Consultation with the
OECD Corporate Governance Committee

Paris, 12 November 2013

BIAC Comments

1. Update of the OECD Corporate Governance Principles

BIAC is following with great interest discussions on the preparations for the update of the OECD Corporate Governance Principles, and welcomes the fact that the Corporate Governance Committee will have a first discussion about the areas and issues that they consider of special interest and importance. We believe, in fact, this is long overdue, and remain anxious to see the update process commence in earnest. We appreciate the opportunity to contribute our comments to the process, which are summarized in the attached paper on business key considerations on the update of the Corporate Governance Principles. This paper represents the fruit of more than a few months of internal debate and consideration among a diverse set of BIAC members, from listed corporations, to institutional investors, to employer and business associations, to audit and professional service firms. Moreover, with this paper, BIAC has made efforts to include views not just from Western or Anglo-American capital markets, but from fast-growing economies, including India and Singapore.

We look forward to participating in the stakeholder consultations on the Principles in March and November 2014, but would like to underline our wish to also become actively involved in the drafting process and contribute to the on-going discussions in between the formal consultations. We encourage the Committee to view BIAC as your conduit to the business community and to the community of large institutional investors.

We welcome the fact that the draft roadmap and terms of reference for the review of the Corporate Governance Principles includes the recommendation to develop a program for communication and implementation of the revised Principles once they are finalized. The Principles are not an end in
themselves, and BIAC has frequently underlined the importance of implementation and active outreach. BIAC and its members expect to be active participants in the roll-out and implementation of the Principles. Through its network of business and employer associations around the world, we believe BIAC is perfectly suited to spread the word through workshops, trainings or other means alone or in collaboration with the OECD. In this context, BIAC would like to offer its help to get more involved with future Regional Roundtables.

2. Program of work and budget 2015-2016

We appreciate the opportunity to contribute to early discussions on the future program of work 2015-2016, bearing in mind that it should remain sufficiently flexible to include new issues as they come up. With regard to the proposed elements of the work program, we would like to offer the following initial comments:

We support a strong focus on the completion, dissemination and implementation of the revised Principles. The finalization of the Principles in 2015 should not be considered as the end of a process, but rather as the beginning of strong communication efforts, outreach, and capacity building. It should also include a process where countries are being encouraged to apply the Principles. In this respect, we also strongly support OECD cooperation with non-member countries, among others through its regional and country-specific programs. We do hope that the necessary funding can be found for the Asia, Latin America and MENA roundtables to continue and would like to reiterate our request to get timely information on the activities of these roundtables with a view to making a constructive contribution.

Data and analysis is a cornerstone of OECD work, and the Committee has made an important contribution through its project on Corporate Governance, Value Creation and Growth. The rapid changes in global business and capital market practices highlight the importance of continued OECD work in this area. We therefore support the suggested emphasis on fact-based and forward-looking analysis of developments that influence the effectiveness and implementation of corporate governance rules and practices, such as the proposed analysis of developments in intermediary ownership.

We also support the Committee’s contribution to horizontal OECD activities, such as the OECD current high-priority project on New Approaches to Economic Challenges (NAEC). Corporate governance principles are not goals in themselves, but rather should be developed with the ultimate objective of enabling business to grow and create sustainable value, while keeping in mind interests of key stakeholders as appropriate. As such, corporate governance should be given due attention in broad-based OECD discussions on economic growth and challenges. We also recommend cooperation with related activities in the area of integrity and supply chains where appropriate.
In addition, we would like to take the opportunity to remind the Committee of our proposals for future projects, which we presented during the consultation in April 2013 and which are summarized again below:

- **Non-financial reporting:** While it is recognized that reporting needs to go beyond financial reporting, the additional costs for companies connected with complex reporting requirements should be carefully considered and weighed against the benefits of providing additional information and the confidence it engenders in investors. The OECD should help shed further light on which particular issues and which ways of non-financial reporting are desirable and which are not. In this regard, we would like to underline the importance of providing better and more concise information, rather than more information.

- **Addressing the risk of over-regulation:** As highlighted by the OECD analysis on Corporate Governance and the Financial Crisis, an urgent challenge is to encourage and support effective implementation of already agreed standards. However, many governments have had a tendency to consider additional regulations as the first response to the crisis. In BIAC’s view, due consideration must be given to the risk of over-regulation as a response to a crisis - both with regard to over-regulation as a source of a further crisis and over-regulation as an impediment to economic recovery. The OECD could make a useful contribution by explicitly addressing this issue. We therefore support the OECD’s efforts to assess the current market landscape as an important input to subsequent discussions on the update of the Principles. BIAC agrees with the OECD that “it is not the amount of regulation that matters, but the quality and relevance of the regulatory framework”, as expressed in its proposed future program of work.

- **Exploring SME governance issues:** SMEs have an essential role to play in strengthening our economies and creating jobs. On the one hand, better governance improves SMEs access to finance and ensures their sustainability, on the other hand it has to be recognized that certain regulations can represent a particular burden for SMEs. An OECD study of the particular governance needs of SMEs and how countries have responded to specific governance issues confronting SMEs could be a useful tool to help promote SMEs and ensure their long-term success. Such work could be carried out in close cooperation with the OECD Centre for Entrepreneurship, SMEs and Local Development.

- **Private companies and private-equity backed companies:** Private equity represents a large and growing number of many member countries’ capital markets. Yet there is little in the way of good governance practice for these firms. Without introducing burdensome regulations, the OECD could play a useful role by highlighting practices that lead to more stable and more successful private-equity backed firms.

- **The role of technology:** Technology will play an increasingly important role in the context of the AGM, including voting at AGMs. However, technology is among others also relevant with regard to the execution of board responsibilities. Issues can arise related to meeting quorums, board
confidentiality, information tabled at meetings, meeting records and decision making. OECD analysis on the challenges and opportunities related to the increased use of technology would be helpful.

We would be grateful if the Committee could include these proposals in discussions going forward, and would appreciate the opportunity to discuss them further as the future program of work is designed.

3. Risk management and corporate governance

BIAC supports efforts to improve sound risk governance, both in terms of board-level direction and management oversight of risk-taking as a core element of effective corporate governance and as a complement to long-term sustainability of business growth and value. While BIAC agrees that control over and oversight of risk taking are important, we also emphasize the value of risk-management and risk-taking itself, both of which enable businesses to set and achieve objectives. Business must take risk in order to achieve a return; without risk, businesses die. BIAC therefore welcomes the OECD’s recognition of the fundamental role of risk-taking as a driving force in business and entrepreneurship.

There is, however, no one-size-fits-all solution to effective risk governance, which calls for flexibility in guidelines with respect to risk management and internal control. Direction and oversight of risk-taking is one of the most urgent tasks facing business in the wake of the financial crisis, and today, more than five years after the beginning of the crisis, there are still few areas of consensus about how boards of directors should do this most effectively.

Risk governance standards ought to be sufficiently general to allow companies the flexibility to implement practices appropriately tailored to their unique and varied needs. Practices should be customized based upon, among other things, company size, stage of development, ownership, structure, industry, culture, and geographical factors. We call upon national regulators to resist the urge to over-prescribe risk management and internal control regulations, especially in the non-financial sector.

The paper specifically recommends that SOEs should follow similar risk governance practices as listed companies. The OECD Working Party on State Ownership and Privatization Practices can play an important role in addressing this issue further.