



THE WORLD BANK

Report on the Observance of Standards and Codes (ROSC)

Corporate Governance

Corporate Governance Country Assessment

Bangladesh

March 2009

Overview of the Corporate Governance ROSC Program

WHAT IS CORPORATE GOVERNANCE?

Corporate governance refers to the structures and processes for the direction and control of companies. Corporate governance concerns the relationships among the management, Board of Directors, controlling shareholders, minority shareholders and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital.

The *OECD Principles of Corporate Governance* provide the framework for the work of the World Bank Group in this area, identifying the key practical issues: the rights and equitable treatment of shareholders and other financial stakeholders, the role of non-financial stakeholders, disclosure and transparency, and the responsibilities of the Board of Directors.

WHY IS CORPORATE GOVERNANCE IMPORTANT?

For emerging market countries, improving corporate governance can serve a number of important public policy objectives. Good corporate governance reduces emerging market vulnerability to financial crises, reinforces property rights, reduces transaction costs and the cost of capital, and leads to capital market development. Weak corporate governance frameworks reduce investor confidence, and can discourage outside investment. Also, as pension funds continue to invest more in equity markets, good corporate governance is crucial for preserving retirement savings. Over the past several years, the importance of corporate governance has been highlighted by an increasing body of academic research.

Studies have shown that good corporate governance practices have led to significant increases in economic value added (EVA) of firms, higher productivity, and lower risk of systemic financial failures for countries.

THE CORPORATE GOVERNANCE ROSC ASSESSMENTS

Corporate governance has been adopted as one of twelve core best-practice standards by the international financial community. The World Bank is the assessor for the application of the OECD Principles of Corporate Governance. Its assessments are part of the World Bank and International Monetary Fund (IMF) program on Reports on the Observance of Standards and Codes (ROSC).

The goal of the ROSC initiative is to identify weaknesses that may contribute to a country's economic and financial vulnerability. Each Corporate Governance ROSC assessment reviews the legal and regulatory framework, as well as practices and compliance of listed firms, and assesses the framework relative to an internationally accepted benchmark.

- Corporate governance frameworks are benchmarked against the OECD Principles of Corporate Governance.
- Country participation in the assessment process, and the publication of the final report, are voluntary.
- The assessments focus on the corporate governance of companies listed on stock exchanges. At the request of policymakers, the ROSCs can also include special policy focuses on specific sectors (for example, banks, other financial institutions, or state-owned enterprises).
- The assessments are standardized and systematic, and include policy recommendations. In response, many countries have initiated legal, regulatory and institutional corporate governance reforms.
- Assessments can be updated to measure progress over time.

By the end of June 2009, 66 assessments had been completed in 55 countries around the world.

REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)

Corporate governance country assessment

Bangladesh

March 2009

Executive Summary

Good corporate governance ensures that companies use their resources more efficiently, protects minority shareholders, leads to better decision making, and improves relations with workers, creditors, and other stakeholders. It is an important prerequisite for attracting the patient capital needed for sustained long-term economic growth. This report provides an assessment of Bangladesh's corporate governance policy framework. It highlights recent improvements in corporate governance regulation, makes policy recommendations, and provides investors with a benchmark against which to measure corporate governance in Bangladesh.

Achievements: The public and private sectors have taken steps to improve corporate governance in recent years. The Securities and Exchange Commission issued Guidelines on Corporate Governance in 2006 and is now working to address problems in the so-called "Z" companies. The creation of a central depository has made share ownership and transfers more secure. International standards for accounting and auditing have been partially incorporated into local standards and the development of the accounting and auditing profession has been assisted by a wide-ranging donor-supported program. The Bangladesh Enterprise Institute is providing director training to a number of board members in listed companies and state owned enterprises (SOEs).

Key Obstacles: Bangladesh's capital markets remain some of the most underdeveloped in the region. The basic legal framework for corporate governance in Bangladesh is dated, and there are a number of contradictions and points of confusion between the various rules and regulations that apply to listed companies. Shareholders do not have sufficient rights regarding related party transactions, the choice of board members, or the disclosure of control. Building on current efforts, more needs to be done to raise the quality of accounting and auditing. Greater independence and professionalism is required in the boardrooms of both listed companies and state-owned enterprises. Neither the Registrar of Joint Stock Companies nor the courts are particularly effective at enforcing the Companies Act (CA).

Next Steps: A new CA should be introduced as part of broader reform to make the legal framework for corporate governance more coherent and effective. This reform should strengthen shareholder rights and the accountability of directors. The Registrar should undergo comprehensive reform to allow it to fulfill its legal obligations. Current efforts to improve accounting and auditing should be accelerated, and the disclosure of corporate control improved. The independence and professionalism of boards should be enhanced, and oversight of SOEs strengthened.

Acknowledgements

This assessment of corporate governance in Bangladesh was conducted in March 2008 by David Robinett and Deborah Eskinazi with Alexander Berg of the World Bank Corporate Governance and Capital Markets Advisory Department, as part of the Reports on Observance of Standards and Codes Program. The report is based on a template / questionnaire completed by Messrs. Doulah & Doulah. It has been updated to reflect all relevant changes through March 2009.

The assessment reflects technical discussions with the Securities and Exchange Commission, Bangladesh Bank, Dhaka Stock Exchange, Registrar of Joint Stock Companies, Institute of Chartered Accountants of Bangladesh, Central Depository Bangladesh Limited, Bangladesh Enterprise Institute, South Asia Enterprise Development Facility (SEDF), Bangladesh Enterprise Institute (BEI) and representatives of companies, banks, and market participants.

Xian Zhu, A.K.M. Abdullah, Lopa Rahman, Eugene Spiro, Tatiana Nenova, Aneeka Rahman, and Pasquale di Benedetta provided advice and comments.

Appendix 1 was prepared by Tatiana Nenova and Aneeka Rahman, of the World Bank South Asia Finance and Private Sector Development Sector Unit.

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Country assessment: Bangladesh

This ROSC assessment of corporate governance in Bangladesh benchmarks law and practice against the OECD Principles of Corporate Governance and focuses on the companies listed on the Dhaka and Chittagong Stock Exchanges.

Good corporate governance is an important prerequisite for attracting the patient capital needed for sustained long-term economic growth, and can lead to better relations with workers, creditors, and other stakeholders. Corporate governance is also an important component of wider governance and transparency initiatives in many countries.

Bangladesh has taken important steps to improve corporate governance over the past few years. However, fully tapping the potential of capital markets and professionalizing boards and management will require reform efforts to continue.

Market profile

Size of the market remains small relative to other emerging markets ...

Bangladesh has two Stock Exchanges, the Dhaka Stock Exchange (DSE) and the Chittagong Stock Exchange (CSE). 443 securities are listed on the DSE and 247 on the CSE. Many companies are listed on both exchanges. About 22 percent of the listed companies are banks or insurance companies, which are required to list. Compared to other countries in the region, the capital market is small: the market capitalization to GDP ratio was less than 15 percent in 2008.

... but share prices and the number of listed companies have been growing rapidly

In December 2008, market capitalization was 797.7 billion taka (\$US 11.56 billion)¹, a 22 percent increase over the previous year. Equity market turnover increased 175 percent during 2007. This is a continuation of the rapid growth experienced by the market since 2003: market capitalization has increased more than 700 percent over the last six years. In 2008, 15 companies listed, following 16 new listings in 2007.

Companies are classified according to the level of dividends they declare

The DSE is the major stock exchange. The share index for the DSE stood at 2309 in December 2008. This is a small change from 2007, when the index increased 87 percent.

For companies to offer shares on the DSE, and stay listed, they must meet both DSE and Securities and Exchange Commission (SEC) requirements. There have been cases of the SEC approving a new listing and the DSE rejecting it.

The SEC has developed a unique system for classifying companies based on both their governance practices, and on the level of dividends paid to shareholders. “A companies” regularly hold their annual meetings of shareholders and have declared dividend at the rate of at least 10 percent in the previous year. “B companies” have also regularly held their annual meeting but have declared dividends of less than 10 percent. Companies which neither hold a meeting nor declare dividends are called “Z companies”. Greenfield companies are in the G category, and the N category is for all other new companies.

Ownership is concentrated

Corporate ownership is concentrated and companies are often controlled by a small number of related shareholders. A few companies have dispersed

¹ Source: Dhaka Stock Exchange. World Development Indicators for 2008 have an estimate of 6.6 billion \$US.

ownership. Most securities in Bangladesh are held by individuals—the controlling family or members of the public—rather than institutions or other companies. 43 percent of the market is held by sponsors who are from the founders’ families, and 38 percent is held by the public at large. Sponsors often have management and or board positions in companies.

Institutional investors play a limited role and foreign investors are almost absent

Institutional investors hold only 10 percent of the market but are sometimes represented on company boards. Bangladesh has improved its foreign investment legislation and foreign investment has increased. However, foreigners still only hold 1 percent of the market.

Privatization has been extensive, but state ownership remains important

Over 400 privatizations have taken place in Bangladesh since 1976, many in the early years of the program. Most of the privatized companies are small and are now closely-held by a single owner or family. The state retains ownership in a number of important enterprises, including listed companies, and holds about 8 percent of the market by capitalization.

Bangladesh’s corporate governance framework is strongly influenced by its common law legal heritage

Bangladesh is a common law country, and much of its corporate legal framework is based on significantly older UK legislation. Key laws include the 1994 Companies Act (CA), the 1991 Bank Companies Act, the 1969 Securities and Exchange Ordinance, and the 1993 Securities and Exchange Commission Act. The SEC is the supervisor of the markets and listed companies. The SEC has also issued a number of important and new regulations to compensate for the old legislation.

The legal framework has problems with consistency and coherence

Key regulations are often only in Bengali or only in English and no official translation is available. Translation problems combined with the proliferation of (much-needed) regulation and the dated nature of the law reduce the coherence of the legal framework.

The SEC issued Corporate Governance Guidelines in 2006

The SEC issued Guidelines on Corporate Governance in 2006. Listed companies are required to “comply or explain”. The Guidelines cover some key topics, including the functioning of the board, and internal and external controls. The Guidelines do not deal with other aspects of corporate governance, including shareholder rights. Compliance is at its early stage - in 2007, about 33 percent of the companies declared full compliance with the Guidelines and 60 percent declared partial compliance.

Other institutions have issued guidance on corporate governance. The Bangladesh Enterprise Institute (BEI) issued a more detailed and voluntary Code of Corporate Governance in 2004. Compliance is limited. Bangladesh Bank (BB), which regulates the financial sector under the 1991 Bank Companies Act and the 1993 Financial Institution Act, issued Prudential Regulations on Corporate Governance for Banks in 2003.

Key findings

The following sections highlight the principle-by-principle assessment of Bangladesh’s compliance with the OECD Principles of Corporate Governance.

Investor protection

Basic shareholder rights are protected

Basic shareholder rights are protected. Shareholder recordkeeping has recently been improved because of the introduction of the Central Depository of Bangladesh (CDBL). Shareholders can demand a variety of information and have

a clear right to participate in the GMS either in person or by proxy. They can elect and remove directors. Changes to the company's articles, authorizing new capital, dividends, and major transactions all require shareholder approval.

Related party transactions do not have to be approved by shareholders

However, shareholders also face limits to their rights and sanctions are often not prohibitive. The information that shareholders can demand is not always free and easily accessible. The process to elect directors is rarely clear and shareholders do not approve director remuneration. In addition, the provisions on notifications for GMS do not include all necessary information. Decisions taken by shareholders meeting cannot be invalidated when a notice is accidentally omitted or not received. Shareholders cannot vote in the GMS electronically or by post. Moreover, there is no legal requirement for custodians to inform beneficial owners on their voting rights.

A key problem is related party transactions (RPTs) that company insiders could use to extract value from the company. RPTs do not have to be disclosed before they take place, and do not have to be approved by shareholders.

Dividend distribution is often not timely, or fair

Another important problem is equitable payment of dividends. Dividends are often not paid in a timely manner and the company can decide which shareholders receive dividends first².

In addition, the rights attached to any class of shares can be changed by a resolution in a separate meeting of the owners of those shares but also with the consent of *any* proportion of those owners fixed by the memorandum or articles.

There have been no prosecutions for insider trading

Insider trading is forbidden in Bangladesh. The listing rules and other securities regulation have inconsistent definitions of insider trading. As is the case in many countries, there have been no prosecutions for insider trading.

Funds do not disclose voting or voting policy

To limit conflicts of interest, funds are required to have legal personalities and employees distinct from other financial intermediaries like merchant bankers and brokers. Funds are not required to disclose their voting or voting policy in the GMS for companies in which they invest, and do not in practice.

Taking control of a company requires making a offer to the public

Under SEC regulation, a person trying to obtain more than 10 percent of a company's shares shall make an offer through a public notice. At the end of the offer, if less than 10 percent of the shares remain in the public, the offeree is bound to buy the remaining shares. Owning more than 10 percent of the share shall be disclosed to the company, the Stock Exchange and the SEC.

The rules are proscriptive, and may have limited certain control transactions. There is no general requirement for control offers to be for all shares in the company. Their scope is also narrow. The CA has distinct, and not entirely harmonized, rules for mergers and acquisitions. There is little guidance on board members' duties during control transactions or when a major shareholder wishes to *sell* a large block of shares.

Threshold for redress is high

Shareholders holding at least 10 percent of shares may go to court, or request an investigation by the Registrar. These actions are rarely taken, and the 10 percent threshold, especially in companies with concentrated ownership, may preclude shareholders from seeking redress for their rights.

² According to some interpretations of the law, the board can decide which shareholders are eligible for dividends, and which are not.

Disclosure

Companies produce audited annual financial statements

All companies in Bangladesh are required to prepare and present audited financial statements to shareholders and the Registrar. Annual reports are normally mailed to shareholders of listed companies, and contain full financial statements, a directors' report, and a statement on corporate governance. Some companies also publish this and additional information on their website. However, compliance with basic disclosure rules must be considered moderate. The 17 Z-listed companies do not in general prepare annual reports, and reports of other companies are often difficult to obtain.³ In addition, there is no website where investors can easily review financial or other company data for listed companies.

International standards of accounting and auditing are being introduced, but are not fully implemented

Listed companies are to prepare their reports using International Financial Reporting Standards (IFRS) as adopted by the Institute of Chartered Accountants of Bangladesh (ICAB). ICAB has incorporated a number of international standards, but not all have been adopted, and some that have not been updated. The CA and other legislation also contain provisions that are not consistent with IFRS. Legally, these provisions are superseded by securities regulation, but in practice they still hinder IFRS implementation by companies. For example, many companies do not prepare consolidated accounts because of the general belief that it is not required under the CA.

Audits are not reviewed

There is no formal process for audit review in Bangladesh, and many market participants are skeptical of audit quality. Auditors are required to be rotated every three years, and cannot perform internal audit functions for the client, though they do perform other services. ICAB is a self-regulatory organization; until recently it rarely disciplined its members.

ICAB has been receiving technical assistance

To fully implement international standards and improve audit quality, donors have arranged for the Institute of the Chartered Accountants of England and Wales to providing training and other support to ICAB. A Financial Reporting Commission to oversee the profession has also been proposed.

There are some key weaknesses in the non-financial disclosure framework, especially in the disclosure of ownership and control

Listed companies are required to report material events to the SEC, the two stock exchanges, and in two daily newspapers. Related party transactions are not explicitly required to be part of this disclosure, and these are normally only disclosed in the annual report, *after* they have taken place. Annual reports also list shareholders that hold 10 percent or more of the voting rights in the company. According to the information collected for the corporate governance indicator presented in appendix 1, this ownership is disclosed in 83 percent of the companies⁴ but only direct holdings are reported. Indirect (sometimes called "beneficial") ownership is not required to be disclosed. In practice, custodian accounts and holdings through related parties are both used to conceal control.

Whistleblowers do not have adequate protection

Whistleblowers—employees who reveal improper conduct by their employers—can be a critical source of corporate information. Unfortunately, whistleblowers in private companies in Bangladesh have little legal protection. In practice, few employees dare to reveal misconduct by their employers.

³ To cite one example – during the developing of the corporate governance index presented in Appendix 1, the annual reports of only 53 companies were available in the SEC library.

⁴ Survey covering 53 companies in 2007 – See Appendix 1.

Company oversight and the board

Director responsibilities are not well defined

Bangladesh has a one-tier board system. The CA requires that the board have at least 3 members. The Guidelines require that the board be composed of at least 5 directors and not more than 20. Most have about 6 to 8. The number of positions one person can hold is apparently not limited and does not have to be disclosed.

The CA and Guidelines provide limited guidance on board member responsibilities. The voluntary Code of Corporate Governance suggests that the board determine, monitor and evaluate strategies, policies, management performance criteria, and the company's business plan. It is unclear how many company boards actually fulfill these responsibilities or require them in their articles. The law and Guidelines are unclear on whether the board can oversee the selection and replacement of key executives.

The board reviews compliance with the Guidelines. It also reviews internal and external controls through an audit committee. However, in practice less than 30 percent of the companies have created an audit committee and less than 20 percent of the companies have had an independent director sitting in the committee⁵. In addition, where they exist, those committees report conflicts of interest in only 50 percent of the companies⁶.

The nomination process is neither formal nor transparent

Directors are elected by shareholders but the nomination process is opaque. There are neither nomination nor remuneration committees. In banks, these committees are not allowed. Nevertheless, the voluntary Code suggests their creation.

Most boards do not evaluate their own performance. However, the voluntary Code recommends this self-evaluation.

Director duties are based on precedent and not explicit in the law

The fiduciary duties of directors are rooted in English common law, and are not explicit in the CA. These include duties to act in the interest of the company and show the same care regarding the company as they would in their own personal affairs. Shareholders can be sued and can be liable for negligence, default, breach of duty or breach of trust, except if they had acted honestly and reasonably.

Some companies have one independent director, some have none

The Guidelines recommend that one-tenth of the board – and at least one member – be independent. However, only 20 percent of the companies in one survey complied with this requirement⁷. An independent director is defined by the Guidelines as a person who does not hold any share or less than 1 percent. Yet, it is required by the CA to own at least a share to be a director.

The Guidelines note that the separation of chairman and CEO is preferable, but this is not required. In practice, those positions are usually filled by different individuals.

Director training is available, but not widely used

The Bangladesh Enterprise Institute (BEI) has periodically provided director training, as have some other institutions in Bangladesh. However, board members in many companies have not received training and the Guidelines do not require or recommend such training.

⁵ Stock Exchange Survey, 2006.

⁶ Survey covering 53 companies in 2007 – See Appendix 1.

⁷ Stock Exchange Survey, 2006.

SOEs are overseen by line ministries

State owned enterprises (SOE) still play an important role in the economy of Bangladesh, especially in utility and infrastructure sectors. As a whole, SOEs are and have been loss making, in part due to implicit or explicit policy objectives they fulfill for the government, and in part due to a lack of restructuring and other problems related to governance and management. SOEs are organized by sector and overseen by the various line ministries, with the Ministry of Establishment having some responsibility for personnel decisions. There is no dedicated part of the administration that ensures that SOEs have good corporate governance and that the state's rights as an owner are respected. The voluntary Code developed by the BEI has recommendations for SOEs, but there is no indication that these are followed in practice.

Enforcement

The SEC has broad ranging powers

The SEC regulates issuers, brokers, merchant banks, and other intermediaries, as well as the two stock exchanges. The SEC issues and retract licenses, approves new securities issues, conducts investigations, produces binding regulation, and can fine both issuers and their directors. The SEC conducts dozens of investigations involving issuers each year.

Staff turnover is an issue

Salary and benefits at the SEC are not as high as that offered by the Bangladesh Bank (BB) or in comparable jobs in the private sector, and staff turnover is an issue. Staffing and budgetary decisions must be approved by the Ministry of Finance, which can be a slow and cumbersome process.

The SEC is now working aggressively to address problems in the Z companies

Under a 2002 securities regulation, the SEC has the power to “reconstitute” the boards of companies that remain in the Z tier for an extended period of time, forcing out current board members, and bringing in new ones to better represent shareholders. Until recently, court decisions prevented this power from being implemented. These decisions were recently reversed, and the SEC is now working to actively implement the regulation. One company has already been forced to change its board.

Bangladesh Bank enforces CG standards

Bangladesh Bank (BB) has also made important progress in improving corporate governance in banks. In the past, related lending and other elements of poor governance had weakened the banking sector and led to some significant failures. BB regulation and supervision have limited potential conflicts of interest, and banks are doing better. However, some rules issued by the BB are contradictory, and some abuses persist in the banking sector.

Self-regulatory organizations are important

The two stock exchanges as well as ICAB are self-regulatory organizations with important oversight functions. The two exchanges have good reputations with market participants and actively monitor issuers and their member brokers. In the past, ICAB was perceived as being lenient with its members, though recently it has become more aggressive in disciplining misconduct.

The Registrar is not an effective means of redress

While supplemented by SEC regulations and enforcement, the CA provides the foundation for corporate governance, and its enforcement depends on the Registrar and the courts. The courts are slow, and lack expertise in corporate and financial matters. The Registrar does not fulfill the redress functions specified in the law. It is automating its files with technical assistance, but much more substantial reform is needed.

While other key

Other key institutions are also weak, including the Comptroller of Insurance, and

institutions are also weak, the media has increased transparency

the general lack of transparency in the public sector may encourage opacity in the private sector. One antidote has been the media, which has been playing a more active role in covering companies, and revealing abusive behavior in the private and public sectors.

Recommendations

Bangladesh has undertaken important reforms in recent years. However, fully tapping the potential of capital markets and professionalizing boards and management will require that reform continues. Good corporate governance ensures that companies use their resources more efficiently and leads to better relations with employees, creditors, and other stakeholders. It is an important prerequisite for attracting the patient capital needed for sustained long-term economic growth.

The recommendations are organized in two sections: reforms to the legal and regulatory framework (including specific recommendations to better protect investors, ensure greater transparency, and improve the effectiveness of company oversight), and institutional reforms.

Reforms to the legal and regulatory framework

Develop a new Companies Act (CA)

A new CA should be drafted and passed into law. It should draw on experience from the recent revision of the UK Companies Act, Acts in other countries, including Australia and the draft bill recently introduced in India, as well as current SEC regulations and the voluntary Code. It should include explicit directors' duties and responsibilities, improve shareholders' rights and raise the fines for non compliance.

Update the Guidelines to take into account good practice in Bangladesh and the rest of the world.

Reforms to the Companies Act should be supported by an update to the Corporate Governance Guidelines:

- The Guidelines, in a few concise pages, set the basic minimum requirements for corporate governance in Bangladesh. It is important that the Guidelines be regularly updated to keep up with good practice in both Bangladesh and elsewhere.
- Many provisions in the Guidelines are aspirational and less subject to objective interpretation (e.g. board functions and responsibilities) and are not appropriate as mandatory legal provisions.
- The Guidelines can be updated more easily than the Companies Act.
- In many countries Codes and Guidelines have served as “test-beds” for future reforms. Once provisions in the Guidelines become accepted by the market, they can move easily into law.

Strengthen key Guideline provisions

The sections related to the board and key executive should be reinforced. While unnecessary duplication with the CA should be avoided, new provisions related to shareholders' rights and duties, including minority representation, and the general meeting should be considered. The voluntary Code of Corporate Governance issued by the BEI can be used as a reference and starting point.

The current classification system for listed companies (A, B...Z) may also be reviewed to tie classification more closely to compliance with the Guidelines, and perhaps lowering the dividend requirements (i.e. lowering the threshold or

Harmonize legal requirements and raise awareness of corporate governance

allowing it to be waived in some cases).

The CA and the Guidelines should be finalized as part of a broad consultative process that serves both to incorporate relevant experience and to raise the awareness of Bangladesh's many investors on the new CA and Guidelines and the importance of good corporate governance.

While drafting a new CA, Guidelines and other laws or regulations, policymakers should harmonize provisions to eliminate contradictions and increase clarity. This could include a new Securities Act that incorporates many of the regulations issued by the SEC and is consistent with the new CA. Revisions to or replacement of other relevant regulations to increase the coherence of the legal framework should also be considered. For example, the process for loans to bank directors in the Bank Companies Act and the Prudential Regulations for Banks should be harmonized.

Introduce new rules on takeovers and insider trading

As part of this process, new acts or comprehensive regulations on takeovers and insider trading should be introduced, replacing current SEC regulation in these areas. The new act or regulation on takeovers should be clearer and should include provisions on mergers and acquisitions, and duties of the board during those transactions. The possibility and nature of significant side transactions and strategic sells should be addressed. A higher threshold for triggering a public tender should be considered, as should adding a second (30-50 percent) threshold with a requirement to buy the company outright (mandatory tender).

The new act or comprehensive regulation on insider trading should use the common expression "insider trading" and the definition should be harmonized with the one in the DSE Listing Rules (LR).

Both sets of rules should be informed by legal requirements in other countries in the region.

Better Protect Investors

Make redress easier

To better protect investors, the new CA should lower the threshold for redress by shareholders from the current 10 percent to 5 percent or lower.

Improve share registry regulation and shareholders' rights to dividends

The new CA should make clear that all shareholders are entitled for payment of dividends at the same time. Redress should also be reinforced to avoid late payment of dividends.

Companies should not be able to decide on which proportion of shareholders can authorize the variation of their rights. The CA should require an approval of at least $\frac{3}{4}$ of the voting rights of the class of the shares subject to the change.

Shareholders should be able to submit resolution to the board

The new CA should include a specific right for shareholders to ask questions at the GMS. Moreover, shareholders should be able to change the agenda by submitting resolutions to the board before the meeting. Failure to give notification for major corporate events should be a reason to invalidate the decisions taken.

The CA should mention all the information required for the GMS notice, including time, date, location, and agenda. In the GMS, shareholders should also approve directors' remuneration. In addition, electronic and postal votes should be allowed.

Require funds to disclose how they vote

Institutional investors should also participate in the GMS, develop voting policies for those meetings, and disclose both their policies and how they vote. These policies should seek to further the interest of their beneficiaries, and explicitly

at the AGM exclude voting to satisfy management or others if it conflicts with those interests. SEC regulations should be considered that require institutional investors to disclose their votes and voting policies.

Disclose related party transactions, and introduce rules to avoid their abuse For better protection of investors, provisions on RPT should be significantly reinforced. The potential operations in which related parties are involved should be disclosed before they take place, together with the opinion of the audit committee on the operation. The CA should also require an approval from the shareholders for all the transactions exceeding a certain threshold, for example 5 percent of the company's assets.

Ensure Greater Transparency

Limit potential conflicts of interest involving auditors A number of steps should be taken to raise audit quality. Regular reviews of audits performed for listed companies should be introduced. This may be through peer review, by ICAB, by the regulators, or through another mechanism. Reasonable limits should be placed on auditors performing non-audit services for their clients. ICAB should continue its efforts to police misconduct by its members and adopt the IFAC Code of Ethics. The proposed Financial Reporting Commission should also be established, especially if ICAB does not make greater efforts to police its members. Other oversight mechanisms for ICAB might also be considered.

Improve disclosure of ownership and control The obligation of major shareholders to disclose both direct and indirect control should be clarified and reinforced. The new law on takeovers should include rules for acting in concert to require disclosure by related or cooperating parties seeking to take control of a company.

Disclosure should also be improved for: director and key executive remuneration (individually and in aggregate), material risks and risk management policy, human resource and other material issues related to stakeholders.

Protect whistleblowers An act should be passed that gives legal protection to whistleblowers—employees that reveal misconduct by their employers. This should be combined with efforts to raise awareness of this issue in both the private and public sector. This is not only important to improve corporate governance, but also in fighting corruption and strengthening the rule of law.

Improve the Effectiveness of Company Oversight

Include duties of loyalty and care in the new Companies Act The new CA should codify and make explicit the fiduciary duties of the board, following the example of the new UK Companies Act. Directors should have explicit duties of loyalty and care to the shareholders and the company. The voluntary Code of Corporate Governance would also be a useful starting point.

The CA (with further detail provided in the Guidelines) should specify the strategic role of the board by requiring that directors approve and monitor strategies, policies, and business plans, in line with the OECD Principles.

Several revisions to the Guidelines should be considered to improve the objectivity of the board

- The Guidelines and/or the Companies Act should specify the nomination process for directors. Minority shareholders should be able to nominate directors, and mechanisms to allow them to choose a certain number of board members, such as proportional representation, should be considered.
- The CA or the Guidelines should limit to a reasonable number – such as 5 – the number of other board positions held at the same time by a director. Those

positions should also be disclosed to the company and in the directors' report.

- The separation of the functions of the chairman and the CEO should be required and not just suggested in the Guidelines.
- The Guidelines should also stipulate that directors can have access to qualified advisors at the expenses of the company, subject to disclosure to the GMS.
- A requirement for board self-evaluation should be added to the Guidelines.
- Over the long term, the Guidelines should be revised to gradually increase the number of independent members on the board, in line with good practice in neighboring countries and around the world (for example, at least one-third of the board of listed companies in India is required to be independent).
- As a technical matter, the definition of independent director in the Guidelines should be harmonized with the provision in the CA requiring that all directors should hold at least one qualification share.

Board members should be liable if they do not disclose potential conflicts of interest

Directors who do not disclose their conflicts of interest should be held liable for any damages resulting from the transaction. Board members should be encouraged to behave in an ethical and lawful manner and to ensure that other members in the company do likewise. The Guidelines should then require a Code of Ethics that applies to board members.

In addition, the Guidelines should mention that directors have to take into account interests of stakeholders in their decisions.

Institutional reforms

Undertake substantial reform of the Registrar

The Registrar should undergo more substantial reform than its current computerization program. It should be capable of fulfilling its role under the CA as well as carrying out its other functions in a timely and efficient manner. This may require extensive change, including the Registrar's place in the current administration.

Accelerate implementation of IFRS

Efforts to implement IFRS for listed companies and other public interest entities should be accelerated. This will require either more frequent updating of BAS or simply adopting IFRS explicitly. Based on experiences in other countries, the latter may be the more effective approach.

Full implementation will also require that current donor assistance to ICAB be maintained, to allow for much needed professional development and expansion in the number of trained auditors and accountants.

Make company information available online

More company information, especially the contents of annual reports, should be available to investors online. One website—either the SEC, Registrar, one or both of the exchanges, or a newly created website—should have extensive information for all listed companies.

Make SEC pay more competitive

Greater budgetary autonomy should be considered for the SEC. Remuneration at the SEC should be comparable to BB, and management should be given more flexibility in responding to staffing needs. Going ahead, market rates should increasingly be the reference point for SEC professionals.

Develop an ownership policy for

Improving the corporate governance of SOEs is an important step towards improving performance and reducing ongoing losses, whether the enterprises remain state owned or will be privatized. This should include the development of

SOEs

an ownership policy by the government, which could be supported by additional diagnostics and analysis.

Consider broader reforms

Media training on corporate governance and related issues could be an effective way to raise awareness about corporate governance. Other actions that could improve the environment for corporate governance include reform of the Comptroller of Insurance, and greater use of alternative dispute resolution (ADR) to compensate for lengthy court procedures.

Summary of Key Recommendations

Recommendation	How to be Introduced	Priority/Status
<i>Strengthen Key Law and Institutions</i>		
Develop a new Companies Act	Broad-based consultation Donor assistance	Medium-Term
Strengthen the CG Guidelines	Changes in current Guidelines	Immediate
Harmonize legal requirements	New legislation and regulation	Medium-Term
Draft new acts on Insider Trading and Takeovers	Broad-based consultation Donor assistance	Medium-Term
Reform the Registrar	Changes in new CA Donor assistance	Medium-Term
<i>Better Protect Investors</i>		
Make redress easier	Changes in relevant legislation/new CA	Medium-Term
Better shareholder participation at meeting	Changes in CG guidelines by SEC/new CA	Immediate
Encourage Institutional investor voting	Private Initiatives Changes in relevant legislation	Medium-Term
Disclose related party transactions and tighten their control	Changes in listing rules/new CA	Immediate
<i>Ensure Greater Transparency</i>		
Accelerate implementation of IFRS	Based on current efforts	Immediate
Limit auditor conflicts of interest	Based on current efforts	Immediate
Better disclosure of corporate control	New CA/new Takeover Act	Medium-Term
Formal protection for whistleblowers	New act	Long-Term
Extend diffusion of information online	Changes in Listing Rules SEC initiatives	Medium-Term
<i>Improve the effectiveness of Company Oversight</i>		
Articulate explicit duties	New CA	Medium-Term
Increase number of independent directors	Changes in the Guidelines	Immediate
Increase director liability related to conflict of interest	New CA	Medium-Term
Improve SOE governance	SOE Ownership policy Donor assistance	Long-Term

Summary of Observance of OECD Corporate Governance Principles

	Principle	FI	BI	PI	NI	NA
I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK						
IA	Overall corporate governance framework			x		
IB	Legal framework enforceable /transparent			x		
IC	Clear division of regulatory responsibilities			x		
ID	Regulatory authority, integrity, resources			x		
II. THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS						
IIA	Basic shareholder rights					
IIA 1	Secure methods of ownership registration		x			
IIA 2	Convey or transfer shares		x			
IIA 3	Obtain relevant and material company information		x			
IIA 4	Participate and vote in general shareholder meetings		x			
IIA 5	Elect and remove board members of the board		x			
IIA 6	Share in profits of the corporation			x		
IIB	Rights to part in fundamental decisions					
IIB 1	Amendments to statutes, or articles of incorporation		x			
IIB 2	Authorization of additional shares		x			
IIB 3	Extraordinary transactions, including sales of major corporate assets		x			
IIC	Shareholders GMS rights					
IIC 1	Sufficient and timely information at the general meeting			x		
IIC 2	Opportunity to ask the board questions at the general meeting			x		
IIC 3	Effective shareholder participation in key governance decisions			x		
IIC 4	Availability to vote both in person or in absentia			x		
IID	Disproportionate control disclosure			x		
IIE	Control arrangements allowed to function					
IIE 1	Transparent and fair rules governing acquisition of corporate control			x		
IIE 2	Anti-take-over devices			x		
IIF	Exercise of ownership rights facilitated					
IIF 1	Disclosure of corporate governance and voting policies by inst. investors				x	
IIF 2	Disclosure of management of material conflicts of interest by inst. investors			x		
IIG	Shareholders allowed to consult each other			x		
III. EQUITABLE TREATMENT OF SHAREHOLDERS						
IIIA	All shareholders should be treated equally					
IIIA 1	Equality, fairness and disclosure of rights within and between share classes			x		
IIIA 2	Minority protection from controlling shareholder abuse; minority redress			x		
IIIA 3	Custodian voting by instruction from beneficial owners			x		
IIIA 4	Obstacles to cross border voting should be eliminated		x			
IIIA 5	Equitable treatment of all shareholders at GMs			x		
IIIB	Prohibit insider trading			x		
IIIC	Board/Mgrs. disclose interests		x			
IV. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE						
IVA	Legal rights of stakeholders respected			x		
IVB	Redress for violation of rights			x		
IVC	Performance-enhancing mechanisms			x		

	Principle	FI	BI	PI	NI	NA
IVD	Access to information					x
IVE	"Whistleblower" protection				x	
IVF	Creditor rights law and enforcement			x		
V. DISCLOSURE AND TRANSPARENCY						
VA	Disclosure standards					
VA 1	Financial and operating results of the company			x		
VA 2	Company objectives			x		
VA 3	Major share ownership and voting rights			x		
VA 4	Remuneration policy for board and key executives			x		
VA 5	Related party transactions			x		
VA 6	Foreseeable risk factors			x		
VA 7	Issues regarding employees and other stakeholders			x		
VA 8	Governance structures and policies		x			
VB	Standards of accounting & audit			x		
VC	Independent audit annually			x		
VD	External auditors should be accountable			x		
VE	Fair & timely dissemination			x		
VF	Research conflicts of interests			x		
VI. RESPONSIBILITIES OF THE BOARD						
VIA	Acts with due diligence, care			x		
VIB	Treat all shareholders fairly			x		
VIC	Apply high ethical standards				x	
VID	The board should fulfill certain key functions					
VID 1	Board oversight of general corporate strategy and major decisions			x		
VID 2	Monitoring effectiveness of company governance practices			x		
VID 3	Selecting/compensating/monitoring/replacing key executives			x		
VID 4	Aligning executive and board pay				x	
VID 5	Transparent board nomination/election process				x	
VID 6	Oversight of insider conflicts of interest			x		
VID 7	Oversight of accounting and financial reporting systems		x			
VID 8	Overseeing disclosure and communications processes			x		
VIE	Exercise objective judgment					
VIE 1	Independent judgment			x		
VIE 2	Clear and transparent rules on board committees			x		
VIE 3	Board commitment to responsibilities			x		
VIF	Access to information		x			

Note: FI=Fully Implemented; BI=Broadly Implemented; PI=Partially Implemented; NI=Not Implemented; NA=Not Applicable

Corporate Governance Landscape

THE OWNERSHIP FRAMEWORK FOR LISTED COMPANIES AND OTHER PUBLIC INTEREST ENTITIES

Bangladesh has two stock exchanges, the Dhaka Stock Exchange (DSE) and the Chittagong Stock Exchange (CSE). 443 securities are listed on the DSE and 247 securities are listed on the CSE (both July 2009). Many companies have securities listed in both exchanges.

On the DSE, banks and insurance represent about 22 percent of the market. Owners include sponsors⁸ (43 percent), institutional investors (10 percent), government (8 percent), foreign investors (1 percent), and the public at large (38 percent). Ownership is concentrated: in listed companies⁹. However, some companies have dispersed ownership. For instance, 92 percent of Uttara Bank and 70 percent of Pubali Bank are owned by the public. Overall, free float represents 42 percent of listed shares.

Market capitalization has been increasing since 2003. In 2008, the DSE had a market capitalization of 797 billion taka (\$11.56 billion), 22 percent more than the previous year and 186 percent more than 2006. The DSE share index nearly doubled from 2006 to 2007 and has been steady since. Turnover has also grown rapidly in recent years. The number of listed companies and other securities has increased steadily.

The size of capital markets remains low. The ratio of market capitalization of domestic listed companies to GDP was less than 15 percent in 2008.

Trading is mostly concentrated in the financial and manufacturing sectors. During 2005-2006, those sectors contributed respectively 64 percent and 24 percent of the DSE turnover.

Dhaka Stock Exchange: Key Indicators (2003- 2009)¹⁰

	2009	2008	2007	2006	2005	2004	2003
DSE All-Share Price Index	2441.32	2309.35	2535.96	1321.39	1294.81	*	*
Market Capitalization (Tk, mn)	959.1	797.0	621.6	278.4	219.9	223.4	97.6
Market Capitalization (US\$, bn)	13.89	11.56	10.82	4.56	3.5	3.81	1.67
Market Cap/GDP (%)	*	14.8%	13.6%	6%	5%	6%	3%
Number of Listed Companies	283	276	266	255	247	237	248

Bangladesh and other Emerging Markets: Selected Market Data (2008)¹¹

Country Name	Listed companies	Market cap % GDP	Market Cap (Billion \$US)	Turnover Ratio (%)	Market Cap (GDP) % of OECD Avg.	Market Cap (\$) % of OECD Avg.	Turnover ratio % of OECD Avg.
Bangladesh	290	8.4	6.6	92	7.0	0.38	50.2
India	4921	53.7	654	84	44.7	38.38	45.9
Nepal	159	41.6	5	7	34.7	0.29	3.8
Pakistan	653	13.6	23	174	11.4	1.34	95.0
Sri Lanka	234	10	4	12	8.3	0.23	6.5
Regional Average	1251.4	25.5	138.5	73.8	21.2	8.1	40.3
OECD Average	938.3	120	1703.8	183.0	100.0	100.0	100.0

⁸ Sponsors are mainly from the founder's family. They often limit the executive management positions to the family members.

⁹ Survey covering 219 companies in 12 sectors in 2007

¹⁰ Dhaka stock exchange and World Bank data. 2009 data is through July.

¹¹ Source: World Development Indicators 2008. Data for Nepal and OECD is 2007.

The financial sector is a mix of domestic privately owned, foreign owned, and state owned institutions. It includes 30 domestic private commercial banks, 9 foreign commercial banks, 29 non-bank financial institutions, 5 state-owned specialized banks¹² and 4 nationalized commercial banks.

Privatization started in 1975. Bangladesh has had a large number of privatizations but most of the privatized companies are small and were bought by a single owner or family. From 1976 to 1992, about 500 State Owned Enterprises (SOEs) had been sold or returned to their former owners. In 1993, the Privatization Commission was created. It is a special agency that implements the program of divestiture of SOEs. From 1993 to 2007, about 75 SOEs had been privatized.

In 2006, the SEC approved direct listing regulations to facilitate the listing of SOEs. Direct listing allows them to sell their shares at market determined price without the rigidity of floating shares through IPO. The Dhaka Electric Supply Company Limited is the first one which has used direct listing.

LEGAL FRAMEWORK

Corporate legal framework. Bangladesh is a common law country. The legal framework governing companies is the Companies Act, 1994. It is based on the 1913 UK Companies Act.

Company types. The Companies Act, 1994 recognizes three types of companies: unlimited companies, private limited companies, and public limited companies.

Limited companies can be limited by shares or by guarantees. Private companies limited by shares have at least 2 shareholders and not more than 50. The right to transfer shares is restricted and the companies prohibit any invitation to the public to subscribe its shares. In companies limited by guarantees, shareholder liability is limited. They are only required to pay capital when the company is wound up. The amount that every shareholder is supposed to pay is stipulated in the memorandum.

Public companies limited by shares have at least 7 shareholders. They offer shares and debentures to the public through a prospectus. A public limited company may be formed by the conversion of a private company.

Securities law framework. The 1969 Securities and Exchange Ordinance updated the rules governing the previous Controller of Capital Issues (CCI), created after Independence. The Ordinance is still in force, though the Securities and Exchange Commission (SEC) replaced the CCI under the 1993 Securities and Exchange Commission Act. Many notifications and regulations have been issued under the authority granted to the SEC by the Ordinance. Among them, the 1995 Banning the Beneficiary/Opportunistic Business Rules regulate the insider trading, and the 2002 Obtaining, Acquisition and Taking control over Considerable Number of Shares Rules regulate the substantial acquisitions of shares in Bangladesh.

Listing rules. All public limited companies must register with the Registrar. The other requirements for listing on the DSE are a minimum paid-up capital of 20 million Taka and at least 400 shareholders. The conditions for listing on the CSE are a minimum paid-up capital of 10 million Taka and at least 250 shareholders.

SOEs list under the Direct Listing Regulations. The requirements for direct listing on the DSE and the CSE are: a minimum paid-up capital of 100 million Taka, no accumulated loss, commercial operation for at least five years, profit in three years out of the past five years with steady growth, and regularly holding the general annual meeting.

The SEC has classified companies regarding how they declare their dividends. The "A companies" have regularly held their annual meetings and have declared dividend at the rate of at least 10 percent in the previous year. The "B Companies" have also regularly held their annual meeting but have declared dividends of less than 10 percent. Companies which neither hold an GMS nor declare dividends are called "Z companies" (Notification Settlement of Stock Exchange Transaction Regulations, 1998 DSE-343/97/910 §4.5). When companies remain in the Z category for more than one year, the SEC has the power to reconstitute their board by holding an extraordinary general meeting (EGM) within 6 months. In addition, managing director and chairman are appointed with SEC approval and directors should be appointed in proportion to groups of shareholders (sponsors, institutions, general public). However, due to court decisions, this regulation on reconstituting the board could not be applied before the beginning of the 2008. Recently, one company was forced to reconstitute its board. This year, 150 companies are in the A category, 21 in the B category and 97 in the Z category.

Among the new companies, the Greenfield companies are placed in the G category (1 company), and all the other new companies are in the N category (14 companies).

Banking Law. Banks are governed by the Bank Companies Act, 1991. The Prudential Regulations on Corporate Governance for Banks is a compilation of Banking Regulations and Policy Department (BRPD) Circulars. The Financial Institutions Act, 1993 establishes the provisions for non-bank financial institutions.

Corporate Governance Code. Listed companies are required to "comply or explain" with the Guidelines issued by the SEC (SEC/CMRRCD/2006-158/Admin/02-08). The Guidelines focus primarily on the board and the internal control. The

¹² Specialized banks are created for specific purposes: for instance, those banks meet needs of the agricultural sector or provide credit facilities and assistance to the industrial sector.

guidelines do not mention the shareholders' rights, for example. In December 2007, less than 33 percent¹³ of the companies fully complied with the Guidelines.

Bangladesh also has a Code of Corporate Governance issued in 2004 by the BEI. The Code is much more complete than the Guidelines but it is voluntary and most of the companies do not comply with it.

KEY INSTITUTIONS

Securities regulator. The Securities and Exchange Commission (SEC) is the regulator of the markets in Bangladesh. The SEC was created in 1993 under the Securities and Exchange Commission Act. The SEC seeks to protect investors in securities, the development and maintenance of fair, transparent and efficient securities markets, and the insurance of proper issuance of securities and compliance with securities laws. It can issue binding regulations under the SEC Act.

The SEC is attached to the Ministry of Finance. The chairman and the members of the SEC are appointed by the government.

The SEC is a corporate body that can sue and be sued.

Stock exchange. Bangladesh has 2 stock exchanges: the Dhaka Stock Exchange (DSE) established in 1954, and the Chittagong Stock Exchange (CSE) established in 1995. Both are self-regulated, private sector entities which must have their operating rules approved by the SEC. The legal framework for those stock exchanges is provided by the Securities and Exchange Ordinance, 1969 and the notifications made under this ordinance, the Securities and Exchange Commission Act, 1993 and the rules made under this Act, the listing rules of the Dhaka Stock Exchange, 1999 and the rules of the Chittagong Stock Exchange.

Central securities depository. Central Depository Bangladesh Limited (CDBL) was incorporated as a public limited company in August 2000 to operate and maintain the Central Depository System (CDS) of Electronic Book Entry, recording and maintaining securities accounts and registering transfer of securities; changing the ownership without any physical movement or endorsement of certificates and execution of transfer instruments, as well as various other investor services including providing a platform for the secondary market trading of Treasury Bills and Government Bonds issued by the Bangladesh Bank. The SEC issued a Certificate to CDBL on December 23, 2003 allowing it to begin operations.

CDBL is owned by more than 80 institutions including nationalized, private, and foreign banks, insurance companies, DSE, CSE, listed companies, Investment Corporation of Bangladesh, and the Asian Development Bank. 235 companies have registered their shares with the CDBL.

Financial sector regulators. The Bangladesh Bank (BB), the Central Bank of Bangladesh, was created in 1972 under the Bangladesh Bank Order. The nine board members are appointed by the government. The Bangladesh Bank has legal authority to supervise and regulate commercial banks and banking institutions. It can impose penalties for non compliance. Bangladesh Bank also articulates monetary policy and prudential regulations such as ensuring minimum capital requirements, applying limits on loan concentration and insider borrowing, and providing guidelines for asset classification and income recognition. The measures taken by the Bangladesh Bank to reinforce the governance structure of banks include the introduction of better disclosure and transparency standards.

BB regulates the non-bank financial institutions under the Financial Institutions Act, 1993 and the microfinance institutions are regulated under the Microcredit Regulatory Act, 2006. Insurance has a separate regulator.

Company Registrar. The Registrar of Joint Stock Companies is responsible for registering and collecting the records of companies. Its activities are regulated under the Companies Act (CA). Records are still paper-based, but the Registrar has been receiving technical assistance to computerize its files. The Registrar has certain enforcement and instigative powers under the CA that are rarely used in practice. The Registrar is overseen by the Ministry of Commerce.

Accountancy bodies. The Institute of Chartered Accountants of Bangladesh (ICAB) is a professional accountancy body in Bangladesh. It was created under the Bangladesh Chartered Accountants Order in 1973. ICAB regulates the accountancy profession and oversees professional ethics and code of conduct by its members, provides specialized training and professional expertise, and fosters acceptance of International Accounting Standards (IAS) and International Standards on Auditing (ISA) by adopting the same as Bangladesh Accounting Standards (BAS) and Bangladesh Standards for Auditing (BSA) respectively.

The Institute of Cost and Management Accountants of Bangladesh (ICMAB) is an autonomous professional body under the Ministry of Commerce. ICMAB offers Cost and Management Accounting education and research. It also regulates and promotes the profession of cost and management accounting in the country.

Institute of Directors. A number of institutes provide director training. The most popular is the Bangladesh Enterprise Institute (BEI), a research center established in 2000. In addition to organizing training programs for directors of listed companies, banks, financial institutions, NGOs, and SOEs, BEI promotes issues of importance to the private sector and seeks to initiate essential measures and influences policy for the development of a market-oriented economy. In 2004, the

¹³ SEC Survey 2007 which covers 264 companies in 15 industrial sectors on December 31, 2007.

Institute published a voluntary Code of Corporate Governance organized into principles and guidelines for corporations, SOEs, and NGOs.

Ownership of state-owned enterprises. In 2006, Bangladesh had 44 SOEs with about 200 subsidiary enterprises. The SOEs are owned by 19 ministries and are present in eight sectors: industry, power, gas and water, transport and communication, trade, agriculture, service, construction, bank and financial institutions. The Ministry of Establishment is in charge of the appointment of CEO and directors.

Principle - By - Principle Review of Corporate Governance

This section assesses compliance with each of the OECD Principles of Corporate Governance. Please see Methodology for Assessing the Implementation of the OECD Principles on Corporate Governance for full details.¹⁴

SECTION I: ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

Principle IA: The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets.

Assessment: Partially Implemented

Bangladesh is a common law country and has been influenced by British, and to a lesser extent, Indian and Pakistani law and legal tradition. The Companies Act (CA) and other legislation are based on dated UK equivalents. The Securities and Exchange Commission (SEC) have used their regulatory authority to compensate for this dated legal structure; however, key gaps remain in the current framework.

Overall capital market transparency. Disclosure by companies is limited by the small size of the accounting profession and little oversight of the quality of financial reporting. Many companies, especially those in the “Z” tier, do not make required filings. Market participants in general are skeptical of the information provided by issuers. Recent reforms, including the introduction of a Credit Information Bureau and mandatory credit rating for issuers and financial companies, do provide some stakeholders with additional sources of information.

More generally, insiders are seen to benefit disproportionately from the control of companies and banks. The SEC has become more vigilant, but there have been no convictions for insider trading or market manipulation at the time of this assessment.

Regulatory consultation process. The SEC has an advisory committee that includes representatives of the private sector as well as other stakeholders. A Better Business Forum has also been established to provide private sector input into government laws and regulation.

Principle IB: The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent and enforceable.

Assessment: Partially Implemented

Legal clarity. The CA is based on 1913 UK legislation and is not always clear in the current Bangladeshi context. Key regulations are often only provided in one language or another, with no official translation. As noted below (Legal Harmonization) there are differences between law and regulation that are potential sources of confusion for market participants.

Consistency of application. The key difference in application depends on the relevant regulator. The parts of the CA that

¹⁴ Principles are **Fully Implemented** if the OECD Principle is fully implemented in all material respects with respect to all of the applicable Essential Criteria. Where the Essential Criteria refer to standards (i.e. practices that should be required, encouraged or, conversely, prohibited or discouraged), all material aspects of the standards are present. Where the Essential Criteria refer to corporate governance practices, the relevant practices are widespread. Where the Essential Criteria refer to enforcement mechanisms, there are adequate, effective enforcement mechanisms. Where the Essential Criteria refer to remedies, there are adequate, effective and accessible remedies. A **Broadly Implemented** assessment is likely appropriate where one or more of the applicable Essential Criteria are less than fully implemented in all material respects. A **Partly Implemented** assessment is appropriate when (1) one or more core elements of the standards described in a minority of the applicable Essential Criteria are missing, but the other applicable Essential Criteria are fully or broadly implemented in all material respects (including those aspects of the Essential Criteria relating to corporate governance practices, enforcement mechanisms and remedies); and (2) the core elements of the standards described in all of the applicable Essential Criteria are present, but incentives and/or disciplinary forces are not operating effectively to encourage at least a significant minority of market participants to adopt the recommended practices; or the core elements of the standards described in all of the applicable Essential Criteria are present, but implementation levels are low because some or all of the standards are new, it is too early to expect high levels of implementation and it appears that the reason for low implementation levels is the newness of the standards (rather than other factors, such as low incentives to adopt the standards). A **Not Implemented** assessment likely is appropriate where there are major shortcomings. A **Not Applicable** assessment is appropriate where an OECD Principle (or one of the Essential Criteria) does not apply due to structural, legal or institutional features (e.g. institutional investors acting in a fiduciary capacity may not exist).

are not reinforced by SEC or Bangladesh Bank (BB) regulation, and are left to the Registrar or courts, are not enforced consistently, or in some cases at all.

Principle IC. The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.

Assessment: Partially Implemented

Clear division of regulatory responsibility. There is some overlap in the authority of the SEC, Registrar, BB, Comptroller of Insurance, and the two exchanges.

Regulatory cooperation. Joint meetings to share information are held every 2-3 months between the SEC, BB, the Registrar, and the Comptroller of Insurance. The SEC cannot investigate banks, but has been able to rely on BB to investigate on its behalf.

Legal harmonization. Securities regulation takes precedent over the CA (for issuers), and little attempt has been made to harmonize the two. More generally, there are a number of differences, and some contradictions, between banking law, banking regulation, the CA, SEC regulation, and listing rules. These in turn may not be consistent with the UK, Indian, and Pakistani precedents that also inform the legal framework. While precedent is understood in *most* cases, the net result is growing legal disharmony and confusion on the parts of certain market participants on key parts of the corporate governance framework.

Effectiveness, transparency, and public interest activities of the self-regulatory bodies. The two stocks exchanges have self-regulatory powers. These include approving new issues, overseeing compliance with listing requirements, and monitoring their member brokers for misconduct. Each exchange also has a Surveillance Department that engages in ongoing, real-time surveillance of trading.

Principle ID. Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfill their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.

Assessment: Partially Implemented

Supervisory authority. The SEC regulates issuers, brokers, merchant banks, and other intermediaries, as well as the two stock exchanges. The SEC issues and retract licenses, approves new securities issues, conducts investigations, produces binding regulation, and can fine both issuers and their directors. The SEC has a civil panel that rules on penalties. These rulings can be appealed to the courts.

The SEC conducts dozens of investigations involving issuers each year. Most SEC enforcement involves administrative actions or penalties, however, from 2004-2006 there were 25 civil court cases and 7 criminal court cases.

The SEC is nominally under the authority of the Ministry of Finance, but is largely independent in regards to its enforcement and regulatory activities. The Ministry does oversee staffing and related issues.

Supervisory resources. The SEC is self-financed and has 34 professional staff in addition to the 4 commissioners. Salary and benefits are not as high as that offered by the BB or in comparable jobs in the private sector, and staff turnover is an issue. Staffing and budgetary decisions must be approved by the Ministry of Finance, which can be a slow and cumbersome process.

Reputation of supervisory bodies. The SEC is respected by market participants, as are the stock exchanges and the BB. The Registrar does not have the same reputation, and is not seen as a source of redress by market participants.

Regulatory efficiency. The SEC and BB seem to make effective use of their staff and other resources.

Courts. Indicators developed by the World Bank imply that it takes more time and is more expensive to enforce a standard contract in Bangladesh compared to other countries in South Asia, or, especially, countries in the OECD. It also takes more procedures to enforce a contract in Bangladesh than in many other countries, indicating that the courts are an expensive and time consuming option for shareholders and other stakeholders. (See Doing Business 2009 at www.doingbusiness.org).

Contract Enforcement Indicator	Bangladesh	South Asia Average	OECD Average
Number of Procedures	41	43.5	30.8
Time (days)	1,442	1,052.9	462.7
Cost (% of debt)	63.3	27.2	18.9

SECTION II: THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS

The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

Principle IIA: The corporate governance framework should protect shareholders' rights. Basic shareholder rights include the right to:

Principle IIA 1: Secure methods of ownership registration

Assessment: Broadly Implemented

Secure share registration. All companies are required to maintain a share registry (CA §34). The Central Depository Bangladesh Limited (CDBL) also holds shares of listed companies, as share certificates are immobilized, and the proportion of shares held by the CDBL is gradually increasing (Central Depositories Act (CDA) 2000, §27). Approximately 40 percent of shares have been immobilized, representing about 142 companies. Evidence of ownership for deposited shares is either a statement from the Central Depository System (CDBL), or a share certificate (for undeposited shares). The shareholder register must be available without charge for inspection by any member of the company (CA §41). Shareholders may apply to the court to rectify any problems in the register. If the company is held liable, it may be ordered to rectify the register and pay any damage sustained by any party aggrieved (CA §43).

The central depository identifies each shareholder by way of a separate account. There are currently 1.7 million accounts, of which 1.3 million are active. In the past shareholder recordkeeping and transfer was a source of significant problems. For example, the market occasionally suffered from a problem of forged share certificates. Some problems apparently take place because of delays in the share registry. For example, if there is a delay in registering a new buyer, dividends may be sent to the former owner. The shareholder is liable for registration. In general, there appear to be limited problems with the shareholder recordkeeping system. In general, market participants report that the CDBL system is new but technically proven, and is considered to be a major improvement on the old paper-based system.

Secure custody system. Shareholders access the CDBL through Central licensed custodians and brokers, who do not hold securities in their name but manage the shareholder's records in the share registry and the central depository. The law does not recognize the existence of "nominee owners" ("No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar" (CA §37)). Custodians exist and are regulated under the law (Security Custodial Service Rules, SEC, 2004). Their duties include the protection of client securities, collecting earnings, collecting information and updating the client, security safekeeping, and valuation. Custodians are required to separate client accounts. As the legal concept of beneficial ownership is not recognized in Bangladesh, custodians must carry out transactions in the name of the ("beneficial") shareholder. The law is silent on custodian insolvency, but because of segregated client accounts this is unlikely to be a major issue in practice.

Principle IIA 2: Convey or transfer shares

Assessment: Broadly Implemented

Restrictions on share transfer. Shares of listed companies are freely transferable; by definition the transfer of shares of public companies cannot be restricted. In the past, in spite of these rules, share registries (companies) would refuse transfer instructions from "unapproved" shareholders. Since the introduction of the depository, listed company shares are traded anonymously (and are issued by lottery in case of over-demand). Some market participants reported that companies could still approve transfers carried out outside of the depository (for example, directors may disapprove sponsor transfers of not fully paid in shares (S20, Schedule A, CA)).

On the Chittagong Stock Exchange (CSE), when a company uses direct listing, the major shareholders ("sponsors") are restricted from selling more than 50 percent of their existing shareholding until the company holds the annual general meeting after completion of one full accounting year of the company upon listing with the Stock Exchange (Chittagong Stock Exchange (Direct Listing) Regulations, 2006 §5(ii)).

Clearing and settlement framework. The clearing and settlement unit of the DSE manages the clearing and settlement process, from the point of entry into the settlement pool trade database until it has been delivered and settled and removed from the Settlement Pool. Since late 2003 share settlement is handled by the CDBL; shares must be immobilized in order to be settled. Full delivery versus payment (DVP) is not yet in place.¹⁵ Settlement is T+3 for "A" listed companies, and T+7 for "Z" listed companies.

Principle IIA 3: Obtain relevant and material company information on a timely and regular basis

¹⁵ There appear to have been no formal studies of compliance with international standards.

Assessment: Broadly Implemented

Availability of information (charter, financial statements, minutes, capital structure). Shareholders can obtain a copy of the memorandum and the articles if they make a written request and pay a fee of 50 taka (\$0.75) or less. The fee is fixed by the company (CA §26).

Minutes of the general meeting are kept at the registered office of the company and shall be open to inspection of any shareholder without charge at least two hours per day. Shareholders can request a copy of any minute with a cost of maximum 10 taka (\$0.15) for every hundred words. The copies have to be furnished within seven days (CA §89).

Where the articles are not registered, shareholders can request a copy of the special resolution paying 15 taka (\$0.22) or less (CA §88).

Financial statements shall be presented in the GMS. Copies shall be sent free of charge to every shareholder more than 14 days before the meeting. Books of account are kept at the registered office of the company and shall be open to inspection during business hours but only to directors (CA §181).

Financial statements, the memorandum, and the articles may also be obtained from the Registrar with some delay.

Principle IIA 4: Participate and vote in general shareholder meetings**Assessment: Broadly Implemented**

Voting rights. Ordinary shareholders have the right to attend, participate and vote at meetings (CA §85, CGG “Role of Shareholders” §III). Every member shall receive the notice of the general meeting CA §85(b)). Unless otherwise specified in the articles, preferred and non-voting shareholders are also allowed to attend shareholder meeting. There do not appear to be any provisions impeding shareholders from participating and voting in a general shareholder meeting.

In practice, many shareholders do attend the general meetings of shareholders (GMS).

Redress. If rights to vote in a general meeting are denied, shareholders of at least one-tenth of the issued shares may ask for an investigation (CA §195) or can go to court for a legal redress and invalidate the proceedings (CA §233). There are no known cases.

Principle IIA 5: Elect and remove board members of the board**Assessment: Broadly Implemented**

Election. Directors are elected by shareholders and among them at a GMS (CA §91).

The GMS can, at any time, remove a director by extraordinary resolution (CA §106). The director is then entitled to claim compensation for damage for breach of his contract with the company (CA §111).

There are no provisions for cumulative voting in the law (except as noted in the next paragraph). However, the voluntary Code recommends that companies consider alternative forms of voting (like cumulative voting) that permit an organized group of minority shareholders to elect a director (CCG “Role of Shareholders” §III.F).

When companies remain in the Z category for more than one year (which means that those companies have not held a GMS or declared dividends for more than a year), the SEC requires that they have to reconstitute their board by holding an EGM within 6 months. Directors should be appointed from among the sponsors, institutional, and the general public shareholders, in proportion to the groups of shareholders they belong. Certain people having interest in the company (i.e. former executive, former statutory auditors, customer, personal relationship, etc) cannot be appointed directors in the reconstituted board. The Managing Director is appointed on professional considerations. However, due to court decisions, this regulation on reconstituting the board could not be applied before the beginning of the year 2008. Recently, the SEC has forced one company to reconstitute its board (Notification Settlement of Stock Exchange Transaction Regulation, 1998 DSE-343/97/910 §4; SEC/CMRRCD/2001-14/Admin/03/06).

Redress. If they are not allowed to elect or remove board members, shareholders of at least one-tenth of the issued shares may ask for an investigation (CA §195) or can go to court for a legal redress (CA §233).

Principle IIA 6: Share in profits of the corporation**Assessment: Partially Implemented**

Clear legal framework. The board of directors decides and proposes dividends. The dividends have to be vetted in the GMS but shareholders are not allowed to claim an amount exceeding the recommended one. There is no mandatory minimum dividend and the board can decide not to declare any dividend. In that case, directors have to explain the reasons in the Directors’ Report (Corporate Governance Guidelines §1.4 (i), CA §184) and the company’s plan (with schedule) for utilization of undistributed profits, if any (Order SEC/CMMRRCD/2006-159/Admin/02/09 May 30, 2006). The Listing Rules (LR) (§36(A)(5)) also require announcement of any recommendation or decision that a dividend will not be declared.

The SEC has classified companies regarding how they declare their dividends. “A companies” regularly hold their annual meetings and have declared dividend at the rate of at least 10 percent in the previous year. The “B Companies” have also regularly held their annual meeting but have declared dividends of less than 10 percent. Companies which neither hold a GMS nor declare dividends are called “Z companies” (Notification Settlement of Stock Exchange Transaction Regulations, 1998 DSE-343/97/910 §4,5). In 2008, 97 companies are in the Z category.

The voluntary Code (“Role of Shareholders” §F.1) also recommends that dividends be approved at general meetings.

In practice, dividends are not declared in a timely manner. Many companies delay the payment and do not necessarily pay all shareholders at the same time.

Equitable treatment. Under the law, all shareholders of a same class are to be treated equally regarding the distribution of profit: shareholders of a same class of shares shall enjoy the same rights (CA §85(1)(e)). However, the board can decide on which shareholders are entitled for dividends on the basis of audited financial statements (Notification SEC/CMRRCD/2001-14/24/Admin/03-03 November 26, 2001).

Redress. Shareholders can go to court.

Principle IIB. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:

Principle IIB 1: Amendments to statutes, or articles of incorporation or similar governing company documents

Assessment: Broadly Implemented

Changes to basic governing documents. Shareholders have the exclusive power to amend the company’s memorandum and articles of association by a special resolution with a majority of $\frac{3}{4}$ of the shareholders present at a GMS. They should be provided with the information not less than 21 days before the meeting. No rules can frustrate the exercise of these rights. A copy of the resolution has to be recorded to the Registrar within 15 days from the date it was passed (CA §12, 20, 87, 85).

Shareholder Challenges. Shareholders of at least one-tenth of the issued shares disagreeing with the decision may require an investigation or go to court (CA §195, 233). However, accidental omission to give notice to, or the non-receipt of notice by any shareholder shall not invalidate the decision (CA §85 (b)).

Principle IIB 2: Authorization of additional shares

Assessment: Broadly Implemented

Issuing share capital. Shareholders have the exclusive power to authorize new capital by a special resolution passed with a majority of $\frac{3}{4}$ of the shareholders present. A 21-day notice is also required (CA §53, 87). For listed companies, an approval from the SEC and an application fee are also required (Securities and Exchange Ordinance, 1969 §2A, SEC (Issue of Capital) Rules, 2001 §3, LR §21, 22). The SEC also requires additional conditions.

A notice of the increase has to be delivered to the Registrar within 15 days from the date it was passed, and the registrar shall record the increase (CA §56).

Shareholder Challenges. Shareholders of at least one-tenth of the issued shares may ask for an investigation (CA §195) or can go to court for a legal redress (CA §233).

Principle IIB 3: Extraordinary transactions, including sales of major corporate assets

Assessment: Broadly Implemented

Sales of major corporate assets. Major corporate transactions that alter the memorandum or the articles of the company require a special resolution passed with a majority of $\frac{3}{4}$ of the shareholders present and a 21-day notice. This procedure is applicable to transactions that dispose of the whole or any part of the undertaking of the company or enlarge or change the local area of the company’s operations (CA §12). Directors shall not – except with the consent of the company given in general meeting – sell or dispose of the undertaking of the company and remit any debt due by a director (CA §107).

Redress. Shareholders of at least one-tenth of the shares disagreeing with the decision may require an investigation or go to court (CA §195, 233).

Principle IIC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:

Principle IIC 1: Sufficient and timely information on date, location, agenda and issues to be decided at the general meeting

Assessment: Partially Implemented

Meeting deadline. The first GMS must be held within 18 months of the incorporation. The following ones must be held at least once every 15 months (CA §81).

According to the SEC, companies should hold their general meeting each year (Notification SEC/SRMI/2000-953/1950 Oct. 24, 2000).

Unless it is otherwise provided in the articles of the company, two or more shareholders having at least 10 percent of the issued share capital may call a meeting (CA §85(2)(a)). At least 10 percent of the shareholders may also request the directors to call an extraordinary meeting (EGM) (CA §84(1)). Five shareholders are required as a quorum (CA §85(2)(b)).

Meeting notice content. Shareholders are notified 14 days in advance for GMS and 21 for EGM. (CA §85(1)(a), 87(2)). Schedule I to the Companies Act requires that an adjourned meeting, because the quorum is not met, should be held the same day in the next week, at the same time.

The CA requires that the statement of the business to be transacted be contained in the notice (§85(1)(b)). Copies of balance sheets, auditors report, and income and expenditure account should also be sent with the notice (§191). The voluntary Code ("Role of Shareholders" §II.D) recommends that the board provide sufficient and timely information on the date, time, location, agenda and issues to be decided at the meeting. The notice should include a description of auditor candidates, director candidates, and the text of the proposed resolutions. The information should be detailed enough to allow shareholders to make their decision.

Accidental omission to give notice to, or the non receipt of the notice by any shareholder shall not invalidate the meeting (CA §85(b)).

Redress. If the meeting is not held, any shareholder may request the Court to call or direct the calling of a general meeting of the company, and, the company and every officer of the company is liable for a fine (CA §81, 82). In case of violation of the procedure, shareholders of at least one-tenth of the issued shares may ask for an investigation (CA §195) or can go to court for a legal redress using the "oppression" remedy (CA §233).

Principle IIC 2: Opportunity to ask the board questions at the general meeting

Assessment: Partially Implemented

Shareholder questions – Forcing items onto the agenda. There do not appear to be any provisions in the CA allowing shareholders to ask questions at meeting. However, in practice they do.

Shareholders are not allowed to change the agenda by submitting resolution to the board.

However, the voluntary Code ("Role of Shareholders", §II.F) suggests that shareholders should have the opportunity to place items on the agenda for the GMS and ask questions to the board.

Principle IIC 3: Effective shareholder participation in key governance decisions including board and key executive remuneration policy

Assessment: Partially Implemented

Facilitation of shareholder participation. The nomination process is not clear. The CA (CA §91) only requires that shareholders elect directors among them.

Approval of board and key executive remuneration. There do not appear to be any provisions related to the role of the shareholders in approving directors' remuneration.

Principle IIC 4: Availability to vote both in person or in absentia

Assessment: Partially Implemented

Proxy regulations. The vote in absentia is authorized by the CA. Shareholders entitled to attend and vote at meetings can nominate another person as his proxy (CA §85 (2)(e),(f)). Proxies may or may not be a member of the company. The appointment of the proxy should be in writing. It does not need to be notarized unless it is required in the articles of association. In practice, proxies are widely used.

Redress. There does not appear to be any specific redress for violation of the proxy regulation since shareholders need to hold at least one-tenth of the issued shares to ask for an investigation (CA §195) or go to court for a legal redress (CA §233).

Postal and electronic voting. Neither postal nor electronic voting is permitted in Bangladesh.

Principle IID: Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

Assessment: Partially Implemented

Classes of shares. Most of the shares offered on the Stock Exchange are ordinary ones. The, Banks Companies Act (§14) does not allow banks to issue other classes of shares. The principle “one share: one vote” is then applicable.

There do not appear to be any provisions on golden shares, voting caps or multi-voting shares.

Disclosure of disproportionate control. Regulation and the Guidelines (§1.4(k)) require the disclosure of shareholders holding 10 percent or more of the voting rights.

Disclosure of company group. The LR (§36(A)(15)) require that a company announce immediately to the Exchange any acquisition of shares of another company or any transaction resulting in such acquisition because of a subsidiary of the company. The annual published account and reports shall also contain the company’s holdings in associate and subsidiaries with the relative percentage (LR §37(2)).

Disclosure of shareholder agreements. There do not appear to be any provisions on shareholders agreements. In practice, they are uncommon.

Principle IIE: Markets for corporate control should be allowed to function in an efficient and transparent manner.

Principle IIE 1: Transparent and fair rules and procedures governing acquisition of corporate control

Assessment: Partially Implemented

Basic description of market for corporate control. Changes in control are infrequent, and, thanks to concentrated ownership, proxy battles and hostile takeovers essentially unknown. Takeovers and changes in corporate control in Bangladesh are regulated by the SEC (Obtaining, Acquisition and Taking Control over Considerable Number of Shares 2002).

Disclosure of substantial acquisition of shares. Every director or officer who has been the beneficial owner of any class of its listed equity securities and every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of such securities shall disclose his ownership to the SEC (Securities and Exchange Ordinance §12). The Obtaining, Acquisition and Taking Control over Considerable Number of Shares Rules also precise that a person owing more than 10 percent of the shares of a company shall report his ownership to the stock exchange, the SEC, and the company. Every company shall also report to the Stock Exchange and the SEC the number of shares held by each of those shareholders. The Stock Exchange, then publicizes the information on line (§4, 14).

Tender rules/mandatory bid rules. A person holding less than 10 percent of the shares or no shares at all who tries to obtain 10 percent or more of the shares of a company without consulting the Stock Exchange, or a shareholder of more than 10 percent of the shares shall place a proposal for purchasing the minimum number of shares of that company to other shareholders through a public notice through a merchant banker registered with the SEC. The minimum price at which tender offers have to take place is the highest price between the highest market price in the Stock Exchange and the average market price of the shares during the last 6 months before the publication of the proposal.

If, after a tender, less than 10 percent of the shares remain with the public, the person who made the offer is bound to buy them (SEC (Obtaining, Acquisition and Taking Control over Considerable Number of Shares) Rules, 2002 §6 to 15).

The CA has different rules for acquisition of the company (§230). The offer must be approved by $\frac{3}{4}$ of the value of the share within 120 days. If approved, the transferee company may, within 60 days after the expiration of the first period of 120 days, give notice to the dissenting shareholders to acquire their shares.

Delisting/going private procedures. The LR provide conditions governing delisting (LR §31,32).

Principle IIE 2: Anti-take-over devices

Assessment: Partially Implemented

Description of anti-takeover devices in use in the market. When a person publishes a notice to obtain more than 10 percent of the share of a company, directors are not allowed, without the consent of the shareholders, to sell any capital resource of the company or to issue new shares with voting rights during the time of the notice (SEC (Obtaining, Acquisition and Taking Control over Considerable Number of Shares) Rules, 2002 §14).

Duty of loyalty in the event of a takeover. The regulations do not define any duties of the board during a takeover. The board should only continue to act in the best interest of the company and the shareholders.

Principle IIF: The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.

Principle IIF 1: Disclosure of corporate governance and voting policies by institutional investors

Assessment: Not Implemented

Blocked shares/record date. There do not appear to be any restrictions on share transfer before a shareholder meeting.

However, only shareholders in the company, the day the notice is sent, are eligible to attend the annual meeting (CA §83(7)).

General obligations to vote. There do not appear to be any obligations or recommendations for institutional investors to vote.

Disclosure of voting policy. Financial investors are not required to disclose either their voting policies or their activities.

Principle IIF 2: Disclosure of management of material conflicts of interest by institutional investors

Assessment: Partially Implemented

Institutional investor policies on conflicts of interests. The SEC (Mutual Fund) Rules require the following:

- No director of mutual fund/ trustee/ asset manager can be executive/ employee of any merchant bank/ portfolio manager/ stock dealer/ stock broker;
- Separate trustee and asset manager for trust;
- Trustee board cannot have 50 percent common members with members, companies or sponsor.

The voluntary Code ("Financial Institution" §II.C.6, 10) recommends that financial institutions disclose the nature and extent of exposures to and transactions with related parties, and affiliates and nature of any conflicts of interest with directors or senior managers and the rules for handling such conflicts.

Principle IIG: Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.

Assessment: Partially Implemented

Rules on shareholder consultation and acting in concert. There appear to be no rules that obstruct the ability of shareholders to consult with each other on the execution of their basic shareholder rights.

There appear to be no rules to prevent abuses during changes in control.

SECTION III: THE EQUITABLE TREATMENT OF SHAREHOLDERS

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

Principle IIIA: All shareholders of the same series of a class should be treated equally.

Principle IIIA 1: Equality, fairness and disclosure of rights within and between share classes

Assessment: Partially Implemented

Equality within share classes. All shares of a same class carry the same rights (CA §85(1)(e)).

Availability of share class information. The prospectus shall describe the dividend, voting, conversion and liquidation rights, as well as redemption or sinking fund provisions of any preferred shares. The prospectus shall be posted in the SEC and company's websites. Investors can also obtain a copy from the company or its manager (SEC (public Issue) Rules, 2006 §18(b); 6(2)(3)). The cost of the hard copy may vary from zero to ten dollars.

Approval by the negatively impacted classes of changes in the voting rights. The memorandum or articles of the company can authorize the variations of the rights attached to any class of shares with the consent of any proportion of the holders of the issued shares of that class or by a resolution passed at a separate meeting of the holders of those shares (CA §71). However, shareholders of the issued shares of that class, who did not consent or vote in favor of the resolution may go to court to cancel the variation (CA §71).

Principle IIIA 2: Minority protection from controlling shareholder abuse; minority redress

Assessment: Partially Implemented

EX ANTE PROTECTIONS

Pre-emptive rights. When directors increase the subscribed capital by issue of shares, existing shareholders have pre-emptive rights (CA §155).

Ability to call meeting. Shareholders who hold at least one-tenth of the issued share capital can call an EGM (CA, §84).

Qualified majority. A majority of at least ¾ of the shareholders present or voting by proxy at the GMS are required for (CA §87): 1) change the name of the company or alter the provisions of the company's memorandum and articles (CA §11,12,

20), 2) authorize the reduction of the capital (CA §59), 3) make liability of directors unlimited (CA §76), 4) offer additional remuneration for the managing agent (CA §119), 5) remove an auditor before the end of his term (CA §201(9)), 5) approving major transactions (see principle IIB3).

Cumulative Voting / Proportional Representation. There is no provision in the CA or regulation for special voting rules to encourage effective shareholder participation, i.e. cumulative voting or proportional representation, except in the case of Z companies as noted below (See IIA5).

EX POST PROTECTION

The court system tends to be not efficient. Private shareholder litigation can take years to be fully resolved. Specialized commercial courts do not exist in Bangladesh.

Ability to sue to overturn meeting decisions. Shareholders of at least one-tenth of the issued shares can sue to overturn meeting decision (CA §223), except for accidental omission to give notice to, or the non-receipt of notice by any shareholder (CA §85 (b)). In addition, if a variation of the rights attached to any class of shares has been authorized, shareholders who did not consent or vote in favor of the resolution may go to court to cancel the variation (CA §71).

Ability to sue directors. Directors can be sued in case of negligence, default, breach of duty or of trust. They will not be liable if the court concludes that they had acted honestly and reasonably and, regarding all the circumstances of the case (CA §396).

According to the English precedent on corporate law Foss vs Harbottle (1843), derivative law suites are not allowed, except under limited circumstances. The first rule derived from this case is “the proper plaintiff rule”: when a company is wronged by its directors, only the company can sue the directors. Minority shareholders cannot initiate the suit. The second rule is “the majority rule principle”; if the alleged wrong can be confirmed or ratified by a simple majority of members in a GMS, then the court will not intervene.

Redress from regulators. Shareholders of at least one-tenth of the issued shares can request inspectors from the Registrar to investigate the company. (CA §195) but, in practice, this does not happen.

The SEC classifies the companies which did not hold any GMS or did not declare dividends the previous year in a category called “Z companies”. When companies remain in this category for more than one year, they have to reconstitute their board by holding an EGM within 6 months. This reconstituted board shall identify the reason of the failure, persons responsible, take appropriate measure against them, propose action plans to improve the performance of the company. If operational and financial performance has not improved within 24 months after the reconstitution, the company shall take appropriate measure for dissolution. However, due to court decisions, this regulation on reconstituting the board could not be applied before the beginning of the year 2008. Recently, the SEC has forced one company to reconstitute its board. (Notification Settlement of Stock Exchange Transaction Regulation, 1998 DSE-343/97/910 §4; SEC/SMRRC/2001-14/admin/03/06).

In addition, any persons who contravenes with the Securities and Exchange Ordinance or regulations made under the ordinance shall pay a fine to the SEC. The Ordinance also requires civil liabilities and imprisonment in the case of fraudulent acts (Securities and Exchange Ordinance 1969 §22, 23, 24).

Principle IIIA 3: Custodian voting by instruction from beneficial owners

Assessment: Partially Implemented

Rights of beneficial owners. Financial institutions do hold shares on behalf of beneficial owners. Instructions bind custodians but they also can vote without specific instructions. In practice, custodians provide shareholders with information concerning their options in the use of their voting rights, although there is no legal requirement to do so.

Blanks votes and abstentions are ignored.

Principle IIIA 4: Obstacles to cross border voting should be eliminated

Assessment: Broadly Implemented

There is no explicit reference on cross border voting in Bangladesh law.

Meeting notice requirements. The meeting notice must be issued 21 days before a meeting, as for domestic investors.

Procedures to facilitate voting by foreign investors. Shareholders can vote in person or appoint a proxy.

Principle IIIA 5: Equitable treatment of all shareholders at GMs

Assessment: Partially Implemented

Procedures to facilitate voting (electronic and postal voting systems). In the shareholders meetings, votes can be given personally or by proxy (CA §85(2)(e)(f)). Neither postal nor electronic voting is permitted in Bangladesh.

Equitable treatment of shareholders at meetings. Shareholders of a same class have the same rights (CA §85(1)(e)). There do not appear to be any provision governing the organization of the vote. The articles of association specify whether

the vote is done with a formal poll or by show-of-hand. In practice, most of the companies use the show-of-hand poll.

Some abuses have been seen in the past. For example, shareholders have been shouted down, meetings have been held out of town and, information has been sent late to some shareholders.

Disclosure of voting results. The minutes of shareholder meetings must be kept in books at the company registered office and open at least two hours a day for inspection by any member of the company without charge. Fines of maximum 100 Taka (\$1.50) per day of default may be applicable. An inspection of the books may also be compelled by the Registrar (CA §89).

Copies of special and extraordinary resolutions shall be recorded at the Registrar. Companies may be liable to a fine not exceeding 100 Taka (\$1.50) per day. They also shall be embodied in or annexed to every copy of the articles issued after the resolutions. Where companies do not comply with this provision, they may be liable to a fine of maximum 50 Taka (\$0.75) per copy of the articles issued (CA §88).

Principle IIIB: Insider trading and abusive self-dealing should be prohibited.

Assessment: Partially Implemented

Basic insider trading rules. Insider trading – called beneficiary/opportunistic business in Bangladesh – is prohibited by the SEC (Banning the beneficiary/opportunistic business) Rules, 1995. Penalties can include 5 years of imprisonment or/and a fine of 500,000 Taka (\$7,280). An insider is defined as a director, key shareholder, managing agent, banker, auditor, advisor, official, staff or person who by virtue of his relationship with those persons or with the company or due to his position, comes into the possession of unpublished price sensitive information or may reasonably expect to have access to such information.

A larger definition of the insider including outside attorneys, public advertisers, advertising agencies, other independent contractors, as well as spouses, immediate families and people under the control of insiders is provided by the Schedule (§6) to the LR. The Schedule also has a slightly different definition of the insider information which is not necessary a price sensitive information but an information “which has not been publicly released and which is intended for use solely for a corporate purpose and not for any personal use and which the company withholds”.

An insider dealing is defined by the SEC Regulations as the purchase, sale or other transfer of a company’s securities made on the basis of unpublished price sensitive information (information that may influence the market price of those securities).

The SEC is responsible for the enforcement of this regulation. However, in practice, the enforcement was weak until 2000. Since then, it has improved.

Insider trading disclosure. Every month, companies have to send the SEC, Registrar of Joint Stock Companies and the Stock Exchange a report listing every director, officer and shareholder holding at least 5 percent of the shares (SEC (Prohibition of Insider Trading) Regulations, 1995).

The Opportunistic Business Rules are interpreted to mean that directors cannot buy or sell shares within four months between the end of the year and the GMS. In addition, they are required to submit 30 working days in advance a written report to the SEC about their intention to buy shares of the company or sell or otherwise dispose of the shares they hold (SEC/SRMID/2000-953/313/Admin-06). When a director directly or indirectly who holds at least 10 percent of the shares, makes any gain by purchase and sale, or the sale and purchase of any shares within a period of less than 6 months, he shall make a report and tender the amount of such gain to the issuer (Securities and Exchange Ordinance §14).

The Guidelines (1.4(k)) require that directors should include in their report to the shareholders the number of shares held by every director and shareholders of at least 10 percent of the shares.

Redress. In case of insider trading, shareholders can report to the SEC, which initiates an action through its Enforcement Department. No criminal prosecution has been pursued.

Disclosure of other types of self dealing. Directors must declare at a meeting of directors their direct or indirect interest in a contract with the company (CA, §130). Directors not complying with this provision shall be liable to a fine not exceeding 5,000 Taka (\$73).

Principle IIIC: Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

Assessment: Broadly Implemented

Conflict of interest rules and use of business opportunities. The CA (§130) requires that directors disclose to the board their direct or indirect interest in a contract with the company.

Public companies are not allowed to make loans to directors (unless the company is in the business of making loans). In private companies, loans to directors are permitted. Loans are to be disclosed and approved at a general meeting.

In banks, loans to directors have also to be approved by the majority of the directors (excluding the director concerned). The

total amount of the loan provided to a director cannot exceed 50 percent of the paid-up value of his shares (CA §103). Banks have different requirements (BRPD Circular No.7 August 5, 1999 §1, Bank Companies Act §27).

Board responsibility for managing conflicts of interest. The board should establish an audit committee of at least 3 directors – including at least an independent one – which shall report to the board any conflicts of interests (Guidelines §3.1, 3.3.1(ii)(a)). The voluntary Code also recommends that the board should establish an audit committee of at least 3 members. However, the Code suggests that the chairman of this committee and the majority of the members be non-executive directors (CCG “Board Issues” §X.C).

SECTION IV: THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

Principle IVA: The rights of stakeholders that are established by law or through mutual agreements are to be respected.

Assessment: Partially Implemented

Stakeholders have protection under relevant legislation (e.g. Labor Act 2006, Bankruptcy Act 1997, Environmental Conservation Act 1995), however, compliance by listed companies is sometimes limited. The large size of the informal sector also limits applicability of certain legal protections.

Stakeholder participation in corporate governance. The legal framework mandates no explicit corporate governance role for stakeholders such as employees or creditors. In practice creditors are sometimes represented on the boards of their borrowers.

Corporate social responsibility and codes for stakeholders. Companies are seen as having general obligations to comply with legal and regulatory requirements, and protect the interest of shareholders. A few companies normally make Corporate Social Responsibility (CSR) statements or support charitable activities directly. Some market participants noted that such activities are considered more appropriate for individuals for families (who do establish and support charitable foundations).

Principle IVB: Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

Assessment: Partially Implemented

For most stakeholders, redress is through the courts, which can be cumbersome and expensive (see 1D). Labor disputes are sometimes settled through government sponsored mediation. Judges can act as arbitrators in other cases, but this option is not widely used. In practice, most claims are settled outside of court.

Director liability to stakeholders. A director can be held liable by stakeholders for “negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company” (CA §102). In practice, finding a director or other corporate officer personally liable for harm to stakeholders is difficult and rarely happens.

Principle IVC: Performance-enhancing mechanisms for employee participation should be permitted to develop.

Assessment: Partially Implemented

Stock options are currently not allowed in Bangladesh, and other forms of compensation based on individual performance are not widely used, though the law does not necessarily prohibit their use. In practice, performance is rewarded through promotion and changes in salary.

All employees are entitled to a fixed share of the profits. Five percent is set aside for employees, of which 20 percent is allocated to an employee welfare fund, and the rest is provided as a bonus.

Employer provided pensions are not common in Bangladesh, and the few that exist are defined benefit. There is no legal framework specifically for pension funds, and they are governed by labor and trust law.

Principle IVD: Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

Assessment: Not applicable

This principle is rated as “Not applicable” because (as per the OECD Methodology) stakeholders in Bangladesh do not directly participate in the corporate governance process.

The general public, including stakeholders, have access to company information through annual reports, company websites, and filings with the Registrar. Creditors may also take advantage of the Creditor Information Bureau and ratings provided by

the two credit rating agencies, as well as doing their own assessment. According to market participants, potential lenders see limited value in the other publicly available information.

Principle IVE: Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.

Assessment: Not Implemented

Whistleblower rules. There is currently no formal protection for employees or others that report misconduct in the company.

Principle IVF: The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

Assessment: Partially Implemented

In the past, banks in Bangladesh had a reputation for abusing related lending—lending on favorable terms to the banks owners, their friends and family—and there have been a number of major bank failures resulting from poor governance and abusive practices; most recently Oriental Bank. BB has pushed through a number of reforms to strengthen bank governance and tighten credit standards, including restrictions on ownership and related lending and introducing regulations on corporate governance for banks.

A Credit Information Bureau has been introduced, and two credit rating agencies are now operating. Banks have to be rated annually; leasing, insurance, and listed companies at least once. Ratings are also required for borrowers seeking large loans. However, a company that requests a rating can refuse to make it public, and go to the other agency.

Effectiveness of bankruptcy, security/collateral, and debt collection/enforcement codes. Standard measures developed by the World Bank indicate that legal rights for creditors are relatively strong in Bangladesh. However, access to information through credit registries and bureaus is limited. (See *Doing Business 2009* at www.doingbusiness.org.) While legal rights may be relatively strong, delays in the court system effectively weaken creditors' rights (see ID).

Creditor Rights Indicator	Bangladesh	South Asia Average	OECD Average
Legal Rights Index (out of a possible 10)	8	4.8	6.8
Credit Information Index	2	2.1	4.8
Public credit registry coverage (percentage adults)	0.9	0.7	8.4
Private bureau coverage (percentage adults)	0.0	2.6	58.4

SECTION V: DISCLOSURE AND TRANSPARENCY

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

Principle VA: Disclosure should include, but not be limited to, material information on:

Principle VA 1: Financial and operating results of the company

Assessment: Partially Implemented

Overview of Financial Reporting. All companies in Bangladesh are required to prepare and present audited financial statements at the GMS on an annual basis. Those statements should then be filed with the Registrar. They should include a balance sheet, the profit and loss account, cash flow statement, and changes in equity. In addition, the board should also disclose other financial information such as changes or commitments affecting the financial position of the company. (CA §183, 184, 190, LR §19(1)). In practice, most listed companies mail the annual report to shareholders before the GMS. However, compliance with basic disclosure rules must be considered moderate. Z-listed companies do not in general prepare annual reports, and reports of other companies are often difficult to obtain.¹⁶

Consolidation. The SEC mandates listed companies to use IFRS (Securities and Exchange Rules, 1987 §12) and the Institute of Chartered Accountant of Bangladesh (ICAB) has developed standards based on IFRS. IFRS requires the preparation of consolidated financial statements. However, since the CA is silent on this point, there is a general belief that

¹⁶ To cite one example – during the developing of the corporate governance index presented in Appendix 1, the annual reports of only 53 companies were available in the SEC library.

consolidation is not required in Bangladesh and, in the past, it was a common practice not to prepare consolidated statements (See ROSC Accounting and Auditing, Bangladesh 2003). Today, some companies do present consolidated statements (for instance, Square Pharmaceuticals, IDLC, Investment Corporation of Bangladesh).

Management discussion and analysis. Directors shall attach a board report to the annual report. The CA (§184) and the Guidelines (§1.4) provide a list of the content of this report. It should include, for instance, statements on financial information, ownership, and changes in the company.

Oversight, sanctions and remedies. Non compliance with the requirement to present financial statements and board report is punishable with fine which may extend to five thousand taka (\$73) (CA §183, 184).

Principle VA 2: Company objectives

Assessment: Partially Implemented

The memorandum establishing the company and the prospectus shall describe the objects of the company (CA §6, 7, 8, 389). Listed companies shall also disclose any proposed changes in the general character or nature of the company (LR §36(2)). In addition, the Directors' report shall contain the principal activities during the year and any changes (LR §37(4)). In practice, companies tend to disclose their objectives in their annual report.

Principle VA 3: Major share ownership and voting rights

Assessment: Partially Implemented

Periodic disclosure of significant ownership. The board is required to disclose, in the annual directors' report, the names of shareholders holding 10 percent or more of the voting rights (Guidelines §1.4(k)). Companies are also required to provide a list of shareholders to the Registrar on an annual basis. In practice, this ownership is disclosed in 83 percent of the companies¹⁷. Only direct shareholdings are reported.

Regulatory agency access to ownership information in a timely manner. Every director or officer who has been the beneficial owner of any class of its listed equity securities and every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of such securities shall disclose his ownership to the SEC (Securities and Exchange Ordinance §12). Every shareholder owning more than 10 percent of the shares shall indeed disclose his ownership to the SEC, as well as to the Stock Exchange and the company (SEC (Obtaining, Acquisition and Taking Control over Considerable Number of Shares) Rules, 2002 §4). In practice, only direct shareholdings are reported.

Disclosure of company group structures. The LR (§36(A)(15)) require that a company announce immediately to the DSE any acquisition of shares of another company or any transaction resulting in such acquisition because of a subsidiary of the company. The annual published account and reports shall also contain the company's holdings in associate and subsidiaries with the relative percentage (LR §37(2)).

Principle VA 4: Remuneration policy for board and key executives, and information about directors

Assessment: Partially Implemented

Material information about directors (qualification, selection, independence). The prospectus of the company shall contain information on qualification, experience and position of each director. It also contains his length of service and other board membership, if any (SEC (Public Issue) Rules, 2006 §8).

The annual report only requires disclosure of the number of board meetings held during the year and the attendance of every director (CGG §1.4(j)). In practice, some companies publish a short bio of each director in the annual report.

The Guidelines (§5) require that the board disclose in the annual directors' report whether independent directors constitute one tenth (with a minimum of one member) of the board. However, they do not require the disclosure of the selection process or the way the company does the independence assessment.

Disclosure of directors' interests. Where a director, officer, or beneficial owner of 10 percent or more of the listed securities of his company, gains by the purchase and sale or sale and purchase, of any such security within a period of less than six months, he shall make a report and tender the amount of such gain to the issuer (Securities and Exchange Ordinance, 1969 §14).

The Securities and Exchanges Ordinance (§12) also requires the disclosure to the SEC of the beneficial holding of every director. In addition, the board should include in the annual report the name and share ownership of every director, CEO, company secretary, CFO, head of internal audit, their spouse and minor children, and the executives (CGG §1.4k).

Full disclosure of remuneration and remuneration policy. The prospectus shall contain the aggregate amount of remuneration paid to all directors and officers as a group during the last accounting year (SEC (Public Issue) Rules, 2006

¹⁷ Survey covering 53 companies in 2007 – See Appendix 1.

§11). In addition, the profit and loss account shall disclose the salaries and wages of directors (Securities and Exchanges Rules, 1987 Part II §1 (C)(3)).

The voluntary Code also recommends that the board should disclose in the directors' report direct and indirect director compensation and remuneration ("Board Issues" §XI.B.13).

Principle VA 5: Related party transactions

Assessment: Partially Implemented

Ex-ante disclosure of material related party transactions. Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of directors at which the contract or arrangement is determined on, of his interest then exists, or, in any other case, at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement (CA §130). No *ex-ante* disclosure is made to shareholders or the public.

Periodic disclosure of related party transactions. IAS 24 requires disclosure of related party transactions in the financial statements. In practice some companies provide detailed disclosure of the related party transactions.

The prospectus shall also contain a description of any transaction during the last two year, or any proposed transactions between the company and any of its directors, executive officers or officers (SEC (Public Issue) Rules, 2006 §10).

Principle VA 6: Foreseeable risk factors

Assessment: Partially Implemented

Disclosure of material risks. Only financial institutions are required to disclose material risks. However, the voluntary Code recommends that other companies also disclose their material risks factors in the annual report (CCG "Board Issues" §XI.B7, "Financial Reporting" §VG).

Principle VA 7: Issues regarding employees and other stakeholders

Assessment: Partially Implemented

Disclosure of stakeholder issues. IAS 19 requires the disclosure of employees benefits in the financial statements. In practice, some companies disclose information related to human resources development, employees benefits, and efforts made for the environment.

Principle VA 8: Governance structures and policies

Assessment: Broadly Implemented

Disclosure of corporate governance report (including structure and operation of board). In the annual directors' report, the board should mention the number of meetings held, the ownership of directors, and the major shareholders. In addition, the board is required to disclose its compliance with the Guidelines, which includes for example the nomination of independent directors (Guidelines §5).

Comply-or-explain in force. All listed companies are to report their compliance or explain their non-compliance with the Guidelines (§5). In practice, in 2008, 33 percent of companies reported full compliance and 60 percent partial compliance. In 2009, 64 percent report full compliance and 29 percent reported partial compliance.

Regulator enforcement practice. The SEC monitors the practice.

Principle VB: Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure.

Assessment: Partially Implemented

Quality of Accounting Standards. According to securities regulation, companies in Bangladesh should comply with the International Financial Reporting Standards (IFRS) "adopted by the Institute of Chartered Accountants of Bangladesh (ICAB)". The Directors' report shall also disclose whether the IFRS have been followed to prepare the financial statements (CGG §1.4(d)).

In practice, companies follow Bangladeshi Accounting Standards (BAS) set by ICAB. ICAB has been incorporating IFRS into BAS, but differences remain. About 9 standards have not been adopted¹⁸. The CA and Banking Act also prescribe certain

¹⁸ Based on information provided by Deloitte at <http://www.iasplus.com/country/banglade.htm>.

accounting practices that are not consistent with IFRS. While securities regulation has technically overridden these requirements, the two acts still influence how listed companies prepare accounts. The limited number of trained accountants and auditors also limits the ability of companies to introduce and implement higher quality standards.

Standard-setting body. The ICAB is empowered by the Bangladesh Chartered Accountants Order, 1973 to determine accounting standards. In recent years, ICAB has been receiving technical assistance to facilitate introduction of IFRS. ICAB is a self regulatory organization overseen by the Ministry of Commerce.

Review/enforcement of compliance. The SEC ensures that statements have been filed and regularly reviews filings.

Principle VC: An annual audit should be conducted by an independent, competent and qualified, auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

Assessment: Partially Implemented

Audit Requirements. SEC regulation requires that listed companies have their accounts audited by chartered accountants (SEC Rules, 1987 §5). In practice, most companies do produce audited financial statements.

Auditor qualifications. Auditors are licensed by ICAB. In the past, only 20-25 were licensed per year, recent efforts have doubled that. Licensed auditors are also required to have a college degree, four years of work experience, and meet requirements for ongoing training. Auditors for banks must come from a list approved by the BB.

Auditor Independence. The CA and SEC regulation require that the auditor not be an employee or investor in the company, and cannot perform internal audit, accounting, book-keeping, or financial services for the company. They may provide tax and other consulting services.

Auditors are required to be rotated every three years, though “A category” companies may ask for an exemption from the SEC.

ICAB has a code of ethic. It has not adopted the IFAC code of ethics.

Audit quality assurance / enforcement. There is no formal mechanism for reviewing audits. ICAB is effectively a self-regulatory organization (though it is under the oversight of the Ministry of Commerce) that has power to discipline its members. This power has been rarely used in the past, but ICAB is now disciplining its members more and working more closely with the SEC, which can refer infractions to ICAB.

ICAB is receiving technical assistance to help them improve implementation of audit standards.

Some market participants have noted that audit fees companies are willing to pay are low, and this also hurts audit quality.

A Financial Reporting Commission has been proposed to oversee accounting and auditing in Bangladesh, but this proposal has not been adopted.

Audit standards development. ICAB also develops Bangladesh Standards for Auditing (BSA) based on International Standards of Auditing (ISA). As with accounting standards, not all have been introduced or are up to date, and many are not implemented. Auditors of listed companies are supposed to comply with ISA (SEC Rules, 1987 §12).

Principle VD: External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.

Assessment: Partially Implemented

Auditor accountability to shareholders. Auditors are appointed in the GMS at the recommendation of the board. In practice, auditors report to the board.

Penalties for auditors who fail to perform with due care. Auditors face potential liability to the company. Shareholders have occasionally sued auditors and the SEC has requested the audit firms to provide explanations on certain qualifications not present in the audit report.

Principle VE: Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

Assessment: Partially Implemented

Material facts. Price sensitive information is to be provided within 30 minutes from the moment of decision or receiving the information (SEC rule 1995). It is to be provided to the SEC and stock exchange(s) and published in two daily newspapers. The regulation defines what material is, and includes changes in financial condition, new capital issues, planned

investments, and so forth.

Oversight, sanctions and remedies. The SEC oversees material disclosure and does take action against issuers that fail to comply.

Easy accessibility of disclosed information. The annual report, articles, and GMS minutes are to be filed with the Registrar and can generally be accessed by shareholders. While not expensive, the Registrar is slow in retrieving files. Under current plans, in the coming months all files will be available for online access.

Most companies mail the annual report to shareholders. Basic company information is available online at the websites of the two stock exchanges, and some companies have their annual reports and other information available on their website.

Prohibitions on selective disclosure of information. There are no specific restrictions on selective disclosure of information, beyond the general requirements to report material facts.

Principle VF: The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by analysts, brokers, rating agencies and others, that is relevant to decisions by investors, free from material conflicts of interest that might compromise the integrity of their analysis or advice.

Assessment: Partially Implemented

Disclosure of conflicts of interest by analysts, brokers, rating agencies. Financial market participants are prohibited from making false and misleading statements or engaging in misleading transactions. There are no other requirements in this area.

Regulation of credit rating agency conflict of interest. Credit rating agencies are required to have a compliance officer to ensure compliance with “securities related laws, rules, regulations”. The SEC has drafted a Code of Conduct for credit rating agencies that will limit conflicts of interest. This Code had not been introduced as of March, 2009.

Regulation of sell-side analyst conflicts of interest. Beyond the general prohibition on false and misleading statements, there are no requirements in this area.

SECTION VI: THE RESPONSIBILITIES OF THE BOARD

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders.

Principle VIA: Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

Assessment: Partially Implemented

Bangladesh has a one-tier board system. The CA requires that a listed company shall have at least three directors (§90). The Guidelines (§1.1) requires that the number of directors be not less than five and not more than twenty. The voluntary Code (“Board Issues” §VII.A, C) recommends that the board be not too small but also not too large to enable involvement of every director. It should have between 7 and 15 members and should, periodically, review its size and composition. In banks, board should have a maximum of 13 members and not more than one member of a family can sit in the same board (BRPD Circular No12 April 26, 2003 §1).

In practice, most of the companies comply with the guideline requirement that board size is between 5 and 20 members. The rest of the companies have been in the process of increasing the size of their board to comply (Stock Exchange Survey 2006¹⁹).

Each director should be an individual and hold a specified share qualification (CA §90, 97). However, the Code of Corporate Governance suggests that directors can also be institutions or institutional investors (“Board Issues” § III.C).

The Guidelines (§1.2) require that at least one tenth of the board members (with a minimum of one) should be independent. The voluntary Code (“Board Issues” §III.A, IV.A) recommends that directors be well-qualified to carry out their duties. It also suggests that the board reflect a balance between directors of diverse skills, experiences, and perspectives.

In practice, 20 percent of the companies have at least one tenth of independent directors (Stock Exchange Survey 2006).

There do not appear to be any provisions requiring a mechanism for representation of the minority shareholders.

“Duty of care” and “Duty of loyalty”. Fiduciary duties of directors are not present in the law. However, since Bangladesh is a common law country, those duties are based on precedents. The CA (§102, 396) forbids any provision in the articles or any contract exempting directors from their liability in case of negligence, default, breach of duty or breach of trust in relation

¹⁹ The Stock Exchange Survey covers 111 companies in 11 industrial sectors in 2006.

with the company. However, it provides that if a Court, hearing a case of negligence, default, breach of duty or of trust, concludes that the director had acted honestly and reasonably and, regarding all the circumstances of the case, thinks he ought fairly to be excused, it may relieve him wholly or partly from his liability.

Effective enforcement. In the event that shareholders feel that directors are not following their duties, legal actions can be taken.

Principle VIB: Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.

Assessment: Partially Implemented

Board “duty of loyalty” / duty to treat all shareholders fairly. There do not appear to be any specific provisions on board’s duty to treat all shareholders fairly. The CA only states that all shares of a same class carry the same rights (CA §85(1)(e)). In addition, only shareholders of at least 10 percent of the shares can take a legal action or request an investigation if they think that the company acts in a way discriminating their interests (CA §233, 195).

However, the voluntary Code (“Board Issues” §II.A.1) notes that all directors represent all shareholders.

Principle VIC: The board should apply high ethical standards. It should take into account the interests of stakeholders.

Assessment: Not Implemented

Development of company codes of ethics. The CA does not require companies to have a Code of Ethics. However, the voluntary Code encourages boards to create a Code of Conduct for directors, detailing their roles, responsibilities, and duties (CCG “Board Issues” §XII.A). In practice, some but not all the companies have a Code of Conduct.

Board and interests of stakeholders. There do not appear to be any provision requiring the board to take stakeholders interests into account.

Principle VID: The board should fulfill certain key functions, including:

Principle VID 1: Board oversight of general corporate strategy and major decisions

Assessment: Partially Implemented

Central and strategic role played by boards. The CA does not specifically stipulate the strategic role of the board but the voluntary Code makes recommendations (“Board Issues” §II). For example, the board should determine, monitor, and evaluate strategies, policies, management performance criteria, and business plans. It also should identify and monitor key risk areas and performance indicators of the company.

In practice, in some companies the board determines some policies – such as employment ones – and performance criteria to monitor the performance of the managing director.

Principle VID 2: Monitoring effectiveness of company governance practices

Assessment: Partially Implemented

Board oversight of legal compliance. The voluntary Code (“Board Issues” §II.B) recommends that the board ensure that the company complies with all relevant laws, and regulations.

Board oversight of code compliance. The Guidelines are on “comply or explain basis” and the board is required to review the compliance by the company with those guidelines and explain areas of non compliance (Corporate Governance Guidelines §5). A company secretary who should attend board meetings has to be appointed by the company (Corporate Governance Guidelines §2.1). In practice, the company secretary may monitor company compliance. In 2007, about 93 percent of the companies reported their compliance with the guidelines. One third of the companies have fully complied with the guidelines (SEC Survey 2007²⁰). Full compliance increased to 64 percent in 2008²¹.

In addition of reviewing the compliance with the Guidelines, the voluntary Code recommends that board explain, in the annual directors’ report, the compliance and/or non-compliance with this Code (CCG “Board Issues” §XI.2).

Board self-evaluation. There do not appear to be any legal provisions on board self-evaluation. However, the Code (“Board Issues” §XV) recommends that the board should, at least once a year, evaluate its own performance, both collectively and individually. This evaluation should include the performance of the chairman. This evaluation should ensure that the board

²⁰ The SEC survey covers 264 companies in 15 industrial sectors on December 31, 2007.

²¹ Information provided by the SEC.

operate effectively and adjust its constitution and policies as needed.

In practice, when boards and their members' performance are evaluated, the evaluation is carried out by an independent agency.

Principle VID 3: Selecting/compensating/monitoring/replacing key executives

Assessment: Partially Implemented

Board oversight of selecting and replacing key executives. Directors are elected among the shareholders (CA §91). The "Company" shall appoint a CFO, a Head of Internal Audit, and a Company Secretary (Corporate Governance Guidelines §2.1). However, there do not appear to be any legal provisions on the board oversight of selecting and replacing key executives. It is unclear if the board has the power to appoint the CFO.

Directors are elected for three years. By common practice, each year, one-third of the board is elected. The term of the mandate for a managing director shall not exceed 5 years at a time (CA §110).

The BB has imposed additional requirements for banks²². Appointment, dismissal, release or removal of Chief Executive and Adviser should be approved by BB. The CEO shall have 15 years of experience as an active officer in bank or financial institution and at least 2 years in the post immediate to the post of Chief Executive of a Bank (BRPD Circular No16 July 24, 2003 §1(f); BRPD Circular No15 September 3, 2002 §2; Bank Companies Act §15(4)).

In banks, directors cannot hold the same position for more than 6 years in continuance. 3 years should pass before they become eligible again. In addition, bank directors cannot, without the BB approval, be directors in other banking companies or lending institutions at the same time, or exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders of the banking company (Bank Companies Act §16, 23). The term of the mandate for the Chief Executive in banks shall be at least for 3 years and renewable (BRPD Circular No15 September 3, 2002 §2).

Furthermore, BB regulations require separation of board and management, where the role of the board is to serve the oversight function.

The voluntary Code makes several suggestions on board election and remuneration:

- Companies should create a nomination committee to seek out and nominate qualified directors. This committee – composed of a majority of non-executive directors or at least headed by a non-executive director – should not prevent shareholders from being active in the nomination process. In addition, the board or nominating committee should suggest only qualified people. Information on qualifications, education, experience, current directorships, and any interests in the company should be submitted with a director nomination ("Board Issues" § IV, XA, X.D.2).
- Mandates for directors of banks and other financial institutions should not exceed 12 years ("Board Issues" §VIII).
- No individual director should hold the same position in more than six boards. An institution or institutional investor can be represented in more than 6 boards ("Board Issues" §III.C).
- Companies should establish a remuneration committee to recommend directors' compensation ("Board Issues" § X.D.1).
- The board appoints the managing director/CE, participates in the appointment of senior management, and ensures a succession plan for senior management and managing director/CEO ("Board Issues" §IIG).

Principle VID 4: Aligning executive and board pay with long term company and shareholder interests

Assessment: Not Implemented

Develop and disclose remuneration policy. There do not appear to be any legal provisions regarding remuneration policy. However, the voluntary Code recommends that the board should disclose in the directors' report direct and indirect director compensation and remuneration. It also recommends that a remuneration committee deal with compensation. The Code suggests that directors' remuneration be "sufficient to compensate directors for the time and effort required to complete their duties well" and notes that "this is especially important to nurture professional directors" ("Board Issues" §XI.B.13, X.D.1, VIII). In practice, remuneration is high enough to motivate directors to fulfill their duties.

Oversight by non-executives. The voluntary Code ("Board Issues" §X.A) recommends that the nominating committee and the remuneration committee should be composed by a majority of non-executive directors or at least be headed by a non-executive director.

Principle VID 5: Transparent board nomination/election process

²² At the time of the original assessment, banks were not allowed to establish nomination or remuneration committees. Recent regulation has allowed for the creation of remuneration committees.

Assessment: Not Implemented

Clear and transparent board nomination process. Shareholders elect directors among them (CA §91). There are no provisions in the CA for a formal and transparent nomination process. However, the voluntary Code encourages it. It recommends that the board or nominating committee – composed of a majority of non-executive directors or headed by a non-executive one – suggest only well-qualified people. Information including qualification, education, experience, current directorships and any interests in the company should be submitted with director nomination. Moreover, it recommends that no individual director should hold the same position in more than six companies at the same time (“Board Issues” §III.A, IV.C, III.C, X.A).

In practice, the nomination of directors is often opaque but some companies describe their nomination process in their memorandum. In some company, shareholders have to approve the eligibility criteria and terms of reference recommended by the board for the appointment of the Managing Director and the independent directors.

Effective shareholder participation in board nomination process. Appointment of board members is made at the GMS (CA §91). The voluntary Code encourages nomination made by the board or its nominating committee. It also notes that shareholders should have the opportunity to nominate candidate and sufficient time to organize this nomination before the notice of the annual meeting (CCG “Board Issues” §IVC).

Disclosure of nomination procedures. There appear to be no requirements for the disclosure of board nomination procedures.

Principle VID 6: Oversight of insider conflicts of interest, including misuse of company assets and abuse in RPTs**Assessment: Partially Implemented**

Board oversight of related party transactions. The board should establish an audit committee of at least 3 directors – including at least an independent one – which shall report to the board any conflicts of interests (Guidelines §3.1, 3.3.1(ii)(a)). In practice, those committees report conflicts of interest in only 50 percent of companies²³. The Code (which also recommends an audit committee) also suggests that the chairman of this committee and the majority of the members be non-executive directors (CCG “Board Issues” §X.C).

Principle VID 7: Oversight of accounting and financial reporting systems, including independent audit and control systems**Assessment: Broadly Implemented**

Board oversight of financial reporting. According to the CA (§183), directors are responsible for preparation of the annual accounts and for getting them audited before the annual meeting. Directors should also disclose in their annual report that, for example, financial statements are fair, books of account have been maintained, and appropriate accounting policies have been applied (Guidelines §1.4). 98 percent of the companies comply with this requirement (Stock Exchange Survey 2006). The Code suggests that the board should also ensure that accounts are in line with IAS (“Financial reporting” §IB).

Board oversight of internal controls. The board should establish an audit committee with written terms of reference to ensure integrity of the financial statements (Guidelines §3; CCG “Board Issues” §X.C.3). According to the Guidelines (§3.1), the committee should be composed of at least 3 members including at least one independent director. According to the voluntary Code (“Board Issues” §X.C.1), the majority of the members and the chairman should be non-executive directors. In practice, less than 30 percent of the companies have established an audit committee and less than 20 percent of the companies have had at least an independent director in their audit committees²⁴.

The company should also appoint a CFO and a Head of Internal Audit. The CFO should attend board meetings (Guidelines §2.1, 2.2). The board should clearly define their roles, responsibilities, and duties. Most of the companies comply with those requirements (Stock Exchange Survey 2006). The voluntary Code also notes that listed companies should have an internal audit function independent from the management with direct access to the board and the audit committee (“Financial reporting” §IV).

Board oversight of external auditors. The voluntary Code recommends that the audit committee, as a sub-committee of the board, should monitor external audits (“Board Issues” §XC2).

Banks’ boards shall review every trimester the reports submitted by their audit committees regarding compliance of recommendations made in internal and external audit reports and the Bangladesh inspection reports (BRPD Circular No16 July 24, 2003 §1(c)).

Internal compliance programs. The Code encourages the board to ensure that the company complies with laws and

²³ Survey covering 53 companies in 2007 – See Appendix 1.

²⁴ Stock Exchange Survey, 2006.

regulations, including the Code itself and other codes of best practice (CCG “Board Issues” §II.B).

Principle VID 8: Overseeing disclosure and communications processes

Assessment: Partially Implemented

Board oversight of disclosure process. According to the CA, the Guidelines and the voluntary Code, the board should disclose a number of aspects of material information about the company, primarily in the directors’ report. This information include material changes and commitments “affecting the financial position of the company” (CA §184), the reason why dividends have not been declared (if it is the case), the compliance or non-compliance with the Guidelines (Guidelines §1.4, 5), information on related party transactions, the detail of directors’ remuneration, directors’ shareholding, explanation of results, material risk factors, future business strategy (CCG “Board Issues” §XI.B, “Financial Reporting” §V).

Board responsibility for communications strategy. The voluntary Code (“Financial Reporting” §V.G.d) recommends that the board describe the future business strategy in the Annual Directors’ Report.

Principle VIE: The board should be able to exercise objective independent judgment on corporate affairs.

Principle VIE 1: Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and non-financial reporting, the review of related party transactions, nomination of board members and key executives, and board remuneration.

Assessment: Partially Implemented

Director independence requirements. The Guidelines (§1.2) require that at least one tenth of the members – and at least one – be independent directors. Independent directors are defined as directors who do not hold any shares of the company or less than 1 percent of the paid-up shares, who are not a family members of any company’s promoters, directors or shareholders of more than 1 percent of the paid-up shares; who do not have any other relationships (for ex pecuniary) with the company or its subsidiary/associated companies, who are not members, directors or officers of any stock exchange, and who are not shareholders, directors or officers of any member of stock exchange or intermediary of the capital market. According to this definition, an independent director could not hold any shares although the CA requires that every director hold qualification shares (CA §97).

The Code (“Board Issues” §VII.B) does not recommend any proportion but notes that the board should be composed of executive directors, non-executive directors and outside/independent directors. In the Code, the latter do not have either employment, or familial, or financial relationships with the company. The non-executive directors do not hold any management position in the company.

Separation of Chairman / CEO. The Guidelines (§1.3) do not explicitly require that the Chairman should be separate from the CEO but state that the two functions should “preferably” be separate. The voluntary Code (“Board Issues” §VI) notes that the two functions “should be filled by different individuals” and that the chairman has to be independent. In practice, the positions of chairman and CEO are filled by different persons in most of the companies (See Appendix 1).

Company disclosure of independence. The Guidelines (§5) require that the board disclose in the annual directors’ report whether independent directors constitute one-tenth (with a minimum of one member) of the board.

Independent oversight of key board tasks including:

Financial Reporting. The Guidelines (§3, 3.1) require the establishment of an audit committee, with at least three members. At least one of them should be independent. The committee assists the board in ensuring a “true and fair” view of the financial statements and a good monitoring system.

The Code suggests that the audit committee be composed of a majority of non-executive directors and the chairman also be a non-executive director. The Code also goes further in the definitions of the duties of the committees. For example, the committee should review the effectiveness of company’s internal risk controls and risk management systems, approve the appointment and removal of the internal auditors, monitor internal and external audits (“Board Issues” §X.C).

Related Party Transactions. The audit committee should report to the board any conflicts of interests (Guidelines §3.3.1).

Board and executive nomination. The voluntary Code (“Board Issues” §IV.B, X.A) suggests the establishment of a nominating committee mainly composed of non-executive directors or at least headed by a non-executive director to propose new candidates for the board. This committee should not prevent shareholders from proposing candidates. The committee should identify well-qualified candidates.

Board and executive remuneration. The Code recommends the establishment of a remuneration committee composed of a majority of non-executive directors or at least headed by a non-executive director, to propose directors compensation (“Board Issue” §X.D.1, X.A). Banks are not allowed to establish nomination or remuneration committees.

Principle VIE 2: Clear and transparent rules on board committees
Assessment: Partially Implemented
<p>Requirements and experience with committees of the board. The Guidelines (§3) require that the board establish an audit committee. In addition to this committee, the voluntary Code also recommends the establishment of committees for nomination and remuneration. The committees should have terms of references (“Board Issues” §IVB, XD, XC, XE).</p> <p>Banks are not allowed to establish nomination or remuneration committees. Banks are only allowed to create an executive committee for decision on urgent matters and an audit committee (BRPD Circular No16 July 24, 2003 §1(f)).</p> <p>Disclosure of mandate, composition, and working procedures of important committees. The voluntary Code recommends that the terms of reference of the committee, including the structure, roles, responsibilities, authority delegated to the committees, and the frequency, length and agenda of the committee meeting, should be available on request and/or published on the company’s website (“Board Issues” §X.E). The board should also disclose in his annual report whether it has an audit committee (Guidelines §5).</p>
Principle VIE 3: Board commitment to responsibilities
Assessment: Partially Implemented
<p>Company disclosure of board member activity. The Corporate Governance Guidelines (§1.4(j)) requires the disclosure in the annual directors’ report the number of board meetings held during the year and the attendance of every director. The voluntary Code (“Board Issues” §XI.B.13, “Financial reporting” §V.G.3.d) also suggests the disclosure of the attendance of directors and substitute directors.</p> <p>The prospectus of the company shall also contain information such as the name, age, qualification, experience and position of each director. It also contains his length of service and directorship or ownership in other companies (SEC (Public Issue) Rules, 2006 §8).</p> <p>No disclosure of the other board positions held at the same time is required. There do not appear to be any limit of the number of positions.</p> <p>Requirements for initial and on-going training. The Code (“Board Issues” §V) recommends that companies provide opportunities and funds to train new and continuing directors. The training should be provided by reputed institution or trainer and focus on increasing skills and knowledge on directors’ liabilities, best practices, and strategic planning.</p> <p>The BEI and some other private sector bodies provides periodic directors training.</p>
Principle VIF: In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.
Assessment: Broadly Implemented
<p>Board access to information. The books of accounts shall be kept at the registered office of the company and shall be open to director at all time during business hours (CA §181).</p> <p>The Guidelines (§2.1) also require that the company appoint a Company Secretary and define his role, responsibilities and duties. In practice, 87 percent of the companies have appointed a Company Secretary (Stock Exchange Survey 2006).</p> <p>The voluntary Code (“Board Issues” §IX) also recommends that the board should be supplied with all the information needed “sufficiently in advance of the board meeting”. The Code also lists the information that should be provided to the board.</p> <p>Free access to qualified advisors. There do not appear to be any provision on free access to qualified advisors. However, it is common practice in Bangladesh that directors, with approval from the board, have access to professional advice at the expense of the company.</p>

Appendix 1: An Assessment Methodology for Corporate Governance Compliance for Listed Companies in Bangladesh²⁵

The proposed assessment methodology for corporate governance compliance of listed companies in Bangladesh ranks companies according to a set of key criteria for corporate governance compliance, assigning an index number (between 0 and 100) to each listed firm. This work has been requested by the Bangladesh SEC, and will be used by them in further advancing their corporate governance work. The methodology has been in wide use internationally, and has been put to work in rewarding Good Governance companies in highly publicized award ceremonies backed by the regulators, stock exchanges, or private sector organizations. The methodology has further been used to study the corporate value added of better governance for firms listed in a given country. For example, McKinsey finds that good governance practices add as much as 12-14% of market value to listed firms in a wide cross-section of international securities markets.²⁶

Data was collected on a number of corporate governance characteristics of a random sample of 53 listed companies, to assess their compliance and related disclosure.²⁷ The governance areas covered closely followed the SEC Corporate Governance Guidelines, which focus on board issues and internal control and audit systems. Table 1 lists the complete set of Governance Characteristics examined, which have been grouped under the following topics:

- Disclosure
- Corporate Oversight and the Board of directors
- Internal Control System and the Audit Committee
- Financial statements
- External Auditor

Table 1 List of Governance Characteristics

Disclosure	Compliance
List of Board members disclosed?	100%
Ownership of Board disclosed?	83%
Payments to Directors/Officers disclosed, if any?	79%
Number of Board meetings held during the year and attendance disclosed	92%
Ownership of shareholders over 10% disclosed?	83%
Pattern of shareholding should be reported to disclose aggregate number of shares held	92%
Related party transactions disclosed?	55%
Corporate Oversight and the Board of Directors	Compliance
Independent Directors present	51%
Chairman of the Board is not the CEO	85%
Director's Report to Shareholders present	98%
Appointment of CFO, HIA and CS	85%
CFO and CS should attend Board Meeting	87%
Internal Control System and Audit Committee	Compliance
System of internal control is sound in design, effectively implemented and monitored	92%
Audit Committee reports its activities to the Board of Directors	63%
Audit Committee is constituted, and is composed of at least 3 members who are Directors	68%
Audit Committee vacancies are filled no later than within one month	67%
Audit Committee includes at least one Independent Director	47%
Chairman of Audit Committee has a professional qualification in accounting or finance	70%
Audit Committee immediately reports conflicts of interest	50%

²⁵ This is an SASFP Knowledge Management product. Please direct all questions to Tatiana Nenova and Aneeka Rahman, SASFP. The work was conducted in close cooperation with David Robinett, World Bank Corporate Governance and Capital Markets Advisory, and in tandem with the Bangladesh Report of the Observance of Standards and Codes (ROSC) on Corporate Governance (May 2008). The work has benefited from the generous assistance and cooperation of the Bangladesh Bank and the Bangladesh Securities and Exchange Commission.

²⁶ The Global Investor Opinion Survey 2002 by McKinsey & Company found that investors are prepared to pay a premium for companies exhibiting high governance standards. Premiums averaged 12-14% in North America and Western Europe; 20-25% in Asia and Latin America; and over 30% in Eastern Europe and Africa.

²⁷ The data comes from their latest annual reports (some 31 December 2006, some are 30 June 2007 and the rest from March and July 2007).

Disclosure	Compliance
Audit Comm. immediately reports suspect / presumed fraud / irregularity / material defect in internal control system	51%
Audit Committee immediately reports suspected infringement of laws	50%
Audit Committee reports to the Authorities	49%
Audit Committee reports to the Shareholders	66%
Financial Statements	Compliance
Financial statements present fairly the state of affairs	92%
Proper books of account of the issuer company have been maintained	92%
Key operating and financial data of at least 3 years should be summarized	87%
Appropriate accounting policies have been consistently applied	92%
IAS has been followed in preparation of financial statements	92%
There are no significant doubts upon company ability to continue as a going concern	92%
Significant deviations from last year's operating results are highlighted and explained	92%
If company has not declared dividend, the reasons thereof should be given	94%
External Audit	Compliance
External Audit has not been engaged in appraisal or valuation services of fairness opinions	98%
External Audit has not been engaged in financial information system design / implementation	100%
External Audit has not been engaged in bookkeeping / accounting records /financial statements	100%
External Audit has not been engaged in broker-dealer services	100%
External Audit has not been engaged in actuarial services	100%
External Audit has not been engaged in internal audit services	100%

The financial statements and other disclosures of listed companies to the SEC were examined to ascertain compliance with the SEC Corporate Governance Guidelines (CGG) along these five areas. Table 2 presents detailed Corporate Governance Index scores for each area, as well as the governance compliance index overall, by company and for the Bangladesh corporate sector as a whole. To calculate the Corporate Governance Index, we assign the value of 1 for each indicator which is fully complied with, and the value of 0 otherwise. Partial compliance is not credited. The company-specific Corporate Governance Index ranges from 100% compliant companies to 8% compliance.²⁸ Overall the random sample of listed companies shows 83% compliance with the SEC Corporate Governance Guidelines, equally weighted. Since larger companies have stronger corporate governance, an index weighing governance by company size (capital) raises this average to 93%.²⁹ These high levels of compliance with the existing Code of Corporate Governance suggest that Bangladesh is ready to take a step in expanding the Code coverage to other important governance areas, such as investor rights. The fact that listed companies have increased their level of sophistication and understanding of governance issues also suggests the need for SEC to step up to more stringent enforcement of the Code provisions, as the market is ready for higher quality compliance.

²⁸ Company names are not disclosed.

²⁹ Weighing by turnover instead gives an overall market governance index of 91%.

Table 2 Detailed Corporate Governance Index

Company ID Number	Issued & paid up capital (Tk. mn)	Turnover (net) (Tk. mn)	Disclosure	Corporate Oversight and the Board of Directors	Internal Control System and Audit Committee	Financial Statements	External Audit	Corporate Governance Index
1	169.17	1065.48	100%	100%	100%	100%	100%	100%
3	33.70	352.66	100%	100%	100%	100%	100%	100%
31	1750.00	5199.00	100%	100%	100%	100%	100%	100%
32	264.00	634.98	100%	100%	100%	100%	100%	100%
33	210.00	930.53	100%	100%	100%	100%	100%	100%
35	200.00	1922.06	100%	100%	100%	100%	100%	100%
36	199.60	2742.04	100%	100%	100%	100%	100%	100%
52	84.00	1924.90	100%	100%	100%	100%	100%	100%
20	13.68	16.99	86%	100%	100%	100%	100%	97%
34	828.00	2829.76	86%	100%	100%	100%	100%	97%
47	47.61	135.19	86%	100%	100%	100%	100%	97%
53	5.50	672.10	100%	80%	100%	100%	100%	97%
6	18.20	191.44	86%	100%	100%	100%	100%	97%
14	184.00	346.25	100%	80%	100%	100%	100%	97%
40	108.00	149.55	100%	80%	100%	100%	100%	97%
45	60.00	77.19	86%	100%	100%	100%	100%	97%
8	50.60	44.83	86%	100%	100%	100%	100%	97%
19	13.68	14.66	86%	100%	100%	100%	100%	97%
23	1201.79	3023.33	71%	100%	100%	100%	100%	95%
27	1200.00	3964.11	100%	80%	92%	100%	100%	95%
29	1080.00	3772.07	100%	80%	92%	100%	100%	95%
51	620.57	1235.10	100%	80%	92%	100%	100%	95%
25	1116.00	2842.34	100%	80%	91%	100%	100%	95%
28	3456.00	11158.06	100%	80%	91%	100%	100%	95%
24	950.40	2340.97	100%	80%	88%	100%	100%	94%
37	202.14	4865.95	100%	80%	88%	100%	100%	94%
2	75.57	286.97	57%	100%	100%	100%	100%	92%
30	571.74	3378.34	86%	80%	91%	100%	100%	92%
9	105.00	8.53	71%	80%	92%	100%	100%	89%
16	66.00	135.46	43%	100%	100%	100%	100%	88%
22	1547.00	5636.00	57%	80%	100%	100%	100%	88%
44	150.00	137.62	100%	40%	86%	100%	100%	88%
38	151.20	327.20	86%	80%	71%	100%	100%	88%
26	1713.76	3808.09	100%	60%	78%	88%	100%	86%
50	150.00	293.18	100%	100%	50%	100%	100%	84%
42	60.00	611.41	100%	80%	42%	100%	100%	79%
13	0.06	14.14	71%	100%	42%	100%	83%	74%
17	608.11	2.60	100%	80%	17%	100%	100%	71%
39	64.69	784.20	86%	80%	17%	100%	100%	68%
49	60.00	29.94	100%	80%	8%	100%	100%	68%
7	52.80	56.67	71%	100%	17%	100%	100%	68%
12	207.00	4.50	43%	80%	42%	100%	100%	68%
43	90.00	0.91	86%	80%	8%	100%	100%	66%
48	217.16	303.68	86%	60%	17%	100%	100%	66%
41	103.36	201.99	86%	80%	8%	100%	100%	64%
46	150.00	57.76	86%	80%	8%	100%	100%	64%
10	40.47	291.47	71%	80%	17%	88%	100%	63%
4	143.47	635.96	86%	40%	17%	100%	100%	63%
5	70.00	14.92	57%	80%	8%	88%	100%	58%
21	100.00	108.42	14%	40%	8%	13%	0%	13%
15	30.00	4.48	43%	20%	0%	0%	0%	11%
11	8.82	22.05	29%	20%	0%	0%	0%	8%
18	20.00	87.27	43%	0%	0%	0%	0%	8%
Sample, equally weighted								81%
Sample, capital-weighted								91%
Sample, turnover-weighted								93%

Bangladesh Terms/Acronyms

BAS: Bangladesh Accounting Standards
BB: Bangladesh Bank
BEI: Bangladesh Enterprise Institute
BRPD: Banking Regulations and Policy Department
BSA: Bangladesh Standards for Auditing
CA: Companies Act
CCG: Code of Corporate Governance
CDBL: Central Depository Bangladesh Limited
CDS: Central Depository System
CEO: Chief Executive Officer
CFO: Chief Financial Officer
CSE: Chittagong Stock Exchange
CSR: Corporate Social Responsibility
Cumulative voting: Cumulative voting allows minority shareholders to cast all their votes for one candidate. Suppose that a publicly traded company has two shareholders, one holding 80 percent of the votes and another with 20 percent. Five directors need to be elected. Without a cumulative voting rule, each shareholder must vote separately for each director. The majority shareholder will get all five seats, as s/he will always outvote the minority shareholder by 80:20. Cumulative voting would allow the minority shareholder to cast all his/her votes (five times 20 percent) for one board member, thereby allowing his/her chosen candidate to win that seat.
DSE: Dhaka Stock Exchange
EGM: Extraordinary General Meeting
ESOP: Employee Stock Ownership Program
GDP: Gross Domestic Product
IAS: International Accounting Standards
ICAB: Institute of Chartered Accountant of Bangladesh
ICMAB: Institute of Cost and Management Accountant of Bangladesh
IFRS: International Financial Reporting Standards
IOSCO: International Organization of Securities Commissions
ISA: International Standards on Auditing
JSC: Joint Stock Company
LR: Listing Rules
Pre-emptive rights: Pre-emptive rights give existing shareholders a chance to purchase shares of a new issue before it is offered to others. These rights protect shareholders from dilution of value and control when new shares are issued.
Proportional representation: Proportional representation gives shareholders with a certain fixed percentage of shares the right to appoint a board member.
PS: Permanent Secretary
Pyramid Structures: Pyramid structures are structures of holdings and sub holdings by which ownership and control are built up in layers. They enable certain shareholders to maintain control through multiple layers of ownership, while at the same time they share the investment and the risk with other shareholders at each intermediate ownership tier.
RPT: Related Party Transaction.
SEC: Securities and Exchange Commission
Shareholder agreement: An agreement between shareholders on the administration of the company. Shareholder agreements typically cover rights of first refusal and other restrictions on share transfers, approval of related-party transactions, and director nominations.
SOE: State Owned Enterprise
Squeeze-out right: The squeeze-out right (sometimes called a "freeze-out") is the right of a majority shareholder in a company to compel the minority shareholders to sell their shares to him. The sell-out right is the mirror image of the squeeze-out right: a minority shareholder may compel the majority shareholder to purchase his shares.
Withdrawal rights: Withdrawal rights (referred to in some jurisdictions as the "oppressed minority," "appraisal" or "buy-out" remedy) give shareholders the right to have the company buy their shares upon the occurrence of certain fundamental changes in the company.

This report is one in a series of corporate governance country assessments carried out under the Reports on the Observance of Standards and Codes (ROSC) program. The corporate governance ROSC assessments examine the legal and regulatory framework, enforcement activities, and private sector business practices and compliance, and benchmark the practices and compliance of listed firms against the OECD Principles of Corporate Governance.

The assessments:

- use a consistent methodology for assessing national corporate governance practices
- provide a benchmark by which countries can evaluate themselves and gauge progress in corporate governance reforms
- strengthen the ownership of reform in the assessed countries by promoting productive interaction among issuers, investors, regulators and public decision makers
- provide the basis for a policy dialogue which will result in the implementation of policy recommendations

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To learn more about corporate governance, please visit the IFC/World Bank's corporate governance resource
Web page at: <http://www.worldbank.org/corporategovernance>

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