

# **REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)**

## **Corporate Governance Country Assessment**

### **REPUBLIC OF INDONESIA**

**August 2004**

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The corporate governance assessment was completed as part of the joint World Bank-IMF program of Reports on the Observance of Standards and Codes (ROSC). It benchmarks the country's observance of corporate governance against the OECD Principles of Corporate Governance and is based on a template developed by the World Bank. This assessment has been undertaken by Behdad Nowroozi from the East Asia and Pacific Region of the World Bank, based on a template completed by Emmy Yuhassarie and on findings of a mission in October 2003. The draft report was discussed with the government in June 2004. The assessment of practices is based on interviews with regulators, institutional investors, financial institutions, and reputational agents such as market analysts, lawyers, accountants and auditors, as well as shareholder activists. We would like to express our gratitude to the Capital Market Supervisory Agency (Bapepam), Jakarta Stock Exchange, and the National Committee for Corporate Governance for their significant cooperation and contributions. We would also like to thank the private sector firms, accounting firms, experts on legal issues, investment bankers, and shareholder activists with whom we spoke. This draft has been prepared in collaboration with the Corporate Governance Unit of the Investment Climate Department of the World Bank, and colleagues from that unit and the East Asia and Pacific Region provided comments and advice. The ROSC assessment was cleared for publication by the Bapepam on September 5, 2004.

## I. EXECUTIVE SUMMARY

Since 2000, Indonesia has taken important steps to address the weaknesses that contributed to the economic crisis of 1997. As a result, the corporate governance framework has been strengthened. The reform agenda, however, remains unfinished. The equity markets grew significantly in 2003.<sup>1</sup> The equity markets relative to other East Asian countries, however, remain small, with a market capitalization of approximately 26 percent of the GDP in 2003.<sup>2</sup>

The ownership structure of companies in Indonesia is characterized by concentrated ownership, family-owned businesses, and controlling shareholders. The business culture is known to be relationship-based rather than rule-based. Most listed companies are either controlled by families or, in the case of state-owned enterprises, by the government.

In reforming its corporate governance and in establishing a rule-based business culture, Indonesia faces many challenges. The key challenges are:

Enforcement of laws and regulations needs to be strengthened. Administrative sanctions for violation of securities or disclosure rules may not be adequate. Efforts should be expended to ensure that corporate officials in the position of trust are held accountable when they violate the law. Sanctions should go beyond fines, and the incentive system should be changed so that violators are truly discouraged and good corporate behavior is promoted. This requires strengthening enforcement capacity of Bapepam for securities violations and its independence as the securities regulator.

The Company Law should explicitly refer to the fiduciary duties of directors and managers for violation of securities laws. Current efforts to amend the Company Law need to be expedited. Further efforts should also be expended to develop alternative (non-judiciary) mechanisms, such as shareholder activism, for encouraging compliance..

Transparency and reliability of financial reports and adequacy of disclosures remain major challenges. Transparency is a prerequisite to accountability. While Indonesian accounting standards are largely consistent with international standards, there is a gap between those standards and actual practices. The external auditors of public companies in the past have not provided the expected assurance. There is a need for greater disclosure and transparency in annual reports and financial statements, and for better quality audit of public companies. The way in which companies report income taxes and often avoid paying taxes--as well as the discretionary power of tax authorities in assessing taxes--are areas that require special attention.

Since the concept of independent commissioners has only recently been introduced for publicly listed companies and state-owned enterprises, there remains the question of whether these commissioners act independently from the controlling shareholders and exercise effective oversight. The process for nomination and selection of independent commissioners needs to be strengthened. Conducting training and promoting awareness among all stakeholders is critical to changing the business culture. Efforts to enhance the skills and knowledge of independent board members need to be expedited. Improving the roles and responsibilities of the audit committees should be a high priority. Separation of management from the owners and appointment of

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<sup>1</sup> The market capitalization increased from IDR 268 trillion in 2002 to IDR 460 trillion in 2003.

<sup>2</sup> In OECD countries, market capitalization rose from 50 percent of GDP in 1990 to 131 percent in 1999 before falling somewhat during 2000. In contrast, its share in Indonesia was 21 percent in year 2002, compared with 178 percent in Malaysia; 165 percent in Singapore; 44 percent in Thailand; and 28 percent in the Philippines.

professional managers needs to be further promoted.

Further improvements will be required to improve minority shareholder rights and the ease with which shareholders exercise those rights. These could include measures to further enhance shareholder rights by allowing minority shareholders a greater voice in the selection of commissioners (i.e. cumulative voting). Additionally, further steps should be taken to improve the process for nomination of independent commissioners by requiring establishment of nomination committees. While class action and derivative actions are allowed, these are costly and, therefore, have been limited so far to only a few cases and none with a favorable outcome. The redress available to shareholders if their rights are violated remains limited.

While Indonesia has an elaborate system of formal corporate governance rules, which in several respects may not be substantially different from OECD countries, corporate governance practices often fall short of the recommendations of the OECD Principles. The challenge now lies in raising awareness and increasing effectiveness of implementation and enforcement of legislation and regulations to improve the corporate culture and practices.

## **II. CAPITAL MARKET OVEVIEW AND INSTITUTIONAL FRAMEWORK**

As of December 2003, the total market capitalization on the Jakarta Stock Exchange (JSX) amounted to about USD 54.4billion, approximately 25.8 percent of the country's GDP. As of April 2004, the number of companies traded at JSX was 335. The turnover ratio in 2003 was 28 percent, up from 18 percent in 2002. JSX is an SRO but has not yet been demutualized.

Listed companies are required to have a minimum free float of 35 percent or 50 million shares, whichever is lower. In practice, free float estimates are believed to be less than 20 percent. The Surabaya Stock Exchange (SSX) stock market is primarily designed for smaller firms, fixed income securities, and for trading over the counter. The SSX is much smaller than the JSX, and most of the stocks listed at SSX are also listed at JSX. As of April 2004, there were 211 companies listed at SSX. Institutional investors have not played as significant a role in improving corporate governance in Indonesia as they have in other markets.

The Capital Market Supervisory Agency, known as the Bapepam, is the securities regulator. It is not a fully independent agency; it is accountable to the Minister of Finance, who appoints the chairman (no fixed term). The Bapepam's annual report is submitted to the Minister of Finance and is publicly available at the Capital Market Reference Center.

The National Committee on Corporate Governance was established in 1999 through a ministerial decree. It is responsible for strengthening, disseminating, and promoting good corporate governance principles in the private sector. Since its establishment, it has developed a Code of Good Corporate Governance.<sup>3</sup> The principal law governing stock corporations is the Company Law of No. 1/1995, and the principal law governing the stock markets is the Capital Market Law (CML) No. 8/1995. The CML contains a number of special rules applicable to listed firms. The CML is implemented by the Bapepam.

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<sup>3</sup> Additionally, NCCG has issued a Code of Good Corporate governance for banks and guidance for audit committees and independent commissioners.

### III. REVIEW OF CORPORATE GOVERNANCE PRINCIPLES

This review assesses the compliance of Indonesia to each OECD Principle of Corporate Governance. Each statement is given a benchmark, based upon the country's level of observance of the Principle.<sup>4</sup>

#### Section I: The Rights of Shareholders

**Principle IA.** The corporate governance framework should protect shareholders' rights. Basic shareholder rights include the right to: (1) Secure methods of ownership registration; (2) Convey or transfer shares; (3) Obtain relevant information on the corporation on a timely and regular basis; (4) Participate and vote in general shareholder meetings; (5) Elect members of the board; and (6) Share in the profits of the corporation.

*Assessment: Partially observed*

*Description of practice:* **(1) Secure methods of ownership registration.** The legal proof of ownership is registration in the Company Register of Shares (DPS). The DPS is maintained by each company's secretary and is a company document. Under Indonesian law, an investor registered in the DPS of the issuer is a legal shareholder entitled to exercise its shareholder rights. It is common practice in Indonesia for listed companies to appoint the Bureau of Share Registration to administer their shareholders and register share ownership in their DPS. The official central depository in Indonesia is the Indonesia Central Securities Depository (KSEI), which is responsible for providing a full range of custodial services. For deposited shares, KSEI is registered as a shareholder in DPS for the interest of investors. Participating securities firms or custodians are, in turn, registered with KSEI. Investors can register/deposit their securities in KSEI through participating securities firms or custodians. When registering with KSEI, all securities firms are required to open sub-account under their customers' names. If such a sub-account is opened, the customer becomes the beneficial and the legal owner, and then is entitled to any benefit of the share. The legal owner could also be the one who holds the power of attorney from a principal or trustee of the beneficial owner. The latter is the common practice in Indonesia.

**(2) Convey or transfer shares.** In principle, shares of listed companies are freely transferable, except for those SOEs<sup>5</sup> in strategic sectors and banks. The model Article of Association (AOA) set out by Bapepam does not allow restriction of the free transferability of shares. The transferability of shares, however, can be restrained by a shareholder agreement.

**(3) Obtain relevant information on the corporation on a timely and regular basis.** Information on the corporation can be obtained through various means. The Company Law requires a company to make annual reports available to shareholders.<sup>6</sup> Listed companies are also required by JSX to hold a public investors' meeting once a year. In practice, however, it is not uncommon for investors to have to expend additional effort to obtain information beyond that which is required to be published. The quality of information disclosed could be improved.

**(4) Participate and vote in general shareholder meetings.** Shareholders are entitled to attend

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<sup>4</sup> **Observed** means that all essential criteria are generally met without any significant deficiencies. **Largely observed** means that only minor shortcomings are observed, which do not raise any questions about the authorities' ability and intent to achieve full observance in the short term. **Partially observed** means that while the legal and regulatory framework complies with the OECD Principles, practices and enforcement diverge. **Materially not observed** means that, despite progress, the shortcomings are sufficient to raise doubts about the authorities' ability to achieve observance. **Not observed** means that no substantive progress toward observance has been achieved.

<sup>5</sup> State-owned enterprises.

<sup>6</sup> Company Law, Article 62.

GSMs.<sup>7</sup> In practice, however, minority shareholders rarely attend GSMs. Under the Company Law, shareholders representing 10 percent of the total shares (or a lesser percent as stipulated in the AOA) may ask the Board of Directors (BOD) or Board of Commissioners (BOC) to convene a GSM.<sup>8</sup>

**(5) Elect members of the board.** Under the Company Law, a limited liability company must have a two-tier board system composed of the BOD and the BOC. The BOD is in charge of day-to-day management of the company, while BOC has the duty of monitoring, overseeing and advising BOD. Members of the BOD and the BOC are both elected at the GSM. The principle of “one share, one vote” applies to shareholder resolutions. While cumulative voting is not explicitly prohibited<sup>9</sup>, cumulative voting is not explicitly specified. Only a few listed companies have established a nomination committee.<sup>10</sup> The AOA sets forth procedures for nominating, appointing, and dismissing members of the BOD and the BOC. In practice, nomination is usually made by management (or controlling shareholders, especially in SOEs). At the GSM, voting is normally conducted for the entire slate of candidates, leaving no alternative to shareholders than to approve the whole package. There is no clear mechanism available for shareholders to nominate board members.

**(6) Share in the profits of the corporation.** The GSM has the power to decide on distribution of net profit. In the case of SOEs, under the control of the government, the dominant shareholder, the decision on distribution of profit is with the government.

*Policy recommendations:* Consider taking steps to allow minority shareholders a greater voice in the selection of directors (commissioners), including the introduction of mandatory cumulative voting for directors and commissioners. Consider requiring all listed companies to establish nomination committees. Consider steps to promote the interest of minority shareholders such as support for shareholder activism and advocacy groups.

**Principle IB.** Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes, such as: (1) Amendments to the governing documents of the company; (2) The authorization of additional shares; (3) Extraordinary transactions that in effect result in the sale of the company.

*Assessment: Largely observed*

*Description of practice:* Revision of the AOA is to be decided at the extraordinary GSM. The GSM has the power to decide on the issuance of shares. This power, however, can be delegated to the BOC for a maximum of five years, and this delegation can be withdrawn by the GSM at any time. The voting requirements are commonly regulated by the company’s AOA. Major corporate transactions that in effect result in the sale of the company are to be approved by the GSM. This requires a three-fourths majority. For other decisions, quorum is reached by having a two-thirds majority. For listed companies, Bapepam regulates these matters in more detail.<sup>11</sup>

**Principle IC.** 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 them.

<sup>7</sup> General Shareholder Meetings.

<sup>8</sup> The Board of Directors is analogous to a continental European “Management Board” and the Board of Commissioners to the “Supervisory Board.” If the BOD or BOC refuse to convene the meeting, the shareholders may take their request to the District Court (Company Law, Article 67).

<sup>9</sup> Company Law, Article 46 and Article 72 allow any kind of voting if agreed upon by shareholders and stipulated in the AOA.

<sup>10</sup> Listed SOEs and large non-listed SOEs are required to have both nomination and remuneration committees.

<sup>11</sup> Bapepam Rules IX.E.1, IX.E.2, and IX.J.1

***Assessment: Largely observed***

***Description of practice:*** There are two types of GSMs: annual GSMs and extraordinary GSMs. To convene a GSM, under the Bapepam rules, companies are required to submit the details of the GSM agenda to the Bapepam seven days prior to an announcement to the public. The announcement and the notice to the public shall be made in two daily newspapers at least 28 days before the date of the GSM. Therefore, it takes a minimum of 35 days to convene a GSM. A notice to shareholders contains the information of the place, time, and agenda of the GSM. Supporting materials are not published, but made available to the shareholders at the company office, or at the meeting place of the GSM.

Shareholders can put items on the agenda.<sup>12</sup> Shareholders can also raise an item in a meeting, but this right is rarely exercised. Shareholders rarely place items on the agenda or participate actively in the shareholders meeting.

Shareholders may exercise their voting rights by proxy. Under the CL, BODs and BOCs, as well as employees of the company holding a GSM, are prohibited from acting as proxies of the shareholders to attend and exercise voting rights of the shareholders. Voting by mail is allowed, if it is stipulated in the company's AOA. Although the CL allows use of "other means" for resolutions of the GSM, in practice, the use of technology in voting is rare. There is no rule on how votes are cast. The vote may be cast by show of hand, or in the case of larger listed companies, by use of bar-code cards. In practice, voting is normally conducted by asking the question "is there anyone who disapproves?" The disapproving shareholder is often asked to explain why. This practice tends to discourage shareholders from voting against the majority shareholders.

***Policy recommendation:*** Consider strengthening shareholders' access to information on the items on the GSM agenda. Minority shareholders should have the right to make proposals in connection with a GSM. It is recommended that the use of technology be promoted to further facilitate shareholders' participation in GSM. Shareholders should be allowed to cast votes electronically. The legal framework (i.e. Capital Market Law) should also acknowledge such technology as legal evidence in the case of legal disputes.

<b>Principle ID.</b> Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.
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***Assessment: Materially not observed***

***Description of practice:*** A 5 percent rule requires any person acquiring more than 5 percent of the paid-in capital to report to Bapepam with respect to their ownership and any change of ownership within a period of no later than ten working days from the transaction date. In practice, it is not easy to find out who the ultimate owner is because the 5 percent rule can be circumvented. The 10 day reporting period is too long. The classification of shares is disclosed in the financial statements, but not in detail. Information on cross ownership or pyramid structure is only minimally disclosed in annual reports or financial statements. A majority owner of a listed company is required to be disclosed in the annual report. The disclosure stops at direct ownership. Information such as the name and address of shareholders and number of shares can be found in the DPS. Under the Company Law<sup>13</sup>, upon written request from shareholders, the Board of Directors (BOD) shall permit shareholders to conduct an inspection of DPS. The BOD may,

<sup>12</sup> Company Law, Article 70.

<sup>13</sup> Company Law, Article 86.

however, reject the shareholders' request due to confidentiality and competition considerations. Under the CL, cross-shareholding is restricted. For listed companies, cross-holdings are prohibited by the listing rules. Additionally, shareholders agreements normally are not disclosed.

*Policy recommendation:* Consider requiring adequate disclosure of the discrepancy between cash flow rights and voting rights of the controlling shareholder and cross ownership of affiliated corporations.

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

*Assessment:* **Materially not observed**

*Description of practice:* Acquisition of a public company can be done through a tender offer, a debt to equity swap, or transactions through secondary market for creeping takeover.<sup>14</sup> Transactions resulting in control changes, however, are rare as the rule is considered to be cumbersome. Anti-takeover devices are not generally available in Indonesia. They are not regulated by Bapepam, but could be regulated specifically in the AOA.

*Policy recommendation:* It is recommended that a study be conducted on how to make the market for corporate control work more effectively.

**Principle IF.** Shareholders, including institutional investors, should consider the costs and benefits of exercising their voting rights.

*Assessment:* **Materially not observed**

*Description of practice:* Institutional investors have the power to vote their shares. In practice, most institutional investors seldom attend GSM. There is no requirement for institutional investors to disclose their voting policy to the public. Such disclosures can prevent abuse of their voting rights in return for private benefit from management.

*Policy recommendation:* It is recommended that institutional investors acting in fiduciary capacity be required to disclose their voting policy.

## Section II: Equitable Treatment of Shareholders

**Principle IIA.** 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. All shareholders of the same class should be treated equally. (1) Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights attached to all classes of shares before they purchase. Any changes in voting rights should be subject to shareholder vote. (2) Votes should be cast by custodians or nominees in a manner agreed upon with the share's beneficial owner.

*Assessment:* **Partially observed**

*Description of practice:* Under the CL, each individual shareholder has the right to file a lawsuit against the company to compensate for the loss arising from unjust and unreasonable acts of the company, the GSM,<sup>15</sup> BOD or BOC. Shareholders holding at least one-tenth of the total voting shares can file a lawsuit (derivative action) against members of BOD or BOC for the company's losses caused by their negligence. The 10 percent threshold seems to be too high compared to other countries.<sup>16</sup> While class action suits are allowed, there have been only a few class action cases related to the capital market law thus far. The cost of initiating such a suit and the lack of understanding of class action suits are considered to be major obstacles. However, to minimize

<sup>14</sup> Company Law, Article 102-109 and Bapepam Rules (IX.H.1, IX.F.1, IX.F.2, IX.F.3).

<sup>15</sup> The right to file a lawsuit against the GSM is not directly intended to result in financial redress, but indirectly through a request that the company put an end to the detrimental actions and take steps to overcome the consequences resulting from those actions.

<sup>16</sup> In Korea, the threshold holding for shareholders to file a derivative action against directors, statutory auditors and controlling shareholders has been reduced from 5 to 1 percent for non-listed firms, and as low as 0.01 percent for listed firms.

costs and shorten the process of dispute resolution, the Indonesian Capital Market Arbitration Board was set up in 2002 as an alternative to court settlement. The Supreme Court Regulation issued in 2002 provides guidance on the procedures.

Non-common shares with special voting rights have to be stipulated in the AOA. Listed companies must issue common shares with one vote.<sup>17</sup> In SOEs, the government holds a “golden share.” Custodian banks may vote the shares in custody if their true owners give proxy, which is common. When an investor opens an account in a securities company, the investor can determine whether or not he/she wants to delegate the voting right to the security company. Although the CL or the Bapepam rules do not explicitly recognize the principle that shareholders must be treated equally in proportion to their shareholding, the equality principle is recognized in various contexts. For example, the Bapepam rule on tender offers prevents different treatment of the shareholders of the same class.

*Policy recommendation:* It is recommended that steps be taken for making it easier for shareholders and investors to file class suits against directors and managers for breaches of duty and violations of the law, such as lowering the threshold for filing lawsuits against members of BOD or BOC.

**Principle IIB.** Insider trading and abusive self-dealing should be prohibited.

*Assessment: Partially observed*

*Description of practice:* Insider trading: Securities trading based on material non-public information is strictly prohibited under the Capital Market Law and Bapepam Rules. Bapepam has the responsibility to closely monitor insider trading and market manipulation. Enforcement of insider trading rules, however, can be improved. Thus far, two cases have been filed in connection with insider trading violations for the last five years. Lack of criminal enforcement of the insider trading rules may be due to the inadequate understanding of the Capital Market Law on the part of police officers, prosecutors and judges. Bapepam can impose administrative sanctions, such as fines. The public perception, however, is that the level of administrative sanctions is not high enough to deter irregularities. Violators are also subject to criminal sanctions, including imprisonment for up to ten years.

Self-dealing: Bapepam sets forth a detailed set of rules on related party transactions. The Bapepam rules require certain related party transactions to be approved by independent shareholders, other than the controlling shareholder.<sup>18</sup> The scope of those related party transactions subject to shareholder approval has been explicitly described in a Baprapem Rule, but in practice, is not well understood. In practice, a certain degree of legal uncertainty exists in this area.

*Policy recommendation:* It is recommended that market surveillance on the part of Bapepam and JSX be strengthened, including insider trading rules. Provide special training programs for enhancing the understanding of insider trading rules on the part of those involved in law enforcement on a regular basis. It is also recommended that the definitions of related party transactions be further clarified to minimize legal uncertainty.

**Principle IIC.** Members of the board and managers should be required to disclose any material interests in transactions or matters affecting the corporation.

<sup>17</sup> Company Law, Article 46.

<sup>18</sup> Bapepam Rule 1X.E.1.

***Assessment: Partially observed***

***Description of practice:*** There is no specific requirement in the CL for disclosure of conflicts of interest on the part of directors or managers. As the Bapepam rules require shareholder approval for certain related party transactions,<sup>19</sup> it may be reasonable to conclude that directors and commissioners (of a listed company at least) are subject to the duty to disclose to the company any potential conflict with the company. Indonesian GAAP also has a detailed set of rules requiring disclosure of certain related party transactions.

***Policy recommendation:*** It should be made more explicit under the Bapepam rules, or the CL, that directors, controlling shareholders and other related parties have the duty to make full disclosure to the company on the conflict of interest or related party transaction in question.

### **Section III: Role of Stakeholders in Corporate Governance**

**Principle IIIA.** The corporate governance framework should recognize the rights of the stakeholders as established by law and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises. The corporate governance framework should assure the rights of stakeholders that are protected by law are respected.

***Assessment: Partially observed***

***Description of practice:*** Indonesia is a civil law country. Although it does not recognize the right of employees in the company decision-making process, the company must consider the interest of its employees.<sup>20</sup> The basic rights of employees are provided under the CL. The labor law provides for a “collective labor agreement” for settling labor disputes, for which the company establishes a three-party body consisting of representatives from government, labor unions, and work providers. Under the recent Labor/Manpower Law, additional provisions related to severance payment and termination are provided.

In the restructuring process, creditors can file a petition to the Commercial Court, or negotiate themselves, or seek out-of-court settlements. Since accurate information on secured assets is not available, the rights of creditors are not well protected. There is no centralized database where creditors can verify whether a movable or immovable asset has been placed as collateral or pledged. In case of pledged shares, KSEI does not have access to underlying agreements and has to rely on the good faith of both the pledgor and the pledgee.

***Policy recommendation:*** It is recommended that pledged shares be required to be reported to and registered in the DPS by both debtor and creditor. It is also important that the same information be provided to the KSEI.

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

***Assessment: Partially observed***

***Description of practice:*** There is no mechanism that provides for an efficient, transparent, and predictable method of assessing the status of assets recovered, including seizure and sale of immovable and movable assets. Under the CL, creditors have the right to liquidate collateral for redress. For other stakeholder issues, such as employee and environmental issues, in practice, the media is being used as the main channel of expressing grievances. Reporting to NGOs is currently the prevalent mechanism.

<sup>19</sup> Bapepam Rule 1X.E.1.

<sup>20</sup> Company Law, Article 36 and 104.

**Principle IIIC.** The corporate governance framework should permit performance-enhancing mechanisms for stakeholder participation.

**Assessment:** *Partially observed*

**Description of practice:** Unless otherwise stipulated in the AOA, under the Company Law, in the case of issuing new capital, the company should offer preemptive rights to the existing shareholders. The concept of share options has been implemented to publicly listed companies since 1999.<sup>21</sup>

**Principle IIID.** Where stakeholders participate in the corporate governance process, they should have access to relevant information.

**Assessment:** *Partially observed*

**Description of practice:** While creditors have the right to access company information, their rights are limited. Stakeholders' access to company information is not adequate.

**Policy recommendation:** It is recommended that adequate company information be made accessible to all stakeholders by making the annual reports and other company information accessible publicly on the company website or on a public website.

## Section IV: Disclosure and Transparency

**Principle IVA.** 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. Disclosure should include, but not be limited to, material information on: (1) The financial and operating results of the company; (2) Company objectives; (3) Major share ownership and voting rights; (4) Members of the board and key executives, and their remuneration; (5) Material foreseeable risk factors; (6) Material issues regarding employees and other stakeholders; and (7) Governance structures and policies.

**Assessment:** *Partially observed*

**Description of practice:** Public companies must submit to Bapepam, their annual (audited) and semi-annual (reviewed) statements prepared in accordance with generally accepted accounting principles in Indonesia, and each public company must publish its annual financial statements in the newspapers.<sup>22</sup> In addition, JSX and SSX require publicly listed companies to submit quarterly financial statements. Under the Company Law, the Board of Directors must submit the annual report to the GSM.<sup>23</sup> Companies are required to report to Bapepam, and announce to the public, any material public information or events that may affect the price of securities or investors' decisions, no later than two working days after the event has occurred. Such events include mergers and changes in control or significant change in management<sup>24</sup>. Omission of disclosure or failure to report/disclose in a timely manner causes imposition of administrative sanctions.<sup>25</sup> In practice, minority shareholders often do not have access to minutes of directors' meetings.

Company objectives are stated in the articles of incorporation, prospectus and/or in the Registration Statement. Companies are required to include in their annual reports information concerning future objectives, development of the company, material changes since registration, and business activities.<sup>26</sup>

Information on share ownership and voting rights is recorded in the DPS and the Special Share Register, where a list of shares owned by directors, commissioners, and the family members or

<sup>21</sup> Bapepam has prepared a draft of Employee Stock Options Plan scheduled to be released in the near future.

<sup>22</sup> Bapepam Rule X.K.2

<sup>23</sup> Law 1/1995, Article 56 and Bapepam Rule VIII.G.2.

<sup>24</sup> Bapepam Rule X.K.1.

<sup>25</sup> Number of companies fined for violation of disclosure requirements have varied between 295 in 1999 and 186 in 2002.

<sup>26</sup> Bapepam Rule VIII.G.2.

affiliates is maintained. All listed companies are now scripless. For scripless trading, DPS is automatically updated. Directors, commissioners and shareholders with ownership in excess of 5 percent of paid in capital are required to report their ownership details to Bapepam and disclose the detail in the financial statements.<sup>27</sup> Information on preferential rights and privileges and special limitations for each type of share should be disclosed separately in the notes to the financial statements.<sup>28</sup> There is no requirement to disclose the identity of the ultimate beneficial owners of the shares. In practice, companies identified with certain major conglomerates and majority shareholders disclose the names of the first-level shareholders, the group affiliation and related parties, which may include the names of the ultimate beneficial owners. There is no requirement for members of the board of directors and commissioners to report to the company on their families shareholding in the company.<sup>29</sup> However, Bapepam Rules require members of the board, commissioners and shareholders with ownership in excess of 5 percent of paid-in capital to report to Bapepam on their shareholding in the company.<sup>30</sup>

Companies are required to include in their annual reports the names of the members of the board and commissioners, and their salaries and other allowances.<sup>31</sup> Salaries and compensations to directors, commissioners and majority shareholders who are also employees are treated as a matter of conflict of interest if the overall amount of the compensation is not disclosed in the periodic financial statements and thus requires approval of the shareholders in GSMs.<sup>32</sup> In practice, remuneration is usually disclosed in aggregate. Companies are required to include in their annual reports (as part of Management's Discussion and Analysis), *inter alia*, exposure to risks caused by competition, supply of raw materials, rules and international regulations, foreign currency exchange rates or interest rates and any measures they have taken to hedge risks resulting from foreign currency exposures.<sup>33</sup> There is no discussion of risks related to internal controls. Companies should disclose the number of employees at the end of the period. Matters and transactions affecting employees are also required to be disclosed in the notes to the financial statements. In practice, however, not all companies are willing to disclose such information.

The Registration Statement, Prospectus and Articles of Association of the companies include discussion on the division of authority between shareholders, BOD and BOC as well as the qualifications, duties and responsibilities, and meetings of the members of the boards of directors and commissioners, and the meetings of the shareholders.<sup>34</sup> There is no requirement for companies to disclose their compliance with the Code of Good corporate Governance. However, the principles of good corporate governance have been adopted in the Bapepam rules. There is, however, a new requirement that the President Director and the Finance Director attest to the accuracy of the financial reports submitted to Bapepam.<sup>35</sup>

***Policy recommendation:*** For listed firms, additional steps should be taken to facilitate investors' access to company information, including making annual reports available to the shareholders through the Internet. It is recommended that consideration be given to require listed companies

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<sup>27</sup> Bapepam Rules X.M.1, VIII.G.7 and Circular Letter SE-02/PM/2002.

<sup>28</sup> SFAS 21.

<sup>29</sup> Company Law 1/1995.

<sup>30</sup> Bapepam Rule X.M.1.

<sup>31</sup> Company Law, Article 56.

<sup>32</sup> Bapepam Rule IX.E.1.

<sup>33</sup> Bapepam Rules IX.B.1, IX.C.2 and VIII.G.2.

<sup>34</sup> Bapepam Rules IX.B.1 and IX.C.2.

<sup>35</sup> Bapepam Rule VIII.G.11 issued in December 2003.

to report on their state of internal controls and that external auditors render an opinion on such reporting in the future. It is recommended that disclosures relating to companies' governance structure be improved, particularly with respect to independence of commissioners, rights of minority shareholders, and responsibilities of directors/commissioners.

**Principle IVB.** Information should be prepared, audited and disclosed in accordance with high quality standards of accounting, financial and non-financial disclosure, and audit.

**Assessment: *Partially observed***

**Description of practice:** Annual financial statements must be prepared in accordance with Indonesian Financial Reporting Standards (PSAK), which are largely adapted from International Financial Reporting Standards (IFRS) and issued by the Indonesian Institute of Accountants (IAI).<sup>36</sup> In a case in which a particular accounting standard has not been issued, IFRS or US Generally Accepted Accounting Principles (GAAP) are followed. The IIA has the primary responsibility for issuing accounting standards and rules. It issues Financial Accounting Standards and, since 1994, has followed a program to harmonize with International Financial Reporting Standards in developing Indonesian standards. There are, however, inconsistencies between the Indonesian accounting standards and IFRS, particularly for those standards that have been modified to suit the local requirements. The Central Bank and Bapepam also issue accounting standards and principles for the banking sector and the capital market. In conducting audits of listed companies the auditors have to follow the Indonesian Generally Accepted Auditing Standards (GAAS) issued by Public Accountants' Compartment of IAI. These standards are said to be materially in conformity with International Standards on Auditing (ISA).<sup>37</sup> While Bapepam has issued guidance on the preparation of financial statements,<sup>38</sup> in practice, the quality of financial statements is not fully consistent with international standards and practices.

**Policy recommendation:** It is recommended that Indonesia improve its national accounting standards and practices by fully adopting International Financial Reporting Standards, issuing related guidelines, and providing training.

**Principle IVC.** An annual audit should be conducted by an independent auditor in order to provide external and objective assurance on the way in which financial statements have been prepared and presented.

**Assessment: *Partially observed***

**Description of practice:** Appointment and dismissal of auditors, as proposed by BOD, is subject to confirmation by the GSM. Ethics and standards of auditors are regulated by Public Accountants Compartment (PAC) of IAI. One of the sections of the Code of Ethics and Public Accountants Professional Standards (SPAP) revised in 2001, consists of integrity, independence and objectivity. The SPAP defines what constitutes "independence of auditors" and, in order to ensure objectivity, elaborates on several aspects of professional standards to be observed in undertaking an audit. To enhance independence, listed companies and non listed companies, are required to change auditors every three years and the auditing firms every five years. Multi-disciplinary practices are prohibited from rendering non-audit services by auditors of a company. Non-audit services are clearly defined and include bookkeeping, internal audit, consulting for management, valuations, human resources and investment advisory.<sup>39</sup> The SPAP is based on Professional Standards of the American Institute of Certified Public Accountants (AICPA). Given

<sup>36</sup> Ikatan Akuntan Indonesia.

<sup>37</sup> An Accounting and Auditing ROSC is planned for 2004.

<sup>38</sup> Bapepam Rule V111.G.7.

<sup>39</sup> Bapepam Rule VIII.A.2/2002.

the changes in international auditing standards, however, the Indonesian SPAP needs further revisions. In practice, the quality of audit of public companies varies.

While there are elaborate reporting requirements, the weak enforcement environment negates incentives and sanctions that support strong and reliable financial reports. Under the Civil Code and in conjunction with various company, capital market and banking laws and regulations, parties that suffer losses due to audit failures may sue auditors. However, investors or shareholders have never filed a class lawsuit against a public accounting firms. The Bank of Indonesia (which has a wide-ranging authority to impose sanctions and fines) has removed auditors from the Bank of Indonesia's auditors list, but has not recommended revoking their licenses to the authorized agency due to ethics violations. The recent Ministry of Finance Decree regulates the public accountants performance and liability.<sup>40</sup> The authority to appoint the independent auditor rests with the GSM. However, the GSM may delegate the authority for appointment of the independent auditor to the audit committee. In order to strengthen the independence of the external auditor, the role of the audit committee in the appointment of the auditor must be strengthened.<sup>41</sup>

*Policy recommendation:* It is recommended that the draft Public Accountant Law adequately strengthen accountants' legal liability, particularly with respect to third parties and with respect to the ease with which legal suits can be filed against accountants in cases of fraud and gross negligence. It is recommended that International Auditing Standards and related pronouncements be fully adopted and that adequate training be provided. It is also recommended that independent auditors be appointed by the audit committee, rather than by the GSM. Further effort should be expended to improve the quality of audit of public companies, including strengthening the quality review of auditors.

**Principle IVD.** Channels for disseminating information should provide for fair, timely and cost-efficient access to relevant information by users.

***Assessment: Partially observed***

*Description of practice:* Companies are required to publish their annual financial statements (including public accountant's opinion) in Indonesian in local newspapers, no later than the end of the third month after the date of the financial statements. Under the CL, companies' annual reports are required to be submitted to the GSM no later than five months after the end of the fiscal year. Those companies issuing shares should submit their annual reports 14 days prior to the GSM.<sup>42</sup> The public is allowed access at the Capital Markets Reference Center to documents related to the capital markets, including annual reports, periodic financial statements, registration statements, prospectus, business license applications and a whole range of documents filed by companies with Bapepam.<sup>43</sup> No fees are involved other than the cost of photocopying. In practice, there is an issue of selective disclosure. Public companies tend to provide additional or more information, beyond that which is publicly available, to some groups such as fund managers and analysts. However, this is considered inside information.<sup>44</sup> While an abbreviated version is published in the newspapers, full financial statements are made available through the corporate secretary of the company. There is no requirement that annual reports be posted on the company's website.

<sup>40</sup> Ministry of Finance Decree 359/2003.

<sup>41</sup> The Sarbaes Oxley Act in the U.S. provides an example of good practices for audit committees.

<sup>42</sup> Company Law, Article 56 and Bapepam Rule VIII.G.2.

<sup>43</sup> Bapepam Rule III.A.I.

<sup>44</sup> Company Law, Article 96.

*Policy recommendation:* It is recommended that consideration be given to reducing the five-month period for submission of annual reports to three months and to mandating that annual reports be sent to all shareholders and posted on the company website.

## Section V: Responsibilities of the Board

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

*Assessment: Partially observed*

*Description of practice:* Under the CL<sup>45</sup>, a limited liability company must have a two-tier board system composed of the BOD and the BOC. The BOD is in charge of day-to-day management of the company, while the BOC has the duty of monitoring, overseeing and advising the BOD. The BOD's authority includes an authority to act, enter into a transaction on behalf of the company, and represent the company in and out of court proceedings. The average size of the board is approximately four to seven board members and three to five commissioners. While the CL is silent, JSX regulations require that 30 percent of the commissioners must be independent of the company. The chair of the audit committee is required to be an independent commissioner.<sup>46</sup> The CL, however, does not include detailed provisions on fiduciary duties, such as the duty of care and the duty of loyalty. As the BOC is to monitor the performance of the BOD, the members of the BOC should be independent from the BOD.

*Policy recommendation:* It is recommended that the duties and accountabilities of independent commissioners be further clarified under the CL and the Capital Market Law. It is also recommended that current efforts to amend the CL be expedited.

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

*Assessment: Partially observed*

*Description of practice:* The BOD is not allowed to discriminate among shareholders of the same class. Under the CL, shareholders may challenge BOD's decisions, even those that are made in the best interest of the company, on the grounds that the decision affect them unfairly.<sup>47</sup>

*Policy recommendation:* It is recommended that the CL explicitly require that the board treat all shareholders fairly. Under such a provision, it would be easier for the shareholders who are affected unfairly by a corporate decision to file a suit against management.

**Principle VC.** The board should ensure compliance with applicable law and take into account the interests of stakeholders.

*Assessment: Partially observed*

*Description of practice:* Under the CL, there is no explicit reference to the responsibility of directors and commissioners for compliance with laws and regulations. A Bapepam rule requires listed companies to have a corporate secretary or assign the function to a member of the BOD or an officer under the BOD.<sup>48</sup> The duties of the corporate secretary are similar to those of a compliance officer. The corporate secretary is accountable to the BOD. A JSX regulation<sup>49</sup>

<sup>45</sup> Company Law, Article 79.

<sup>46</sup> Bapepam Rule 1X.15.

<sup>47</sup> Company Law, Articles 56, 85,98.

<sup>48</sup> Bapepam Rule 1X 1.4 (1996).

<sup>49</sup> JSX Rule 10-1-A/2001.

requires activities of the audit committee to be disclosed in the annual report. The audit committee is to oversee the company decisions and actions to ensure that it does not violate the existing regulations. Regarding stakeholder interests, the CL does not impose any duty on the BOD or BOC. In practice, however, banks, listed companies and SOEs are expected to comply with the Code on Good Corporate Governance.

*Policy recommendation:* It is recommended that consideration be given to requiring the BOD and BOC of listed companies to include in the annual report a statement on their responsibilities for establishing and maintaining adequate internal controls over financial reporting and compliance with applicable laws and regulations, as well as an assessment of effectiveness of their internal control system consistent with international best practice. Such an assertion should be certified by the external auditor.<sup>50</sup>

**Principle VD.** The board should fulfil certain key functions, including the following: (1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures; (2) Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning; (3) Reviewing key executive and board remuneration, and ensuring a formal and transparent board nomination process; (4) Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions; (5) Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law; (6) Monitoring the effectiveness of the governance practices under which it operates and making changes as needed; and (7) Overseeing the process of disclosure and communications.

*Assessment: Partially observed*

*Description of practice:* Due to the two tier system, the above functions are carried out by either the BOD or BOC. The relevant governing body in this context is largely the BOC. The CL is not specific as to the functions of the BOC. The JSX rules, however, require that the BOC be in charge of the above functions, except that the BOC does not appoint the members of the BOD. The JSX rules specifically require listed companies to establish audit committees. Establishment of remuneration and nomination committees is not mandatory. It is within the authority of the BOD and BOC to decide whether such committees should be established. The audit committee is established by, and accountable to, the BOC. Audit committees consist of at least one independent commissioner and at least two outsiders, who are not members of the BOC. The concept of the audit committee is new, and audit committees are generally perceived to be neither effective nor adequately equipped to discharge their responsibilities.

*Policy recommendation:* It is recommended that listed companies be required to establish remuneration and nomination committees. It is recommended that the effectiveness of audit committees be improved, including measures to clarify and strengthen the role and function of audit committees, consistent with international best practice.<sup>51</sup> Audit committee members should continuously upgrade their knowledge and skills, e.g. through one of the institutions that provide directors' training.

**Principle VE.** The board should be able to exercise objective judgment on corporate affairs independent, in particular, from management.

*Assessment: Partially observed*

*Description of practice:* The CL does not require independence for members of the BOC. The JSX regulations now require listed companies to fill at least one-third of the BOC with

<sup>50</sup> An example of good practice is the recent Sarbanes-Oxley Act of 2002 in the U.S. that requires each annual report of an issuer to contain an "internal control report." Each issuer's auditor needs to attest to and report on the assertion made by the management of the issuer.

<sup>51</sup> Examples of good practices are the Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees and the recommendations of the NYSE Listing Committee issued in 2002.

independent commissioners. The audit committee is to be chaired by an independent commissioner. In practice, there is no mechanism available to shareholders to select/nominate independent commissioners. The GSM normally approves the BOD's proposal for independent commissioner. The CL and the JSX Rules define the qualifications of commissioners. In practice, however, the BOC is often not independent from the BOD. Attendance records at board meetings are kept by the BOD, but attendance lists are not disclosed even to the regulatory bodies. Under the law, there is no specific requirement related to the time to be spent by the members of the BOD or BOC on discharging their responsibilities. For directors in the banking sector, however, members of the BOD are not allowed to serve on more than one board of directors, fill more than one position as commissioner, or serve on an executive level in other banks, companies, or financial institutions. In practice, the maximum term allowed for a director varies from three to five years as stipulated in the AOA. It can, however, be renewed for another term. It may be better for the BOC to have power to fire members of BOD. Without such power, it would be difficult for the BOC to exercise effective control.

*Policy recommendation:* It is recommended that the independence of the commissioners be further defined under the Code on Good Corporate Governance. In order to ensure that the BOC functions independently of the BOD, consider expanding the role and responsibility of the BOC and improving the process for nomination and selection of independent commissioners. Require establishment of nomination and remuneration committees for all listed companies.

**Principle VF.** In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.

*Assessment: Partially observed*

*Description of practice:* The CL is not explicit as to the BOC's access to corporate information. Under the CL, the BOC is empowered to supervise and advise the BOD. This implies that BOC can request and access any corporate information to fulfill those responsibilities.<sup>52</sup> The JSX rule also requires that company appoint independent commissioners.<sup>53</sup> In practice, however, members of the BOC are not aware of their rights and responsibilities.

*Policy recommendation:* It is recommended that the CL be revised to explicitly entitle the BOC to have access to relevant corporate information. Additionally, further efforts should be expended to intensify training of commissioners on their duties and accountabilities.

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<sup>52</sup> Company Law, Article 97 and 98.

<sup>53</sup> JSX Rule 1-A.

## ANNEX A: SUMMARY OF OBSERVANCE OF OECD CORPORATE GOVERNANCE PRINCIPLES

PRINCIPLE	O	LO	PO	MO	NO	Comment
<b>I. THE RIGHTS OF SHAREHOLDERS</b>						
IA Basic shareholder rights			X			<ul style="list-style-type: none"> <li>In practice, minority shareholders rarely attend GSMs and have difficulty obtaining some information.</li> <li>Only a few companies have nomination committees.</li> </ul>
IB Rights to participate in fundamental decisions.		X				<ul style="list-style-type: none"> <li>GSM decides on issuance of shares, delegation possible.</li> <li>Major corporate transactions approved by ¾ majority GSM.</li> </ul>
IC Shareholders AGM rights		X				<ul style="list-style-type: none"> <li>Shareholders can put items of agenda, vote by proxy and mail, though usually by show of hands.</li> <li>In practice, disapproving shareholder must explain why, discouraging minority shareholders from voting against.</li> </ul>
ID Disproportionate control disclosure				X		<ul style="list-style-type: none"> <li>Insufficient disclosure of cross ownership, pyramid structures, majority owners and shareholder agreements.</li> <li>Board may reject shareholder's request to inspect Company Register due to confidentiality considerations.</li> </ul>
IE Control arrangements should be allowed to function.				X		<ul style="list-style-type: none"> <li>Anti-takeover devices are not generally available.</li> <li>Transactions resulting in control changes are rare as the rules are cumbersome.</li> </ul>
IF Cost/benefit to voting				X		<ul style="list-style-type: none"> <li>Institutional investors seldom attend GSMs and are not required to disclose their voting policy to the public.</li> </ul>
<b>II. EQUITABLE TREATMENT OF SHAREHOLDERS</b>						
IIA All shareholders should be treated equally			X			<ul style="list-style-type: none"> <li>Shareholders holding 10% of total voting shares can bring a derivative action.</li> <li>Very few class action suits brought, due to cost and lack of understanding of class action suits.</li> </ul>
IIB Prohibit insider trading			X			<ul style="list-style-type: none"> <li>Enforcement of insider trading rules is weak.</li> <li>Legal uncertainty in area of related party transactions.</li> </ul>
IIC Board/Mgrs. disclose interests			X			<ul style="list-style-type: none"> <li>No explicit rule for directors to have duty to disclose related party transactions, though can be inferred.</li> </ul>
<b>III. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE</b>						
IIIA Stakeholder rights respected			X			<ul style="list-style-type: none"> <li>Recent Labor/Manpower Law to protect workers.</li> <li>Rights of creditors are not well protected.</li> </ul>
IIIB Redress for violation of rights			X			<ul style="list-style-type: none"> <li>No mechanism for an efficient, transparent, predictable method of assessing status of assets recovered.</li> <li>For employees and environmental issues, the media and reporting to NGOs is the prevalent mechanism.</li> </ul>
IIIC Performance enhancement			X			<ul style="list-style-type: none"> <li>Share options concept has been in existence for publicly listed companies since 1999.</li> </ul>
IIID Access to information			X			<ul style="list-style-type: none"> <li>Creditors have limited rights to access company information.</li> <li>Stakeholder access to company information is inadequate.</li> </ul>
<b>IV. DISCLOSURE AND TRANSPARENCY</b>						
IVA Disclosure standards			X			<ul style="list-style-type: none"> <li>In practice, minority shareholders often do not have access to minutes of directors', and not all companies disclose material issues regarding employees and other stakeholders.</li> </ul>
IVB Standards of accounting & audit			X			<ul style="list-style-type: none"> <li>In practice, the quality of financial statements is not fully consistent with international standards and practices.</li> </ul>
IVC Independent audit annually			X			<ul style="list-style-type: none"> <li>The weak judicial environment negates many of the incentives and sanctions that support strong and reliable financial reports.</li> <li>Investors/shareholders have never filed a class action suit against a public accounting firm.</li> </ul>
IVD Fair & timely dissemination			X			<ul style="list-style-type: none"> <li>Submission of annual financial statements no later than five-months after end of fiscal year.</li> <li>In practice, there is the issue of selective disclosure.</li> </ul>
<b>V. RESPONSIBILITIES OF THE BOARD</b>						
VA Acts with due diligence, care			X			<ul style="list-style-type: none"> <li>The Company Law does not include detailed provisions on fiduciary duties e.g. duty of care, duty of loyalty.</li> </ul>

PRINCIPLE		O	LO	PO	MO	NO	Comment
VB	Treat all shareholders fairly			X			<ul style="list-style-type: none"> <li>Company law does not explicitly require that the board treat all shareholders fairly.</li> </ul>
VC	Ensure compliance w/ law			X			<ul style="list-style-type: none"> <li>Listed companies are required to have a corporate secretary/compliance officer, and activities of the audit committee should be disclosed in the annual report.</li> <li>The CG Code discusses stakeholder interests, but is not mandatory.</li> </ul>
VD	The board should fulfill certain key functions			X			<ul style="list-style-type: none"> <li>Establishment of audit committees are mandatory, but remuneration and nomination committees are not.</li> </ul>
VE	The board should be able to exercise objective judgment			X			<ul style="list-style-type: none"> <li>In practice, the BOC is often not independent from the BOD.</li> <li>There is no specific requirement related to the time spent by board members on discharging their responsibilities.</li> </ul>
VF	Access to information			X			<ul style="list-style-type: none"> <li>The Company Law does not specifically entitle the BOC to have access to relevant corporate information.</li> </ul>

## Annex B: Summary of Key Policy Recommendations

<b>I. THE RIGHTS OF SHAREHOLDERS</b>	
IA	Basic shareholder rights <ul style="list-style-type: none"> <li>• Allow minority shareholders greater voice in director selection, e.g. cumulative voting.</li> <li>• Require listed companies to establish nomination and remuneration committees.</li> <li>• Consider steps to promote the interest of minority shareholders, e.g. shareholder activism</li> </ul>
IB	Rights to participate in fundamental decisions. <p style="margin-left: 20px;">NA</p>
IC	Shareholders AGM rights <ul style="list-style-type: none"> <li>• Strengthen shareholder access to information on the items on the GSM agenda.</li> <li>• Provide minority shareholders the right to make proposals in connection with a GSM.</li> <li>• Promote use of technology to further facilitate shareholder participation in GSM.</li> </ul>
ID	Disproportionate control disclosure <ul style="list-style-type: none"> <li>• Consider requiring adequate disclosure of the discrepancy between cash flow rights and voting rights of the controlling shareholders, and cross ownership of affiliated corporations.</li> </ul>
IE	Control arrangements should be allowed to function. <ul style="list-style-type: none"> <li>• Conduct a study on how to make the market for corporate control work more effectively.</li> </ul>
IF	Cost/benefit to voting <ul style="list-style-type: none"> <li>• Require institutional investors to disclose their voting policy.</li> </ul>
<b>II. EQUITABLE TREATMENT OF SHAREHOLDERS</b>	
IIA	All shareholders should be treated equally <ul style="list-style-type: none"> <li>• Take steps to make it easier for shareholders and investors to file class action suits, including lowering the threshold for filing lawsuits.</li> </ul>
IIB	Prohibit insider trading <ul style="list-style-type: none"> <li>• Strengthen market surveillance on the part of Bapepam and JSX.</li> <li>• Provide special training on insider trading rules and further clarify definition of related party transactions.</li> <li>• Definitions of related party transactions should be further clarified.</li> </ul>
IIC	Board/Mgrs. disclose interests <ul style="list-style-type: none"> <li>• Make explicit under Bapepam or the Company Law that directors and related parties have the duty to make full disclosure to the company on the conflict of interest or related party transactions.</li> </ul>
<b>III. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE</b>	
IIIA	Stakeholder rights respected <ul style="list-style-type: none"> <li>• Require that pledged shares are reported and registered in the Company Share Register.</li> </ul>
IIIB	Redress for violation of rights <p style="margin-left: 20px;">NA</p>
IIIC	Performance enhancement <p style="margin-left: 20px;">NA</p>
IIID	Access to information <ul style="list-style-type: none"> <li>• Make adequate company information accessible to all stakeholders by making annual reports and other company information available on the company or on a public website.</li> </ul>
<b>IV. DISCLOSURE AND TRANSPARENCY</b>	
IVA	Disclosure standards <ul style="list-style-type: none"> <li>• Require listed companies to make their annual reports available to shareholders through the Internet.</li> <li>• Require listed companies to report on their state of internal control.</li> <li>• Improve disclosure relating to companies' governance structure.</li> </ul>
IVB	Standards of accounting & audit <ul style="list-style-type: none"> <li>• Adopt International Financial Reporting Standards fully.</li> </ul>
IVC	Independent audit annually <ul style="list-style-type: none"> <li>• Adopt International Auditing Standards fully and related pronouncements.</li> <li>• Strengthen accountants legal liability particularly with respect to third parties.</li> </ul>
IVD	Fair & timely dissemination <ul style="list-style-type: none"> <li>• Consider reducing the period for submission of annual reports.</li> </ul>
<b>V. RESPONSIBILITIES OF THE BOARD</b>	
VA	Acts with due diligence, care <ul style="list-style-type: none"> <li>• Further clarify the duties and accountabilities of independent commissioners.</li> </ul>
VB	Treat all shareholders fairly <ul style="list-style-type: none"> <li>• Explicitly require under the Capital Market Law that the boards treat all shareholders fairly.</li> </ul>

VC	Ensure compliance w/ law	<ul style="list-style-type: none"> <li>• Require BODs and BOCs to include in their annual reports a statement on their responsibilities for establishing and maintaining adequate internal control over financial reporting</li> <li>• Require an assessment of effectiveness of the internal control system be put in place consist with international best practice.</li> </ul>
VD	The board should fulfill certain key functions	<ul style="list-style-type: none"> <li>• Improve duties and effectiveness of audit committee consistent with international best practice.</li> </ul>
VE	The board should be able to exercise objective judgment	<ul style="list-style-type: none"> <li>• Consider expanding the role and responsibilities of BOCs. Require establishment of nomination committees for listed companies.</li> </ul>
VF	Access to information	<ul style="list-style-type: none"> <li>• Revise the Capital Market Law to explicitly entitle the BOC to have access to relevant corporate information.</li> </ul>