원칙」은 前文(Preamble)에서 이 원칙은 구속력을 갖지 않으며, 또한 각국의 법률에 반영시킬 것을 목적으로 동 원칙을 마련한 것이 아님을 밝히고 있음
- 하지만, 「기업지배구조 기본원칙」은 가이드라인이 각국의 대표, 국제기구 및 유력한 민간전문가 등이 참가하여 의견 개진과 토론을 거쳐 작성된 것이므로 기업지배구조 모델의 국제적인 準據(Benchmark)가 될 전망

☐ 상장기업이 주요 적용 대상

- 「기업지배구조 기본원칙」은 기본적으로 상장기업에 초점을 맞추고 있지만, 폐쇄기업 및 국유기업의 기업지배구조 개선을 위해서도 유용한 수단이 될 수 있음

4. 「기업지배구조 기본원칙」의 구성체계 및 주요 내용

가. 구성체계

□ “前文(Preamble)” “本文” 및 “註釋(Annotations)”으로 구성

- “전문”에서 「기업지배구조 기본원칙」의 제정목적, 주요 적용 대상 및 방법 등을 포함
- “본문”은 5개 부문(I. 주주의 권리, II. 주주의 동등대우, III. 기업지배구조에 있어서 이해관계자의 역할, IV. 공시 및 투명성, V. 이사회역의 역할)에 대해 “핵심원칙” 및 구체적인 권고사항을 제시하고 있음
- “주석”은 본문의 내용과 관련하여 그 배경, 논쟁점, 요구수준 등에 대해 보다 상세하게 기술하여 「기업지배구조 기본원칙」의 해설서와 같은 성격을 가짐

나. 주요 내용 (본문중 구체적인 권고사항)

□ 주주의 권리

- 주주의 기본적 권리는 ① 소유권등록 ② 주권의 양도 ③ 관련 기업정보의 적시·정제적 획득 ④ 주총참석 및 의결권 행사 ⑤ 이사 선임, ⑥ 잔여이익 분배참여 등임
- 주주는 기업의 근본적인 변화(예 : 정관변경, 주식발행, 합병 및 기업자산의 중요부분 매각 등)에 관한 의사결정에 참여하고, 이러한 의사결정에 대한 정보를 충분히 받을 수 있는 권리를 가져야 함

- 주주는 본인이 직접 또는 부재로 주주총회에서 의결권을 행사할 수 있는 기회를 가져야 하며, 주총에서 이사회에 질문하고 주총의안을 제기할 수 있는 기회를 가져야 하며, 의결권 행사절차를 포함하여 주주총회에 관한 규칙에 대한 정보를 받아야 함
- 특정주주가 자신의 주식소유비율과 달리 과도한 지배권을 갖는 것을 가능하게 하는 자본구조 및 협약(예 : 피라미드식 주식소유, 상호주식보유, 공동의결권행사를 위한 주주 계약 등)이 있는 경우 그 내용은 공시되어야 함
- 기업지배권시장(M&A시장)은 공정하고 투명해야 하는데, 자본시장에서 기업지배권 획득, 합병과 같은 특별거래, 기업자산의 중요부분의 매각 등에 관한 규제 및 절차는 명확히 규정되고 공시되어서 투자자들이 자산의 권리 및 권리침해에 대한 구제수단을 이해할 수 있도록 해야 함. 또한, 적대적 M&A 방어수단은 경영자의 책임을 방어하기 위해 사용되어서는 안됨

□ 주주의 동등대우

- 동종의 주식을 가진 모든 주주는 동일한 의결권을 갖는 동등하게 대우받아야 하며, 보관기관 및 명의인(은행 및 예탁기관 등)에 의한 의결권행사는 실질주주와 합의된 방식으로 이루어져야 함

- 자기거래(회사와 이사 등과의 거래) 및 내부자거래는 금지되어야 하며, 이사 및 경영자가 당해기업에 영향을 미치는 거래 또는 사안과 관련하여 중요한 이해관계를 가지는 경우에는 그 내용을 공시해야 함

☐ 기업지배구조에 있어서 이해관계자의 역할

- 법에 의해 보호되는 이해관계자의 권리가 존중되도록 해야 하며, 이 경우 이해관계자는 자신의 권리가 침해된 경우 이를 효과적으로 시정할 수 있는 기회를 가져야 함
- 기업지배과정에서 기업성과향상을 목적으로 한 이해관계자의 참여를 허용해야 하며, 이 경우 이해관계자는 관련정보에 접근할 수 있어야 함

☐ 공시 및 투명성

- 공시내용에는 최소한 ① 기업의 재무 및 영업결과 ② 기업목표 ③ 주요 주주분포 및 의결권 ④ 이사 및 핵심 집행임원과 이들의 보수 ⑤ 예측가능한 중요위험요소 ⑥ 종업원 및 기타 이해관계자에 관한 중요한 사항 ⑦ 기업지배구조 및 정책 등이 포함되어야 함
- 공시정보는 재무공시, 非재무공시 및 감사에 관해 높은 수준의 기준에 따라 작성·감사·공시되어야 하며, 회계감사는 독립적인 감사인(CPA)에 의해 수행되어야 함

□ 이사회 의 임무와 책임

- 이사는 충분한 정보를 가지고, 성실하고 정당한 주의로써 최선의 기업이익을 위해 행동해야 함
- 이사회는 기업이 관련법률을 준수할 수 있도록 해야 하며, 기타 이해관계자의 이익을 고려해야 함
- 이사회는 기업전략 및 목표 설정, 업무집행 및 성과 감독, 임원의 선임·보상·교체 등 감독, 부당 내부거래 감시, 기업회계 및 재무정보의 신뢰성 확보, 기업지배구조의 실효성 검토 및 개선안 마련, 공시과정의 감독 등 핵심 기능을 수행할 책임이 있음
- 이사회는 경영자로부터 독립적으로 기업업무에 대한 객관적인 판단을 할 수 있어야 하는데, 이를 위해 독립적인 판단을 할 능력이 있는 충분한 수의 비집행이사(Non-executive board members)를 이해갈등이 발생할 수 있는 임무(예 : 재무보고, 이사후보 지명, 집행임원의 보수 등)에 배정하는 것을 고려해야 함
- 이사는 자신의 책임수행에 충분한 시간을 바쳐야 하며, 책임을 이행하기 위해 적시의 정확한 관련정보에 접근할 수 있어야 함

5. 「기업지배구조 기본원칙」 제정에 따른 예상효과

- ☐ OECD는 동 원칙이 회원국의 기업지배구조 개선에 참고 자료를 제공하기 위한 것임을 명시("They are non-binding and do not aim at prescriptions for national legislation. Their purpose is to serve as a reference point")
 - 우리나라도 OECD 회원국으로서 기업지배구조 개선 추진에 있어서 이러한 권고를 참고하게 될 것임
- ☐ 특히 전·현직 기업경영인, 금융계 대표, 법률 및 회계 전문가 등으로 「기업지배구조개선위원회」를 구성할 계획인 바,
 - 동 위원회에서는 OECD의 「기업지배구조 기본원칙」, 선진국의 모범규약 등을 참고하여 21세기 국제경쟁 시대에 걸맞는 바람직한 한국형 기업지배구조 모범규약 (Code of Best Practices)을 마련하게 될 것임

OECD Principles of Corporate Governance

The OECD Council, meeting at Ministerial level on 27-28 April 1998, called upon the OECD to develop, in conjunction with national governments, other relevant international organisations and the private sector, a set of corporate governance standards and guidelines. In order to fulfil this objective, the OECD established the Ad-Hoc Task Force on Corporate Governance to develop a set of principles that embody the views of Member countries on this issue.

The Principles contained in this document build upon experiences from national initiatives in Member countries and previous work carried out within the OECD, including that of the OECD Business Sector Advisory Group on Corporate Governance. During their preparation, they were considered by the relevant committees within the OECD: the Committee on Financial Markets, the Committee on International Investment and Multinational Enterprises, and the Industry Committee. They also benefited from broad exposure to input from the business sector, investors, trade unions and other interested parties.

Preamble

The Principles are intended to assist Member and non-Member governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance. The Principles focus on publicly traded companies. However, to the extent they are deemed applicable, they might also be a useful tool to improve corporate governance in non-traded companies, for example, privately held and state-owned enterprises.

Increasingly, the OECD and its Member governments have recognised the synergy between macroeconomic and structural policies. One key element in improving economic efficiency is corporate governance which involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and shareholders and should facilitate effective monitoring, thereby encouraging firms to use resources more efficiently.

While corporate governance is an important element affecting the long-term financial health of companies, it is only part of the larger economic context in which firms operate which includes, for example, macroeconomic policies and the degree of competition in product and factor markets. The corporate governance framework also depends on the legal, regulatory, and institutional environment. Business ethics and corporate awareness of the environmental and societal interests of the communities in which it operates can also have an impact on the reputation and long-term success of a company.

The degree to which corporations observe basic principles of good corporate governance is an increasingly important factor for investment decisions. Of particular relevance is the relation between corporate governance practices and the increasingly international character of portfolio investment. International flows of capital enable companies to seek financing from a much larger pool of investors. If countries are to reap the full benefits of the global capital market, and if they are to attract long-term "patient" capital, corporate governance arrangements must be credible and well understood across borders. Adherence to

good corporate governance practices will help reinforce the confidence of investors, may reduce the cost of capital, and ultimately induce more stable capital flows.

Corporate governance is also affected by the relationships among participants in the governance system. Controlling shareholders, which may be individuals, family holdings, bloc alliances, or other corporations acting through a holding company or cross shareholdings, can significantly influence corporate behaviour. As owners of equity, institutional investors are increasingly demanding a voice in corporate governance in some markets. Individual shareholders usually do not seek to exercise governance rights but may be highly concerned about obtaining fair treatment from controlling shareholders and management. Creditors, especially banks, play an important role in some governance systems and have the potential to serve as external monitors over corporate performance. Employees and other stakeholders play an important role in contributing to the long-term success and performance of the corporation, while governments establish the overall institutional and legal framework for corporate governance. The role of each of these participants and their interactions vary widely among OECD countries and among non-Members as well. These relationships are subject, in part, to law and regulation and, in part, to voluntary adaptation and market forces.

There is no single model of good corporate governance. In light of the needs of individual firms and the variety of national institutional frameworks, it would not be useful to seek to establish a global standard of corporate governance. At the same time, work carried out in Member countries and within the OECD has identified some common elements that underlie good corporate governance. The Principles build on these common elements and are formulated to embrace the different models that exist. They are non-binding and do not aim at prescriptions for national legislation. Their purpose is to serve as a reference point. They can be used by policy makers, as they examine and develop their legal and regulatory frameworks for corporate governance that reflect their own economic, social and legal circumstances, and by market participants as they develop their own practices.

The Principles are evolutionary in nature and should be reviewed in light of significant changes in circumstances. To remain competitive in a changing world, corporations must innovate and adapt their corporate governance practices so that they can meet new demands and grasp new opportunities. Similarly, governments have an important responsibility for shaping an effective regulatory framework that provides for sufficient flexibility to allow markets to function effectively. It is up to governments and market participants to decide how to apply these Principles in developing their own frameworks for corporate governance, taking into account the costs and benefits of regulation.

The following document is divided into two parts. The Principles presented in the first part of the document cover five areas: I) The rights of shareholders; II) The equitable treatment of shareholders; III) The role of stakeholders; IV) Disclosure and transparency; and V) The role of the board. The term "board" as used in this document does not espouse any particular board structure and is meant to embrace the different national models of board structures found in OECD countries. Each of the sections is headed by a single Principle which appears in bold italics and is followed by a number of supporting recommendations. In the second part of the document, the Principles are supplemented by annotations that contain commentary on the Principles and are intended to help readers understand their rationale. The annotations may also contain descriptions of dominant trends and offer alternatives and examples that may be useful in making the Principles operational.

I. The rights of shareholders

The corporate governance framework should protect shareholders' rights.

- A. Basic shareholder rights include the right to:** 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5) elect members of the board; and 6) share in the residual profits of the corporation.
- B. Shareholders have the right to participate in, and to be sufficiently informed on,** decisions concerning fundamental corporate changes such as: 1) amendments to the statutes, or articles of incorporation or similar governing documents of the company; 2) the authorisation of additional shares; and 3) extraordinary transactions that in effect result in the sale of the company.
- C. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:**
 - 1. Shareholders should be furnished with sufficient and timely information** concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting.
 - 2. Opportunity should be provided for shareholders to ask questions of the board and to place items on the agenda at general meetings, subject to reasonable limitations.**
 - 3. Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.**
- D. Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.**
- E. Markets for corporate control should be allowed to function in an efficient and transparent manner.**
 - 1. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.**
 - 2. Anti-take-over devices should not be used to shield management from accountability.**
- F. Shareholders, including institutional investors, should consider the costs and benefits of using their voting rights.**

11. The equitable treatment of shareholders

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

- A. All shareholders of the same class should be treated equally.
 - 1. Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights affiliated with all classes of shares before they purchase. Any changes in voting rights within or between classes of shares should be subject to shareholder vote.
 - 2. Votes should be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares.
 - 3. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes.
- B. Self-dealing and insider trading should be prohibited.
- C. Members of the board and managers should be required to disclose their material interests in transactions or matters affecting the corporation.

III. The role of stakeholders in corporate governance

The corporate governance framework should recognise the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

- A. The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected.
- B. Where stakeholder interests are protected by law, stakeholders should have the opportunity to seek effective redress for violation of their rights.
- C. The corporate governance framework should permit performance enhancing mechanisms for stakeholder participation.
- D. Where stakeholders participate in the corporate governance process, they should have access to relevant information.

IV. Disclosure and transparency

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

- A. Disclosure should include, but not be limited to, material information on:
 - 1. The financial and operating results of the company;
 - 2. Company objectives;
 - 3. Major share ownership and voting rights;
 - 4. Members of the board and key executives, and their remuneration;
 - 5. Material foreseeable risk factors;
 - 6. Material issues regarding employees and other stakeholders; and
 - 7. Governance structures and policies.
- B. Information should be prepared, audited, and disclosed in accordance with high quality standards of financial disclosure, non-financial disclosure and audit.
- C. An annual audit should be conducted by an independent auditor in order to provide an external and objective control on the way in which financial statements have been prepared and presented.
- D. Channels for disseminating information should provide for fair, timely and cost-efficient access to relevant information by users.

V. The role of the board

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

- A. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company.
- B. Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.
- C. The board should ensure compliance with applicable law and take into account the interests of stakeholders.
- D. The board should fulfil certain key functions, including:
 - 1. Reviewing corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestitures.
 - 2. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.
 - 3. Reviewing executive remuneration.
 - 4. Monitoring and managing potential conflicts of interest of management, board members and shareholders including misuse of corporate assets and abuse in related party transactions.
 - 5. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law.
 - 6. Monitoring the effectiveness of the governance practices under which it operates and making changes as needed.
 - 7. Overseeing the process of disclosure and communications.

- E. The board should be able to exercise objective judgement on corporate affairs, independent of management.
 - 1. Boards 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: financial reporting, nomination and executive remuneration.
 - 2. Board members should devote sufficient time to their responsibilities.
- F. In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information.

**Annotations to
the OECD Principles of Corporate Governance**

I. The rights of shareholders

The corporate governance framework should protect shareholders' rights.

Equity investors have certain property rights. For example, an equity share can be bought, sold, or transferred. An equity share also entitles the investor to participate in the residual profits of the corporation, with liability limited to the amount of the investment. In addition, ownership of an equity share provides a right to information about the corporation and a right to influence the corporation, primarily by participation in general shareholder meetings and by voting.

As a practical matter, however, the corporation cannot be managed by shareholder referendum. The shareholding body is made up of individuals and institutions whose interests, goals, investment horizons and capabilities vary. Moreover, the corporation's management must be able to take business decisions rapidly. In light of these realities and the complexity of managing the corporation's affairs in fast moving and ever changing markets, shareholders are not expected to assume responsibility for managing corporate activities. The responsibility for corporate strategy and operations is typically placed in the hands of the board and a management team that is selected, motivated and, when necessary, replaced by the board.

Shareholders' rights to influence the corporation centre on certain fundamental issues, such as the election of board members, or other means of influencing the composition of the board, amendments to the company's organic documents, approval of extraordinary transactions, and other basic issues as specified in company law and internal company statutes. This Section can be seen as a statement of the most basic rights of shareholders which are recognised by law in virtually all OECD countries. Additional rights can be found in various jurisdictions.

- A. Basic shareholder rights include the right to: 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5) elect members of the board; and 6) share in the residual profits of the corporation.
- B. Shareholders have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as: 1) amendments to the statutes, or articles of incorporation or similar governing documents of the company; 2) the authorisation of additional shares; and 3) extraordinary transactions that in effect result in the sale of the company.
- C. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:
 1. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting.
 2. Opportunity should be provided for shareholders to ask questions of the board and to place items on the agenda at general meetings, subject to reasonable limitations.

In order to enlarge the ability of investors to participate in general meetings, some companies have increased the ability of shareholders to place items on the agenda by simplifying the process of filing amendments and resolutions. The ability of shareholders to submit questions in advance and to obtain replies from management and board members has also been increased. Companies are justified in assuring that frivolous or disruptive attempts to place items on the agenda do not occur. It is reasonable, for example, to require that in order for shareholder-proposed resolutions to be placed on the agenda, they need to be supported by those holding a specified number of shares.

3. **Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.**

The Principles recommend that voting by proxy be generally accepted. Moreover, the objective of broadening shareholder participation suggests that companies consider favourably the enlarged use of technology in voting, including telephone and electronic voting. The increased importance of foreign shareholders suggests that on balance companies ought to make every effort to enable shareholders to participate through means which make use of modern technology. Effective participation of shareholders in general meetings can be enhanced by developing secure electronic means of communication and allowing shareholders to communicate with each other without having to resort to proxy solicitation. As a matter of transparency, meeting procedures should ensure that votes are properly counted and recorded, and that a timely announcement of the outcome be made.

- D. **Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.**

Some capital structures have the effect of increasing the degree of control over the corporation by some groups of shareholders to an extent that exceeds their share of ownership in the company. Pyramid structures and cross shareholdings can be used to diminish the capability of non-controlling shareholders to influence corporate policy.

In addition to ownership relations, other devices can affect control over the corporation. Shareholder agreements are a common means for groups of shareholders, who individually may hold relatively small shares of total equity, to act in concert so as to constitute an effective majority, or at least the largest single block of shareholders. Shareholder agreements usually give those participating in the agreements preferential rights to purchase shares if other parties to the agreement wish to sell. These agreements can also contain provisions that require those accepting the agreement not to sell their shares for a specified time. Shareholder agreements can cover issues such as how the board or the Chairman will be selected. The agreements can also oblige those in the agreement to vote as a block.

Voting caps limit the number of votes that may cast, regardless of the number of shares the shareholder may actually possess. Voting caps therefore redistribute control and may affect the incentives for shareholder participation in annual meetings.

Given the capacity of these mechanisms to redistribute the capacity of shareholders to influence company policy, shareholders can reasonably expect that all such capital structures and arrangements be disclosed.

E. Markets for corporate control should be allowed to function in an efficient and transparent manner.

1. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.
2. Anti-take-over devices should not be used to shield management from accountability.

In some countries companies employ anti-take-over devices. However, both investors and stock exchanges have expressed concern over the possibility that widespread use of anti-take-over devices may be a serious impediment to the functioning of the market for corporate control. In some instances, take-over defences can simply be devices to shield the management from shareholder monitoring.

F. Shareholders, including institutional investors, should consider the costs and benefits of using their voting rights.

The Principles do not advocate any particular investment strategy for investors and do not seek to prescribe the optimal degree of investor activism. Nevertheless, it is worth recalling that many investors have concluded that positive financial returns can be obtained by expending a reasonable amount of resources on analysis and the use of voting rights.

II. The equitable treatment of shareholders

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

Investors' confidence that the capital they provide will be protected from misuse or misappropriation by corporate managers, board members or controlling shareholders is an important factor in the capital markets. Corporate boards, managers and controlling shareholders may have the opportunity to engage in activities that may advance their own interests at the expense of non-controlling shareholders. The Principles support equal treatment for foreign and domestic shareholders in corporate governance. They do not address government policies to regulate foreign direct investment.

One of the ways in which shareholders can enforce their rights is to be able to initiate legal and administrative proceedings against management and board members. Experience has shown that an important determinant of the degree to which shareholder rights are protected is whether effective methods exist to obtain redress for grievances at a reasonable cost and without excessive delay. The confidence of minority investors is enhanced when the legal system provides mechanisms for minority shareholders to bring lawsuits when they have reasonable grounds to believe that their rights have been violated.

There is some risk that a legal system which enables any investor to challenge corporate activity in the courts can become prone to excessive litigation. Thus, many legal systems have introduced provisions to protect management and board members against litigation abuse in the form of tests for the sufficiency of shareholder complaints, so-called safe harbours for management and board member actions (such as the business judgement rule) as well as safe harbours for the disclosure of information. In the end, a balance must be struck between allowing investors to seek remedies for infringement of ownership rights and avoiding excessive litigation. Many countries have found that alternative adjudication procedures, such as administrative hearings or arbitration procedures organised by the securities regulators or other regulatory bodies, are an efficient method for dispute settlement, at least at the first instance level.

A. All shareholders of the same class should be treated equally.

1. **Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights affiliated with all classes of shares before they purchase. Any changes in voting rights within or between classes of shares should be subject to shareholder vote.**

The optimal capital structure of the firm is best decided by the management and board, subject to the approval of the shareholders. Some companies issue preferred (or preference) shares which have a preference in respect of receipt of the profits of the firm but which normally have no voting rights. Companies may also issue participation certificates or shares without voting rights which would presumably trade at different prices than shares with voting rights. All of these structures may be effective in distributing risk and reward in ways that are thought to be in the best interest of the company and to cost efficient financing. The Principles do not take a position on the concept of "one share one vote". However, many institutional investors and shareholder associations support this concept. Moreover, some OECD governments have recently revised their laws to curtail practices aimed at redistributing voting rights in ways that diverge from proportionality to ownership.

Investors can expect to be informed regarding their voting rights before they invest. Once they have invested, their rights should not be changed unless those holding voting shares have had the opportunity to participate in the decision. Proposals to change the voting rights of different classes of shares are normally submitted for approval at a general shareholders' meeting by a specified majority of voting shares in the affected categories.

2. **Votes should be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares.**

In some OECD countries it was customary for financial institutions which held shares in custody for investors to cast the votes of those shares. Custodians such as banks and brokerage firms holding securities as nominees for customers were sometimes required to vote in support of management unless specifically instructed by the shareholder to do otherwise.

The trend in OECD countries is to remove provisions that automatically enable custodian institutions to cast the votes of shareholders. Rules in some countries have recently been revised to require custodian institutions to provide shareholders with information concerning their options in the use of their voting rights. Shareholders may elect to delegate all voting rights to custodians. Alternatively, shareholders may choose to be informed of all upcoming shareholder votes and may decide to cast some votes while delegating some voting rights to the custodian. It is necessary to draw a reasonable balance between assuring that shareholder votes are not cast by custodians without regard for the wishes of shareholders and not imposing excessive burdens on custodians to secure shareholder approval before casting votes. It is sufficient to disclose to the shareholders that, if no instruction to the contrary is received, the custodian will vote the shares in the way he deems consistent with shareholder interest.

It should be noted that this item does not apply to the exercise of voting rights by trustees or other persons acting under a special legal mandate (such as, for example, bankruptcy receivers and estate executors).

3. **Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes.**

In Section I of the Principles, the right to participate in general shareholder meetings was identified as a shareholder right. Management and controlling investors have at times sought to discourage non-controlling or foreign investors from trying to influence the direction of the company. Some companies charged fees for voting. Other impediments included prohibitions on proxy voting and the requirement of personal attendance at general shareholder meetings to vote. Still other procedures may make it practically impossible to exercise ownership rights. Proxy materials may be sent too close to the time of general shareholder meetings to allow investors adequate time for reflection and consultation. Many companies in OECD countries are seeking to develop better channels of communication and decision-making with shareholders. Efforts by companies to remove artificial barriers to participation in general meetings are encouraged.

B. Self-dealing and insider trading should be prohibited.

Persons having close relationships to the company may be able to exploit those relationships to the detriment of the company. Since insider trading entails manipulation of the capital markets, it is prohibited by securities regulations, company law and/or criminal law in most OECD countries. However, not all jurisdictions prohibit such practices, and in some cases enforcement is not vigorous. These practices can be seen as constituting a breach of good corporate governance inasmuch as they violate the principle of equitable treatment of shareholders.

The Principles reaffirm that it is reasonable for investors to expect that the abuse of insider power be prohibited. In cases where such abuses are not specifically forbidden by legislation or where enforcement is not effective, it will be important for governments to take measures to remove any such gaps.

C. Members of the board and managers should be required to disclose their material interests in transactions or matters affecting the corporation.

This item refers to situations where members of the board and managers have a business, family or other special relationship to the company that could affect their judgement with respect to a transaction.

III. The role of stakeholders in corporate governance

The corporate governance framework should recognise the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

A key aspect of corporate governance is concerned with ensuring the flow of external capital to firms. Corporate governance is also concerned with finding ways to encourage the various stakeholders in the firm to undertake socially efficient levels of investment in firm-specific human and physical capital. The competitiveness and ultimate success of a corporation is the result of teamwork that embodies contributions from a range of different resource providers including investors, employees, creditors, and suppliers. Corporations should recognise that the contributions of stakeholders constitute a valuable resource for building competitive and profitable companies. It is, therefore, in the long-term interest of corporations to foster wealth-creating co-operation among stakeholders. The governance framework should recognise that the interests of the corporation are served by recognising the interests of stakeholders and their contribution to the long-term success of the corporation.

- A. The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected.**

In all OECD countries stakeholder rights are established by law, such as labour law, business law, contract law, and insolvency law. Even where stakeholder interests are not legislated, many firms make additional commitments to stakeholders, and concern over corporate reputation and corporate performance often require the recognition of broader interests.

- B. Where stakeholder interests are protected by law, stakeholders should have the opportunity to seek effective redress for violation of their rights.**

The legal framework and process should be transparent and not impede the ability of stakeholders to communicate and to seek redress for the violation of rights.

- C. The corporate governance framework should permit performance enhancing mechanisms for stakeholder participation.**

Corporate governance frameworks will provide for different roles for stakeholders. The degree to which stakeholders participate in corporate governance depends on national laws and practices, and may vary from company to company as well. Examples of mechanisms for stakeholder participation include: employee representation on boards; employee stock ownership plans or other profit sharing mechanisms or governance processes that consider stakeholder viewpoints in certain key decisions. They may, in addition, include creditor involvement in governance in the context of insolvency proceedings.

- D. Where stakeholders participate in the corporate governance process, they should have access to relevant information.**

Where laws and practice of corporate governance systems provide for participation by stakeholders, it is important that stakeholders have access to information necessary to fulfil their responsibilities.

IV. Disclosure and transparency

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

A strong disclosure regime is a pivotal feature of market-based monitoring of companies and is central to shareholders' ability to exercise their voting rights. Experience in countries with large and active equity markets shows that disclosure can also be a powerful tool for influencing the behaviour of companies and for protecting investors. A strong disclosure regime can help to attract capital and maintain confidence in the capital markets. It also helps improve public understanding of the structure, activities and policies of enterprises.

Shareholders and potential investors require access to regular, reliable and comparable information in sufficient detail for them to assess the stewardship of management, and make informed decisions about the valuation, ownership and voting of shares. Insufficient or unclear information may hamper the ability of the markets to function, may increase the cost of capital and result in a poor allocation of resources.

In most OECD countries a large amount of information, both mandatory and voluntary, is compiled on publicly traded and large unlisted enterprises, and subsequently disseminated to a broad range of users. Public disclosure is typically required, at a minimum, on an annual basis though some countries require periodic disclosure on a semi-annual or quarterly basis, or even more frequently in the case of material developments affecting the company. Companies often make voluntary disclosure that goes beyond minimum disclosure requirements in response to market demand. The OECD Guidelines for Multinational Enterprises are relevant in this context.

Disclosure requirements are not expected to place unreasonable administrative or cost burdens on enterprises. Nor are companies expected to disclose information that may endanger their competitive position unless disclosure is necessary to fully inform the investment decision and to avoid misleading the investor. In order to determine what information should be disclosed at a minimum, many countries apply the concept of materiality. Material information can be defined as information whose omission or misstatement could influence the economic decisions taken by users of information.

The Principles support prompt disclosure of all material developments that arise between regular reports. The Principles also support simultaneous reporting of information to all shareholders in order to ensure their equitable treatment.

A. Disclosure should include, but not be limited to, material information on:

1. The financial and operating results of the company;

Audited financial statements (most typically including the balance sheet, the profit and loss statement, the cash flow statement and notes to the financial statements) are the most widely used source of information on companies. Management's discussion and analysis of operations is typically included in annual reports. In their current form, the two principal goals of financial statements are to enable appropriate monitoring to take place and to provide the basis to value securities.

It is important that transactions relating to an entire group be disclosed. Arguably, failures of governance can often be linked to the failure to disclose the "whole

picture", particularly where off-balance sheet items are used to provide guarantees or similar commitments between related companies. Normally these should become apparent through proper consolidation accounting which should be used for groups of companies under the control of a parent.

2. Company objectives;

In addition to their commercial objectives, companies are encouraged to disclose policies relating to business ethics, the environment and other public policy commitments.

3. Major share ownership and voting rights;

One of the basic rights of investors is to be informed about the ownership structure of the enterprise and their rights vis-à-vis the rights of other owners. Countries often require disclosure of ownership data once certain thresholds of ownership are passed. Such disclosure might include data on major shareholders and others that control or may control the company including information on special voting rights, shareholder agreements, the ownership of controlling or large blocks of shares, significant cross shareholding relationships and cross guarantees. (See Section LD with respect to disclosure of capital structures and arrangements that allow shareholders to obtain control disproportionate to their equity ownership). Companies are also expected to provide information on related party transactions.

4. Members of the board and key executives, and their remuneration;

Investors require information on individual board members and key executives in order to evaluate their experience and qualifications and assess any potential conflicts of interest that might affect their judgement.

Board and executive remuneration are also of concern to shareholders. Companies are generally expected to disclose sufficient information on the remuneration of board members and key executives (either individually or in the aggregate) in order for investors to properly assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to performance.

5. Material foreseeable risk factors;

Users of financial information and market participants need information on reasonably foreseeable material risks that may include: risks that are specific to the industry or geographical areas; dependence on commodities; equity, interest rate or currency risk; and risk related to derivatives and off-balance sheet transactions. The Principles do not envision the disclosure of commercially sensitive information in greater detail than is necessary to fully inform investors of the material risks of the enterprise. Disclosure of risk is most effective when it is tailored to the particular industry in question. Disclosure of whether or not companies have put systems for monitoring risk in place is also useful.

6. Material issues regarding employees and other stakeholders; and

Companies are encouraged to provide information on key issues relevant to employees and other stakeholders that may materially affect the performance of the company. Some areas in which disclosure might be considered are management/employee relations, and relations with other stakeholders such as creditors, suppliers, and local communities.

Some countries require extensive disclosure of information on human resources. Human resource policies, such as programmes for human resource development or employee share ownership plans, can communicate important information on the competitive strengths of companies to market participants.

7. Governance structures and policies.

Companies are encouraged to report on how they apply relevant corporate governance principles in practice. Disclosure of the governance structures and policies of the company, in particular the division of authority between shareholders, management and board members, is important for the assessment of a company's governance. More generally, the division of authority between the board, management, and the shareholders as a body--as well as the legal standards that govern the authority of shareholders, members of the boards and management, duties and responsibilities, and legal liabilities--are expected to be clearly articulated in company law.

B. Information should be prepared, audited, and disclosed in accordance with high quality standards of financial disclosure, non-financial disclosure and audit.

The application of high quality standards is expected to significantly improve the ability of investors to monitor the company by providing increased reliability and comparability of reporting, and improved insight into company performance. The quality of information depends on the standards under which it is compiled and disclosed. The Principles support the development of high quality international standards which can serve to improve the comparability of information between countries.

C. An annual audit should be conducted by an independent auditor in order to provide an external and objective control on the way in which financial statements have been prepared and presented.

Many countries have considered measures to improve the independence of auditors and their accountability to shareholders. It is widely felt that the application of high quality audit standards and codes of ethics is one of the best methods for increasing independence and strengthening the standing of the profession.

Numerous other measures and proposals have been considered by OECD countries. Some countries apply limitations on the percentage of non-audit income that the auditor can receive from a particular client. Other countries require companies to disclose the level of fees paid to auditors for non-audit services. In addition there may be limitations on the total percentage of auditor income that can come from one client. Examples of other proposals include: prohibitions on the provision of non-audit services, mandatory rotation of auditors and the direct appointment of auditors by shareholders. Further measures include strengthening of board audit committees and increasing the board's responsibility in the auditor selection process.

- D. Channels for disseminating information should provide for fair, timely and cost-efficient access to relevant information by users.**

Channels for the dissemination of information can be as important as the content of the information itself. While the disclosure of information is often provided for by legislation, filing and access to information can be cumbersome and costly. Filing of statutory reports has been greatly enhanced in some countries by electronic filing and data retrieval systems. The Internet and other information technologies also provide the opportunity for improving information dissemination.

V. The role of the board

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

Board structures and procedures vary both within and among OECD countries. Some countries have two-tier boards that separate the supervisory function and the management function into different bodies. Such systems typically have a "supervisory board" composed of non-executive board members and a "management board" composed entirely of executives. Other countries have "unitary" boards which bring together executive and non-executive board members. The Principles are intended to be sufficiently general to apply to whatever board structure is charged with the functions of governing the enterprise and monitoring management.

Together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance, preventing conflicts of interest and balancing competing demands on the corporation. In order for boards to effectively fulfil their responsibilities they must have some degree of independence from management. Another important board responsibility is to ensure that the corporation obeys applicable laws, including tax, competition, labour, environmental, equal opportunity, health and safety laws. In addition, boards are expected to take due regard of, and deal fairly with, other stakeholder interests including those of employees, creditors, customers, suppliers and local communities.

- A. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company.
- B. Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.
- C. The board should ensure compliance with applicable law and take into account the interests of stakeholders.
- D. The board should fulfil certain key functions, including:
 1. Reviewing corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestitures.
 2. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.
 3. Reviewing executive remuneration.
 4. Monitoring and managing potential conflicts of interest of management, board members and shareholders including misuse of corporate assets and abuse in related party transactions.
 5. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law.

6. **Monitoring the effectiveness of the governance practices under which it operates and making changes as needed.**
7. **Overseeing the process of disclosure and communications.**

The specific functions of board members may differ according to the articles of company law in each jurisdiction and according to the statutes of each company. The above-noted elements are, however, considered essential for purposes of corporate governance.

E. The board should be able to exercise objective judgement on corporate affairs, independent of management.

The variety of board structures and practices in different countries will require different approaches to the issue of independent board members. Board independence usually requires that a sufficient number of board members not be employed by the company and not be closely related to the company, or its management through significant economic, family or other ties. Independent board members can contribute significantly to the decision-making of the board. They can bring an objective view to the evaluation of the performance of the board and management. In addition, they can play an important role in areas where the interests of management, the company and shareholders may diverge such as executive remuneration, succession planning, changes of corporate control, take-over defences, large acquisitions and the audit function.

The Chairman as the head of the board can play a central role in ensuring the effective governance of the enterprise and is responsible for the board's effective function. The Chairman may, in some countries, be supported by the company secretary. In unitary board systems, the separation of the roles of the Chief Executive and Chairman is often proposed as a method of ensuring an appropriate balance of power, increasing accountability and increasing the capacity of the board for independent decision making.

1. **Boards 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: financial reporting, nomination and executive remuneration.**

While the responsibility for financial reporting, remuneration and nomination are those of the board as a whole, independent non-executive board members can provide additional assurance to market participants that their interests are defended. Boards may also consider establishing specific committees to consider questions where there is a potential for conflict of interest. These committees may require a minimum number or be composed entirely of non-executive members. The audit function in particular can benefit from independent oversight.

2. **Board members should devote sufficient time to their responsibilities.**

It is widely held that service on too many boards can interfere with the performance of board members. Companies may wish to consider whether excessive board

service interferes with board performance. Specific limitations are less important than ensuring that members of the board enjoy legitimacy and confidence in the eyes of shareholders.

In order to improve board practices and the performance of its members, some companies have found it useful to engage in training and voluntary self-evaluation that meet the needs of the individual company.

- F. In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information.**

Board members require relevant information on a timely basis in order to support their decision making. Non-executive board members do not typically have the same access to information as key managers within the company. The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company such as, for example, the company secretary and the internal auditor, and recourse to independent external advice at the expense of the company. In order to fulfil their responsibilities, board members should ensure that they obtain accurate, relevant and timely information.