Good corporate governance supports sustainable growth

Good corporate governance, across all sectors of the economy, is a fundamental prerequisite for the long-term sustainability of businesses, the stability of capital markets, and sustainable growth. Corporate governance affects every step of the investment cycle and should enable business to take risk to grow and create value, which requires access to and effective allocation of capital. It also enhances decision-making by public sector entities, and a better allocation of scarce resources to grow and create value for society.

As the world undergoes profound changes, including in the areas of capital formation, capital allocation, corporate structures, the number of listed companies, disruptive business models and the complexity of the investment chain, the role of the OECD is increasingly important to analyse new trends and ensure sound corporate governance arrangements that are supportive of long-term investment and corporate access to capital markets to support the sustainable growth of our economies. Most important, we need continued emphasis on the effective implementation of the OECD/G20 Corporate Governance Principles, with due mechanisms in place to review progress and encourage leading practices.
I. The importance of outreach and policy coherence

The G20/OECD Principles of Corporate Governance are the international benchmark for policy makers, investors, corporations and stakeholders worldwide. They play a major role in informing local codes and practices around the world. The implementation of the Principles should remain a top priority. Business at OECD (BIAC) welcomes the close cooperation with non-OECD G20 countries as well as with international organizations, such as the FSB, IOSCO and other standard-setting organizations. Cooperation in the context of the OECD accession process represents an important opportunity for further implementation of the Principles. BIAC also welcomes OECD regional roundtables as an important channel for reform assistance, and as recognition that different parts of the world present unique challenges to effective implementation of the Principles.

As corporate governance is closely linked to other policy areas, the Corporate Governance Committee should work closely with other parts of the OECD and contribute to work on cross-cutting issues in areas such as productivity, sustainability, integrity, anti-corruption, disclosure practices and finance. Attention should also be given to the impact of technology on corporate governance, shareholder, stakeholder and regulator relationships and on audit and assurance of company information.

Recommendations to the OECD:
- Ensure the implementation of the OECD-G20 Principles and foster policy coherence
- Further explore the impact of technology in the area of corporate governance
- Consider connections between the access to equity and capital markets and inclusive growth

II. Objective data and analysis

BIAC has consistently underlined the important role of the OECD as a knowledge center, recognizing its strength in the collection and compilation of fact-based information to contribute to policy discussions. BIAC welcomes the Corporate Governance Factbook, and strongly supports regularly updating this publication, which is a unique source of factual information on institutional, legal and regulatory frameworks. We would be pleased to contribute to discussions as future focus areas are considered, for example, the topic of shareholder activism, or succession planning. BIAC also welcomes the unique analysis of the OECD in the area of state-owned enterprises (SOEs), including on the size and composition of SOEs and their role as global competitors.

Recommendations to the OECD:
- Regularly update the Corporate Governance Factbook and the dataset of SOEs
III. Key areas covered in the Corporate Governance Principles

Effective corporate governance framework

The promotion of transparent and fair markets and the efficient allocation of resources, consistent with the rule of law and supported by effective supervision and enforcement are of fundamental importance. Rule of law is an important consideration, in particular in certain countries. Good corporate governance is important for listed companies, but also other companies, like SMEs and family controlled businesses, which play a major role in the economy. While due attention must be given to the specific challenges faced by SMEs, companies at large benefit from a flexible and adaptable corporate governance framework, which can be applied to the specific circumstances of the business. BIAC has consistently highlighted the importance of “comply or explain” as an important foundation which coupled with transparency can yield better results than a heavy legislative approach.

Recommendation to the OECD:
- Explore how SMEs and family-owned companies best benefit from an enabling corporate governance framework taking into account their specific challenges

Rights and equitable treatment of shareholders

The corporate governance framework underlines the importance of protecting shareholders’ rights and the equitable treatment of all shareholders. This is particularly relevant with majority-controlled or influenced companies. Due attention should also be given to mechanisms that will maintain the rights of shareholders in the face of dual class shares.

In addition to shareholder rights, due consideration should be given to the responsibilities of shareholders to act in a responsible manner aligned with companies’ objectives of value creation and long-term sustainability. Furthermore, a balance must be found between shareholder rights and avoiding votes on matters that are too technical or would considerably broaden shareholder meetings. In addition, the challenges of cross-border voting impediments must be tackled, such as through increased use of technology.

Recommendation to the OECD:
- Consider how to balance shareholder rights and responsibilities and address specific challenges
Institutional investors, stock markets, and other intermediaries

The responsibilities of institutional investors are becoming increasingly important. BIAC therefore underlines the importance of institutional investor engagement and a clear understanding of the incentives and obligations for investors to monitor and engage with their investments, ways to minimize misalignments between investors and companies where they invest and the role of stewardship codes.

Due consideration should also be given to the changing roles of stock exchanges to achieve greater focus on long-term approaches to investment and management of the enterprise. Furthermore, given their size in today’s capital markets, increased attention should be paid to the role of bondholders in corporate governance, including whether there could be incentives for their constructive involvement in company governance. It would also be helpful to explore the policy framework that must in place to ensure support for the ‘one share one vote’ principle.

Recommendations to the OECD:

- Investigate the incentives for investors to monitor and engage with management at the companies they hold, as well as ways to minimize misalignments
- Increase awareness of investors for their responsibility in line with recent policy initiatives, e.g. EU Action Plan and EU High-Level Expert Group Findings, reflected in the Shareholders’ Rights Directive
- Further explore the role of bondholders in corporate governance

Role of stakeholders

Consideration should be given to how boards can balance on the one hand the growing expectations of stakeholders (e.g. in the area of sustainability) and on the other hand, certain institutional shareholders, whose focus may be more on short-term performance expectations. The OECD might therefore help shed light on the question of how issuers can achieve a better balance between shareholder centric and stakeholder centric approaches. Achieving the right balance is also an important consideration for SOEs which need to strive for commercial results while meeting expectations of the public.

Recommendations to the OECD:

- Define what are reasonable stakeholder expectations and how companies can balance between shareholders and stakeholder expectations
Disclosure and transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. While disclosure and reporting need to go beyond financial reporting, a balance needs to be found between additional costs for companies connected with complex reporting requirements and the benefits of providing additional information.

Information provided needs to be clear and easily understandable, including on forward-looking matters such as companies' business models to create value, its strategy and risk management. The importance of auditor independence and audit quality should be emphasized, recognizing the role that audit committees play in ensuring auditor independence, promoting audit quality, and supporting investor confidence. Periodic board evaluations should be a rule for all listed companies.

Recommendation to OECD:
- Further highlight the importance of auditor independence, audit quality, and audit committees in upholding investor confidence

Responsibilities of the board

Effective boards are key to the long-term success of a company as good corporate governance starts at the top. The Principles therefore highlight the importance of the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders. Furthermore, attention should be given to issues such as sufficient quality of board composition, the board's responsibility for risk management oversight, as well as the importance of sufficient diversity of thoughts and skills, which was also the subject of a special roundtable BIAC organized in 2015.

Recommendations to the OECD:
- Continued focus on how to enhance the effectiveness of the Board, including in areas such as skills, independence of thought, succession planning, and the role of the chair and board committees.
IV. Other issues for implementation and analysis

In addition to the above-mentioned proposals, detailed analysis or peer reviews on the following areas will be particularly helpful, in cooperation with other parts of the OECD when necessary.

Culture within organizations

The role of culture within organizations is often a critical factor for how governance principles are recognized and applied in practice. Whether a corporation claims to take a governance principle but applies it with the intention of ignoring it or working around it, or whether a corporation embraces the spirit of the Principles in a meaningful way is often down to culture. The OECD can make a meaningful contribution to the implementation of the Principles by looking more closely at which elements of corporate culture drive behaviour in different ways. This might include a closer look at incentives and remuneration, and how these drive culture, or it might include an investigation into forms of internal communication, hierarchy structure or methods of sharing power.

Recommendation to OECD:
- Explore which elements of corporate culture drive behavior in different ways

Risk of over-regulation

Over-regulation, inconsistent and overlapping regulations can be important impediments to economic growth and hamper the development of market-driven corporate governance practices. Due attention must be given to the regulatory burden on companies, which can be particularly challenging for smaller companies. The OECD can make a useful contribution by addressing these issues, giving careful consideration to situations where regulation may be contrary to recommendations in the Principles or where this may promote differences in the adoption of the Principles within and between jurisdictions, and by fostering cooperation, mutual acceptance of regulations’ application that have “comparable regulatory outcome effects”, including across borders, between OECD corporate governance and regulatory policy experts.

Recommendation to OECD:
- Address the risk of over-regulation and inconsistent regulation.
Flexibility and proportionality

BIAC appreciates the current analysis in this area. While one should not necessarily assume that “one size fits all”, the call for different standards/principles applying to companies of differing size, form, purpose, ownership or stage of maturity or geography should not be the automatic answer. It is important not to undermine basic standards and key principles of good governance or create a disincentive for growing companies about passing a threshold that would oblige them to adapt to a more extensive corporate governance framework. In general, the focus should be on a principles-based framework, together with a “comply or explain” provision to provide sufficient flexibility, proportionality and scalability for smaller entities.

Recommendations to OECD:
- Proactively consider issues that might arise in different types of companies and organizations to see where gaps exist and explore solutions

Skills agenda

The composition of today’s boards of directors remains a pressing issue in corporate governance, for shareholders and investors who want to ensure that the business is well-run, and that management is accountable. Good governance starts and is driven from the top. Boards must therefore be well equipped to respond to a fast-changing business environment. As the Principles make direct reference to the diversity of skills on boards, there is a real interest in having a close look at both the collective and individual sets of skills that are required for the board to function properly. A number of companies have developed skills checklists reflecting the experience and diversity of the skills they require. Succession planning and oversight of the succession process have to be considered as an integral part of the process. In addition to the board, it is important to carefully consider the skills of committee members.

Business Recommendations to OECD:
- Develop a “skills agenda” exploring best practices for skills of directors
V. Corporate Governance of SOEs

In addition to the implementation of the OECD Corporate Governance Principles, BIAC underlines the importance of implementing the OECD Guidelines on Corporate Governance of SOEs, including in non-member countries which have an important SOE sector. Robust corporate governance practices are as essential for SOEs, as they are for private sector businesses. At the same time, a sound competitive environment is essential for open trade and investment and a global level playing field. In light of the rapid internationalization of SOEs, it is crucial to enhance transparency about the benefits they may enjoy, address competitive distortions and ensure that they play by the same rules. The participation of non-OECD countries is essential, and implementation gaps must be addressed.

Providing guidance for privatization and broadening of SOE ownership is another pillar of OECD work in this area. Having a clear view and guidance on the alternatives that privatization can provide to state ownership is important to inform discussions on the rationales of state ownership. Work on privatization is one of the possible outcomes of the regular reviews of each state’s ownership policy as recommended in the SOE Guidelines.

Business Recommendations to OECD:

- Increase transparency with regard to the advantages SOEs enjoy
- In cooperation with other committees, address competitive distortions
- Continue efforts to foster integrity in SOEs