Corporate Governance Practices in Emerging Markets

Report from the Emerging Markets Committee

of the

International Organization of Securities Commissions

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Contents

Background

The EMC-Taskforce on Corporate Governance circulated a Survey Questionnaire on Corporate Governance in Emerging Markets in August 2006. The objective of the said survey was to set the future agenda for promoting fair corporate governance practices among emerging market jurisdictions.

Keeping this in view, the survey questionnaire was prepared with the objective of assessing the general framework of corporate governance practices prevailing in emerging market jurisdictions. The survey also intended to identify the best practices among surveyed jurisdictions which could be implemented across emerging market jurisdictions.

This report is being issued by the Emerging Markets Committee in order to identify dominant trends of corporate governance standards in Emerging Market jurisdictions.

Executive Summary

The report is based on information on corporate governance standards for companies whose securities are listed on exchanges of the twenty six emerging market jurisdictions that responded to the questionnaire.

The traditional single-tier oversight structure is used in seven jurisdictions. The *two-tier* board structures, where management and supervisory board are separate, are in practice in two jurisdictions. Flexible board structure, subject to certain given provisions/ conditions, is practiced in twelve jurisdictions.

In *Tanzania* and *Uganda*, corporate governance norms are principle based. In rest of the twenty four jurisdictions, corporate governance norms are a combination of rule and principle based provisions. Provisions/guidelines of codes incorporated as rules under various legislations, regulations, and listing requirements including listing agreement of the responding jurisdictions are enforceable through warning/directions/monetary penalty/delisting/civil legislation/prosecution/Compensation to aggrieved party.

In all the responding jurisdictions basic rights of shareholders are addressed and these rights include right to:

a. secure method of ownership registration
b. transfer shares
c. obtain timely relevant information on the company
d. participate and vote in general shareholders meetings
e. elect members of the board
f. share in the profits of the company, and
g. participate in and be informed on decisions concerning fundamental corporate changes

A mix of various provisions like requirement of independent directors in the board, possibility of minority shareholders nominating/electing shareholders representative to the board, vetoing decisions, requirement of adequate and timely disclosure of and access to information and protection of minority shareholders' interests through regulatory or court redressal are mechanisms for protecting minority shareholders in the surveyed jurisdictions. Almost all of the responding jurisdictions have provisions in their laws/rules/regulations/listing agreements for prohibition of insider trading.

Prescription of corporate governance principles being still an emerging area, instances of corporate governance related violation are recorded and acted upon in few of the responding jurisdictions. However, most of the jurisdictions are gearing up to address the issue of identification and enforcement of prescribed corporate governance rules in their respective jurisdictions.

There is a general framework for promoting investor activism through timely and adequate disclosures, investor grievance redressal by the respective Securities Commission and Courts. In addition, there are special arrangements for promoting investor associations, providing financial assistance to plaintiffs, enabling minority shareholders to veto certain decisions and use their legal right to information in order to promote investor activism.

With a few exceptions, disclosures and management-shareholders communication by companies are well established in most of the surveyed jurisdictions. However, it could not be assessed with clarity as to which of the information disclosed is audited.

Presence of independent directors constitutes the most important aspect of corporate governance practice in the surveyed jurisdictions. Final decision on independence of directors lies with the shareholders/Securities Commission/auditors/audit committee/ nomination committee or voluntary compliance.

In eighteen out of twenty five surveyed jurisdictions, the authority of removing independent directors lies with the shareholders. In six jurisdictions, government/ Securities Commission/Courts have power of removing independent directors upon acting on a complaint. In sixteen out of twenty five jurisdictions, a reporting mechanism on resignation by independent directors to shareholders/ Securities Commission/ exchange exists.

In a majority of the surveyed jurisdictions, the subject of shareholding restrictions or limits on remuneration for independent directors is not specifically addressed.

As far as special rights of independent directors are concerned, in twelve of the surveyed jurisdictions, independent directors can have separate meetings with shareholders or audit committees so as to form an unbiased judgment. In a majority of the surveyed jurisdictions, independent directors have access to external legal, accounting or other special advice at the company's expenses and the company's records including financial records, management and staff. In nine of the surveyed jurisdictions, independent directors can initiate legal proceedings against a company if the company's affairs are being conducted in a manner that is oppressive or unduly prejudicial to, or that unfairly disregards the interests of any shareholders.

In a majority of the surveyed jurisdictions, specific mechanism for evaluation of board members is yet to be specified. Compliance of board members to a prescribed code of conduct is yet to be addressed in a majority of the jurisdictions. Sensitization of board members through proper orientation and continuing education is yet another area many of the surveyed jurisdictions are yet to address.

So far as provisions relating to specialist committees are concerned, eighteen of the surveyed jurisdictions require listed companies to have an audit committee. In most of the surveyed jurisdictions, constitution of a nomination committee by the listed companies is recommended under the best practices of corporate governance. In Korea and Tanzania, it is mandatory for each of the listed companies to have a nomination committee. While in four jurisdictions, it is mandatory for listed companies to have a remuneration committee, it is recommended in seven other jurisdictions. Presence of independent directors in a majority in specialist committees is a general requirement across the surveyed jurisdictions and is a mechanism to maintain the independence of these specialist committees.

1. Corporate Governance Overview

This report includes information on corporate governance standards for companies whose shares are listed on stock exchanges. Twenty six emerging markets jurisdictions responded to the questionnaire. The approximate number of listed companies in each of the responding jurisdictions as at the end of November 2006 is given below:

	Jurisdiction	**No of listed Companies**
1	Bangladesh	256
2	Barbados	26
3	China	1379
4	Colombia	183
5	Hungary	40
6	India	4791
7	Israel	599
8	Kenya	51
9	Korea	1666
10	Lithuania	46
11	Malaysia	1027
12	Mauritius	43
13	Morocco	64
14	Nigeria	204
15	Pakistan	652
16	Philippines	NA
17	Poland	287
18	Republic of Srpska	900
19	Romania	66
20	South Africa	387
21	Sri Lanka	236
22	Tanzania	9
23	Thailand	476
24	Tunisia	48
25	Turkey	316
26	Uganda	8

Source: Replies to the Questionnaire

1.1 Information on ownership pattern

Nine[1] out of twenty-five jurisdictions have predominantly block ownership pattern where a few shareholders own a listed company with each one of them having a relatively large block of shares. Two[2] countries have predominantly diffused ownership pattern where most listed companies' shares are held widely by numerous investors, with few, if any, shareholders owning a sufficient number of shares to give them effective control over the company. Three[3] countries have equal combination of block and diffused ownership pattern. Information on ownership pattern of listed companies was not available from twelve[4] jurisdictions.

1.2 Board Structure

The traditional single-tier oversight structure is used in eight jurisdictions[5]. The *two-tier* board structures, where management and supervisory board are separate, are in practice in two[6] jurisdictions. Flexible board structure, subject to certain provisions/ conditions is practiced in twelve[7] jurisdictions. Information on Board structure was not available from four[8] jurisdictions.

1.3 Nature of Corporate Governance Norms

Different provisions on corporate governance norms are being practiced in responding jurisdictions from part of different prescriptive and legislative schemes like Corporate Governance Code, Companies Act, Securities Commission and Exchange Order. In twelve[9] jurisdictions, corporate governance norms have been specifically prescribed over last five years from 2002 to 2006. In nine[10] countries corporate governance norms form part of the Companies Act. In seven jurisdictions, viz., *India, Israel, Morocco, Romania, South Africa, Tanzania, Tunisia,* part or whole of the corporate governance norms form

[1] China (state holding), Israel, Korea, Lithuania, Morocco, Tanzania, Turkey (Family or Group relevant), India, Uganda
[2] Kenya, Nigeria
[3] Hungary, Poland, Thailand.
[4] Bangladesh, Barbados, Columbia, Malaysia, Mauritius, Pakistan, Philippines, Republic of Srpska, Romania, South Africa, Sri Lanka, Tunisia.
[5] Columbia, Hungary, India, Israel, Malaysia, Pakistan, Tanzania, Turkey.
[6] Poland, Republic of Srpska
[7] Barbados(subject to minimum prescribed norms), China (Inside Controlled or Dual Board structure), Korea (s.t. article of incorporation), Lithuania, Mauritius (Unitary Board structure with committees recommended), Morocco, Romania, South Africa, Sri Lanka, Thailand (There is no requirement concerning the board type), Tunisia (companies are allowed to opt for one out of three possible structures), Uganda (unitary board prevalent)
[8] Bangladesh, Kenya, Nigeria, Philippines
[9] China (2002), Columbia (2005), Lithuania (2004, 2006), Malaysia (2000), Nigeria, Pakistan (2002), Philippines, Republic of Srpska (2006), Thailand (2002, 2006), Turkey, Uganda (2003), Sri Lanka (drafted)
[10] Bangladesh, India, Israel, Kenya, Korea, Mauritius, Morocco, Romania, Tunisia,

part of the securities commissions order where as in *Hungary, Malaysia* and *Poland*, corporate governance norms are also governed under exchange orders.

In *Tanzania* and *Uganda*, corporate governance norms are only principle based. In rest of the twenty four jurisdictions, corporate governance norms are a combination of rule and principle based provisions. In twelve jurisdictions, viz., *Bangladesh, Barbados, China, Israel, Kenya, Pakistan, Philippines, Republic of Srpska, Romania, Thailand, Tunisia and Turkey* corporate governance codes are based on OECD code.

1.4 Enforcement

Enforceability of provisions under corporate governance code are enforceable with penalty in Eleven countries viz., *Bangladesh, Barbados, China, Hungary, Kenya, Korea, Mauritius, Pakistan, Romania, Sri Lanka and Thailand*. In eight countries, viz., Columbia *Korea, Lithuania, Malaysia, Nigeria, Tanzania, Thailand* and *Uganda,* provisions under corporate governance codes are not enforceable.

However, provisions/ guidelines of codes incorporated as rules under various legislations, regulations, and listing requirements including listing agreement of the responding jurisdictions are enforceable through warning/ directions/ monetary penalty/delisting/civil legislation/prosecution/ Compensation to aggrieved party.

2. Corporate Governance and Protection of Shareholders

Shareholders protection is ensured by providing them certain rights, protecting them from the hegemony of the dominant shareholders and encouraging shareholders activism. This section outlines various provisions existing in the surveyed jurisdictions to protect the interest of shareholders and more particularly of minority shareholders.

2.1 Rights of Shareholders

In all the responding jurisdictions, basic rights of shareholders are addressed and these rights include right to:

a. secure method of ownership registration:
b. transfer shares
c. obtain timely relevant information on the company
d. participate and vote in general shareholders meetings
e. elect members of the board
f. share in the profits of the company
g. participate in and to be informed on decisions concerning fundamental corporate changes

2.2 Status of Shareholders

In *Bangladesh*, all shareholders are treated equally, where as in *Barbados, China*[11], *Hungary*[12], *India, Korea, Lithuania, Malaysia, Mauritius, Pakistan, Romania, South Africa, Sri Lanka, Thailand* and *Turkey* shareholders of same class are treated equally. In Columbia, *Israel, Philippines, Republic of Srpska* and *Tunisia* shareholders have rights proportional to their shareholdings (e.g. one share one vote).

[11]China: Total capital is divided into equal shares. Shareholders assume liability towards the company to the extent of their respective shareholdings.
[12] Hungary: A group of shareholders controlling at least 1 per cent of the voting rights may request in writing the management board to place an issue of their choosing on the agenda, indicating the reason and the purpose thereof. The articles of association may contain provisions to afford this right to a group of shareholders controlling a lesser percentage.

2.3 Protection of Minority Shareholders

In *Bangladesh, Barbados, China, Malaysia* and *Tunisia* aggrieved shareholders can call for an AGM or move the court to get their grievances redressed. In *Turkey* cumulative voting system is introduced by Capital Market Law in order to improve minority representation in the board of the company and court redressal. In *Mauritius* and *Sri Lanka,* the board has as directors, persons who are independent from the company and also from dominant shareholders with adequate disclosure requirements to protect shareholders. The Companies Act, 2007 of Sri Lanka has provided for minority protection in a very comprehensive manner. In *Morocco,* for listed companies, the Securities Commission has the power to protect minority shareholders during corporate action and possibility given by the law to the minority to veto some decisions of the majority shareholders in the general meeting of shareholders. In *Thailand* and *Israel,* super-majority requirements in shareholding voting in important decisions are provided for as a mechanism to protect minority shareholders.

In *Nigeria,* the Code prescribes that a seat on the board be allocated to minority shareholders holding up to 10% of a listed company's paid up share capital. Right of shareholders to call for information and extra ordinary shareholder meeting and inspect the company's books and other business documents protects shareholders in *Hungary, Thailand* and *Korea*. In *India* and *Romania*, small shareholders (accounting for a minimum share, generally 10% of shares) can elect a director for representing them. In *Pakistan*, minority shareholders, as a class, are able to contest election of directors by proxi solicitation and are also protected through complaint redressal by securities Commission. In Columbia, shareholders representing at least 5% of the subscribed shares can submit proposals to the board which is under obligation to answer the same.

2.4 Prohibition of Insider Trading

Almost all of the responding jurisdictions have provisions in their laws/rules/ regulations/ listing agreements for prohibition of insider trading. Surveillance mechanism plays a key rule in detecting prima facie occurrence of insider trading. In some jurisdictions, though there are provisions under law to prohibit insider trading, enforcement mechanism is weak.

An information chart on the provisions relating to prohibition of insider trading in the responding jurisdictions is given below:

	Jurisdiction	**Prohibition of insider trading**
1.	Bangladesh	Securities and Exchange Commission (Prohibition of Insider Trading) Rules, 1993
2.	Barbados	s. 308 – 311 Companies Act, Cap. 308 and s. 115 – 122 Securities Act, Cap. 318A
3.	China	Article 76 and 202 of the Securities Law

4.	Colombia	Such provisions are not available
5.	Hungary	Chapter XXI of Act CXX of 2001 on the Capital Market.
6.	India	Prohibition of Insider Trading Regulations and prohibitive enforcement measures. Integrated Market Surveillance System.
7.	Israel	Insider trading is a criminal offense according to Securities Law. Abusive self-dealing is addressed in the Companies Law.
8.	Kenya	The insider trading prohibition mechanisms are addressed elsewhere in the regulations not in the guidelines of corporate governance
9.	Korea	Prohibited under regulations. A company's director and employees cannot conduct a transaction with the company for their own benefits or on behalf of a third party for its benefits. They may do so only when they have obtained approval from the board of directors.
10.	Lithuania	Prohibited under the Law on Markets in Financial Instruments and regulations that detail this Law.
11.	Malaysia	Securities Industries Act 1983, provisions in the Listing Requirements, and the Companies Act. There are criminal/civil and administrative penalties for persons engaging in insider trading.
12.	Mauritius	The Securities Act 2005 as amended in 2007 provides an effective mechanism in relation to insider trading. The Listing Rules 2000 of the Stock Exchange of Mauritius also provides a Model Code for securities transactions by directors of listed companies.
13.	Morocco	Yes.
14.	Nigeria	The law prohibits insider trading but enforcement mechanism is weak
15.	Pakistan	Yes.
16.	Philippines	Information not provided.
17.	Poland	Forbidden and penalized by the law
18.	Republic of Srpska	The use of insider information is prohibited by the Law on securities.
19.	Romania	Romanian capital market law and surveillance by C.N.V.M.
20.	South Africa	Prohibited in terms of the Securities Services Act, No, 36 of 2004
21.	Sri Lanka	Prohibitions on trading of listed securities by directors and connected parties (insiders) are provided for under Sections 32,33 and 34 of Securities and Exchange Commission Act of 1987 as amended. Apart from this, the Listing Rules of the Colombo Stock Exchange also prohibit connected parties from trading on the basis of material information that is unknown to the investing public.
22.	Tanzania	The CMS Act prohibits insider trading and abusive self-dealing
23.	Thailand	-According to the Securities and Exchange Act, unfair trading practices include misappropriation or misuse of the company's material, non-public information by a person entrusted by a

		company for his/her own benefits. -According to the Stock Exchange of Thailand (SET)'s notification on the Guidelines on Disclosure of Information of Listed Companies, listed companies should require their directors, officers, employees, and other insiders to avoid purchases or sales of the company's securities which may be questionable as to the propriety of such trading.
24.	Tunisia	Yes, effective mechanisms prohibiting insider trading and abusive self-dealing do exist.
25.	Turkey	Other than criminal provisions, CMB is also empowered to impose transaction prohibition for persons involved with manipulation and insider trading practices prohibited by law. Also, Istanbul Stock Exchange is entitled to render trading halt decision for manipulated stocks and stocks which have been subject to insider trading.
26.	Uganda	Prohibited by the Capital Market Authority (CMA) Act and regulations are also being framed.

2.5 Violations and Enforcement

Prescription of corporate governance principles being still an emerging area of corporate regulations, instances of corporate governance related violation are recorded and acted upon in few of the responding jurisdictions. However, most of the jurisdictions are gearing up to address the issue of identification and enforcement of non compliance to prescribed corporate governance rules in their respective jurisdiction. A chart of the cases of non compliance to corporate governance rules and their enforcement in the responding jurisdictions is placed below:

	Jurisdiction	**Cases of Violations and Enforcement**
1.	Bangladesh	Around sixty during the year 2005-2006. Action against the companies was initiated for all the cases.
2.	Barbados	The Principles have not yet been formally adopted
3.	China	149 from the beginning of 2005 to August 2006.
4.	Colombia	So far, No studies have been conducted on this issue.
5.	Hungary	Not applicable.
6.	India	SEBI has introduced the revised Clause 49 of the Listing Agreement relating to corporate governance with effect from January 1, 2006. Extent of compliance would be reviewed at the end of the quarter ending March 31, 2007 and suitable action would be taken wherever required.
7.	Israel	No consistent empirical data is available on the incidence of corporate governance violations. Some corporate governance violations do entail misleading disclosure or material omissions,

		(violations under the Securities Law) or, in some cases may involve fraud or falsification and forgery of corporate documents, (violations of the Penal Code). In these cases, public enforcement of corporate governance, albeit indirect, is possible.
8.	Kenya	Data not available.
9.	Korea	In Korea, there is not a legal provision specifically requiring the government or financial regulator to assess corporate governance of companies, but self-regulatory organizations prepare and release relevant data. Corporate Governance Service surveys listed companies every year and announces the list of companies with the best or excellent corporate governance (www.cgs.or.kr). The Korea Exchange releases Korea Corporate Governance Stock Price Index (KOGI) which is calculated using data on fifty companies with exemplary corporate governance (www.krx.co.kr).
10.	Lithuania	Information not available.
11.	Malaysia	Prosecution on corporate governance offences from 1993 to 2004: 29 cases.
12.	Mauritius	There is currently one.
13.	Morocco	Data not available
14.	Nigeria	Violations have been in the areas of combined positions of Chairman/CEO and MD being a member of Audit Committee.
15.	Pakistan	The code of Corporate Governance is relatively new and code of corporate governance was included in the listing regulations in 2002. There has not been any significant violation of the code so far.
16.	Philippines	On an average 98% of the listed companies comply with various corporate governance requirements. Action taken against all companies non complying with governance requirements
17.	Poland	As corporate governance is based on the comply-or-explain rule, it is difficult to give exact statistics. As an indicative factor one may use the number of administrative proceedings against listed companies for violation of duty to publish important information. In the period since 1st January to 15th September 2006 there were 14 such proceedings
18.	Republic of Srpska	That data is not available since the general jurisdiction is given to courts.
19.	Romania	Warning to management of 41 companies, re-calling of the general shareholders meetings of 25 companies, banning the transfer of the securities of 29 companies.
20.	South Africa	Statistics on the number of cases of violation are not available.
21.	Sri Lanka	Since Rules on Corporate Governance are recently mandated, there are no statistics in this regard.
22.	Tanzania	Information not available.
23.	Thailand	In 2005 there were 17 cases relating corporate governance related offences which were settled with fine and 6 cases of criminal

		complaints.
24.	Tunisia	Given that many of the corporate governance standards are rather recent, except those regarding information disclosures, the cases of violation are mainly related to transparency and disclosure of information. In this respect, the average number is around nine cases and in all of them, legal actions against the company were successful. However, these cases are in a notable decrease.
25.	Turkey	Standard is a combination of rule-based and principle based. For this reason, some of the standards are sanctioned by coercive legal rules on the other hand, principle based standards are not subject to enforcement mechanisms. Therefore, determination of violation cases is not possible.
26.	Uganda	Unrecorded.

2.6 Investor Activism

There is a general framework of promoting investor activism through timely and adequate disclosures, investors' grievance redressal by respective Securities Commissions and Courts. In addition, there are special provisions in various jurisdictions to promote investor activism. Formation and active role of *Investor Associations* are promoted by the Securities Commissions of jurisdictions like *India, Malaysia*[13]*, Mauritius, Nigeria, Poland, Romania, Tanzania, Thailand, and Uganda. In Kenya* and *Turkey* each of the *listed companies are encouraged to form Investor Associations* to promote dialogue between the company and the shareholders. In *Israel*, plaintiffs in class actions are entitled to request *financial assistance* from the Israel Securities Authority (ISA) to cover the cost of class actions. The ISA has drafted a bill that would enable financial assistance for derivative actions as well. In Morocco, investor activism, particularly of minority shareholders, is promoted by the possibility given by the law to the minority to veto some decisions of the majority shareholders in the general meeting of shareholders. In *Korea*, minority shareholders are entitled to exercise certain rights under the Commercial Act. For instance, they may propose items to be included on the agenda for a shareholders' meeting and ask a company to use cumulative voting to elect more than one director. There are few jurisdictions viz. Columbia, *Bangladesh, Hungary, Lithuania, Pakistan, Philippines,* where there are no special norms to promote investor activism. In *Sri Lanka* investors can forward their complaints to the Securities and Exchange Commission of Sri Lanka. Further the Companies of 2007 has provided for actions that could enhance shareholder activism including derivative action and action relating to prevention of oppression and mismanagement and restraining orders.

[13] Minority Shareholders Watchdog Group (MSWG) formed in August 2000 to monitor and combat abuses of control by insiders against minority investors as well as promoting shareholders activism.

In this age of "protection through Information", in jurisdiction like *India, Right to Information Act*, provides a statutory obligation on the part of the Securities Commission to promote investor activism and empower investors through provision of timely information to investors on various aspects of their grievances and complaints lodged with the Securities Commission.

3. Corporate Governance Disclosure and Transparency

Disclosure of audited information and communication of management with shareholders forms a crucial part of corporate governance ethics and shareholders protection.

3.1 Disclosure of Audited Information

As for disclosure of audited information, the following items form the general scheme of disclosures.

- *a) Financial and operating results of the company*
- *b) Company objectives*
- *c) Major share ownership and voting rights*
- *d) Members of the board and key executives, their transactions and remuneration*
- *e) Material foreseeable risk factors*
- *f) Material issues regarding employees and other shareholders*
- *g) Governance structure and policies*

While information on financial and operating results of the company, company objectives and major shareholders are disclosed in all the responding jurisdictions, information on the members of the board and key executives, their transactions and remuneration are disclosed in all responding jurisdiction except for *Morocco*, *Pakistan*, and *Turkey*. Disclosure on material foreseeable risk factors is not made in *Uganda*[14] from among the responding jurisdictions. In *Uganda*, information on shareholding profile i.e. a list of the top 10 shareholders is to be included in the annual report of the Company. In Columbia, issuers require to periodically report list of 20 major shareholders to the Regulator. Except for *Barbados*, material issues regarding employees and other shareholders are disclosed in all responding jurisdictions. So far as governance structure and policies are concerned, from among the surveyed jurisdictions; *Israel, Tunisia* and *Turkey* do not make disclosures. In *Israel* corporate governance standards are set in the Companies Law-1999. Public companies are not required to disclose a Corporate Governance code but are required to disclose departures from the standards appearing in the law.

3.2 Management-Shareholders Communications

[14] In Uganda, the risk factors are disclosed in the prospectus of the company during the IPO. However it is not specifically required by the CG guidelines.

Management-shareholders communication in the surveyed jurisdictions, except for *Republic of Srpska*, is achieved through the Management Discussion & Analysis (MD & A) section in the annual report. The MD & A typically contains information on the following with a few exceptions:

a. Industry structure and developments
b. Opportunities and threats
c. Segment-wise or product-wise performance
d. Outlook, risks and concerns
e. Internal control systems and their adequacy
f. Discussion on financial performance with respect to operational performance
g. Material developments in Human Resources/ Industry Relations front, including number of people included
h. Information on newly appointed directors including brief resume, nature of expertise in specific functional areas, names of companies in which the person holds directorship and the membership of committees of the board etc.

MD & A does not contain information on industry structure and developments in *Bangladesh*, on segment wise or product wise performance and outlook, risks and concerns in *Lithuania*.

Israel[15], *Korea* and *Romania* do not disclose information on internal control systems and their adequacy in their MD & A Report. In *Korea*, internal control systems and their adequacy is a mandatory item in attachments to the annual report. In *Israel* there is no requirement of board of director certification of the functioning of internal control systems. However, public companies are required to appoint an internal auditor and must disclose in their MD&A detailed information regarding the auditor, the nature of his/her engagement with the company, his/her work plan and the board's assessment of his/her activities. Material developments in Human Resources/ Industry Relations Front, including number of people included do not form part of the MD & A in Columbia, *Bangladesh, Korea* and *Tunisia*. However, it forms a mandatory part of the annual report in *Korea*

[15]Israel: All corporate filings of public companies are disseminated in real time and are available without charge to the public via the electronic filing system at www.magna.isa.gov.il.The filling includes all the listed information except internal control and adequacy.
Kenya: Guidelines broadly provide disclosures to be made through the MD &A in the Annual Report.
Nigeria: Management – shareholders communication strongly recommend but MD & A not yet in operation
Philippines: No detailed disclosures in place.
Poland: “Management Board Report” is an obligatory part of the Annual Report. However the requirements as of the exact content of this report are not specified in law.
South Africa: Part of the items mentioned above form part of the Chairman’s report in the annual report and the rest are likely to be addressed in the annual general meeting.

Information on newly appointed directors including brief resume, nature of expertise in specific functional areas, names of companies in which the person also holds directorship and the membership of committees of the board etc. are not disclosed in the MD & A in *Bangladesh, Sri Lanka, Tunisia* (partly disclosed) and *Turkey* (each listed company have a shareholders relations department to improve relations between the shareholders and the company). In *Sri Lanka* in terms of listing rules the board is required to publish in its annual report a brief resume of each director on its board which includes information on the nature of his her expertise in relevant functional areas. Upon appointment of a new director, the company also provides a brief resume of such director to the Colombo Stock Exchange for dissemination to the public.

4. Board Independence

4.1 Definition of Independence

Except for *Morocco, Nigeria, Philippines, Republic of Sprska, Romania* and *Tunisia*, all other responding jurisdictions have comprehensive criteria for defining independent directors[16]. While there are no provisions relating to defining independent directors in *Morocco* and *Nigeria*, in the *Republic of Srpska*, final decision in this regard is made by the Board. In *Romania*, the current legislation regarding trading companies does not include provisions that refer to board independence or specialist committees. However, there is a draft law which contains a number of modifications that will be brought to the current Romanian law on trading companies. In *Tunisia*, one who does not perform management charges is an independent director. No information was available on this aspect from Philippines. In *Sri Lanka* the listing rules state criteria for defining independence.

4.2 Decision on Independence

As far as the authority to determine independence is concerned, it is determined in the light of the criteria laid down by various jurisdictions in this regard. As far as a final decision on independence of a member is concerned, the authority lies with the SEC in *Bangladesh*; the General Meeting in *China* and *Nigeria*; the Company Board in *Lithuania, Poland, Republic of Srpska, South Africa, Sri Lanka* (subject to scrutiny by the shareholders), *Thailand* (along with SEC and Exchange), the Audit Committee in *Israel*; the Nomination Committee in *Korea*; voluntary compliance by members in *Kenya, Mauritius, Pakistan,* Stock Exchange in *Malaysia* and the Statutory Auditor or practicing Company Secretary submitting the periodic reports to Stock Exchanges in *India.* The issue of final authority in deciding the independence of directors is not specifically addressed in *Barbados*, Columbia, *Hungary, Romania, Turkey*, and *Uganda*. Information in this regard was not available for *Morocco, Philippines*, and *Tunisia*.

4.3 The term for appointment and reappointment

In five jurisdictions, *China, Israel, Tanzania, Turkey,* and *Uganda,* the term of the independent directors is similar to the term of office of the directors. Each term is for a maximum of three years. An independent director may serve consecutive terms if re-elected upon expiration of his term of office, but not exceed two terms (7 years in the case of Turkey).

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[16] Bangladesh, Barbados, China, Colombia, Hungary, India, Israel, Kenya, Korea, Lithuania, Malaysia, Mauritius, Pakistan, Poland, South Africa, Sri Lanka, Tanzania, Thailand, Turkey, Uganda

In two jurisdictions, *Korea* and *Pakistan*, the term of office of a director may not exceed three years whereas in *Mauritius*, each Director is elected (or re-elected as the case may be) every year at the Meeting of Shareholders. In *Lithuania*, *Nigeria* and *Romania*, independent directors are appointed for specified terms subject to individual re-election. In *Malaysia* and *Thailand*, election of directors takes place each year. All directors retire from office once at least in 3 years, but are eligible for re-election. In *Kenya*, all directors, except the managing director, are required to submit themselves for re-election at regular intervals or at least every three years.

In *Hungary*, unless otherwise specified in the memorandum of association, independent directors (executive officers) are considered elected for five years. They may be re-elected., and may be 'freely removed by the business association's supreme body' at any time. In India, the Companies Act provides that not less than two third of the total number of directors of a public company, or of a private company which is a subsidiary of a public company, shall retire at every Annual General Meeting.

In six jurisdictions, *Bangladesh*, *Barbados*, *Columbia*, *South Africa* (differs from company to company in terms of their articles of association), Sri *Lanka* (maximum of 9 years) and *Tunisia*, this issue is not specifically addressed. Relevant information on terms of appointments and reappointments was not available from *Morocco*, *Philippines*, *Poland* (same as for other members of the Supervisory Board) and *Republic of Sprska* (elected by the shareholders assembly and the director appointed by the management board).

4.4 Termination of Independent Director

Services of independent directors in various jurisdictions surveyed can be terminated as per the mechanisms in the following table:

By the shareholders in a General Meeting	Barbados, China, Columbia, Hungary, India, Lithuania, Nigeria, Pakistan, Poland, Republic of Srpska, Romania, Sri Lanka, Tanzania, Thailand, Turkey, Uganda, Malaysia, Mauritius
By the shareholders with special majority	Israel, Korea, Thailand
By the Board of Directors	South Africa
As per the Provision of Companies Act	Bangladesh
By the Regulator	Thailand (directors other than independent directors can also be removed), Columbia
By the Court upon complaint	Israel, Malaysia, Tanzania, Thailand
No specific provision	Kenya, Morocco, Tunisia,
Information not available	Philippines

4.5 Reporting of Resignation of Independent Directors

Notification concerning corporate governance does not provide any express provision for explanatory statements for resignation of independent director in jurisdictions like *Bangladesh,Columbia*, *Poland*, *Tunisia, India,* and *Pakistan*. In Barbados, a director may submit to the company, a written statement giving reasons for his resignation but he is not mandated to do so. If he does, however, the company must forthwith send a copy of the statement to the Registrar and every shareholder entitled to receive notice of an annual general meeting. If an independent director resigns, the director needs to submit a written report to the board of directors, and make an explanatory statement regarding the resignation in jurisdictions like *China, Lithuania*, *Nigeria* and *Republic of Srpska.* The company must disclose the information on resignation in jurisdictions like *Israel, Kenya* and *South Africa* whereas in *Hungary*, an extraordinary statement is required to be disclosed by the company. The resignation of independent directors must be reported to the Company Board and the listed company should intimate the exchange within a specified period after the resignation in *Korea, Mauritius*, *Sri Lanka, Tanzania, Thailand, Turkey* and *Uganda*. In *Korea* and *Tanzania* the securities commissions must also be informed on this. In *Malaysia,* if an independent director resigns, the company has to lodge information in the prescribed form notifying the Companies Commission of Malaysia within one month of resignation by the Director. No information was available from *Morocco, Philippines* and *Romania* on this question.

4.6 Board Composition

Board composition of listed companies in the surveyed jurisdictions is set out in the following table:

At least one tenth (1/10) of the total number of the company's board of directors, subject to a minimum of one, should be independent directors.	Bangladesh
At least two outside directors should be there.	Israel, Mauritius
At least three independent directors, preferably one third should be independent.	Thailand, Tunisia
At least One-third of the whole board should be independent	China, Kenya (independent + non-executive), Uganda (independent + non-executive)
At least 2 directors or one third of its board of directors, whichever is higher should be independent directors	Malaysia, Turkey
Where the constitution of the board of directors includes only two non executive	Sri Lanka

directors in terms of clause 1 above, both such non-executive directors shall be 'independent'. In all other instances, the majority of non executive directors appointed to the board of directors shall be 'independent'	
Not less than fifty percent of the board of directors comprising of non-executive directors. Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors.	India
At least half of the whole board should be independent	Korea (all publicly traded company with total assets of at least KRW 2 trillion)
At least one-half of members of the supervisory boards should be independent. In companies where one shareholder holds a block of shares carrying 50% of all the voting rights, at least two should be independent.	Poland
The majority of the board of directors to be made up of independent directors	Hungary
It is recommended that the board should comprise a balance of executive and non-executive directors. A majority of non-executive directors is preferred of who sufficient should be independent of management	South Africa, Tanzania
Not specifically addressed	Barbados, Lithuania, Nigeria, Republic of Srpska, Romania, Pakistan
The limit number of board members having a contract of employment with the company not be more than the 1/3 of the board members	Morocco
Information not available	Philippines
At least 10% must be independent	Columbia

4.7 Shareholders entitlement to nominate or appoint board members to represent themselves

There is no specific provision for shareholders to nominate or appoint board members to represent themselves in jurisdictions like *Bangladesh Columbia*, *Israel*, *Kenya,* *Lithuania, Malaysia, Mauritius, Morocco, Nigeria, Poland, Romania, South Africa, Sri Lanka, Thailand, Tunisia, Turkey* and *Uganda.* In *Sri Lanka* both the Companies Act and Articles of Association of companies provide for appointment of directors by shareholders. In *Barbados*, shareholders, holding at least 5% of the issued shares can nominate a board member to represent them. In *China*, the boards of directors, the supervisory board and shareholders with 1% or above shares have the right to nominate the candidates for independent directors. In *Korea*, when nominating independent directors, the nomination committee for independent directors must include candidates recommended by the shareholders. In *Pakistan*, minority shareholders as a class are facilitated to contest election of directors by proxy solicitation, for which purpose, the listed company may make certain arrangements. Information provided by *Philippines*[17] on this aspect was not clear, where as information was not available on this aspect from *Hungary, Republic of Srpska* and *Tanzania.*

4.8 Limit on shareholding by an independent director

An independent director can hold less than one percent (1%) shares of the total paid-up shares of the company in *Bangladesh* and *Turkey*. In *Thailand*, an independent director should not hold shares more than 5% of paid-up capital of the company, affiliated company, associated company or related company. In *India*, the limit is 2% of the block of voting shares. *In Sri Lanka*, the limit is less than 10% of the voting rights. In the case of *Israel*, independent directors are permitted to own shares in the company but can not have a controlling interest in it. In *Korea*, if an outside director, together with related parties holds the largest number of voting shares of the company, he will be dismissed as director. An independent board member should not be a controlling shareholder or representative of such shareholder in *Lithuania* and *Malaysia.*

In *Mauritius*, there is no limit on shareholding by independent directors. However, Boards of companies are required to pay attention to the ability to influence or control the board or management when they decide on the limits of shareholding of an independent director. In *Nigeria*, an independent director is not supposed to hold shares in the company.

Share holding restrictions on independent directors are not specifically addressed in Barbados, *China, Hungary, Kenya, Pakistan, Poland, Republic of Srpska, Romania, South Africa, Tanzania, Tunisia and Uganda.* Information on this aspect was not available from *Morocco* and *Philippines. Information on this aspect was not clear from Columbia.*

[17] Shareholders are entitled to nominate or elect, through cumulative voting, board members to represent themselves

4.9 Compensation package, access to company shareholding and independence of independent directors

No bar or restriction on the compensation package of independent director is in place in *Bangladesh* and *Thailand*[18]. In *Hungary* and *India,* apart from directors' remuneration, no other pecuniary benefits can be paid to an independent director. In *Israel,* limits on compensation to independent directors are not determined by the company, its directors, executives or controlling shareholders, but rather by law. In *Kenya*, remuneration is decided by the whole board, and is disclosed to the shareholders in the annual report. In *Korea*, companies refer to and comply with the Best Practices for Corporate Governance on a voluntary basis, which was developed by a self-regulatory organization, and which includes creation of the remuneration committee. In *Malaysia*, the company's article of association usually provides for remuneration of a director and the remuneration shall be agreed upon from time to time by the company in a general meeting. However, there is nothing that prevents the board from determining its own salaries. Remuneration Committees recommend to the shareholders in the Shareholders General Meeting in *Philippines, South Africa* and *Uganda*. In *Turkey and Mauritius* remuneration is decided by suggestions of the board of directors and approved by the general shareholders' meeting. Remuneration of independent directors is not specifically addressed in *Barbados, Lithuania, Morocco, Nigeria, Pakistan, Poland, Republic of Srpska, Romania, Sri Lanka, Tanzania* and *Tunisia.*

4.10 The maximum number of board memberships held by an independent board member and the number of meetings that a member is required to attend in a given period

There is no maximum limit of board memberships to be held by an independent director as well as other directors in *Bangladesh*[19] (however, post of Managing Directors can be held only of one company), *Lithuania*[20] and *Mauritius*. In *Malaysia,* a director shall not hold more than 25 directorships in companies, of which the number of directorships in listed companies shall not be more than 10 and the number of directorships in companies other than listed companies shall not be more than 15. In *Kenya,* one cannot be director in

[18] The director compensation has to be approved by the shareholders meeting. In general, the audit committee or other committees – e.g. remuneration committee, nomination committee-may receive more compensation than other board members due to their higher responsibility and accountability

[19] As per section 108(f) of the Companies Act, 1994 the office of a director shall be vacant if he absents himself from three consecutive meeting of the directors or from all meetings of the directors for a continuous period of three months, whichever is the longer, without leave of absent from the board of directors

[20] In the event a member of the collegial body should be present in less than a half of the meetings of the collegial body throughout the financial year of the company, shareholders of the company should be notified.

more than 5 companies and chairman of more than 2 companies. In *Korea*, this is covered under the Best Practices for Corporate Governance which is applicable on a voluntary basis. In Thailand, the principles of good corporate governance recommends that each director should serve on not more than 5 boards of listed firms. This issue is not specifically addressed in *Barbados, China, Hungary,* and *Israel*[21].

In *Uganda*, the maximum limit of board memberships/directorships is 5 in any listed company at any time. There is also a limit on chairmanships – no person can be chairman of more than 2 public listed companies.

4.11 Special Rights of Independent Directors

<u>Holding of Separate Meeting</u>

Independent members of the Board may hold separate meetings to form unbiased judgment on specific issues in jurisdictions like *Hungary, Israel, Malaysia* (subject to Board approval)*, Republic of Srpska, South Africa, Tanzania* and *Thailand*. Such separate meetings are not allowed in *Morocco, Nigeria, Poland* and *Pakistan*. In *Tunisia,* the available framework allows independent directors to hold separate meetings with audit committees, but does not allow meeting shareholders separately. There is no specific provision regarding this in *Bangladesh, Barbados, China, Columbia, Kenya, Lithuania, Mauritius* and *Romania*. *Sri Lanka, Turkey, Uganda* and *India.* In *Korea*, the Best Practices for Corporate Governance developed by a self regulatory organization covers this area, and companies comply on a voluntary basis. Information was not available on this right of independent directors from *Mauritius* and *Philippines.*

<u>Access to external professional assistance</u>

Independent directors have access to external legal, accounting or other specialist advice, the company's records including financial records, management and staff in *Bangladesh Columbia, Israel, Kenya*[22]*, Korea* (subject to board approval), *Lithuania, Malaysia, Mauritius, Philippines, Poland* (the whole supervisory board has such access), *South Africa, Tanzania, Thailand, Tunisia* and *Turkey*[23]. No such access is available in *Nigeria.* There are no specific provisions in this regard in *Barbados, China, Hungary, Morocco,*

[21] the Companies Law stipulates that outside directors cannot serve in other companies in any capacity such that would impinge on their ability to fulfill their duties as outside directors
[22] at least once in a year the committee shall meet with the external auditors without executive board members present.

[23] The board of directors should have a budget to reimburse travel/meeting expenses, costs pertaining to special working requests and similar expenses.

Pakistan, Romania, Uganda and *India*[24] In *Sri Lanka*, under the Companies Act, directors, including independent directors can rely on external professional assistance

Right of independent directors to initiate legal proceedings against the company

Independent directors may apply to the court for an appropriate order if the company's affairs are being conducted in a manner that is oppressive or unduly prejudicial to, or that unfairly disregards the interests of any shareholder in jurisdictions like *Barbados, China, Columbia, Israel, Mauritius, Philippines, Poland, Republic of Srpska, South Africa*[25] and *Thailand*[26].
No such provision exists in *Bangladesh, India, Kenya, Lithuania, Romania, Pakistan* and *Uganda.* In *Sri Lanka,* a director of a company can obtain a restraining order against a company. The Companies Act also provides for derivative action that could be initiated by a director, including independent directors. In *Korea*, *Malaysia*[27], *Nigeria* and *Tunisia,* independent directors are not allowed to initiate legal proceedings against the company. In *Hungary*, there is no special requirement and civil court proceedings are to be applied. Information from *Turkey*[28] was not clear; **no specific provision in *Morocco*.** Information on this particular issue was not available from *Tanzania.*

4.12 Evaluation of Independent Directors

In *China, Hungary, Lithuania* and *Mauritius*, it is necessary for the independent board to submit the annual reports about their work which includes the standard operation of the listing company, the protection of small and medium shareholdings' interests and the implementation of independent directors' work. The General Meeting evaluates the independent board's work annually. In *Israel,* the audit committee is charged with addressing managerial deficiencies, including those of the board and/or board members and evaluating them. In *Uganda*, the assessment is done by the entire board, i.e. there is an evaluation/assessment of individual board members by each other. In *Malaysia,* the nomination committee, if appointed, is responsible for assessing annually the

[24] Though there is no specific provision as such for independent directors, Clause 49 gives similar powers to the audit committee
[25] Provided they have the power of attorney from the board, but this is not common practice.

[26]According to Section 85 of the PCA, if a director does not perform its duties with care and honesty and causes damage to the company, the company may claim compensation from such director. In order to do that, an independent director, on behalf o the company, can initiate legal proceedings against the company.

[27]An independent director can initiate proceedings against the company in his personal capacity on a contractual agreement. However, if the director wants to initiate proceedings on behalf of members, it is not possible as the director would not be the proper plaintiff.

[28] According to the TCC any person (including the board members) who was granted the authority to represent the company by the board of directors may carry out any legal transactions in context of the subject and aim of the company and use the company title.

effectiveness of the board as a whole and the contribution of each individual director. In *Turkey,* the corporate governance committee determines the principles and practices regarding the evaluation of performances of the board members and executives, career planning and rewarding of them.

In *India*, clause 49 of the listing agreement contains a non-mandatory provision for evaluating the performance of non-executive directors. It recommends that the performance evaluation of non-executive directors could be done by a peer group comprising the entire Board of Directors, excluding the director being evaluated; and Peer Group evaluation could be the mechanism to determine whether to extend / continue the terms of appointment of non-executive directors. In *Philippines* and *Sri Lanka*, the management has to establish a performance evaluation system to measure the performance of the Board and top level management of the corporation. The establishment of such evaluation system, including the features thereof, may be disclosed in the company's annual report. In *Korea*, the Best Practices for Corporate Governance developed by a self regulatory organization provides for evaluation of outside dirtectors, and companies comply on a voluntary basis

There is a mechanism of self evaluation of the board and board members in *South Africa*. In *Nigeria*, a few companies have started to implement board evaluation which is still evolving. In *Bangladesh*[29]*, Barbados, Kenya, Pakistan, Poland, Republic of Srpska, Romania, Tanzania, Thailand* and *Tunisia,* there is no specific provision relating to evaluation of independent board members. However, in *Thailand*, the audit committee guideline recommends that an audit committee should be formally evaluated in order to ensure that the performance of the committee is efficient and meets the objectives. In *Morocco*, no specific provision on evaluation independent board members exists. In Columbia, Regulations require that companies raising resources from pension funds should have specific mechanism for evaluation of directors. However, companies are left free to decide ways for such evaluation.

4.13 Code of Conduct for Board Members

In *China*[30]*, Columbia, India, Kenya, Mauritius, Nigeria, Pakistan* and *South Africa*[31]*,* board of directors are required to comply with the code of conduct prescribed for them. In *Thailand,* the principles of good corporate governance recommend that the board of directors should ensure that a written code of business conduct is in place so that all

[29] Notification concerning corporate governance does not provide any provision for evaluation for board of directors and individual independent board members. As per the Companies Act, 1994 general body of shareholders could do that. However, there is a checklist in the Corporate Governance Guidelines that has to be filled in and included in the annual report. Failure of certain aspects that are required to be complied with by directors could be examined by the Securities and Exchange Commission and necessary action may be taken by it.

[30] The CSRC has already drawn up a regulation about the independent directors in the listing companies in this July.

[31] The exchanges have adopted a Charter which outlines the code of conduct of board members.

directors, executives and employees understand business ethic standards of the company. Compliance to the code should be closely monitored by the board.

In *Israel* board members are not required to comply with a specific code of conduct, however, the fiduciary duties articulated under the Companies Law specify types of actions that are typically included in codes of conduct, the breach of which would be considered breach of legal duty. The Law prohibits: a) engaging in activities engendering conflicts of interest between his/her role in the company and personal affairs; b) engaging in activities that compete with the company's business; c) exploiting corporate activities for his own or another's behalf. Directors must also disclose all information and submit all documents pertaining to the company which he has come across during the course of their tenure with the company. Similarly, directors have a positive duty to disclose any conflicts of interests between themselves and the company. In *Korea*, a company must set up and disclose to the public the code of conduct, and its board of directors must supervise compliance with relevant laws and ethics standards under the Best Practices for Corporate Governance developed by a self regulatory organization, and companies comply on a voluntary basis. In *Malaysia*, there is no prescribed code of conduct for board members, however there are no provisions prohibiting companies from introducing a code of conduct for its board members. In *Uganda*, the Board members are required to adhere to a code of conduct which is provided for in their Board Manual

In *Morocco*, no code of conduct is required to be complied by the board members. This issue is not specifically addressed in many of the jurisdictions such as *Bangladesh, Barbados, Hungary, Lithuania, Poland, Republic of Srpska, Romania, Sri Lanka, Tanzania* (company specific), *Tunisia* and *Turkey*. Information in this regard was not available from *Philippines.*

4.14 Education for Board Members

Board members are to be provided with the necessary orientation in the area of the Company's business, their duties and responsibilities as company board members in jurisdictions like *China*, *Lithuania*[32], *Malaysia* (provisions provided in the listing agreement), *Nigeria* and *Uganda.* Such orientation is not required in *Bangladesh, Israel*, and *Tanzania.* In *Korea*, the Best Practices for Corporate Governance developed by a self regulatory organization provides for education programs for directors, and companies comply on a voluntary basis. In *Thailand*, the principles of good corporate governance recommends that the board should encourage and facilitate training for all internal parties related to corporate governance such as directors, members of the audit committee, executives, company secretary etc. It can be either internal or external training. No specific provision on education of board members exists in *Barbados*, *Hungary*, *India*,

[32]All new members of the collegial body should be offered a tailored program focused on introducing a member with his/her duties, corporate organization and activities. The collegial body should conduct an annual review to identify fields where its members need to update their skills and knowledge.

Kenya, Mauritius, Republic of Srpska, Romania, South Africa, Sri Lanka[33], *Tunisia* and *Turkey*. No information was available from Columbia and *Philippines* in this regard. In Morocco, no specific provision on education of board members exists.

[33]The Financial Services Academy established under the auspices of the Securities and Exchange Commission of Sri Lanka would have programs aimed at directors of listed companies.

5. Specialist Committees

5.1 Audit Committee

In jurisdictions where companies have an audit committee, the audit committee monitors the company's inside audit system and its implementation, takes charge of communications between the inside and outside audit, reviews and audits the company's financial information and its disclosure and audits the company's inside-control system, thereby assisting the board of directors in ensuring that the financial statements reflect a true and fair view of the state of affairs of the company.

It is mandatory to have an audit committee by listed companies in 18 out of 26 surveyed jurisdictions. It is mandatory for listed companies to have an audit committee in jurisdictions like *Bangladesh*, *China, Columbia*, *Hungary*, *India*, *Israel*, *Kenya*, *Korea*, *Malaysia* (for all publicly traded companies with at least KRW 2 trillion in total assets at the end of the fiscal year), *Mauritius, Nigeria, Pakistan, Republic of Srpska, Sri Lanka*, *Tanzania*, *Thailand, Tunisia* and *Turkey*. In *Romania*, according to the draft law, for a joint stock company whose annual financial statements are the object of a mandatory audit, it is mandatory to have an audit committee. In *Barbados, Lithuania, Poland, South Africa* and *Uganda*, it is not mandatory, but recommended for companies to have an audit committee. In *Morocco,* no specific provisions exist in this regard. No information was available from *Philippines* in this regard.

As far as composition of Audit committee is concerned, each of the jurisdictions has their own structure with a common principle that majority of the members of the committee consist of independent directors. In *Bangladesh and Mauritius,* the audit committee is a sub committee of the Board and it should include atleast one independent director. In *China,* independent directors should account for the majority in the audit committee of the listed companies, and the chairman of this committee must be one of the independent directors. Furthermore, one of the independent directors must be an accounting expert. In *Hungary,* the audit committee must consist of three members elected by the general meeting from the board of directors, or from the independent members of the supervisory board.

In *India* and *Korea,* the audit committee should have minimum three directors as members. Two-thirds of the members of audit committee should be independent directors. All members of audit committee should be financially literate and atleast one member should have accounting or related financial management expertise. In *Malaysia*, atleast three members, of whom majority, including the chairman, should be independent. Atleast one member of the audit committee (i) must be a member of the Malaysian Institute of Accountants or (ii) if he is not, he must have at least 3 years working experience and he must have passed the relevant examinations under the Accountants Act

1967 or he must be a member of one of the associations of accountants specified in the Accountants Act 1967.

In *Israel and Thailand*, the audit committee must comprise of at least three members. All independent directors serve on the audit committee. In *Kenya*, *Lithuania* and *Tanzania*, the audit committee consists of atleast of three independent and non-executive directors having knowledge about the company business and finance and audits. In *Mauritius*, the audit committee should be composed entirely of non-executive directors and the chairman should be an independent non executive director. In *Nigeria* and *Pakistan*, the audit committee consists of three non-executive members of the Board or shareholders.

In *Poland*, it consists of atleast two independent members and atleast one person possessing relevant qualifications and experience in accountancy and finance. In *Republic of Srpska* and *Tunisia*, the audit committee consists of independent directors only. In *Romania*, it is formed of at least two members of the council of administration (Board of Directors) who are non excutive and independent. Atleast three members, of whom majority should be independent, form the members of the audit committee in *South Africa*.

In *Sri Lanka*, the audit committee should comprise of a minimum of two independent non-executive directors (in instances where a company has only two directors on its board) or exclusively of non-executive directors, a majority of whom should be independent.. The chairman or one member of the committee should be a Member of a recognized professional accounting body. In *Turkey*, if there are two members, both of them should be non-executive members. If there are more than two members in a committee, the majority of its members should be non-executive members. The Chairman should be elected from among independent members of the board. In *Uganda*, majority of members of the audit committee are required to be independent and non-executive directors including the chairman.

Procedural framework

In Bangladesh, the audit committee reports to the board of directors, to the authorities and to the shareholders and general investors. In *China*, *Lithuania* and *Mauritius*, if the audit committee finds any problems, they refer it to the board of directors. In Columbia, *Hungary*, *India*, *Kenya* and *Tanzania*, the Audit committee monitors, for the Board of Directors and/or the Supervisory Board, the efficiency of risk management, the operation of the internal control system, and the internal audit activities. In *Israe*l, the internal auditor is entitled to be notified of and attend all meetings. Meetings can also been convened upon the request of the internal auditor. An invitation to any committee meeting dealing with an issue pertaining to the audit of the company’s financial statements must be extended to the external auditor, who is entitled to attend the meeting.

In *Sri Lanka*, the audit committee is required to determine the independence of the auditors and disclose the basis of such determination in the annual report. The annual report contains a report by the audit committee setting out the manner of compliance by the company with Sri Lanka accounting standards in relation to disclosures in the financial statements of a listed company, and compliance with other financial and information requirements of the Companies Act and other relevant laws and adequacy of the companies' internal controls and risk management.

In discharging their functions the audit committee is expected to meet and have a dialogue with the management of the company to ensure proper performance of their duties. In *Thailand*, it is a requirement that the audit committee has to prepare an audit committee report and disclose in the annual report. The report has to contain its work during the fiscal year. In *Malaysia*, the audit committee reviews, among others, the audit plan with the external auditors, the internal audit programme, any related party transaction and reports to the board of directors as well as recommends the nomination of a person(s) as external auditors. In *Pakistan*, all listed companies are required to ensure that internal audit reports are provided for the review of external auditors. The auditors should discuss major findings in relation to the reports with the Audit Committee, which should report matters of significance to the Board of Directors. There are no specific provisions in the regard in *Korea, Poland, Romania* and *Tunisia*. The procedural framework is not defined in *Republic of Srpska*. In *Uganda,* the Audit Committee reports to the Board with formal terms of reference addressing its authority and duties.

Independence of Audit Committee

The existence of independent directors in the audit committee ensured the independence of the committee in most of the jurisdictions like *China, Columbia, India, Israel, Kenya, Korea, Lithuania, Malaysia, Nigeria* (non-executive directors), *Poland, Republic of Srpska, South Africa, Sri Lanka, Tanzania, Thailand, Tunisia,* and *Turkey*. In *Bangladesh*, the audit committee reports to the board. However, if board fails to hear or implement the decision of the audit committee, the committee is required to make that known to the Securities Commission.

5.2 Nomination Committee

The nomination committee, in general, sets standards and procedures of directors and managers' nomination and gives suggestions, produces the eligible candidates list and gives its views on the candidates. Nomination committee, as a general practice in the surveyed jurisdictions, also considers proposals by other parties, including management and shareholders. The board, through the nomination committee, annually reviews its required mix of skills and experience and other qualities, including core competencies which non-executive directors should bring to the board.

In most of the surveyed jurisdictions, constitution of a nomination committee is recommended under the best practices of corporate governance. For instance, in *China, Kenya, Lithuania, Mauritius, South Africa, Thailand, Turkey* and *Uganda*, companies are not mandatorily required to constitute a nomination committee, but the code of corporate governance for listed companies prescribes that the board of directors sets up the nomination committee according to the decisions of the general meeting. In jurisdictions like *Bangladesh, Hungary, Tunisia, India, Israel*[34]*, Morocco, Pakistan, Poland, Republic of Srpska, Romania, Sri Lanka* and *Tunisia,* there is no specific provision on nomination committee and in case a company constitutes one, it is governed as per the article of association of the concerned company. In Columbia, the current laws do not have provisions for Nomination Committee.

In two jurisdictions, *Korea* and *Tanzania*, nomination committee is mandatory for certain companies. For instance, in Korea, a company with atleast KRW 2 trillion in total assets at the end of the fiscal year must establish a nomination committee to recommend candidates for outside directors. In addition, Korea's Best Practices for Corporate Governance recommends that a company set up a nomination committee to ensure fair and independent nomination processes and adopt cumulative voting and disclose to the public whether it has adopted it or not. In *Tanzania,* it is mandatory for all publicly listed companies to have a nomination committee.

As far as composition of nomination committee is concerned, typically independent directors must account for the majority and the chairman of the committee should also be an independent director. This is the practice in *China, Kenya, Korea, Lithuania, Tanzania* and *Thailand.* In *Malaysia,* the committee should consist of directors composed exclusively of non-executive directors, a majority of whom are independent. In *Turkey*, the chairman of the nomination committee should be elected from amongst independent members of the board and this committee should comprise of atleast two members. If there are two members, both of them should be non-executive members. If there are more than two members in a committee, the majority of its members should be non-executive. In *Uganda*, majority of members should be non-executive and independent

5.3 Remuneration Committee

The remuneration committee examines the remuneration policy and program about the directors and managers, studies how to assess the directors and managers, and gives suggestions on remuneration and entitlement of the directors and managers to employee stock options etc.

It is manadatoty for listed companies in *China, Morocco*[35]*, Sri Lanka* and *Tanzania* to have a remuneration committee. In *Nigeria,* the code expects every listed company to constitute a remuneration committee. The corporate governance principles recommend

[34] However, the audit committee within its capacity to approve contracts and transactions between the company and its board members and/or controlling shareholders (prior to shareholder approval) addresses remuneration of these individuals. As mentioned above, remuneration packages of board members and controlling shareholders is also subject to shareholder approval.

companies to have a remuneration committee in *Lithuania, India, Mauritius, South Africa*, *Thailand*, *Turkey* and *Uganda*. In *Poland*, the Best Practices in Public Companies 2005 specify a remuneration committee. In *Korea*, the Best Practices for Corporate Governance recommend that a company set up a compensation committee which only consists of outside directors in order to ensure appropriate level of compensation for executive officers and objective assessment of performance of executive officers. There are no specific provisions in this regard in *Bangladesh*, *Columbia, Hungary, Tunisia, Israel*, *Kenya, Pakistan*, *Republic of Srpska*, *Romania* and *Tunisia*.

As far as the composition of the remuneration committee is concerned, generally, the independent directors account for a majority and the chairman of the committee is also an independent director. This is the practice in *China, Kenya* and *Lithuania*. In *Malaysia* and *Tanzania*, the remuneration committee consists mainly of non-executive directors. In *Israel*, at least one member must be an independent director.

* * *