Update of the OECD Corporate Governance Principles

Key considerations

BIAC promotes corporate governance principles designed to foster business growth, create sustainable value, and stimulate innovation and entrepreneurship. BIAC emphasizes that business growth should be pursued in an ethically conscious manner.

The OECD Corporate Governance Principles offer non-binding standards and good practices as well as guidance on implementation, which can be adapted to the specific circumstances of individual countries and regions. The Principles should retain their capacity to address new business challenges in an evolving global economy. Care should be taken that in the update process, new proposals do not impede voluntary actions by companies to enhance corporate governance.

The revised Principles should encourage a long-term perspective and highlight the importance of sustainable value creation. Good governance is the foundation for doing business, but also needs to provide space for entrepreneurial behavior, focusing on longer-term sustainable value creation that is beneficial for all.

Corporate governance systems vary across countries. Bearing in mind the importance of solid overarching principles, the consultation process should give due regard to the need for flexibility to allow companies to apply the principles to achieve effective governance. The Principles should accommodate specific needs of companies, which can differ, among others, based on size, stage of development, ownership structure, industry, culture and geo-political factors. The consultation process should therefore be inclusive, both in terms of sector and geography and should benefit from the active involvement of non-member countries.

We recommend that work on the Principles primarily focus on listed companies, bearing in mind that subsequently there may be a need to consider additional work on SMEs and family-owned companies.
**Preliminary suggestions for updates**

The points mentioned below are a non-exhaustive preliminary list of issues to be further discussed during the update process. BIAC will follow up with additional specific comments as the OECD will be looking at specific update proposals.

- **Effective Boards**: Good governance starts at the top. It is therefore recommended to give more prominence to chapter VI and strengthen the text, focusing on the importance of “effective Boards”. Issues such as board composition, including qualifications for director candidacy and developing the Board’s role in risk oversight/management should be further highlighted. Effectiveness should be supported by periodic performance evaluations.

- We believe all boards should encourage independent and objective views among their members. However, there are multiple approaches to achieve this depending on the circumstances in different jurisdictions. Some jurisdictions have outside, independent directors, and others include independent points of views through systems of statutory auditors (Audit & Supervisory Board) or advisory councils. In all cases, the independence of thought and objectivity of Board members while making decisions is key to their overall effectiveness.

- **Diversity of thought**: The importance of diversity of thought in the Boardroom should be introduced as a cornerstone of effective corporate governance. This should be done in a broader context of highlighting the importance of skills and experience. Flexibility is necessary in determining what kind of diversity consideration would best suit each company’s unique situation (due consideration to diversity of talent, skills, culture, gender, etc…).

- **Risk oversight and management**: Corporate governance practices should enable businesses to seize appropriate opportunities and manage risks in order to stimulate business growth. The concept of risk oversight and management should be strengthened, taking into account the importance of understanding and agreeing the level of acceptable risk, and the establishment and monitoring of risk policies and systems. Whether a committee is required at the board level to manage this risk may be driven by the nature and complexity of the company’s risk, the nature of the company’s business and the particular circumstances in different jurisdictions.

- **Audit committees**: Since the Principles were revised in 2004, independent audit committees have played an increasingly important role in enhancing confidence in corporate reporting. The discussion of the audit committee as well as global standards in auditor independence should be highlighted to reflect current practices.
• **Disclosure and transparency**: The Principles should acknowledge the developments we have seen since 2004, among others in corporate reporting, including on non-financial information that is beneficial to stakeholders. However, it should be born in mind that a balance needs to be found between the additional costs for companies connected with complex reporting requirements and the benefits of providing additional information.

• “**Comply or explain**” is an important foundation of the flexibility of national corporate governance codes, which should be duly highlighted. This implies that good corporate governance can be achieved by either applying the code or by explaining why they chose not to do so, bearing in mind that the reasons for not doing so should be explained clearly and carefully to shareholders, who, if they consider the explanations as insufficient, can then vote against the company resolutions. We support this approach, a high level of transparency on corporate governance information by companies and ways for shareholders to hold Boards ultimately accountable for their corporate governance decisions and disclosures, which we believe has a stronger chance of success than a heavy legislative approach.

• **Shareholder rights**: We recommend further emphasis on addressing cross-border voting impediments, enhancing transparency regarding disclosure of beneficial and derivative ownership and respect of minority shareholders.

• **Rights and Responsibilities of institutional investors**: We believe the issue of shareholder behavior and investor stewardship should be emphasized in the Principles. We also support consideration of what the governance framework should provide for stakeholders beyond a company’s equity shareholders. We encourage the OECD to investigate the incentives for investors to monitor and engage with their investments, and ways to minimize misalignments between investors and companies where they invest.