Board Independence of Listed Companies

Responses to the Consultation Report

February 2007

Responses to IOSCO Consultation Report

Board Independence of Listed Companies

European Association of Listed Companies AISBL-IVZW

EALIC

Brussels, 22 January 2007

Re: THE OICV-IOSCO CONSULTATION REPORT ON BOARD INDEPENDENCE OF LISTED COMPANIES OF NOVEMBER 2006

We are pleased to provide you attached hereto with our comments on the Report quoted above. We apologise for having slightly passed the deadline of 10 January and hope that the contribution of our members can still be taken into account. We detected a few inconsistencies in the national descriptions which the attached document hopes to rectify or clarify.

We stay at your disposal to discuss the contents of the attached position at your convenience.

Yours sincerely,

Dorien FRANSENS
Secretary General

Enclosure : 1

EALIC, the European Association of Listed Companies, promotes the common interests of European issuers on a European level. Its scope of activities includes the legal and regulatory framework specific to listed companies in general and to the issuing and trading of securities on European markets in particular.

EALIC was incorporated in December 2002 as an international non-profit association. Its current memberbase counts six national associations of listed companies, namely VEUO (Netherlands), ANSA and AFEP (France), ABSC-BVBV (Belgium), ASSONIME (Italy) and SEG (Poland). In addition, more than seventy public companies from the mentioned countries, as well as from Portugal and Spain, are direct members of our association. As such EALIC represents many hundreds of leading issuing companies to date.

EALIC'S COMMENTS
on
THE OICV-IOSCO CONSULTATION REPORT
ON BOARD INDEPENDENCE OF LISTED COMPANIES
OF NOVEMBER 2006

22 January 2007

We are pleased to list below some comments by EALIC on the OICV-IOSCO Consultation Report on the "Board Independence of Listed Companies" (hereinafter referred to as the "Report").

EALIC welcomes this open consultation carried out with a view to gather comments on corporate governance practices across different jurisdictions. In accordance with the fact-finding approach followed by the Task Force set up in October 2005, most of our comments address some of the national situations as described in the Report, in particular showing some inconsistencies with legislative, regulatory and self regulatory rules.

The Report provides a comprehensive overview on the main topics related to board independence: each of the relevant aspects has been taken into account. However, it is not clear to what extent this document is meant to constitute a basis for further initiatives by the OICV-IOSCO. In our opinion, the Report should remain an exercise of comparative analysis. Its aim should only be to provide both national legislators/regulators and those involved in the drafting of corporate governance codes with a useful tool for their decisions. The outcome-oriented approach of the OECD Principles of Corporate Governance has to be maintained and no detailed guidance on corporate governance devices should follow, since – as widely recognised by literature and experts – one size does *not* fit all.

In order for the Report to provide a complete and useful set of different corporate governance solutions, it is advisable to distinguish the source of the standards highlighted by the Report: it is important to know if a principle is deemed to be mandatory in a jurisdiction or if, on the opposite, it is only regarded as a best practice model to be followed only if the benefits it brings outperform its costs.

The Report shows some inconsistencies and sometimes even important errors in the description of the national systems. The following comments refer to certain corporate governance standards adopted in specific countries, namely Italy and France. We do not give a complete picture of national rules, as this report cannot contain full detail of each legislation.

We do hope that the Report can take the comments set out below into account, in order to present a more accurate picture of the corporate governance rules in the concerned countries.

Corporate Governance Guidelines (enforcement mechanisms, page 13)

Italy

According to the Report, in Italy "listed companies may make a public declaration to be bound by the corporate governance code, thereby becoming legally bound to comply. The securities regulator (CONSOB) is able to impose administrative sanctions in the event of non-compliance".

This description is not in line with Italian legislation. According to the Consolidated Law on Finance (Legislative Decree 24th February 1998, No. 58, hereinafter also referred to as the "Single Financial Act" – article 124-*bis*), listed companies "shall annually disclose information on their adoption of codes of conduct promoted by management companies of regulated markets or by trade associations of market participants and on their compliance with the consequent obligations, explain the reasons for any failures to comply". Thus, this rule shows two steps: first, listed companies are compelled to declare if they adopt a Code of Best Practice as term of reference for their corporate governance. Then, if (and only if) it is stated that a company adopts a Code, a "comply or explain" rules applies: the company has either to disclose to what extent it complies with the provisions of the Code or, in case one ore more principles are not actually implemented, to explain the reasons why it has decided not to respect them.

Thus, the declaration "to be bound by a corporate governance code" does not imply, *per se*, that every provision in the Code has to be implemented: of course, untruly stating that a certain corporate governance principle is implemented would be regarded as misleading the public. For this reason, the board of auditors is required to check "the arrangements for implementing the corporate governance rules provided for in codes of conduct drawn up by management companies of regulated markets or by trade associations that the company, by means of public disclosures, declares it complies with" (article 149 of the Single Financial Act).

Administrative sanctions are imposed by the securities regulator, CONSOB, only in case of oversight of the annual disclosure obligation above (article 192-*bis* and article 195 of the Single Financial Act).

Rules on personal liability (pages 18-19)

France

The report should list France in the jurisdictions allowing legal proceedings on the company's behalf against board members initiated by shareholders. A lawsuit against a director who has broken the law, violated the by-laws or mismanaged, can be initiated either by a shareholder acting individually, whatever his/her shareholding is, or by shareholders gathered on purpose or in an association, and representing 5% of the capital (different decreasing percentages according to the amount of the capital for each of the latter cases).

Italy

Under Italian law (article 2395 of the Civil Code) remedies for breach of duty may be sought by individual shareholders on their own account, not only by shareholders representing more than 5% of the shares. Moreover, the claim of liability may be pursued on behalf of the company by shareholders representing at least 2,5% of the outstanding capital.

Regular term and re-election (pages 20-21)

France
Regarding the age limits for board members in French law, the by-laws should specify an age limit for the exercise of the office of director, either for all the directors or for a specific percentage of them, and the office of the chairman. In the absence of an explicit provision, the number of directors over the age of 70 may not be more than one third of the directors in office, and the age limit for the chairman is 65 years old.

Any appointment made in violation of these provisions is null and void. Moreover, in the absence of an explicit provision in the by-laws specifying another procedure, the oldest director is deemed to be retiring from office when the age limit for directors is exceeded.

Voting rules (page 22)

Italy
Under the Italian law (art. 2368 of the Civil Code) when the meeting is held at first call, board members are appointed by more than 50% of the voting capital that is present at the meeting, provided that at least 50% of the voting capital is represented at the meeting. In the second call, more than 50% of the voting capital represented suffices, irrespective of the percentage represented in the meeting.

Termination – dismissal (page 24)

Italy
Under the Italian law, no particular threshold is required to dismiss board members: the rule for the appointment applies (see the previous paragraph). The 20% threshold referred to in the Report seems to refer to another rule, according to which whenever a claim for liability towards a member of the board is approved with at least one-fifth of the total voting capital, that member is automatically dismissed (article 2393 of the Civil Code).

Availability and dedication (page 26)

Italy
Under Italian securities legislation, CONSOB has not been given the power to impose limits of general application on the number of board memberships an individual can hold. On the contrary, a rule of this kind is provided for the internal auditors: CONSOB will impose limits on the number of board and auditor memberships an internal auditor can hold in listed companies (article 148-*bis* of the Single Financial Act).

Shares and stock options (page 29)

France
France should be listed in the "first group of jurisdiction", which does not allow the participation of independent directors in stock options plans. As a matter of fact, only executive directors are entitled to such kind of remuneration amongst the board members.

Loans and financial assistance (pages 29-30)

France
Contrary to what is stated in the report, France imposes specific restrictions on the granting of loans and other financial assistance. Directors other than legal entities, as well as their spouse and relatives in the ascending and descending line, are prohibited to contract loans with, or obtain other financial assistance from the company or arrange for the company to stand surety for them or act as their guarantor. However, if the company operates a banking or financial establishment, this prohibition does not apply to current commercial transactions entered into under normal conditions.

Persons or committees determining compensation (page 30)

France
Shareholders approve an envelope for attendance fees which is freely used and distributed by the board. No reference to the specific case of independent directors is made by shareholders.

Disclosure standards (page 31)

France
The French legal and regulatory framework also requires full disclosure of the remuneration of board members.

Categories of board members (page 34)

Italy
The Single Financial Act (articles 147-ter and 148) set the criteria for independence of statutory auditors and independent board members. According to the Italian law, at least one -board member (two if the board is made up of more than seven members) has to be independent under these criteria. As a result, there are two categories of independent directors: one (compulsory) laid down by law, the other (to be adopted on a voluntary basis) by the corporate governance code.

Definition of independence - negative criteria (page 36)

Italy
Under the new Italian Corporate Governance Code, the so-called negative criteria are listed by way of example and are not binding on the board of directors. The board may adopt, for the purpose of its evaluation of independence, additional or different criteria, in

whole or in part, giving adequate information to the market together with the relevant reasons.

Definition of independence - negative criteria (page 42)

Italy
Under Italian securities legislation, CONSOB has not been given the powers referred to in the Report to take disciplinary action, declare that a person is disqualified from serving as an independent board member or even sue the issuer for misstatements in the declaration of independence. In such a case, two different remedies apply: on the one hand, if the *law* or the *articles of association* provide for independence as a requirement for serving as board member, in case of loss of independence or misstatements in the declaration of independence, the board of directors will declare that the person concerned is disqualified from serving as board member (article 2387 of the Italian Civil Code and article 147-*ter* of the Single Financial Act); on the other hand, the internal auditors discovering misstatements in the declaration of independence that the company, by means of public disclosure, declares to adopt, have to report such to CONSOB and to the shareholders. If CONSOB finds out that misleading information has been given to the public, it imposes administrative sanctions on the issuer (articles 149 and 193 of Single Financial Act).

Standards on "sufficient number" of independent board members (page 43)

Italy
In Italy, a recommended proportion of independent board members is provided for only for companies which have chosen the one-tier corporate governance system (one-third of the members has to be independent). Apart from this, recommended proportions are provided for only for companies listed in the "Star" segment of Borsa Italiana, but they are not equal to one third as provided for by the Report[1].

Separate meetings (page 45)

France
France should be added to the list of jurisdictions recommending separate meetings of independent members of the board.

Audit committee (page 46)

Italy
No Italian securities provision provides for the existence of a mandatory audit committee for listed companies. The new Italian Corporate Governance Code recommends establishing an internal control committee, made up of non-executive directors, the majority of which are independent. If the issuer is controlled by another listed company,

[1] The recommended proportions for Star companies are as follows: at least one fourth in case of boards up to eight members; one third in case of boards comprised between nine and fourteen members; less than one fourth in case of board more than fourteen members.

the internal control committee shall be made up exclusively of independent directors. Moreover, at least one member of the committee must have an adequate experience in accounting and finance, to be evaluated by the board of directors at the time of his/her appointment.

The Code recommends that the internal control committee performs, *inter alia*, the following functions:

a) evaluate together with the officer in charge of the preparation of the company's accounting documents and the auditors, the correct utilization of the accounting principles and, in the event of groups, their consistency for the purpose of the preparation of the consolidated balance sheet;

b) upon request of the executive director, express opinions on specific aspects relating to the identification of the principal risks for the company as well as on the design, implementation and management of the internal control system;

c) review the work plan prepared by the officers in charge of internal control as well as the periodic reports prepared by them;

d) evaluate the proposals submitted by the external auditing firm for obtaining the relevant appointment, as well as the work plan prepared for the audit and the results described in the report and the letter of suggestions, if any, and

e) supervise the validity of the accounting audit process.

Other committees (page 49)

Italy

Italy does not explicitly recommend establishing risk management and board evaluation committees.

Gruppo Borsa Italiana

Subject: Borsa Italiana's comment to IOSCO Consultation Report on Board Independence

Borsa Italiana thanks IOSCO and highly appreciates the work undertaken by its Technical Committee with respect to the corporate governance standards.

Borsa Italiana is happy to take this opportunity to contribute with some comments and offer (i) updates on the new developments occurring in the Italian securities markets at the legislative level and at the market rules level (in particular for the companies listed on the "Star segment" of the MTA market organized and managed by Borsa Italiana) and (ii) some further clarifications concerning the standards mentioned in the Report, in order to enrich the outcome of the overall analysis.

Please find attached the document containing the detailed and technical observations concerning the topics mentioned above.

Borsa Italiana hopes that IOSCO will find its comments useful and remains at disposal for any further clarification.

Executive Director
Legal and Institutional Affaires
Avv. Michele Monti

Annex: Comment on IOSCO Consultation Report on Board Independence of listed companies

COMMENT ON IOSCO CONSULTATION REPORT

BOARD INDIPENDENCE OF LISTED COMPANIES

Borsa Italiana highly appreciates the work undertaken by the IOSCO Technical Committee with respect to the corporate governance standards and takes this opportunity to contribute with some comments. In particular, Borsa Italiana has the aim to update the Committee (i) on the new developments occurring in the Italian securities markets at the legislative level and at the market rules level (more specifically for the companies listed on the "Star segment" of the MTA market organized and managed by Borsa Italiana) and (ii) on some further clarifications concerning the standards mentioned in the Report, in order to enrich the outcome of the overall analysis.

On a general basis, we would like to point out that corporate governance standards in Italy are foreseen at three different levels, i.e. (a) primary law (in particular: the Civil Code and the Consolidated Law on Finance), (b) provisions set in the voluntary Corporate Governance Code promoted by Borsa Italiana and (c) mandatory requirements for companies listed on the "Star segment" of the MTA market of Borsa Italiana.

i. NEW DEVELOPMENTS

The Italian Government is in the process of releasing[1] an amending act to law 262/05 (i.e. law on the provisions for the protection of savings and the regulation of financial markets, which amended the Italian Consolidated Law on Finance), which will update some aspects of the corporate governance requirements applicable to Italian listed companies.

To our purposes, the main changes concern the mandatory number of independent directors (which will be increased, as better indicated below), the elimination of secret voting for the election of directors (introduced by

[1] We have based our analysis on the text submitted for approval by the Italian Government. Should any significant change result in the text as published on the Official Journal, it will be our care to inform IOSCO consequently.

the law 262/05) and the appointment of a member of board of the statutory auditors (for the case of the traditional model) by minorities.
The other most relevant new provisions will be described in the course of this document.

CORPORATE GOVERNANCE REQUIREMENTS FOR STAR COMPANIES

As IOSCO is aware, in March 2006 Borsa Italiana has published a new Corporate Governance Code, following a far-reaching revision of the principles of corporate governance applicable to Italian listed companies. Borsa Italiana is in the process of updating accordingly the corporate governance requirements for companies in the Star segment of the MTA market, as such segment is intended to be conformed with the highest standards in terms of transparent disclosure and corporate governance.

As a consequence, in order to obtain and maintain the Star status, issuers are required to apply the principles and criteria concerning the composition of the board of directors and the role of non-executive and independent directors as now set forth in specific articles of the Corporate Governance Code.
In particular, the following principles and criteria are to be applied:

- the definition of executive directors;
- the number, role and characteristics of non-executive directors;
- the appointment of a lead independent director if the chairman and the CEO are the same person or if the chairman is the person who controls the company;
- the number and definition of independent directors;
- the cumulative presence of a remuneration committee and of remuneration schemes for directors linked to the economic results achieved by the issuer;
- the establishment of a internal control committee.

ii. STANDARDS MENTIONED IN YOUR REPORT

We have the following specific observations concerning the analysis conducted by IOSCO with reference to the sections where the Report expressly mentions the Italian standards:

- Corporate Governance Guidelines (p.13 of the Report): with reference to the enforcement mechanisms presented in the Report, in Italy the approach to the adoption of a Corporate Governance Code is of a "comply or explain" nature. As a matter of facts, the relevant Italian law provisions establish that all listed companies "*shall annually disclose information on their adoption of codes of conduct promoted by management companies of regulated markets or by trade associations of market participants and on their compliance with the consequent obligations, explain the reasons for any failures to comply*" (art. 124-bis of the Italian Consolidated Law on Finance, introduced by the law 262/05). Such provisions reaffirm – at the primary law level - the "comply or explain" principle, already established by Borsa Italiana's rules.

  Moreover, it is important to note that the amending act to law 262/05 will give the securities regulator (Consob) the power to impose administrative sanctions only in case of omission of the annual communication prescribed by article 124-bis above mentioned and not in case of non compliance.
- Duty of care (p.16): in Italy both a generally worded obligation to act with due care, skill or diligence and specifically worded obligations are applied to board members. In particular, directors are subject to the general duty of acting with the diligence required by the nature of their task and their specific skills (art. 2392 of the Italian Civil Code).
- Rules on personal liability (p.19): in Italy any shareholder can seek a remedy for himself where he has directly suffered harm as a consequence of misconduct by a board member, without this possibility being linked to any proportion of the share capital (article 2395 of the Italian Civil Code).

The 5% threshold mentioned in the IOSCO Report is only relevant for the right of the minorities to act on behalf of the company.

- Voting rules (p.22): the amending act to law 262/05 has introduced a new threshold for the presentation of a slate of candidates, i.e. 1/40 of the share capital, yet granting the Italian securities regulator (Consob) the power to define a different threshold in consideration of the characteristics of the company.
- Dismissal (p.24): the Italian law does not establish a special voting threshold for shareholding resolutions relating to the removal of board members. Moreover, the securities regulator has the power to report the facts to the Court where it has a well-founded suspicion of serious irregularities in the performance of the supervisory duties of the board of auditors, the supervisory board or the audit committee.
- Availability and dedication (p.26): in the Italian system, the legislative restrictions to the external commitments apply only to the members of the statutory auditors board or – in the case of a monistic governance model – of the audit committee and not to all board members.

  With reference to the board members, the voluntary Corporate Governance Code recommends that "*The board shall issue guidelines regarding the maximum number of offices as director or auditor … that may be considered compatible with an effective performance of a director's duties*".
- Induction courses and training (p.26): the Italian Corporate Governance Code recommends that the directors should "*participate in initiatives aimed at increasing their knowledge of reality and business dynamics, also having regard to the relevant regulatory framework, so that they may carry out their role effectively*".
- Share and stock options (p.29): if it is true that in Italy it is necessary the approval of the shareholders' meeting for stock options granted to directors (including independent board members), it is also true that the volunteer Corporate Governance Code recommends that independent

board members should be excluded from such plans (as in the first group of jurisdictions mentioned).

- The concept of independent board members (p.34): the independence requirements set forth by law for statutory auditors in Italy also apply to the independent members of the board the presence of which is required by the law (see below).

  In addition to this, the voluntary Corporate Governance Code recommends that "*an adequate number of non-executive directors should be independent*" and defines more specific independence criteria.
- Negative criteria (p.36): in Italy, with reference to the independence criteria defined by the Corporate Governance Code, the application of a negative criteria does not immediately result in the individual being deemed to be not independent. In fact, the board can take the view that the member is still independent and disclose the reasons why it considers so.
- Determination and disclosure of independence of individual board members (p.42): the amending act to law 262/05 will eliminate the possibility for the securities competent authority (Consob) to sue the issuer for misstatements in the declaration of independence.
- Standards on "sufficient number" of independent board members (p.43): the amending act to law 262/05 provides that there must be at least one independent director if the board is composed of maximum 7 members and at least 2 if it is composed of more than 7 members. The proportion of 1/3 of independent directors over the total board members is compulsory only for those companies that have opted for a monistic model. Finally, in the case of companies listed on the Star segment of the MTA market, Borsa Italiana's regulations state that it is mandatory to have 2 independent directors (pursuant the independence criteria defined in the Corporate Governance Code) if the board composition is up to 8 members, 3 if up to 14 and 4 if more than 14.

  Also, the voluntary Corporate Governance Code recommends that an adequate number of non-executive directors should be independent.

- Audit Committee (p.46): the "audit committee" – strictly speaking – is mandatory only for those companies (both listed and not listed) that choose a monistic model. Instead, an "internal control committee" – as designed in the Corporate Governance Code – is recommended for all listed companies and is mandatory for companies listed on the Star segment of the MTA market.

* * *

We hope that IOSCO will find Borsa Italiana's comments useful and we remain at disposal for any further clarification.

Milan, January 10th 2007

For additional details, please contact:
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Singapore Exchange Limited

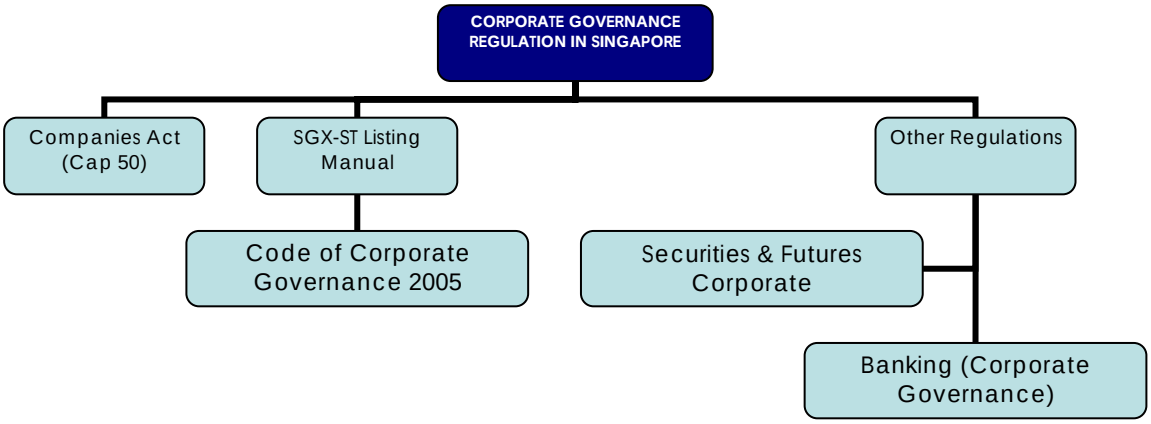
10 January 2007

COMMENTS ON CONSULTATION REPORT ON BOARD INDEPENDENCE

1. Comments on Consultation Report

1.1 As the regulator of listed companies in Singapore, SGX has a keen interest to promote good corporate governance, including strengthening the independent element of the board of directors of listed companies.

1.2 The corporate governance structure in Singapore is supported by a body of legislation, regulations and guidelines, as illustrated in the diagram below.



1.2.1 Listed companies are governed by the Companies Act, and are also regulated by the Singapore Exchange Securities Trading Limited (SGX-ST) Listing Manual ("the Listing Manual"). The Listing Manual provides that a listed company must describe its corporate governance practices with specific reference to the Code of

Corporate Governance 2005 ("the Code") in its annual report. It must disclose any deviation from the Code.

1.3 Requirements for board independence

1.3.1 Companies Act

Section 201B of the Companies Act requires every listed company to have an Audit Committee with not less than three members, a majority of whom should be independent. A director is defined as not independent in the section if :-

i) he is an executive director of the company or any related corporation;

ii) he is a spouse, parent, brother, sister, son or adopted son or daughter or adopted daughter of an executive director of the company or of any related corporation;

iii) he is a person having a relationship which, in the opinion of the board, would interfere with the exercise of independent judgment in carrying out the functions of an audit committee.

In determining independence, the key elements under the Companies Act are independence from the corporation personally or through a family member. Importantly, the definition is left open and principle-based, as any relationship which would affect the independence of the director.

1.3.2 Listing Manual

The Listing Manual requires that listed companies should have two non-executive directors at all times "who are independent and free of any material business or financial connection with the issuer".

1.3.3 2005 Code

The 2005 Code provides a more comprehensive definition of independence. The key components of independence under the Code include:-

i) independence from business and management;

ii) not being a substantial shareholder,

and include any relationship that could interfere or be reasonably perceived to interfere, with the exercise of the director's independent business judgment, in view of the best interests of the company. The 2005 Code provides an additional requirement for the Nominating Committee Chairman, to not be directly associated[2] with a substantial shareholder.

1.3.4 An overview of the requirements with respect to board independence for listed companies in Singapore are set out in **Appendix 1**. The information follows the issues addressed in your consultation report sequentially for ease of reference.

2. Requirements for independence as an approved holding company under the Singapore Securities and Futures Act

2.1 As an approved holding company in Singapore, Singapore Exchange Limited ("SGX"), and its regulated subsidiaries are required to comply with Singapore's Securities Futures Act (SFA), and with the Securities and Futures (Corporate Governance of Approved Exchanges, Designated Clearing Houses and Approved Holding Companies) Regulations 2005 ("SFR 2005"). The Monetary Authority of Singapore monitors SGX's compliance of the SFA and SFR.

2.2 SGX is also listed on its own bourse and therefore must comply with its own listing rules as set out in the Listing Manual.

2.3 The independence requirements for SGX under the SFR 2005 are set out in a tabular form in **Appendix 2**. The essential elements of board independence requirements are as follows:-

[2] A director will be considered "directly associated" to a substantial shareholder when the director is accustomed or under an obligation, whether formal or informal, to act in accordance with directions, instructions or wishes of the substantial shareholder.

i) independent from management and business relationships;

ii) independence from shareholders;

iii) independence from trading members.

2.4 Self Regulatory Organisation (SRO) Conflicts

2.4.1 SGX is a Self-Regulatory Organisation ("**SRO**") and as such its board of directors has two key mandates – to act in the best interests of the company and the shareholders, and to act in the public interest as a SRO. These interests are not always conflicting, however to assist the board in its decisions with regard to the public interest mandate, a specialized board committee -the Conflicts Committee- was established in January 2005. The Committee must be comprised entirely of directors who are independent from management and business relationships with SGX and a majority of who are also independent from any substantial shareholder.

3. Corporate Governance of the Banking Industry

3.1 Corporate Governance of the banking industry is regulated by the Monetary Authority of Singapore through the Banking (Corporate Governance) Regulations. The independence requirements for the banking industry are similar to those of the securities and futures industries. We have not examined the details which are outside the scope of these comments. The regulations are available online at www.mas.gov.sg.

Yours faithfully

Joyce Fong Foong Chao
Company Secretary & General Counsel
Singapore Exchange Limited

encls.

Appendix 1

Introduction

The Corporate Governance environment

1. Overview of Listed Companies

As of December 2006, there were 539 companies listed on the SGX-ST main board and 169 companies listed on the secondary board for smaller issuers.

1.1 Ownership Patterns

Singapore's listed companies have a predominantly block share ownership pattern. SGX is an exception with a diffused ownership pattern.

1.2 Board Oversight Structures

Singapore companies have single-tier oversight structures with sub-committees including Nomination, Remuneration and Audit Committees. Each of the committees has specific requirements on independence.

Auditors are appointed by shareholders at general meetings.

2. Applicable Standards Addressing Principle VI.E

2.1 The corporate governance structure in Singapore is supported by the following body of legislation, regulations and guidelines:-

a) Companies Act (Cap 50);

b) SGX-ST Listing Manual (the "Listing Manual");

c) Code of Corporate Governance 2005 (the "2005 Code");

d) Securities and Futures (Corporate Governance of Approved Holding Companies, Designated Clearing Houses and Approved Holding Companies) Regulations 2005 (the "SFR 2005");

e) Banking (Corporate Governance) Regulations.

2.2 Listed companies are governed by the Companies Act, and are also regulated by the Singapore Exchange Securities Trading Limited (SGX-ST) Listing Manual. The Listing Manual provides that a listed company must describe its corporate

governance practices with specific reference to the Code of Corporate Governance in its annual report. It must disclose any deviation from the Code.

Standards related to "board independence"

3. General standards intended to facilitate the board's exercise of "objective independent judgment"

Fiduciary duties

Directors have a fiduciary duty both at common law and under various legislative provisions. Broadly these include the following:-

a. the duty to act honestly in the company's best interests;
b. duty not to place himself in a position of conflict;
c. duty to use powers as a director for the proper purpose of the company.

Duty of care

Section 157(1) of the Companies Act provides that a director is to act honestly and use reasonable diligence in the discharge of his duties at all times. General and specific duties are set out in case law which is continually developing.

3.1 Rules on personal liability

There is a string of statutory liabilities of directors under the Companies Act, including both civil and criminal liabilities. Shareholders may institute actions against the board of directors.

3.2 Liability insurance

Directors and officers liability insurance is not uncommon. Fraudulent acts and intentional wrongdoings are excluded.

4 Appointment and termination of board members

4.1 Nomination and appointment

Regular term and re-election

Articles of Association stipulate the length of appointment of directors. Generally these provide for retirement by rotation and re-election by shareholders at annual general meetings.

Procedure for selection, nomination and appointment

Listed companies are required to spell out and disclose the process of nomination of directors, which is led by the Nominating Committee. The Nominating Committee must have a formal nomination process and nominates members to the board.

Voting rules

If shareholders resolve, without any objection, to vote on appointments of more than one director by a single resolution, more than one director may be so appointed. Otherwise, the appointment of directors in listed companies must be voted on individually.

Disclosure of personal and professional information

There are comprehensive disclosure requirements for directors and their interests under the Companies Act. These include, inter alia, personal details, interests in a transaction or proposed transaction, shares, debentures, participatory interests, rights, options, contracts and relationships with significant shareholders and management. Any change in the interests, relationships or details is also to be disclosed.

4.2 Termination

Dismissal

Under Section 152 of the Companies Act, directors may be removed by ordinary resolution of shareholders. This must be by special notice of 28 days. Upon receiving notice of intention of such a resolution, the company must immediately inform the director concerned, who is entitled to be heard on the resolution at the meeting.

Resignation

Disclosure must be made of resignation of all directors. There is no special requirement for disclosure of reasons for resignation of independent directors.

When no reason is given for the resignation of an independent director, the exchange will usually contact the resigning independent director to enquire as to the reasons for resignation.

Also, listed companies have a continuing obligation, under the Listing Manual, to ensure that there are at least two non-executive directors who are independent and free of any material business or financial connection with the issuer.

4.3 Dedication, training and evaluation

Availability

The 2005 Code provides that when a director has multiple board representations, the director must ensure that sufficient time and attention is given to the affairs of each company. The NC should decide if a director adequately carries out his/her duties as a director of the company. Internal guidelines should be adopted that address the competing time commitments that are faced when directors serve on multiple boards.

The 2005 Code also recommends that the number of board and committee meetings held in the year, as well as attendance of every board member at the meetings, be disclosed in the company's annual report.

Induction training and courses

The 2005 Code provides that every director should receive training when first appointed to the board. This should include an orientation program to ensure that incoming directors are familiar with the company's business and governance practices. Of equal importance is further relevant training, particularly on new laws, regulations and changing commercial risks.

Access to advice and information

The 2005 Code provides that in order to fulfil their responsibilities, board members should be provided with complete, adequate and timely information prior to board meetings and on an on-going basis.

The board should have separate and independent access to the company's senior management and the company secretary.

In addition, there should be a procedure in place for directors, either individually or as a group, in furtherance of their duties, to take independent professional advice, if necessary, at the company's expense.

Evaluation

The 2005 Code provides that there should be a formal assessment of the effectiveness of the board as a whole and the contribution by each director to the effectiveness of the board. The assessment process should be disclosed in the annual report.

There should be objective evaluation criteria which should include comparison with industry peers and should address how the board has enhanced long term

shareholders' value. The criteria which should be decided by the board should not be changed from year to year.

The performance evaluation should also consider the company's shares price performance over a five-year period vis-à-vis the Singapore Straits Times Index and a benchmark index of its industry peers.

There should be an individual evaluation assessing each director's contribution. The Chairman should act on the results of the performance evaluation, including proposals for new members or resignations of directors, in consultation with the NC.

5. Compensation of board members

The 2005 Code provides that there should be a formal and transparent procedure for developing policy on executive remuneration and for fixing remuneration packages of individual directors. Remuneration of executive directors is linked to individual and corporate performance and aligns interests of executive directors with those of shareholders.

Disclosure should be made of remuneration policies, level and mix of remuneration, and procedure for setting remuneration. Disclosure should enable investors to understand the link between remuneration paid to directors and key executives, and performance.

5.1 Standards relating to compensation levels

The 2005 Code provides that the level of remuneration should be appropriate to attract, retain and motivate the directors needed to run the company successfully, but companies should avoid paying more than is necessary for this purpose.

5.2 Restrictions applicable to specific categories of remuneration

Shares and stock options

These are subject to specific disclosure requirements under the Companies Act and Listing Manual and recommendations under the 2005 Code.

Loans and financial assistance

The Companies Act generally prohibits companies from giving loans and financial assistance to directors, with a few exceptions. Any loans or financial assistance given under the exceptions requires shareholders approval given at a general meeting where the purpose and terms of the loan or financial assistance are disclosed.

5.3 Persons or committees determining compensation

Unless there is a service contract for the remuneration of a director, a director is entitled to remuneration only as provided for under the Articles of Association, or where a requisite resolution is passed at a general meeting of shareholders. General practice is for remuneration to be approved by shareholders at general meetings.

5.4 Disclosure standards

The Listing Manual provides that disclosure of directors' remuneration should be in bands of $250,000, and must include all forms of remuneration.

The 2005 Code has similar recommendations and adds that companies are encouraged, as best practice, to fully disclose the remuneration of each individual director.

6. The concept of "independent" board members

6.1 Companies Act

Section 201B of the Companies Act requires every listed company to have an Audit Committee with not less than three members, a majority of whom should be independent. A director is defined as not independent in the section if :-

iv) he is an executive director of the company or any related corporation;

v) he is a spouse, parent, brother, sister, son or adopted son or daughter or adopted daughter of an executive director of the company or of any related corporation;

vi) he is a person having a relationship which, in the opinion of the board, would interfere with the exercise of independent judgment in carrying out the functions of an audit committee.

6.2 The Listing Manual

6.2.1 As stated earlier the Listing Manual provides that a listed company must describe its corporate governance practices with specific reference to the Code of Corporate Governance in its annual report. It must disclose any deviation from the Code.

6.2.2 Rule 210(5)(c) of the Listing Manual provides that an issuer seeking to list its shares must have at least two non-executive directors who are independent and free of any material business or financial connection with the issuer. Rule 720 of the Listing Manual, on continuing obligations of listed companies, provides that a listed company must company with Rule 210(5) on a continuing basis.

6.2.3 The Listing Manual also provides that foreign issuers are required to have at least two independent directors who are Singapore residents at the time of listing and on a continuing basis.

6.3 Code of Corporate Governance 2005

6.3.1 Principle 2 of the 2005 Code provides that there should be a strong and independent element on the Board, which is able to exercise objective judgment on corporate affairs independently, in particular, from Management.

6.3.2 An "Independent Director" is defined under Guideline 2.1 of the 2005 Code, as one who has:-

i) no relationship with the company;
ii) no relationship with related companies[3];
iii) no relationship with the company's officers,

that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgment with a view to the best interests of the company.

6.3.3 The following relationships deem a director not to be independent:-

i) a director being employed by the company or any of its related companies for the current or any of the past three financial years;
ii) a director who has an immediate family member[4] who is, or has been in any of the past three financial years, employed by the company or any of its related companies as a senior executive officer whose remuneration is determined by the remuneration committee;
iii) a director, or an immediate family member, being a substantial shareholder of or a partner in (with 5% or more stake), or an executive officer of, or a director of any for-profit business organisation to which the company or any of its subsidiaries made, or from which the company or any of its subsidiaries received, significant payments in the current or immediate past financial year. As a guide, payments aggregated over any financial year in excess of $200,000 should be deemed significant. Unless special treatment is accorded, payments for transactions involving standard services with published rates or routine and retail transactions and relationships, will not be taken into account.

6.3.4 The 2005 Code makes clear that the above examples are not exhaustive, and are examples of situations where a director would be deemed not independent. The company may also consider the director independent, even if any one of the stated relationships exists, in which case it must fully disclose the details of the relationship and explain why the director should be deemed independent.

[3] A related company in relation to a company includes its subsidiary, fellow subsidiary, or parent company.
[4] As defined in the Listing Manual of the Stock Exchange to mean the spouse, child, adopted child, step-child, brother, sister and parent.

6.3.5 Composition Requirements

i) Nominating Committee (NC)
The NC should comprise of at least three directors, a majority of whom, including the Chairman, should be independent. In addition, the NC Chairman should not be, and should not be directly associated with a substantial shareholder. (Guideline 4.1 of the 2005 Code)

ii) Remuneration Committee (RC)
The RC should comprise entirely of non-executive directors, the majority of whom, including the Chairman, should be independent. (Guideline 7.1 of the 2005 Code)

iii) Audit Committee (AC)
The AC should comprise of at least three directors, all non-executive, the majority of whom, including the Chairman, should be independent. (Guideline 11.1 of the 2005 Code)

Chairmanship of the board

In the board's role and duties stipulated in the 2005 Code, the right of individual board members to convene meetings and request for addition of agenda items is implicit.

Appendix 2

Summary of Regulations

Securities and Futures (Corporate Governance of Approved Exchanges, Designated Clearing Houses and Approved Holding Companies) Regulations 2005

No.	Regulation Reference	Requirements
Definition of Independence		
1a.	3(1)(a)	Independent if:- (a) **no management relationship** with the regulated institution or any of its subsidiaries; and
1b.	3(1)(b)	(b) **no business relationship** with the regulated institution or any of its subsidiaries.
Disqualification from Management Relationship Independence		
2a.	3(2)(a)	Not considered independent from management relationship if:- 1. employed by regulated institution or any of its subsidiaries; or 2. has been employed at any time during the current financial year or any of the preceding 3 financial years.
2b.	3(2)(b)	Not considered independent from management relationship if any immediate family[5]: 1. is employed by the regulated institution or any of its subsidiaries as an executive officer whose compensation is determined by RC of the regulated institution or subsidiary; or 2. has been employed at any time during the current financial year or any of the preceding 3 financial years.
2c.	3(2)(c)	Not considered independent from management relationship if accustomed or under obligation to act in accordance with directions, instructions or wishes of the management of the regulated institution or its subsidiaries.

[5] The term "immediate family" in relation to an individual means the individual's spouse, child, adopted child, step-child, brother, sister, parent or step-parent (step-brothers and step-sisters are excluded).

No.	Regulation Reference	Requirements
Disqualification from Business Relationship Independence		
3a.	3(3)(a)	Not considered independent from business relationship if he is director, substantial shareholder or executive officer of any corporation, or partner of a firm or LLP or a sole proprietor, which carries on business for profit, to which the regulated institution or its subsidiaries has made or received *substantial*[6] *payments*[7] in the current or immediately preceding financial year;
3b.	3(3)(b)	Not considered independent from business relationship if he is receiving or has received any compensation (apart from that received for services as a director or employee) from the regulated institution or from any of its subsidiaries during the current or immediately preceding financial year;
3c.	3(3)(c)	Not considered independent from business relationship if he is a director or substantial shareholder of a corporation which is a [8]member of, or a related corporation of a member of the regulated institution or its subsidiaries;
3d.	3(3)(d)	Not considered independent from business relationship if he is employed by or is receiving or has received compensation, during current and immediately preceding financial year of the regulated institution, from: 1. a member of the regulated institution; 2. a related corporation of a member; 3. a member of subsidiary of the regulated institution; or 4. a related corporation of a member of a subsidiary of the regulated institution; and in the case of (2) and (4) he is responsible for or engages in the activities of the member.
3e.	3(3)(e)	Not considered independent from business relationship if member of immediate family is:

[6] As a guide the Code of Corporate Governance 2005 states that payments aggregated over any financial year in excess of S$200,000 should generally be deemed significant.

[7] "Payments" does not include payments for transactions involving standard services with published rates, or for routine or retail transactions or relationships, unless special or favourable treatment is accorded.

[8] The "member", in relation to an approved exchange, a recognized market operator or a designated clearing house, means a person who holds membership of any class or description in the approved exchange, recognized market operated or designated clearing house, whether or not he holds any share in the share capital.

		1. a director or substantial shareholder of a member of the regulated institution or any of its subsidiaries; or 2. is employed, by a member of the regulated institution or any of its subsidiaries, as an executive officer (with compensation determined by RC of that corporation).

No.	**Regulation Reference**	**Requirements**
Independence from substantial shareholder		
4.	4(1)	Director considered independent of substantial shareholder if: 1. he is not that substantial holder; and 2. is not connected to that substantial holder.
	4(2)	A person is connected to a substantial shareholder if he is: 1. where substantial shareholder is an <u>individual</u>: • a member of immediate family of substantial holder; • employed by substantial shareholder; • a partner of a firm or a LLP of which the substantial shareholder is also a partner; or • accustomed or under an obligation to act in accordance with the directions or instructions or wishes of the substantial shareholder. 2. where substantial shareholder is a <u>corporation</u>: • employed by the substantial shareholder; • employed by a subsidiary or associated corporation of the substantial shareholder; • director of the substantial shareholder; • director of a subsidiary or associated corporation of the substantial shareholder; • partner of a firm or LLP of which the substantial shareholder is also a partner; or • accustomed or under an obligation to act in accordance with the directions or instructions or wishes of the substantial shareholder.

Taiwan Stock Exchange Corp.

Comment for the IOSCO Consultation Report "Board Independence of Listed Companies"

This consultation paper gathers information about the difference between "OECD Principles of Corporate Governance" and the regulations of corporate governance from 18 countries. We would like to share the latest development of corporate governance in Taiwan as a comment.

1. **Fiduciary duties and Liability Insurance**

   According the Company Act there is a statutory mandate relationship between company and the board. Like in other countries, the board, mandated by shareholders, shall have the loyalty and shall exercise the due care of a good administrator in conducting the business operation of the company pursuant to Article 23 of Company Act. Currently there is no difference between the fiduciary duties of independent board members and those of non-independent board members.

   In order to reduce and spread the risk of material harm to the company and shareholders arising from any illegal conduct, a TSEC/GTSM listed company may take out liability insurance for directors with respect to their liabilities resulting from exercising their duties during their terms of occupancy, pursuant to Article 39 of Corporate Governance Best-Practice Principles for TSEC/GTSM Listed Companies. According to the questionnaire survey conducted by TSEC on May 30, 2005, more the half of the listed companies has purchased liability insurance for their directors and supervisors.

2. **The nomination, termination and training of board members**

   The term of office of a director shall not exceed three years; but he/she may be eligible for re-election, according to Article 195 of the Company Act. Any shareholder holding 1% or more of the total number of outstanding shares issued by the company may submit to the company in writing a roster of director candidates, according to Article 192-1 of the Company Act, providing legal protection for the privileges of minority shareholders to nominate directors. Cumulative Voting System is used in electing the boards of directors, according to Article 198 of the Company Act. Under current rules, minority shareholders may elect their nominees

by concentrating their votes, to avoid manipulation by majority shareholders.

In addition, the TSEC stipulates the "Exemplification of Directions Governing Implementation of Continuing Education for Directors and Supervisors of TSEC/GTSM Listed Companies, requiring directors and supervisors to participate in training courses of finance, business, commerce, accounting or law which cover subjects relating to corporate governance at least 3 hours each year.

3. Disclosure on the Compensation of Board Members

Since 2005, the TSEC/GTSM listed companies shall report the emoluments and compensation paid to directors and supervisors for the most recent fiscal year by the 10th day of each July and shall list the payment status on Market Observations Post System, pursuant to Article 3, paragraph 1, subparagraph 25 of the Taiwan Stock Exchange Corporation Regulations Governing Information Reporting by Listed Companies. Besides, the companies shall report on the emoluments and compensation paid to board members and management team of their selves and their subsidiaries included in the consolidated financial statement by a scale format, as well as report the remuneration policy and the ratio of total reward paid to directors, supervisors, presidents, and vice presidents to profit after tax for the most recent 2 fiscal years in annual financial reports and prospectus. Those measures comply with the global trend towards disclosure of the remunerations of board members.

4. The Concept of Independent Board Member

The Securities and Exchange Act was amended on January 11, 2006, providing a legal basis for corporate governance and introducing the mechanism of Independence Board Committee and Audit Committee.

Concerning the structure of Board, a company may arbitrarily select either a binary system or a unified system. The former maintain the structure at which Board and supervisors exist at the same time; the latter allows a company to establish an Audit Committee under the Board to replace supervisors. However, the Competent Authority, in view of the company's scale, type of operations, or other essential considerations, may order it to establish an audit committee in lieu of a supervisor, subject to Article 14-4 of the Securities and Exchange Act.

As for the establishment of independent board, subject to Article 14-2 of the Securities and Exchange Act, a company may appoint independent directors in accordance with its articles of incorporation and may determine the number of independent directors and the ratio of independent directors in the Board. The Competent Authority, however, shall as necessary in view of the company's scale, shareholder structure, type of operations, and other essential factors, require it to appoint independent directors, not less than two in number and not less than one-fifth of the total number of directors. The financial holding companies issued stock in accordance with the Securities and Exchange Act and the TSEC/GTSM listed companies whose paid-in capital are more than 50 billion in non-financial sector are such the cases.

Definition of "Independence"

We would like to fill the task force in on the seven typical criteria described in the Consultation Report with those stipulated in the "Regulations Governing Appointment of Independent Directors and Compliance Matters for Public Companies" adopted on March 28, 2006.

(1) Not to be a member, or an immediate family member of a member, of management of the company.

According to Article 3 of the Regulations, during the two years before being elected or during the term of office, an independent director of a public company may not be a director or supervisor of the company or any of its affiliates, nor a spouse, relative within the second degree of kinship, or lineal relative within the fifth degree of kinship, of any of the above-mentioned persons. The same does not apply, however, in cases where the person is an independent director of the company, its parent company, or any subsidiary in which the company holds, directly or indirectly, more than 50 percent of the voting shares.

(2) Not to be an employee of the company or a company in the group

According to Article 3 of the Regulations, during the two years before being elected or during the term of office, an independent director of a public company may not be an employee of the company or any of its affiliates, nor a spouse, relative within the second degree of kinship, or lineal relative within the fifth degree of kinship, of any of the above mentioned persons. Nor may be an employee of a corporate shareholder that directly holds five percent or more of the total

number of issued shares of the company or that holds shares ranking in the top five in holdings.

(3) Not to receive compensation from the company or its group other than directorship fees.

The Regulations does not contain this part. However, since 2005, the TSEC/GTSM listed companies shall report information on the remuneration of directors and supervisors for the most recent fiscal year pursuant to Article 3, paragraph 1, subparagraph 25 of the Taiwan Stock Exchange Corporation Regulations Governing Information Reporting by Listed Companies.

(4) Not to have material business relations with the company or its group

According to Article 3 of the Regulations, during the two years before being elected or during the term of office, an independent director of a public company may not be a director, supervisor, officer, or shareholder holding five percent or more of the shares, of a specified company or institution that has a financial or business relationship with the company.

(5) Not to have been an employee of the external auditor of the company or of a company in the group.

According to Article 3 of the Regulations, during the two years before being elected or during the term of office, an independent director of a public company may not be professional individual who, or an owner, partner, director, supervisor, or officer of a sole proprietorship, partnership, company, or institution that, provides commercial, legal, financial, accounting services or consultation to the company or to any affiliate of the company, or a spouse thereof.

(6) Not to exceed some maximum tenure as a board member

The Regulations does not contain this part. However, the term of office of a director shall not exceed three years; but he/she may be eligible for re-election, according to Article 195 of the Company Act.

(7) Not to be or represent a significant shareholder

According to Article 3 of the Regulations, during the two years before being elected or during the term of office, an independent director of a public company may not be a natural-person shareholder who holds shares, together with those held by the person's spouse, minor children, or held by the person under others' names, in an aggregate amount of one percent or more of the total number of issued shares of the company or ranking in the top 10 in holdings, nor a spouse, relative within the second degree of kinship, or lineal relative within

the fifth degree of kinship, of any of the above-mentioned persons. Nor may be a director or supervisor of a corporate shareholder that directly holds five percent or more of the total number of issued shares of the company or that holds shares ranking in the top five in holdings.

Besides, according to Article 26-3 of the Securities and Exchange Act, except where the Competent Authority has granted approval, a spousal relationship and a familial relationship within the second degree of kinship may not exist among more than half of a company's directors. (A company shall have at least one or more supervisors, or one or more supervisors and directors, among whom no above-mentioned relationship exists.)

A person serving as an independent director of the applicant company may not fail to satisfy any prerequisite set forth in the Regulations Governing Appointment of Independent Directors and Compliance Matters for Public Companies, pursuant to Article 17 of the Supplementary Provisions to the Taiwan Stock Exchange Corporation Rules for Review of Securities Listings.

Determination and disclosure of independence of individual board members

Although a Nomination Committee is not required, the election of independent directors at a public company is subject to the provisions of Article 192-1 of the Company Act in that a candidate nomination system shall be adopted, that such system shall be expressly stated in the articles of incorporation of the company, and that shareholders shall elect independent directors from among the those listed in the slate of independent director candidates, pursuant to Article 5 of the Regulations Governing Appointment of Independent Directors and Compliance Matters for Public Companies. Meanwhile, a listed company shall disclose the determination of independent directors at Market Observation Post System, annual report, and prospectus, subject to Taiwan Stock Exchange Corporation Rules Governing Information Reporting by Listed Companies, Taiwan Stock Exchange Corporation Procedures for Verification and Disclosure of Material Information of Listed Companies, Regulations Governing Information to be Published in Public Offering and Issuance Prospectuses, and Criteria Governing Information to be Published in Annual Reports of Public Companies.

Specific roles and powers of "independent" board members

The following matters shall be submitted to the board of directors for approval by resolution: adoption or amendment of an internal control system, adoption or amendment of acquisition or disposal of assets, a matter bearing on the personal interest of a director, a material asset or derivatives transaction, a material monetary loan, the offering or issuance of any equity-type securities, the hiring or dismissal of an attesting CPA, and the appointment or discharge of a financial, accounting, or internal auditing officer; when an independent director has a dissenting opinion or qualified opinion, it shall be noted in the minutes of the directors meeting, pursuant to Article 14-3 of the Securities and Exchange Act.

Besides, it would be inappropriate for the chairman to also act as the general manager. If the chairman also acts as the general manager or they are spouses or relatives within one degree of consanguinity, it would be advisable that the number of independent directors be increased, pursuant to Article 23 of the Corporate Governance Best-Practice Principles for TSEC/GTSM Listed Companies.

Meetings of the board of directors shall be convened by the chairman of the board of directors, subject to Article 203 of the Company Law. Not all the board members are endowed with the privilege to convene a Board Meeting.

5. Specialized board committees and the role of independent board member

The board of directors of a TSEC/GTSM listed company may set up audit, nomination, compensation or environmental protection committees, pursuant to Article 27 of the Corporate Governance Best-Practice Principles for TSEC/GTSM Listed Companies. Regulations governing the exercise of audit and nomination committee's power and duty are adopted for the reference of the TSEC/GTSM listed company.

A company shall establish either an audit committee or a supervisor pursuant to Article 14-4 of the Securities and Exchange Act. The Competent Authority may, however, in view of the company's scale, type of operations, or other essential considerations, order it to establish an audit committee in lieu of a supervisor. The audit committee shall be composed of the entire number of independent directors. It shall not be

fewer than three persons in number, one of whom shall be convener, and at least one of whom shall have accounting or financial expertise. For a company that has established an audit committee, the provisions regarding supervisors in this Act, the Company Act, and other laws and regulations shall apply mutatis mutandis to the audit committee. In addition, the Regulations Governing the Exercise of Powers by Audit Committees of Public Companies is adopted to provide a legal basis for an audit committee and the independent directors to exercise their power and duty.

As for the function of an audit committee, for a company with an audit committee the following matters shall be subject to the consent of one-half or more of all audit committee members and be submitted to the board of directors for a resolution: adoption or amendment of an internal control system, adoption or amendment of acquisition or disposal of assets, a matter bearing on the personal interest of a director or supervisor, a material asset or derivatives transaction, a material monetary loan, the offering or issuance of any equity-type securities, the hiring or dismissal of an attesting CPA, the appointment or discharge of a financial, accounting, or internal auditing officer, and annual and semi-annual financial reports; any matter under a subparagraph of the preceding paragraph that has not been approved with the consent of one-half or more of all audit committee members may be undertaken upon the consent of two-thirds or more of all directors, and the resolution of the audit committee shall be recorded in the minutes of the directors meeting, pursuant to Article 14-5 of the Securities and Exchange Act.

The Association of Capital Market Intermediary Institutions of Turkey

1) In the section 2 at page 12, it is stated that “In Turkey the securities regulator has responsibility for the development of the corporate governance code”. In Turkey, the securities regulator, Capital Market Board of Turkey, has responsibility for the development of the corporate governance code only for publicly held companies. However, Draft Turkish Commercial Code empowers Capital Market Board of Turkey to develop and implement corporate governance code for the both listed and other companies in Turkey.

2) In the section of “Rules on personal liability” at page 18, it’s mention that “In Turkey, shareholders holding more than 10% of the capital can force the company to initiate legal action, even if the general meeting voted against, although they are required to deposit their shares as a guarantee.” The threshold has been decreased to 5% for publicly held companies with Article 11 of Capital Markets Law. (Article 11-The rights set forth in Articles 348, 356, 359, 366, 367 and 377 of the Turkish Commercial Code that can, under Article 341, be exercised by shareholders representing ten percent of the equity capital of the company may, in the case of publicly held joint stock companies, be exercised by shareholders representing at least one twentieth of the paid-in capital of the company.)

3) In the section of Other Committees at page 49 it is mentioned that Italy, Mexico, Turkey has “Board evaluation committee”. The exact name of the committee should be “corporate governance committee”.

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