

Consultation with the OECD Corporate Governance Committee

23 March 2015

BIAC comments

BIAC has actively provided input during the discussion on the update of the OECD Corporate Governance Principles, including several written submissions with detailed wording proposals. As the Committee is now discussing the revised version, we would like to highlight the following key BIAC recommendations, which we hope will be addressed in the final draft. We will separately submit our detailed comments with additional suggestions regarding the latest changes.

Support growth and value creation

The objective that good governance should enable business to grow and create sustainable value while upholding investor confidence in capital markets should guide the update of the Principles. The Principles should reflect recent developments and be sufficiently ambitious with regard to key outcomes so that the OECD retains its authority in this important area. We also underline the importance of careful, consistent and clear use of language.

Foster a principles-based approach

We have consistently highlighted the need to focus on effective overarching principles, instead of including too many detailed prescriptions which differ in various jurisdictions and which can become quickly outdated. The Principles should therefore focus on broad measures or desired outcomes. This is already endorsed in the new draft of the preamble “about the Principles”, which states that the Principles are intended to be concise, understandable and accessible to the international community, which should be reflected in the relevant sections. Where other OECD instruments or global standards exist, these should be referred to rather than overloading the Principles with detailed prescriptions in individual chapters.

The current draft includes too much detail on several topics, including:

- **Say on pay:** The Principles should not refer to a shareholder vote on the remuneration of individual board members. Instead, the existing wording regarding votes on remuneration *policy* should be kept. We believe this is sufficient to provide an opportunity for discussion and voting when the remuneration system changes.
- **Related party transactions:** BIAC supports rules to protect minority shareholders against abusive transactions with related parties, but cautions against provisions that are too detailed and do not fit with various company law systems in OECD countries. The proposal that shareholders should be given a say in approving certain transactions with interested shareholders excluded is not compatible with the situation in jurisdictions where other ways of protecting minority shareholders exist.
- **Human rights:** Some sections, e.g. regarding disclosure related to human rights in the supply chain, are too detailed and dealt with in other OECD instruments.

Taxation: BIAC recognizes that corporate governance principles extend to the area of taxation, but draws the committee’s attention to earlier concerns we expressed in this area.

We recommend strengthening language on:

- **“Comply or explain”:** The corporate governance framework should promote transparent and *efficient* markets. The Principles should more clearly underline that regulatory elements of the corporate governance framework **should** be complemented by soft law, based on the “comply or explain” principle (I.1 and 2). The “comply or explain” principle should be specifically included in the preamble and further highlighted throughout the Principles, rather than drawing artificial lines for large companies only. Investors and small companies should not be led to believe that good governance is just for large companies.
- **Auditor’s independence and audit committee for all:** We underline the importance of the audit committee and the need to further strengthen the section on auditor independence. We recommend additional emphasis on why auditor independence matters, and a focus on governance mechanisms that oversee auditor independence. The Principles should avoid a long list of policy approaches that may be appropriate in some markets but not in others and instead keep the text focused on the relevant IOSCO principles.
- **Board’s role in risk management oversight:** To avoid a siloed approach to risk management, the Principles should reflect that the board will set the company’s risk appetite and will ensure oversight of an effective risk management process. However, the Principles should emphasize that the board is not primarily responsible for managing risk on a day-to-day basis, but for its oversight.