



THE WORLD BANK

# Report on the Observance of Standards and Codes (ROSC)

Corporate Governance

## Corporate Governance Country Assessment

Kingdom of Saudi Arabia  
February 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

Saudi Arabia

February 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 the Kingdom of Saudi Arabia (KSA) 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 KSA.

The corporate governance laws, regulations, and institutions that have been put in place generally reflect international good practice. In the wake of the market correction of 2006, market regulators focused on the need for better corporate governance via legal and institutional reforms. These included passing a Corporate Governance Regulation (CGR) for listed companies (2006), and further strengthening the supervisory functions across the financial sector. However, many of the laws and institutions are still relatively new and untested; awareness of the importance of good corporate governance is low, and implementation by companies in its early stages.

The report makes a number of recommendations to continue the process of bringing the corporate governance framework in line with international good practice, including some recommended adjustments to the CGR, additional focused enforcement efforts, and more steps to turn the “law on the books” into practice. Particular areas of emphasis are the disclosure of ownership information and other non-financial disclosure. The Capital Markets Authority (CMA) and the Saudi Arabian Stock Exchange (Tadawul) should continue to build their credibility through clear and transparent coordination arrangements with other authorities. Perhaps most importantly, CMA and the Saudi Arabian Monetary Authority (SAMA) should work to build awareness of the importance of corporate governance among companies, shareholders, and stakeholders, and encourage the development of director training programs to build a cadre of qualified directors. The enhancement of corporate governance practices remains instrumental to better protect investors, enhance company oversight, and increase confidence in capital markets.

## **Acknowledgements**

This assessment of corporate governance in KSA was conducted in 2008 by Pasquale Di Benedetto and Alexander Berg with the support of Sebastian Molineus, from the Corporate Governance Group, part of the Global Capital Markets Development Department of the World Bank, as part of the Reports on Observance of Standards and Codes (ROSC) Program. The report was based on a template/questionnaire completed by the law firm Talal Abu-Ghazaleh. The assessment reflects technical discussions with a number of private and public sector institutions, as well as other relevant stakeholders, whom the World Bank would like to thank. The interlocutors include: Saudi Capital Market Authority (CMA), Saudi Stock Exchange (Tadawul), Saudi Arabian Monetary Authority (SAMA), Saudi Organization for Certified Public Accountants (SOCPA), Saudi Arabian General Investment Authority (SAGIA), Saudi Arabian Ministry of Commerce and Industry, legal and accounting experts, and representatives of companies, banks, and market participants.

Joseph Saba, Director (MNATD), Jamal Al-Kibbi, Country Manager (MNASA), Philippe de Meneval, PSD Specialist, and Saad El Gueddari, (MNSED), Martin Steindl, Program Manager, and Christopher Razook, Operation Officer (IFC, CMEPF) provided advice and comments.

# Table of Contents

<b>Market profile</b> .....	1
<b>Key findings</b> .....	3
<i>Investor protection</i> .....	3
<i>Disclosure</i> .....	4
<i>Company oversight and the board</i> .....	5
<i>Enforcement</i> .....	6
<b>Recommendations</b> .....	6
<b>Summary of Observance of OECD Corporate Governance Principles</b> .....	11
<b>Corporate Governance Landscape</b> .....	13
<i>Ownership Framework and Capital Markets</i> .....	13
<i>Legal and Regulatory Framework</i> .....	14
<b>Principle - By - Principle Review of Corporate Governance</b> .....	16
<i>Section I: Ensuring The Basis For An Effective Corporate Governance Framework</i> .....	16
<i>Section II: The Rights of Shareholders and Key Ownership Functions</i> .....	18
<i>Section III: The Equitable treatment of Shareholders</i> .....	24
<i>Section IV: The Role of Stakeholders in Corporate Governance</i> .....	26
<i>Section V: Disclosure and Transparency</i> .....	27
<i>Section VI: The Responsibilities of the Board</i> .....	31



## Country assessment: Saudi Arabia

This Report on the Observance of Standards and Codes (ROSC) assessment of corporate governance in the Kingdom of Saudi Arabia (KSA) benchmarks law and practice against the OECD Principles of Corporate Governance, and focuses on listed companies. Good corporate governance ensures that companies use their resources more efficiently and leads to better relations with workers, creditors, and other stakeholders. It is an important prerequisite for attracting the patient capital needed for sustained long-term economic growth. The challenge to policymakers is to implement reforms without raising the costs of remaining listed, or increasing the incentives of companies to leave the public market.

An awareness of the importance of good corporate governance is beginning to emerge in KSA. In the wake of the market correction of 2006, authorities and market regulators pushed for better corporate governance and legal and institutional reforms. These included a Corporate Governance Regulation (CGR) for listed companies (2006), guidelines on corporate governance best practices for banks (in the process of being finalized), and further strengthening of the supervisory functions across the financial sector. Although the regulatory and institutional improvements are steps in the right direction, additional reform efforts are required to bring corporate governance practices in line with the international standards.

### Market profile

*The KSA equity market is relatively large...*

The KSA equity market is by far the largest in the Arab world with a market capitalization of USD 519 billion at the end of 2007, well ahead of United Arab Emirates (USD 224 billion), and Qatar and Kuwait (USD 95 billion each). More companies are coming to market: eight new securities were listed in 2008 and 25 in 2007, for a total of 119 as of May 2008. More IPOs are expected in 2008.

*...and is recovering from the severe downturn of 2006 and 2008*

Share prices have traditionally been strongly correlated with international oil prices, and the market index (TASI) reached its historical peak in February 2006, over 800% above its level at the beginning of 2003. Several factors in the first quarter of 2006 led to a 60% market correction. Since August 2006, market capitalization has rebounded by 62%. The rebound does include the additional 57% market correction experienced in 2008.

*The shares of privatized companies are among the most actively traded*

Trading is concentrated in a few major shares. Most actively traded shares on the Saudi Stock Exchange (Tadawul) originated as public offerings of minority stakes in state-owned companies. Private-sector offerings have increased since the Capital Markets Authority (CMA) was established in 2003.

*Ownership and control are concentrated among founding families and the State*

While data on the ownership of Saudi listed companies are limited, ownership of Saudi listed companies appears to be highly concentrated. Roughly one-third of the market's total capital is owned by the government (including public pension funds), and another one-third is tied up in strategic holdings (founding families).<sup>1</sup> Most of the remaining shares (required free float is set at 30%) are in the hands of Saudi retail investors, who are responsible for 93% of the trading activities and include many first-time investors drawn to the market by a succession of profitable and oversubscribed IPOs.

<sup>1</sup> Source: Economist Intelligence Unit

*Foreign portfolio investment is partially restricted, and domestic institutional investors are only now beginning to emerge*

Traditionally, the market has been closed to foreigners. However, following the 2006 market correction, the authorities decided to increase demand for shares by further opening the market. Financial institutions and institutional investors from other Gulf Cooperation Council (GCC) countries and foreign legal residents are now allowed to invest directly in Saudi shares, and other foreigners can also do so via Saudi investment funds. The impact of these measures remains limited, with foreign trading representing less than 2% of the total. There is an on-going debate over whether the market should be further opened to investment from non-residents.

*The future growth in listings may be checked by abundant liquidity and ownership concentration*

Some of the largest 20 companies in Saudi Arabia are not listed and do not plan to do so in the near future<sup>2</sup>. The abundant liquidity in the market reduces the need to go public, as banks are well capitalized (their capital adequacy ratio is well above the minimum required by Basel) and ready to provide financing, and ownership is concentrated in the hands of the government and founding funding families, both of which appear to be unwilling to dilute their holdings.

*The financial sector is expanding and being slowly liberalized*

There are now 22 banks licensed to operate in the Kingdom, as the sector was liberalized in 2005, when the country joined the WTO. Until liberalization, there had been only 11 banks for the best part of two decades. In the last two years, 11 branches of foreign banks have begun operations under licenses recently granted by the Saudi Arabian Monetary Authority (SAMA), and more are expected. The council of ministers has approved licenses for over 20 new insurance companies, which fall under the surveillance of SAMA. The CMA has also licensed a wider range of specialized financial institutions since 2006. Asset-management and brokerage firms as well as a small number of investment banks have entered the market since 2006.

*The financial regulatory structure has changed and enforcement capacity is being made more efficient*

Public companies are under the supervision of the CMA. The Tadawul is the country's stock exchange, and the SAMA is the regulator for banks. As a result of the increased number of market participants, CMA and SAMA are expanding their supervisory capacity. In particular the CMA, established in 2003 by Royal Decree No. N/30 dated 31 July, 2003, is in the process of strengthening its enforcement functions. Also, the Tadawul (currently a state-owned joint stock company) may eventually sell part of its shares in an initial public offering, and separate the Securities Depository Center (SDC), currently a department of Tadawul.

*KSA legal framework is based on Sharia law*

The fundamental source of law in Saudi Arabia is Islamic Law (the Sharia). Several other sources of law elaborate on the Sharia, and are issued through Royal Decrees. Regulations, often issued by government agencies, elaborate on these laws and provide more specific requirements. The legal framework governing companies is the CL by Royal Decree M/6, the Capital Market Law (CML) by Royal Decree M/30, the Listing Rules (LRs) of the CMA by decision No. 3-11-2004, and the Merger and Acquisition Regulations (MAR) issued by the Board of the CMA, Decision No. 1-50-2007. However, it should be noted that both the LR and MAR apply to listed companies only.

*The CGR is an important step toward awareness raising and reform*

The most significant recent legal development in the area of corporate governance was the issuance of the CGR by the CMA in 2006. Listed companies are required to disclose their adherence to the CGR on a 'comply or explain' basis. Authorities have reported relatively low compliance with the regulation in its first year of

<sup>2</sup> Source: Ownership Structures in MENA Countries: Listed Companies, State-Owned, Family Enterprises and some Policy Implications', OECD 2006, page 3 (<http://www.oecd.org/dataoecd/26/2/35402110.pdf>).

adoption. SAMA is also in the process of drafting a corporate governance manual for banks, which is in the process of being finalized. Bank directors will be expected to follow this Manual and implement its guidelines.

## Key findings

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

### Investor protection

*Basic shareholder rights are protected*

Basic shareholder rights are in place in KSA. Registration is secure and dematerialized through the SDC. Shareholders can demand a variety of information from the company and have a clear right to participate in the general shareholder meetings (GSM) either in person or via proxy, add items to the GSM agenda, call for a GSM, and have a clear right to nominate, vote for, and remove board members. Cumulative voting has also been recently introduced by the CGR as a means to nominate directors. Changes to the company's articles of association, increasing authorized capital, and large transactions all require extraordinary assembly (EGM) approval, with a constituting quorum of 50% of the capital and approving quorum of 75%. Shareholders have pre-emptive rights to new share issues (although these can be waived by the government in the case of companies with state ownership, and the company's articles of association).

*The regime governing the review, approval, and disclosure of related party transactions is underdeveloped*

A potentially greater problem is posed by the approval and disclosure of related party transactions (RPTs). The LRs require companies to disclose promptly to the CMA any transaction between the company and a connected person, and to include in the board report information related to any contract between the company and the chief executive officer (CEO), chief financial officer (CFO) and any director. There is no mention of RPTs in the CGRs, no other requirements to publically disclose RPTs before they are carried out, or rules for approvals of significant RPTs by the board or by shareholders.

*Market participants perceive insider trading and market manipulation to be widespread, however, the CMA is working to resolve these practices.*

Many investors are concerned that brokers and other industry insiders engage in improper conduct and abuse their position. This includes trading on inside information, improper trading with shares in investor accountants, and market manipulation. In 2004, the CMA expanded on the insider trading provisions contained in the CML by issuing a Market Conduct Regulation to define "insiders", and prohibit illegal direct and indirect insider trading, as well as market manipulation. Moreover, the CMA has taken action against insider trading, and results have been published on its website.

*Funds are recommended to disclose voting or voting policy, in line with good practice*

Recent growth in equity markets has increased the importance of a new class of financial intermediaries: fund managers, investment bankers, and research analysts. These intermediaries are currently regulated by the Authorized Persons Regulations (APR), which appears to capture most of the core principles of the IOSCO Statement of Principles for Addressing Sell-side Securities Analyst Conflicts of Interest, 2003. However, the core measures of principles of the IOSCO Statement of Principles for Addressing Sell-side Securities Analyst Conflicts of Interest, 2003 do not need to be addressed by the legal framework necessarily. Of note is that the CGR encourages fund managers to disclose their voting, or voting policy, in the GSM for companies in which they invest. Having and disclosing a voting policy can make funds more effective advocates for good corporate governance.

*Tender offers are only required upon CMA approval*

Regulations issued by the CMA govern takeovers. Any shareholder who acquires more than 50% of shares may be required to make a tender offer for all outstanding shares, if the CMA decides so. Tender offers are an important shareholder protection mechanism and the MAR has been issued to provide legal protection to shareholders, in particular minority shareholders. The regulation grants a discretionary power to the CMA to call for tender offers; however, this may also create a legitimate cause of concern for minority shareholders and adds a degree of market insecurity.

### Disclosure

*Listed companies issue quarterly, semi-annual, and audited annual financial statements*

Listed companies in KSA are required to produce quarterly and semi-annual financial statements, which contain a balance sheet, a profit and loss account, a cash flow statement, and notes, as well as audited annual reports. Annual reports must also contain a description of the issuer and its business, information regarding the board, officers, and staff of the issuer, and a statement by management of current and future developments expected to have a significant effect on the company's financial position. A number of company websites also have this and additional information.

*Compliance with non-financial disclosure requirements appears weak*

The LRs rules are fairly complete and require significant disclosure. However, compliance with certain existing non-financial disclosure requirements is considered to be weak by market participants in particular with respect to corporate governance-related information. Although companies are required to disclose in the board report their corporate objectives, their dividend policies, and the board composition, disclosure in other areas remains haphazard, in particular the disclosure of information related to beneficial ownership, board member qualifications, and nomination procedures.

*Public disclosure of beneficial ownership remains a key concern, however, the Tadawul has undertaken an initiative to publish ownership data online, in-line with good practice*

The current corporate governance framework requires the disclosure of the ultimate (“beneficial”) owners, however, disclosure is to be made to the CMA, and not public. Any shareholder crossing the 5% threshold (including shareholders acting in concert) must notify the company and the CMA, however, it is left to the CMA on whether to disseminate this information to the public. The Tadawul has recently begun to publish ownership data of shareholders who exceed or fall below the 5% ownership threshold—a noteworthy initiative much in-line with good practice. The annual report (board report) must also describe significant shareholders.

*Progress has been made in improving National Accounting and Auditing Standards, but convergence with IFRS is not currently planned*

Financial statements are to be prepared according to local National Accounting Standards and audited with National Standards on Auditing. According to the Saudi Organization for Certified Public Accountants (SOCPA), Saudi Arabia does not intend to converge its own accounting standards with International Financial Reporting Standards (IFRS). Compliance with the national standards is reportedly high, however, there is a strong case to be made to converge with internationally acceptable accounting and auditing standards to improve upon financial reporting and further assure investors.

*The legal basis for setting Accounting and Auditing Standards is explicit*

SOCPA is the accounting and auditing standard setter, their authority is generally respected and there is an explicit legal basis for SOCPA to set accounting and auditing standards via sub-committees (SOCPA has nine in total).

*Quality reviews of audits is considered inefficient*

SOCPA conducts cross-examinations and verifies audit quality through a peer review process. This peer review process, however, lacks the resources to be efficient and effective.

*Basic requirements for the board of directors are in place*

### **Company oversight and the board**

Boards of directors do appear to play a central and strategic role in many companies. The minimum board size is two and maximum board term is three years renewable. The typical board size is eight, in-line with good practice; boards tend to be larger in more capitalized companies. According to a recent report issued by the International Finance Corporation (IFC) and the Hawkamah Institute for Corporate Governance (Hawkamah), founding families appear to have relatively few family members who directly sit on boards, and instead appoint representatives from outside the family, again in-line with good practice.

*Fiduciary duties of care and loyalty are beginning to emerge*

As various supervisory institutions are raising awareness of corporate governance, directors are beginning to understand their duties and obligations, and are developing an awareness and understanding of their duties to the company and all shareholders, as prescribed by the CGR but not the CL. On the other hand, there are almost no suits filed against directors, and it appears that directors do not usually purchase liability insurance.

*The CGR provides good-practice guidance to boards, board committees, and directors*

The CGR defines the board's functions and responsibilities, prohibits the chairman from acting as CEO, and defines the role of the nomination, the remuneration, and the audit committees. The CGR also recommends payment forms for board remuneration, and generically defines the roles of stakeholder and shareholder in the governance of the company.

*The definition of independence is reasonably complete, however the assigned roles of an independent director should be specified*

The CGR defines an "independent board member". Accordingly, directors who are controlling shareholders; senior executives (or directors who were senior executives over the past two years); first-degree relatives of a board member or senior executive; board members of a company within the holding or group structure; employees of an affiliate of the company (or affiliate within the holding or group structure) are not considered to be independent. The CGR recommends a minimum of two board members or at least one-third of the board (whichever is greater in number) to be independent. Other board commitments are limited to five. However, the CGR does not assign specific responsibilities or board committee memberships to the independent directors, and ultimately leaves it up to the company articles of association to define how independent directors will contribute to the effective roll out and completion of board tasks.

*Succession planning and formal performance evaluation procedures are not widespread*

Audit committees tend to be present in most of the banks and some listed companies; however, their role is not fully defined and/or well understood. Nomination and remuneration committees are recommended by the CGR however their scope is not fully defined. Few companies are thought to have such committees. Succession planning and performance evaluation frameworks for board members and executive do not appear to be present and/or widespread among listed companies.

*Cumulative voting is encouraged by the CGR, yet remains to be implemented*

There are several specific measures that allow minority shareholder participation in the board election process, including cumulative voting. The CGR is still in the process of being implemented, so it is difficult to test the effectiveness of cumulative voting at this stage. There appear to be no requirements for the disclosure of board nomination policies.

## Enforcement

*Several enforcement actions are at disposal of the CMA and CRSD and several cases have been investigated*

The CMA has the power to investigate and take enforcement action. In 2006, 83 cases were brought to the CMA's attention, some through referral reports by shareholders. Most of these cases were related to market manipulation and delays in disclosure. Daily suspension of trading activities, warnings, fines, and cease and desist orders are the remedies at the CMA's disposal.

Violators are also prosecuted before the Committee for the Resolution for Securities Disputes (CRSD), an independent committee created to complement the Saudi judiciary on securities' disputes falling under the provisions of the CML, and the regulations issued by the CMA and the Tadawul. The CRSD is comprised of legal advisors specialized in commercial and financial issues, and securities transactions.

The CMA has the authority to levy administrative fines. For more severe penalties (e.g. imprisonment) the CMA has to present its case to the CRSD. Pecuniary fines vary from approximately USD 2,600 to USD 26,000. The first cases were lodged in 2005, including 26 civil cases, 4 criminal cases, and 1 administrative case.

*KSA has well-funded and respected regulatory institutions*

Both the CMA and SAMA have ample funding and staffing (although SOCPA mentioned resource constraints). The CMA has statutory oversight of financial reporting and is in the process of increasing its resources for the Continuous Disclosure Supervision Department. All interlocutors had only positive things to say about the institutions responsible for corporate governance, including the CMA (even though still nascent), SAMA, Tadawul, and SOCPA. The level of enforcement was deemed fair, and communications between the regulators and issuers are in place, if infrequent. The following year the CMA's enforcement capacity vis-à-vis the CGR will be tested.

*Corporate governance is still a nascent concept and the CMA is still in the process of educating the markets on the benefits of applying good corporate governance*

The CMA recognizes the need for better corporate governance and has taken a three phased approach to implementing improved corporate governance. Phase one consisted of publishing the CGR. The current phase two sets out to educate market participants on how to apply the regulation. Phase three will consist of a revision of the CGR, and possibly making parts or all of the Regulation mandatory (the CGR is currently implemented on a 'comply or explain' basis).

## Recommendations

The following section details policy recommendations that can help improve upon KSA's corporate governance and investor protection frameworks.

### ***The CMA and other relevant regulators should further strengthen their enforcement activities***

*CMA could improve disclosure of listed company compliance with the CGR*

The CMA should consider the development of a process to systematically assess whether company disclosure is in compliance with the CGR. The CMA could enforce disclosure of compliance and issue warning letters, and fines when needed. These results should also be disclosed on the CMA and the Tadawul website.

*CMA should consider focusing its enforcement activities*

The CMA should continue to focus its enforcement efforts on disclosure, working towards full compliance with the CGR's 'comply or explain' requirements, and requirements with other non-financial disclosure rules. Enforcement could be

*on compliance with disclosure requirements, particularly non-financial disclosure*

strengthened in the area of public disclosure of ownership and adherence to the CGR. In addition to focusing on the largest companies in terms of market capitalization, the regulators may wish to focus their efforts on some of the smaller issuers, where corporate governance shortcomings are likely to be greatest.

*Policymakers should review policies related to accounting standards development, particularly convergence to IFRS*

An Accounting and Auditing ROSC should be carried-out to evaluate the costs and benefits of convergence with IFRS. Additional resources are essential for SOCPA to continue the revision, update, and interpretation of the accounting standards. The regulators should also consider increasing coordination between the Supervision and Financial Disclosure Department of the CMA and SOCPA to ensure consistency. Additional resources could be made available to SOCPA.

*Regulatory Authorities should continue to work to build their enforcement capacity*

The CMA and SAMA have announced their intention to hire more staff in their enforcement departments. They should also consider offering tailored corporate governance courses to new and existing staff, in particular those tasked with monitoring compliance with the CGR. This will, for example, allow supervisors to better engage and guide listed companies in the application of the CGR. Training and capacity building assistance could also be provided to the CRSD.

*The CMA should publish significant owners of listed companies in a systematic way*

Ownership information that is disclosed to the CMA does not appear to be made publically available on a systematic basis. CMA could publish ownership reports that have been filed, and should follow-up with companies that have not made any ownership filings.

*The CMA should consider imposing a requirement for insiders to disclose all transactions*

An option to further combat insider dealing in KSA could be to follow what other jurisdictions have found useful: i.e. to impose requirements on directors, executives, and other insiders to report any transactions in their company's shares, as soon after they take place. This requirement is much easier to enforce than traditional prohibitions on illegal insider trading, and presents a strong deterrent to insider dealing.

*The authorities should work to allow companies with good corporate governance to differentiate themselves*

In addition to fair and consistent enforcement, the CMA and Tadawul could consider approaches to allow companies to differentiate themselves, and to create incentives for good corporate governance. This approach could include:

- In the short term: CMA and Tadawul could sponsor an annual corporate governance competition to present the companies with the best or most improved compliance with the CGR.
- In the medium term: as the quality of information disclosure improves, the authorities could consider either creating a special tier on Tadawul for companies complying in full with the CGR, or the creation of a corporate governance index that includes only those companies that comply with the CGR.

*Ensure MoUs among regulatory and oversight authorities are formalized*

The CMA and SAMA should finalize their Memorandum of Understanding (MoU) outlining their respective roles and responsibilities in supervising listed banks. Both organizations may also wish to create a committee consisting of representatives from both institutions to ensure that new enforcement issues as they arise over time are dealt with in a timely fashion. CMA and SAMA can continue to work overtime to improve the consultation process for new regulations.

**Strengthen the Legal and Regulatory framework**

*Based on feedback and compliance, the CMA should update the CGR in 2009*

The CMA should work with companies' stakeholders and other outside experts to seek and review the implementation of the CGR, and update the CGR's recommendations and its own enforcement efforts accordingly. The following recommendations provide some possibilities for updating the CGR and harmonizing it with other elements of the corporate governance framework.

*Revise and harmonize the non-financial disclosure framework for listed companies*

Listed companies already face significant disclosure obligations under the LRs, listing rules, and recommendations of the CGR. However, some of the non-financial disclosure recommendations of the OECD Principles are not implemented. The CMA and its stakeholders could consider revising the non-financial disclosure requirements contained in the regulation and LRs.

*Minority shareholder rights should be strengthened by mandating that acquirers of 50% of a company's capital have to extend a tender offer to the remaining shareholders*

The default rule should be that all those acquiring 50% of a company's capital should be required to extend a tender offer to the company's remaining shareholders. In order to consistently protect the rights of minority shareholders, this rule should in principle not be subject to exceptions. However, if the CMA wishes to retain a voice on such matters, then the ability to waive the mandatory tender offer should be the exception rather than the rule, and any exceptions should be explicitly mentioned in the law. With respect to the pricing of the tender offer, the highest price paid for the same securities by the offeror, or by persons acting in concert with the offeror, over a period of not less than six months and not more than 12 before the bid shall be regarded as the equitable price.

*The review and approval framework of related party transactions should be upgraded*

As part of the update to the CGR, the CMA's working group should review international experience with the review and approval of RPTs. The board should be given explicit authority to approve RPTs. Extra-ordinary transactions should receive special treatment, which could include approval by independent directors, upon review by the audit committee, pre-approval by shareholders, and the ability of minority shareholders to call for a special audit of the terms of the transaction. Conflicted directors should not be allowed to participate in discussions on the relevant board agenda item.

*The position of company secretary could be introduced into the corporate governance framework by the CGR*

The CGR could introduce a requirement to establish the institution of company secretary in listed companies. Company secretaries are employees of the company, but serve to assist boards in their governance activities. The majority of companies in KSA provide timely and relevant information to their boards however, according to a recent MENA-wide survey rolled-out by the IFC and Hawkamah in 2008, 67% of the boards effectively meet only on a quarterly basis, and only 11% meet between six to nine times per year, in-line with good practice. A professional company secretary charged to manage the proper and effective functioning of the board could be considered.

The company secretary would be in charge of developing, implementing, and periodically reviewing a company's corporate governance framework and policies, and should be provided sufficient time and adequate resources. The position should have the full support of the board and senior management, both in theory and in practice. The company secretary should have access and provide regular reports to senior management. In this regard, the company secretary can play an important role in helping a company meet the information gathering and reporting requirements contained in the CGR.

*Make greater use of skilled independent directors*

Boards of listed companies could strive to include more independent directors. In addition, a time limit to serve as an independent director could be introduced and the recommendation established by the UK Combined Code could be used as a reference point. Given that directors are appointed for a three-year term, the independence of a director should be carefully reviewed by the board following the end of the second term. After nine years, a director should no longer be deemed independent, however, should be allowed to serve on the board as a non-executive director.

*Experience with cumulative voting should be reviewed*

As part of the process of updating the CGR, the CMA should survey companies and interview those who have adopted cumulative voting procedures. In some countries where cumulative voting procedures have been allowed, they are employed in only a small fraction of companies, because of the complexity of the process and inability of shareholders to vote collectively. Should adoption rates be low in KSA, the revised CGR could include other options to increase minority shareholder representation on boards. Shareholder associations and institutional investors both have an important role to play in this respect.

*The debate over the CGR should inform future revisions to the Companies Act*

Future revisions to the CL could include the fiduciary duties of directors, incorporating some of the duties described in the CGR. Revisions should also take into account recent international experience, including the update of the Companies Act in the UK, which includes a number of significant changes to the traditional company law framework, in which the fiduciary duties of care and loyalty were articulated. More detailed guidance on how to interpret these two duties should be developed in the CGR.

***All stakeholders should work in partnership to build awareness of the value of corporate governance.***

*The CMA and SAMA should roll out a corporate governance awareness raising campaign*

The CMA and SAMA should roll out an important corporate governance awareness raising campaign, focusing on explaining the definition of and business case for implementing good corporate governance. The campaign should include a series of conferences and media events, combined with a set of focused seminars and workshops targeting directors and senior managers, especially those from smaller listed banks and companies, on issues such as good board practices, risk management, and non-financial disclosure.

Both regulators may wish to consider the merits of requiring a formal director training program on corporate governance. Retail investors too should receive targeted corporate governance materials and course offerings, educating them on their rights (and responsibilities) as investors. These events could be organized through existing institutions (e.g. Institute of Banking) or new institutions (such as a corporate governance institute or institute of directors).

*All stakeholders should be encouraged to develop high-quality training programs for directors*

As noted above, board professionalism is a key to improving corporate governance (and to a company's long-term success). Resources should be invested in targeted programs, which can train board members and raise awareness of the importance of good corporate governance. Formal training could be required by the government for all board members in state-owned enterprises. The programs could also develop guidelines on key board processes, including the oversight of internal controls and the implementation and monitoring of codes of ethics. Any work in this area could be coordinated with an on-going program being carried out by the International Finance Corporation (IFC) and IFC Global Corporate Governance Forum, which are currently reviewing the needs for corporate governance training institutes in the Kingdom.

*Media Capacity  
Building Workshop*

The authorities could take into consideration the importance of the media in raising corporate governance awareness and their ability to fulfill their public scrutiny function. With this in mind, authorities might want to consider workshops to build capacities among journalists on reporting on issues related to corporate governance in the local financial press.

## Summary of Observance of OECD Corporate Governance Principles

	Principle	FI	BI	PI	NI	NA
<b>I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK</b>						
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			
<b>II. THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS</b>						
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 AGM rights					
IIC 1	Sufficient and timely information at the GSM		X			
IIC 2	Opportunity to ask the board questions at the GSM		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			
<b>III. EQUITABLE TREATMENT OF SHAREHOLDERS</b>						
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 GSM		X			
IIIB	Prohibit insider trading			X		
IIIC	Board/Mgrs. disclose interests		X			
<b>IV. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE</b>						
IVA	Legal rights of stakeholders respected		X			
IVB	Redress for violation of rights			X		
IVC	Performance-enhancing mechanisms			X		
IVD	Access to information					X
IVE	"Whistleblower" protection				X	

	Principle	FI	BI	PI	NI	NA
IVF	Creditor rights law and enforcement		X			
<b>V. DISCLOSURE AND TRANSPARENCY</b>						
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	
<b>VI. RESPONSIBILITIES OF THE BOARD</b>						
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

### OWNERSHIP FRAMEWORK AND CAPITAL MARKETS

**Listed Companies.** Publically available data on the ownership of Saudi listed companies are very limited. According to the Economist Intelligence Unit, ownership of Saudi listed companies is highly concentrated. Roughly one-third of the market's total capital is owned by the government (including public pension funds), and another one-third is held by strategic holdings (founding families).

At the end of May 2008, 119 companies were listed on the Tadawul, an increase of 33 companies since 2006. Using data from 2006 (the last year for which GDP data are consistently available), the Tadawul is the largest stock exchange in the Middle East region, however, smaller than the BRIC emerging markets and OECD average (see Table 1 below). The market experienced over 800 % growth in market capitalization from 2003 to 2006, however, suffered from a significant correction in the first quarter of 2006, and a 60% downturn of the market. The Tadawul also experienced a second major correction of more than 50% in 2008, following the global financial crisis.

After the 2006 correction, several incentives were put in place. The first set of incentives have aimed at increasing stock demand by: allowing foreign residents in KSA to invest directly in Saudi shares; lowering trading fees; allowing financial institutions and institutional investors of other GCC countries to participate in the Saudi market; approving a large number of licenses for investment businesses, and with a view to improving investors' information and introduce competition. The second set of incentives was intended at strengthening market regulation and supervision by: limiting speculation (including imposing substantial fines and sanctions for market manipulation); increasing oversight function of the regulatory bodies; and strengthening the corporate governance of listed companies.

**Table 1: Saudi Arabia and other Emerging Markets: Selected Market Data (2007)<sup>3</sup>**

Country Name	Listed Companies	Market Cap % GDP	Market Cap (Billions \$US)	Turnover Ratio (%)	Market Cap (% GDP) % of OECD Avg.	Market Cap (\$) % of OECD Avg.	Turnover ratio % of OECD Avg.
<b>Saudi Arabia</b>	<b>86</b>	<b>93.6</b>	<b>326.9</b>	<b>288.4</b>	<b>93.3</b>	<b>22.6</b>	<b>287.3</b>
Tunisia	48	14.7	4.4	14.3	14.7	0.3	14.2
Oman	124	49.5	16.2	21.1	49.3	1.1	21.0
Bahrain	49	108.3	21.1	7.4	107.9	1.5	7.4
Jordan	227	210.8	29.7	59.5	210.1	2.1	59.3
Iran, Islamic Rep.	332	17.4	37.9	12.7	17.3	2.6	12.7
Pakistan	652	35.9	45.5	276.8	35.8	3.2	275.7
Morocco	65	75.5	49.4	35.3	75.2	3.4	35.2
Qatar	36	205.6	61.6	27.6	204.9	4.3	27.5
Egypt, Arab Rep.	603	87.0	93.5	54.8	86.7	6.5	54.6
Kuwait	163	161.0	128.9	43.2	160.5	8.9	43.0
UAE	81	173.9	138.5	62.1	173.3	9.6	61.9
<b>BRICS Countries</b>							
Brazil	392	66.6	711.1	42.9	66.4	49.2	42.7
South Africa	401	280.2	715.0	48.8	279.3	49.5	48.6
India	4796	89.8	818.9	93.1	89.5	56.7	92.7
Russian Federation	309	107.1	1,057.2	64.1	106.7	73.2	63.9
Hong Kong, China	1165	903.6	1,715.0	60.0	900.6	118.8	59.8
China	1440	91.7	2,426.3	102.0	91.4	168.0	101.6
<b>Other Markets</b>							
Germany	656	56.5	1,637.8	173.9	56.3	113.4	173.2
France	717	108.0	2,428.6	119.6	107.6	168.2	119.1
United Kingdom	2913	159.6	3,794.3	123.8	159.1	262.8	123.3
United States	5133	147.6	19,425.9	182.8	147.1	1,345.4	182.1
<b>OECD Average</b>	<b>894</b>	<b>100.3</b>	<b>1,443.9</b>	<b>100.4</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Trading on the Tadawul is concentrated, the top ten companies in the market account for 75% of market capitalization and similar pattern can be witnessed in other GCC countries as well (see Table 2 and 3). In 2007, the Tadawul was incorporated as a state-owned joint stock company (fully owned by the Public investment Fund) and successfully launched a new electronic trading platform provided by OMX (NewGen).

<sup>3</sup> Source: World Development Indicators 2006. Source: World Development Indicators. Market capitalization as a % of GDP data are 2005 for Bahrain, Oman, Kuwait. OECD average includes 24 high-income OECD countries (as defined by WDI).

Table 2: Regional Market Concentration (June 2006)

Country	Top 10 companies as a % of total market
Bahrain	78%
Kuwait	48%
Oman	71%
Qatar	82%
Saudi Arabia	75%
UAD-Abu Dhabi/Dubai	64%

Table 3: KSA Stock Market: Key Indicators (2001- 2006)

	2007	2006	2005	2004	2003
Tadawul All Share Index (TASI)	11,175.96	7,933.29	16712.64	8206.23	4437.58
Market Cap (US Billion)	519.03	326.9	650.18	306.3	157.31
Market Cap to GDP		94%	205%	122%	73%
Trading volume (US Billion)	682.06	1400	1.104	403	159.07
Number of shares traded	58.86	54.44	12.28	10.3	5.6
Number of Listed Companies*	111	86	77	73	12
New Listings	25	9	5	4	1
De-listings	2	0	0	0	0

**Banking Sector.** During the 1984-2004 period, 11 banks had been licensed in KSA. Today, there are 22 banks licensed to operate in the Kingdom. Since the sector was liberalized in 2005 (when the country joined the WTO), 11 foreign banks have begun operations under licenses granted by SAMA. GCC banks have been authorized to operate in KSA since 1999, but the first wholly-owned foreign bank in KSA was BNP Paribas in 2005. JP Morgan, National Bank of Kuwait, National Bank of Bahrain, and other foreign banks have been licensed to operate since then.

Over the past three years, banks and financial institutions in KSA have significantly improved corporate governance practices. The drive for change can be attributed to increased liberalization of the sector and SAMA's decision to implement the Basel II Capital Adequacy Accord during the period 2008-2010. Banks are free to choose any Basel II approach for credit and operational risk. Work is currently underway to plan for the implementation of all three pillars of Basel II by 2010. Banks are now required to put in place a board-level audit committee, appoint independent directors and establish a risk management system, and SAMA is in the process of launching a manual on corporate governance for bank directors.

Ten of the 11 Saudi banks are listed on the Tadawul. The largest financial institutions tend to be state-owned, and are not listed. For example, the National Commercial Bank (NCB), the largest Saudi bank, controlled by the state, with a majority of shares (since 1999) owned by the Public Investment Fund (PIF). The possibility of floating 50% of NCB's shares has been discussed in the last four years however, no concrete steps toward an IPO have been taken.

## LEGAL AND REGULATORY FRAMEWORK

**Corporate legal framework.** The fundamental source of law in Saudi Arabia is the Islamic Law (the Sharia). The Sharia consists of the Holy Koran, the teachings of the Prophet Muhammad (the Sunnah), and the writings of legal scholars. Several other sources of law elaborate on the Sharia and govern commercial relations. Regulations, often issued by government agencies, elaborate on these decrees and provide more specific requirements. The legal framework governing companies is the CL, issued by Royal Decree M/6, the CML issued by Royal Decree M/30, the LRs of the CMA issued by decision No. 3-11-2004, and the MAR, issued by the CMA's Board Decision No. 1-50-2007. It should, however, be noted that both the LRs and the MAR apply to listed companies only.

**Company types.** Several company types can be formed in KSA, namely joint liability companies, partnership in commendum companies, partnership companies, joint stock companies (public shareholding), stock commandite companies, limited liability companies, variable capital companies, and cooperative companies. All companies in KSA are required to register in the Commercial Registers, located in several cities of the Kingdom, created and supervised by the Ministry of Commerce and regulated by the 1995 Royal Decree.

Only joint stock companies can be listed on the Tadawul. Once the listing requirements are satisfied, companies register at the SDC, and registration includes information on shares such as value, kind, shareholders, and founders' shares.

**Listing rules.** The CMA has issued LRs in 2004 and has significantly amended these in 2006. There are no different listing segments on the stock exchange, so all companies must meet the full listing requirements. Foreign companies are not allowed to list on the Tadawul. All listed companies must be: Saudi joint stock (public shareholding) companies; carry independent business activities for at least three financial years under the same management; demonstrate that senior management has the necessary expertise and experience; ensure that at least 30% of shares are owned by the public; and,

finally, that the company have at least 200 public shareholders. Public is defined as all shareholders other than a director, senior executive, or substantial/significant shareholder – 5% ownership – of the company.

**Securities regulations.** The Offers of Securities Regulations was issued by the CMA in 2004, and amended in 2006 and 2008. The regulation applies to issuances of securities, invitations to public subscription, the direct or indirect marketing, statement, announcement, or communication that has effect of selling or offering securities.

**Corporate Governance Codes.** The most recent significant legal development in the area of corporate governance was the issuance of the CGR issued by the CMA in 2006. Listed companies are required to disclose their adherence to the CGR on a 'comply or explain' basis. Unsurprisingly, authorities have reported very low compliance with the regulation in its first year of adoption. As mentioned previously, SAMA is in the process of drafting a corporate governance manual for banks, which is in the process of being finalized.

**Securities regulator.** Under the CML, the CMA acts as the securities regulator and oversees the Tadawul, the joint stock companies listed on the Tadawul, the brokerage companies, the investment funds, and the SDC. The CMA is a government organization with legal, financial, and organizational independence and reports directly to the Prime Minister. The CMA is in charge of developing the KSA's capital market, and therefore regulates and monitors the issuance, dealing, and information disclosure with respect to securities. Its regulatory powers include sanctions such as warning letters, cease and desist orders, suspension or cancellation of the listing, and suspension of the Tadawul's activities for one or more days. The CMA through its board or the CRSD can also impose fines varying from 10,000 to 100,000 Saudi Riyal (SAR) for each infraction committed by the violator.

**Stock exchange.** The Tadawul was established in 2007 as the sole formal stock exchange authorized to operate in KSA and since 2007 it has the legal status of a joint stock company and is entirely funded by PIF<sup>4</sup>. It is the sole entity authorized to carry out trading in securities, which is done through its SDC, and to provide settlement and clearance rules.

**Securities Depository Center.** The SDC acts as a central registry and is a department of the Tadawul. The SDC is in charge of the operations of deposit, transfer, settlement, clearing, and registering ownership of Saudi securities traded on the Tadawul. SDC records serve as conclusive proof of ownership.

**Banking and other regulators.** SAMA oversees banking licensing, registration, and approval. SAMA also licenses insurance companies and supervises their activities.

**Accountancy bodies.** SOCPA is responsible for drafting and interpreting auditing standards and is entrusted to set ad-hoc committees. The development and reviewing of all accounting standards in KSA is the responsibility of the Accounting Standards Committee (ASC), which is part of SOCPA. SOCPA's Committee has nine sub-committees (quality control, ethics, audit, accounting, etc) in charge of drafting and interpreting the relevant standards. Overall, the market scores high in compliance with the local standards.

---

<sup>4</sup> Historically, SAMA was the government body charged with regulating and monitoring market activities until the Capital Market Law was passed in 2003, which allowed establishing the CMA in 2003 and the Tadawul in 2007.



## 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.<sup>5</sup>

### 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**

**Overall capital market transparency.** The operation of the capital market is moderately transparent. Information is generally available about listed companies, and the Tadawul website aggregates listed companies by industry and discloses monthly, quarterly, and annual financial information. There are factors which potentially undermine the transparency and efficiency of the KSA market, notably: 1) insufficient disclosure of non-financial information (especially on beneficial ownership); 2) an absence of foreign competition (foreign companies are not allowed to access the Tadawul); 3) and improper conduct and abuse of position by brokers and industry insiders. There is nascent support for developing corporate governance disclosure requirements, which are viewed as an important step to develop a more reliable and transparent capital market. The number of listings is expanding at a constant pace (111 total listed companies in 2007 up from the 73 companies of 2004).

The market was tested during the market declines of the last three years. The institutional structure of the capital market has rapidly transformed and more changes are expected in the near future. The CMA was established in 2003, and the Tadawul was incorporated as a joint stock company, fully owned by PIF, only in 2007. The Tadawul may carry out an IPO in the near future, and the SDC is likely to be incorporated into an autonomous entity.

**Regulatory consultation process.** Authorities and legislatures develop policies, laws, and regulation in consultation with other stakeholders. Market participants acknowledge that SAMA's consultative process is more formal, and more effectively involves banks, while CMA interacts less with listed companies on proposed changes in statutes and new regulations. However, informal consultations are improving and it is now common practice for the CMA to post draft laws and by-laws on its website to elicit and incorporate comments and suggestions from the market before proceeding to the issuance of new regulations.

**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: Broadly Implemented**

**Legal clarity.** The legal and regulatory framework is generally well-drafted and clear. The CGR expands on corporate governance provisions, and integrates well with the CL of 2003. For example, while the CL details the role and responsibilities of the board, independent directorships and board committees are regulated in the CGR.

**Consistency of application.** Court Rulings and interpretations related to legal provisions are not made public; it is therefore

<sup>5</sup> 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).

difficult to monitor the consistency of interpreting the law. There are some inconsistencies between the different acts, and efforts are underway to remove them.

**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: Broadly Implemented**

**Clear division of regulatory responsibility.** Regulatory responsibility over listed companies has been clearly divided between CMA and SAMA – the only area of supervisory overlap is listed banks. In order to enable information sharing, MoUs have been signed between CMA and the Ministry of Commerce and Industry, but no MoU has been signed between CMA and SAMA. Most of the supervisory agencies are effective and well respected by the market. The CMA is financially independent and has plenty of economic resources at its disposal.

**Regulatory cooperation.** Interviews with regulators and its market participants suggest a significant degree of cooperation between the various financial sector regulatory bodies. There is no information related to joint investigations conducted by the authorities, but channels of informal exchange of information on market participants have been established.

**Effectiveness of self-regulatory bodies.** The Tadawul is a joint stock company as of 2007, although it is fully owned by PIF, a government fund. SOCPA appears under-budgeted, however, enjoys a fairly strong reputation domestically and internationally.

**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: Broadly Implemented**

**Supervisory authority.** The CMA has the power to investigate and take enforcement action. The CMA regulates the exchange, the issuance of securities, the dealing in securities, and monitors and controls the works and activities of the parties subject to the control and supervision of the Authority. It also regulates and monitors the full disclosure of information of securities and their issuers. Almost 50 professionals are employed in the Market Supervision and Continuous Disclosure Department and are in charge of reviewing annual and quarterly financial statements, performance of securities on a daily basis, and recording qualified and unqualified opinions from external auditors.

The Enforcement Department is composed by 16 professionals. In 2006, 83 cases were brought to the CMA's attention, some through referral reports by shareholders. Most of the referrals were related to market manipulation, and delays in disclosure. Some cases can be submitted to the CMA Board of Commissioners in order to seek approval to proceed to prosecute violators before the CRSD or to directly impose certain penalties (i.e. daily suspension of trading activities, warnings, fines, and cease and desist order).

Indeed, the CML created the CRSD as an independent administrative body to complement the Saudi judiciary in the securities dispute resolution process. The CRSD is a department and is comprised of legal advisors specialized in securities transactions and exchanges, and in commercial and financial matters. The CRSD has sole and exclusive jurisdiction over disputes and causes of action arising under the law and its rules, instructions, and regulations. At the request of the CMA, the CRSD has the power (CML, Art. 59) to levy a fine of between USD 2,600 to USD 26,000 against any person responsible for knowingly violating the law or any rule. If the Tadawul finds that any broker or agent has violated any by-law related to the regulation of brokers, it may request the CRSD to impose sanctions. Such sanctions include revocation or suspension of the broker's license, restitution, and/or a fine. The first case ever lodged was in May 2005. Statistics for the year 2005 are: 26 civil cases, four criminal cases, one administrative case. Statistics for the year 2006: 220 civil cases, eight criminal cases, and four administrative cases.

The 1983 Arbitration Regulation provides a comprehensive set of rules. The Regulation provides for two types of arbitration agreements: parties may agree either "to arbitrate a specific existing dispute" or to make a "prior agreement to arbitrate any dispute resulting from the performance of a specific contract. There is an extensive supervisory role played by the "Authority" originally competent to hear the dispute. The Authority would presumably be the Committee for Settlement of Commercial Disputes (CSCD) in most commercial disputes, Grievance Board in disputes with a government agency that has received permission to arbitrate, or the competent Sharia court in a case involving real estate.

No complaint or statement of claim may be filed with the CRSD without being filed first with the CMA and a 90-day period has passed from the filing date, unless the CMA notifies the grievant otherwise of the permissibility of submitting before the expiration of this period.

**Supervisory resources.** The CMA is required to maintain cash reserves "equal to the double of its expenditures as reported in its preceding annual budget" (CML, Art. 13-14). This is a safety net instituted to ensure its independence from the Government. The CMA is in expansion, and does not seem to have difficulties in attracting qualified staff. SAMA is also economically independent.

However, the resources available of other institutions, especially SOCPA, appear to be relatively low. SOCPA in particular is comparatively inadequately staffed, and has difficulty in retaining staff because of low salaries while SAMA and CMA

employees are remunerated at competitive market prices.

**Reputation of supervisory bodies.** The reputation of the regulatory bodies (CMA, Tadawul, and SAMA) in the market appears to be solid. Some institutions are nascent but have already gained the institutional respect needed to carry out its supervisory duties.

**Court efficiency.** Standard measures developed by the World Bank indicate that contract enforcement in KSA is relatively slow and expensive when compared to OECD countries. It also takes more procedures to enforce a contract in KSA making the whole process more costly when compared to the OECD average. KSA is comparable to the rest of the MENA region. (See Doing Business 2008 at [www.doingbusiness.org](http://www.doingbusiness.org)).

Contract Enforcement Indicator	KSA	MENA Average	OECD Average
Number of Procedures	44	43.5	31.3
Time (days)	635	699	443
Cost (% of debt)	27.5	24	17.7

## 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: Fully Implemented**

**Secure share registration.** All companies are required to keep a share registry (CL, Art. 102). The registry must include the names of shareholders, their nationalities, places of residence, professions, number of shares, and the paid amount of shares.

For listed companies, registration is centralized, securities are dematerialized, and in general the methods adopted for registration of shares appear secure. The sole entity authorized in the Kingdom to register ownership, deposit, transfer, settle, and clear securities traded on the Tadawul is the SDC, which is within the Tadawul (CML, Art. 26/a-b). In order to be protected by third party claims, securities must be registered at the SDC, which issues a certification of ownership upon request by the investor (CML, Art. 27). Once the SDC completes the final verification of ownership documents, registration is effective and all shares are dematerialized and transferred by book entry. There were no reports of any problems with the current system. The government has also expressed an interest in converting the SDC into a separate and autonomous entity in the near future.

**Secure custody system.** The legal framework does not recognize the concept of nominee ownership, however it does authorize the establishment of custodians via the APR (APR, Art. 5, 87, 96), which are required to have adequate arrangements and protections to safeguard assets, to act with due diligence and care, and to ensure the efficiency of management, financial prudence, fair treatment of customers, and avoidance of conflicts of interest. The CMA can take steps to protect the rights of the custodians' clients, which have preference over other creditors of the custodian. Custodians cannot dispose of clients' assets.

**Regulatory oversight.** The CMA is responsible for monitoring the activities of the Tadawul and the SDC.

**Principle IIA 2: Convey or transfer shares**

**Assessment: Fully Implemented**

**Restrictions on share transfer.** The shares of all public limited companies are freely transferable; however, two restrictions apply (CL, Art. 68 and 100). First, pecuniary shares, in-kind shares, and founding shares cannot be transferred before publishing the budget and the profit and loss account for the first two fiscal years of the company's life. Exception to this rule is made only if the transfer is from founder to founder. Second, board members must own a number of company shares (the value cannot be less than 10,000 SAR) which are allotted to guarantee liability of board members and cannot be circulated until the elapse of the hearing if liability lawsuit is filed against them. Companies can decide in the articles of association to restrict the circulation of shares, but cannot fully deny such circulation (CL, Art. 101).

**Clearing and settlement framework.** For listed companies, the Tadawul is responsible for trading, clearing, and settling listed shares in KSA. SDC has a reputable clearance, settlement, and registration system with many strong features. While the Group of Thirty called for final settlement by T + 3 (date of trade plus three days), ESIS, a widely distributed computer network trading system linking the banks of Saudi Arabia via the existing telecommunications infrastructure of the country, allowed KSA to average final settlement by T + 0. Cash transfer is achieved via the national real-time gross settlement system, SARIE. Internal documents reported that less than 1% of all trades run through the Saudi system failed to settle, a

<p>% age significantly lower than the world average.</p> <p>There are no reports of problems with shareholder record keeping.</p>
<p><b>Principle IIA 3: Obtain relevant and material company information on a timely and regular basis</b></p>
<p><b>Assessment: Broadly Implemented</b></p>
<p><b>Shareholder access to information.</b> The CGR recommends companies to make company information accessible and updated for shareholders. It also encourages that the information be succinct and accurate, and that the company use effective ways to communicate with shareholders (CGR, Art. 4).</p> <p><b>Availability of information (charter, financial statements, minutes, capital structure).</b> Shareholders have the right to obtain several company documents. Copies of articles of association and other related incorporation documents are deposited at company's head office, at the disposal of shareholders. Companies are also required to maintain a registry of all minutes of all Annual General Meetings of Shareholders (AGM) meetings, and shareholders have access to the registry (CL, Art. 82). Companies are required to make available to the shareholders 25 days before the AGM at their head office a series of reports, including financial statements, report on the activities of the company, list of shareholders, and methods proposed for the distribution of net profits (CL, Art. 90).</p> <p><b>Redress.</b> Shareholders representing 5% of the capital are also entitled to request the CDSR to order a company inspection, provided that the CDSR assesses the complaint as valid (CL, Art. 109).</p>
<p><b>Principle IIA 4: Participate and vote in general shareholder meetings</b></p>
<p><b>Assessment: Broadly Implemented</b></p>
<p><b>Voting rights.</b> Shareholders are entitled to all the rights attached to the share and this includes also the right to attend, participate in deliberations, and vote at GSMs (CL, Art.108). The company articles of association indicates which categories of shareholders are entitled to attend the GSM; however, the CL (CL, Art. 83) allows each shareholder holding at least twenty shares to attend the meetings, even if the statutes or articles of association mandate otherwise (CL, Art. 83). According to good CG practices, this provision may be perceived as a procedural obstacle that impedes entitled shareholders from participating and voting in an AGM. The CMA may want to consider lowering the threshold to include all the holders of shares, irrespective of the number of shares held. The CGR encourages companies to facilitate participation of shareholders in meetings by choosing the appropriate time and place so as to guarantee participation of the greatest number of shareholders (CGR, Art. 5e). Shareholders representing at least 5% of the capital can call for an extraordinary meeting, and add items on the meeting's agenda for discussion. Shareholders representing 2% of the capital can request the Companies General Directorate to convene the general assembly, if this has not been held within one month from the convening specified date (CL, Art. 86).</p> <p><b>Redress.</b> Absent or objecting shareholders (proof being the minutes of the meeting) have the right (CL, Art. 97) to demand nullification of the decisions taken in the AGM before the CRSD when decisions are taken against their rights. Yet the suit cannot be heard if it is submitted one year after the contested decision was taken. The framework does not specify what the contesting options are if a shareholder is accidentally omitted from the invitation list or if the shareholder does not receive an invitation.</p>
<p><b>Principle IIA 5: Elect and remove board members of the board</b></p>
<p><b>Assessment: Broadly Implemented</b></p>
<p><b>Election.</b> Directors are elected and removed by the AGM, unless the company's charter states different methods to terminate a director's mandate (CL, Art. 66). Where present, nomination and remuneration committees are in charge of recommending candidates (CGR, Art.15 c/1). Companies can be held liable if board members are removed at inappropriate time or for unacceptable reasons (CL, Art. 66 and CGR, Art.12 f). The law in this case does not specify what inappropriate time or unacceptable reason means.</p> <p>The CGR introduced cumulative voting and companies are encouraged to use it in order to permit an organized group of minority shareholders to elect a director (CGR, Art.6 b).</p> <p><b>Redress.</b> The framework does not specify what the contesting options are if a shareholder is accidentally omitted from the invitation list or if the shareholder does not receive an invitation for the AGM. However, the general rule is that shareholders who were absent at the AGM for acceptable reason or shareholders who have voted against the AGM decision (proof being the minutes of the meeting) have the right to demand nullification of the decisions taken in the AGM before the CRSD (CL, Art. 97). The right to file suit expires one year from the date of the contested AGM decision.</p>
<p><b>Principle IIA 6: Share in profits of the corporation</b></p>
<p><b>Assessment: Broadly Implemented</b></p>

**Clear legal framework.** The board proposes and the AGM approves profit distribution and decides on the date of distribution of profits (CL, Art. 108). Minimum mandatory dividend is set at 5% of the net profits, after mandatory contributions legal reserves (10% of the net profits) and contributions to other reserves (CL, Art. 127). The contributions to reserves can be halted by the AGM if the “reserve amounts to half of the capital” (CL, Art. 125). In their first years of existence, companies have the option to decide in the articles of association a fixed amount of profits to be distributed to shareholders. The amount cannot exceed 5% and has to be limited to a maximum of five years. To complete the framework, the CGR encourages the board to lay down a clear policy on dividends (CGR, Art. 7), in line with good practices.

Under the CL, companies are entitled to issue preferred shares, unless forbidden by the company’s articles of association (CL, Art. 103).

**Equitable treatment.** Under the law, all shareholders of a same class are to be treated equally regarding the distribution of profits and shareholders of a same class shall enjoy the same rights (CL, Art. 108). CL allows AGM to amend the rights of certain groups of shareholders, but the decision is not effective unless approved by those whose rights will be amended (CL, Art. 86). This applies also to preferred shares, which are permitted under the CL, unless the Company’s articles of association stipulate otherwise.

**Redress.** (See Principle IIA 5 above).

**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.** The extra-ordinary general assembly (EGM) is responsible for amending the company articles of association. The quorum is 50% capital in the first EGM, and 25% in the second EGM. EGM decisions are valid when at least 2/3 of the shares represented vote in favor. In case of increase and decrease of capital, extension of the term of the company prior to its termination, or merger of the company into another company, EGM decisions require a 75% supermajority (CL, Art. 85, 92).

Under no circumstances can the EGM amend the articles of association in order to: increase the financial burden on shareholders; change of the company nationality or company purpose; and transfer the company’s head office abroad (CL, Art. 85).

**Shareholder Challenges.** Shareholders can request an annulment of EGM deliberations and file complaints to the CMA. Shareholders also have remedies through the CDSR.

**Principle IIB 2: Authorization of additional shares**

**Assessment: Broadly Implemented**

**Issuing share capital.** Conditional to the full payment of the capital, shareholders have the exclusive power to authorize once or several times to increase the capital via an EGM decision approved by at least 75% of the shares present at the meeting (CL, Art. 134). Capital can be increased in one of the following methods: issuance of new shares the value of which is to be paid in cash; issuance of new shares against a) in-kind shares, b) incorporation shares, c) circulating bonds; and issuance of new shares equivalent to the profit surplus via the raise of nominal value of the shares already in circulation (CL, Art. 135). Shareholders have pre-emptive rights to acquire new shares unless the company charter stipulates otherwise. (CL, Art. 136). Good practice would call for this pre-emptive rights limitation to be subject to a 2/3 or 75% EGM vote, and the CMA may want to consider adopting this practice in the future. Once the company’s decision to raise capital is announced on the daily gazette and notified to shareholders via a registered letter, shareholders have 15 days to state their intention in writing to buy the new shares.

**Shareholder Challenges.** Shareholders can request annulment of EGM decisions and file complaints to the CMA. Shareholders representing 5% of the capital are also entitled to request the CDSR to order a company inspection, provided that the CDSR positively assesses the complaint’s validity.

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

**Assessment: Not Implemented**

**Sales of major corporate assets.** The board cannot decide to conclude loans of terms exceeding three years, sell or mortgage company real estate, sell or mortgage company premise, unless provided for in the company’s articles of association. If the company’s articles are silent, then the ordinary AGM must approve these dispositions (CL, Art. 73).

In this case, the legal provision appears too broad to capture the essence of the principle, which aims at protecting company assets from unauthorized transfers that may result in the sale of the company. Specific legal approval requirements should be introduced to identify appropriate thresholds/percentages of net book value that govern the sale, exchange, lease, and

other transactions with company property. In addition, approval thresholds on sales or investments that equal or exceed adequate company assets' percentages should be investigated as well.

**Redress.** Shareholders representing 5% of the capital are entitled to request the CDSR to order a company inspection, provided that the CDSR assesses positively the complaint's validity

**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: Broadly Implemented**

**Meeting deadline.** The AGM must be held once a year within six months following the completion of the financial year. If the AGM date is announced but the meeting is not held within a month, shareholders representing 2% of the capital can request the Companies General Directorate to invite the AGM to convene. Also, the board is always required to convene an AGM if the company auditor or shareholders representing at least 5% of the capital request so.

**Meeting notice content.** Invitation to the AGM is published in the official gazette and a daily newspaper, and distributed at the head-office 25 days prior to the convened date. Financials shall be deposited at head office 60 days prior to the AGM. If all shares are nominal, a registered invitation letter is satisfactory. The notice should contain the date, the place and the agenda of the AGM. If shares are all nominal, a registered letter sent to the shareholders and containing the above information is sufficient. (CL, Art. 88). For every AGM, the board is required to distribute the company's budget, a report on the company activity, profit and loss account, its financial position, and the method proposed for distribution of profits and to deposit this documentation at the head office at the disposal of shareholders 25 (60) days prior to the meeting date. The chairman is also required to deposit at the head office an adequate summary of the board report and the full text of the auditor's report 25 days prior to the meeting (CL, Art. 89). Modern technological methods are also recommended in communicating with shareholders (CGR, art. 5c). The CGR also recommends that date, place and agenda be announced by a notice at least 20 days prior to the date of meeting, and invitation be published also in the Tadawul's website, the company's website, and in two major newspaper in the Kingdom.

CGR encourages companies to facilitate participation of shareholders in meetings by choosing the appropriate time and place so as to encourage participation of the greatest number of shareholders (CGR, Art. 5e).

In practice, GSM are well attended.

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

**Assessment: Broadly Implemented**

**Shareholder questions.** There appear to be no limits for shareholders to ask questions at meetings. Each shareholder is entitled to discuss issues included in the agenda of the assembly and address questions to the company's board and external auditor. The auditor and the board members are obliged to answer questions of the shareholders to the degree in which their answers do not jeopardize the company interest. According to the CL, if shareholders deem that the reply to their question is not persuasive, they shall resort to the AGM and its decision is effective. Every shareholder who has objected, in the minutes of the meeting, to AGM deliberations, or was absent from the meeting for acceptable reason, is also entitled to demand nullification. Shareholders can ask for damages (CL, Art. 76, 78, 94, 97, and CGR, Art. 5g).

**Forcing items onto the agenda.** When preparing the content of the agenda, the board of directors shall consider topics that shareholders would like to discuss in the agenda. Shareholders who represent at least 5% of company capital can add topics for discussion to the agenda (CGR, Art. 5f).

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

**Assessment: Partially Implemented**

**Facilitation of shareholder participation.** Companies are encouraged to facilitate participation of shareholders in meetings by choosing the appropriate time and place so as to encourage the participation of the greatest number of shareholders. (CGR, Art. 5e). The CGR also recommends that companies inform shareholders about the rules governing the meetings and the voting procedure (CGR, Art. 5d).

**Cumulative Voting / Proportional Representation.** Shareholders can adopt the cumulative voting method to elect board members. It was recently introduced by the CGR however; it is not clear how often it has been applied to date (CGR, Art. 6b).

**Approval of board and key executive remuneration.** The board report (distributed at the AGM) must include the remuneration packages of its members and its five highest paid executives on an individual basis, but it does not appear that

the meeting approves the actual remuneration (CGR, Art. 9e). Companies are not required to disclose their remuneration policies, which good practices would call for to explain the link between executive remuneration and company's performance.

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

**Assessment: Partially Implemented**

**Proxy regulations.** Shareholders may delegate, in writing, another shareholder to attend and vote in the AGM on his/her behalf. The proxy can neither be a member of the board, nor an employee of the company (CL, Art. 83; and CGR, Art. 6c).

Minutes of the AGM have to include names of the attending shareholders or representatives, number of shares in their possession whether personal ownership or by proxy, number of votes prescribed for them, and decisions taken (CL, Art. 83, 95).

**Postal and electronic voting.** Neither postal nor electronic voting is permitted in Saudi Arabia.

**Redress.** Absent or objecting shareholders, whose complaints to the decision are recorded in the minutes of the AGM, are entitled to demand nullification of the decision issued in contradiction to the provisions of the CL or provisions of the company articles of association. The ruling of such nullification renders the decision null and void for all shareholders.

**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.** Shares can be pecuniary or in-kind and nominal or to the holder, but the stock remains nominal until the payment of its full value (CL, Art. 99). Companies can issue preferred shares, or transform normal shares into preferred shares. If preferred shares are already present, new preferred shares with higher priority can only be issued if the holders of the initial preferred shares vote so in a special assembly (CL, Art. 103).

Ordinary shares of public limited companies are "one-share, one-vote". The company' shares can be pecuniary, in-kind, nominal, or preferred (CL, Art. 107, 99, 103).

**Disclosure of disproportionate control.** The company has to disclose in the prospectus a description of the group, if any, and the company's position within that group (LRS, Art.12, annex 4). On annual basis, in the board report, the company has to disclose a description of the principal activities of the company and its group, a statement of the aggregate indebtedness of the issuer and its group relating to any borrowers of the group.

**Disclosure of shareholder agreements.** Companies do not appear to disclose shareholder agreements or similar arrangements.

**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: Broadly implemented**

**Basic description of market for corporate control.** Takeovers are regulated by the MAR. The Competition Law contains restrictions against mergers. The approval of the Council of Competition Protection is needed in cases of mergers and acquisitions, acquiring controlling interests, and joint ventures. The CML governs "restricted purchases of shares" and "restricted offers for shares". The CMA has several powers. In this contest, it has the ability to mandate the time, form, and manner of announcing a "restricted offer for shares". The CMA can promulgate rules it considers necessary to regulate these transactions.

The Offers of Securities Regulations apply to issues of securities, invitations to the public to subscribe, the direct or indirect marketing, statement, announcement or communication that affects the selling or offering securities.

**Disclosure of substantial acquisition of shares.** Persons becoming the owner of at least 5% of any class of voting share or convertible debt instrument have to disclose their ownership to the company and the CMA. Those persons have also to disclose the increase or decrease by 1 % or more of their ownership. In addition, the legal ownership of any shares or debt instrument by directors and senior executive has also to be disclosed to the CMA and in the Board's Report (LRs, Art. 30).

**Tender rules/mandatory bid rules.** The Law mandates that public offers be universal. Within sixty days of acquiring a 50% ownership in any listed company, the CMA Board may require that the offeror – whether acting alone or in concert – issues a tender offer to all outstanding shareholders on whatever terms the Board mandates. The only limit is that the share price may not be set higher than any price paid for the same shares at any time in the past twelve months. Thus, these kinds of "restricted offers or purchases for shares" require that all shareholders receive equal treatment in the event of a takeover, which is rolled out at the discretion of the CMA. An offer, in respect of class of share capital involved, must be in cash or accompanied by a cash alternative at no less than the highest price paid by the offeror or any person acting in concert with it during the offer period and within 12 months prior to its commencement. If the offeror considers that the highest price as

specified above should not apply a particular case, the offeror should approach the CMA which has the discretion to agree an adjusted price. In no case the offeror will be compelled to offer to purchase the remaining shares at a price exceeding the highest price he paid to purchase any of the shares of that company during the 12 months preceding the date the board of the Capital Market Authority ordered (MAR, Art. 12a, CML Art. 54).

Friendly mergers are regulated under the Mergers and Acquisitions Regulations and the relevant provisions of the CL. Such transactions are to be regulated under the broad power of the CMA to grant exemptions from filing for certain types of transactions. These transactions, unless exempted under (CML, Art. 53e) will still face the notification and reporting requirements of a regulated purchase and may also be subject to the universal offer rule under Article 55, should the CMA deem it to be in the best interest of the public.

**Delisting/going private procedures.** The regulations on securities and the LRs, Art. 21 govern de-listing. De-listing occurs if the CMA considers it necessary to protect investors and maintain orderly market, if the issuer fails in a material manner to comply with the listing rules, insufficient securities in the hands of the public, the CMA considers that the issuer does not have sufficient level of operations or sufficient assets, and the CMA considers that the issuer or its business is no longer suitable to warrant continuing listing.

Based on the information elicited, we are not aware of any takeover with the current provision of the law.

#### Principle IIE 2: Anti-take-over devices

**Assessment: Broadly implemented**

**Description of anti-takeover devices in use in the market.** The MAR restricts the target company's ability to prevent takeovers. The board of the target cannot without the shareholder's approval: a) issue any authorized but unissued shares, b) issue or grant options in respect of any unissued shares, c) sell, dispose or acquire, or agree to sell, dispose or acquire assets of a material amount or d) enter into contracts other than in the ordinary course of business. In addition, any break-up fees of more than 1% of the offer value are prohibited (MAR., Art. 24).

**Duty of loyalty in the event of a takeover.** The Takeover Rules provide specific guidance on board conduct during a takeover offer. The board of directors must circulate its view on the offer and the advice given to it by the independent advisers to shareholders (CMA and MAR., Arts. 6c, 6g, 7, 17, 22, 24, 25, 29, 36).

**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: Partially Implemented**

**Blocked shares/record date.** Companies can "close the register" up to the day of the specified date of the annual AGM convention, unless the company's articles of association stipulate otherwise (CL, Art. 90).

**General obligations to vote.** Investment funds set general voting policies. The manager of the fund then decides to exercise the voting right in accordance with the policies and after consultation with the compliance officers/committee. There appear to be no obligation or recommendation that institutional investors vote or weigh the costs and benefits of voting, unless the internal policies stipulate so.

**Disclosure of voting policy.** Institutional investors such as investment funds and legal persons acting on behalf of other shareholders are recommended to disclose their policy of voting and actual voting in their annual reports (CGR, Art.6d).

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

**Assessment: Broadly Implemented**

**Institutional investor policies on conflicts of interests.** Institutional investors are required to disclose in their annual reports the conduct adopted to deal with conflicted positions that may affect fundamental rights related to their investments.

**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: Broadly Implemented**

**Rules on shareholder consultation and acting in concert.** There appear to be no rules in the CGR or CL that obstruct the ability of shareholders to consult with each other on the execution of their basic shareholder rights. We understand from some articles that acting in concert in KSA is recognized (See for example MAR, Art.12).

## 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: Fully Implemented**

**Equality within share classes.** Under the law, all shareholders of a same class are to be treated equally regarding the distribution of profit, and shareholders of a same class of shares shall enjoy the same rights (CL, Art. 108). The CL allows the AGM to amend the rights of certain groups of shareholders, but the decision is not effective unless approved by those concerned (CL, Art. 86). This applies also to preferred shares, which are permitted under the CL, unless the Company's articles of association stipulates otherwise.

**Availability of share class information.** Information on the different classes of shares is available in the prospectus (per LRs) and the articles of association. CGR (Art. 4) facilitates the collection of share class information by stating that shareholders should be enabled to elicit all the needed information at the Companies General Directorate and that the companies themselves need to adopt the most effective means to communicate the needed information. (LRs, Art. 22(8). In any case, ordinary shares of public limited companies are "one-share, one-vote".

**Approval by the negatively impacted classes of changes in the voting rights.** The decision to amend the rights of a certain group of shareholders is not effective unless approved by those concerned shareholders who have the right of voting in a special assembly, pursuant to the provisions prescribed for the EGM (CL, Art. 86, 113, 122). Shareholders can sue the company for: damages as a result of mismanagement of company affairs; violation of CL provisions; or stipulations of the company statute.

**Principle III A 2: Minority protection from controlling shareholder abuse; minority redress**

**Assessment: Partially Implemented**

**EX ANTE PROTECTIONS**

**Pre-emptive rights.** Shareholders have pre-emptive rights to purchase new shares, to protect against share dilution and expropriation through capital increases (CL, Art. 136). The Council of Ministers can cancel or restrict pre-emptive rights in six instances (in case of concession, public utility company, in companies where the state guarantees a certain rate of profits and or is subsidized and or participated by the government, in case of banking institutions), (CL, Art. 136).

**Ability to call meeting.** Shareholders (who have at least 10% of voting rights) can call a special AGM (CL, Art. 87). AGM can also be called upon the request of the external auditor or shareholders representing 5% of the equity share capital (CGR, Art. 6b). The same percentage of 5% allows shareholders to add items on the AGM agenda (CGR, Art. 5f).

**Cumulative Voting / Proportional Representation.** CGR defines (Art. 2) the option of accumulative voting for electing directors, and states this election method can apply in every company (CGR, Art. 6b).

**EX POST PROTECTION**

**Ability to sue to overturn meeting decisions.** Overall, objecting shareholders, whose complaints are recorded in the minutes of the AGM, or shareholders who are absent from the AGM for acceptable reason, are entitled to demand nullification of the decision issued in contradiction to the provisions of the CL or provisions of the company's articles of association. The ruling of such nullification shall render the decision null and void for all shareholders.

**Redress from regulators.** Shareholders can complain to the CMA, which can investigate within its powers (see section I). Shareholders can sue directors if their actions have caused a special damage to them (CL, Art. 78). The company itself can follow shareholder complaints with a liability lawsuit against the board for errors prior to ordinary GSM approval (CL, Art. 77).

**Ability to sue directors.** Directors can be sued for negligence, and overall violation of their fiduciary duties. In practice, there are almost no suits against directors. Liability insurance policies are not provided to directors.

**Withdrawal rights.** Shareholders do not have the ability to require the company to purchase their shares in the event of certain corporate events.

**Inspection Rights.** Shareholders representing 5% at least can request via the CSCD to order an inspection of the company (CL, Art. 109). If evidence is proven from the dispositions of the board of directors, or auditors, in the company affairs, the CSCD can order performance of inspection on the company management at the expense of the complainants. (When it is deemed necessary, the CSCD can demand from the complainants to offer a guarantee. If the complaint is confirmed as valid, the CSCD shall order whatever it deems of precautionary measures and shall call for the general assembly to take necessary decisions. The CSCD also, in case of dire necessity, may depose the board of directors and the managers and

appoints a temporary manager for whom it shall determine his power and the term of his assignment.)
<b>Principle IIIA 3: Custodian voting by instruction from beneficial owners</b>
<b>Assessment: Broadly Implemented</b>
<b>Rights of beneficial owners.</b> Custodians do not appear to be required to provide shareholders with information concerning their options in the use of their voting rights. No depository receipts appear to be present.
<b>Principle IIIA 4: Obstacles to cross border voting should be eliminated</b>
<b>Assessment: Partially Implemented</b>
<b>Meeting notice requirements.</b> (CL, Art. 88) The AGM notice must be issued 25 days before an AGM, and shall be published in the official gazette and a daily newspaper. Once published, all the necessary documentation is rendered at the company's head office at the disposal of shareholders.
<b>Procedures to facilitate voting by foreign investors.</b> Shareholders can vote in person or may delegate in writing another shareholder to attend the AGM on his/her behalf (CL, Art. 83). This applies to foreign investors if they enter a proxy vote agreement.
(This principle is rated "Partially Implemented" because of the restrictions in place on foreign investment.)
<b>Principle IIIA 5: Equitable treatment of all shareholders at GSM</b>
<b>Assessment: Broadly Implemented</b>
<b>Procedures to facilitate voting (electronic and postal voting systems).</b> CGR (Art. 3, 4, 5d, 6a) state that companies are prohibited from installing procedures that may limit shareholders voting exercise.
However, there are cases where shareholders have to arrive from distant locations and this is the reason why the CMA, in cooperation with the Ministry of Commerce and Industry, is contemplating the possibility to issue rules on use of phone and internet for participation purposes. No cases of shareholder complaints related to obstacles of AGM participation have been reported.
<b>Equitable treatment of shareholders at meetings.</b> The CL does not address methods of voting but the CGR leaves it to the articles of association to determine the methods of voting. Pools, shows of hand, and other methods are allowed. There are no provisions on counting blank votes, but the CGR has instituted the cumulative voting procedure at discretion of the companies.
<b>Disclosure of voting results.</b> CL, Art. 95 requires companies to record minutes of the AGM including names of the attending shareholders or representatives, number of shares in their possession (personal or by proxy), number of votes prescribed, decisions taken with supporting votes, along with a summary of the discussions. Minutes are then signed by the chairman, its secretary and vote's collector, and kept in a special registry.
<b>Principle IIIB: Insider trading and abusive self-dealing should be prohibited.</b>
<b>Assessment: Partially Implemented</b>
<b>Basic insider trading rules.</b> The CML (Art. 50 a/b) and the Market Conduct Regulation (Section 3, Art.5, 6, and 7) provide the basic framework for trading. Illegal (direct and indirect) insider trading are defined, and prohibited along with manipulative practices and untrue statements.
<b>Investor protection against abusive self-dealing.</b> There is no private cause of action for investors in case of self-dealing or insider trading. Investors in the Saudi securities market have four causes of action under the CML (Art. 55, 56, 57). First, they may sue to recover damages resulting from a material misrepresentation in a prospectus. The second private cause of action is the right of recovery in the event that an individual makes an untrue written or oral statement of material fact, or a material omission, in connection with another's purchase or sale of a security. The third private cause of action is for those adversely affected by market manipulation. The final private cause of action is against unlicensed brokers.
In 2006, 83 cases were brought to the supervisory attention, some through referral reports via shareholders. Most of them were related to market manipulation, delays in disclosure, and manipulation on portfolio management. And the market still appears seriously concerned by insider trading and dealing activities.
<b>Insider trading disclosure.</b> There is no mention of insider trading disclosure on newspapers however, recently the Tadawul has begun to disclose ownership information above and below 5% and/or stock exchange website. Information of holding interests or shares is only disclosed to the CMA at the end of trading day.
<b>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.</b>

**Assessment: Broadly Implemented**

**Conflict of interest rules and use of business opportunities.** According to CL Art. 69 and 70, board member shall not have any direct or indirect interest in the operations and contracts done in the company favor unless he receives a license from the AGM, renewable every year. The board member cannot, without an annual renewable license from the AGM, participate in any operation that competes with the company, or trade in a branch of the activity it is practicing.

According to the regulations on securities and (LRs., Art. 27 b11 and b7), the board, in its report, has to describe any interests and rights of board members, key executives, their spouses and children in company shares or any of its subsidiaries. The board shall also provide information on any contract involving material interests for board members, general manager, financial manager, or any related party.

**Board responsibility for managing conflicts of interest.** Board members and managers are subject to fines as they can be considered liable for damages for violation of the above mentioned rules.

**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: Broadly Implemented**

The CL, Art.143, 215 allow creditors to object to reductions in the authorized capital or the merger of the company however, there are no provisions that provide other stakeholders (employees, consumers, the community) the right to have input in the governance of the company. Also, there are no provisions with regard to employees' consultation with unions during company restructuring.

The CGR (Art. 10) recognizes the need for boards to organize relationships with stakeholders and requires companies to establish written policies for that purpose, asking the board to monitor its implementation (CGR Art., 10e/5). Also, the CGR (Art. 1a) states that the recommendations included in the CGR are meant to ensure the protection of shareholder rights as well as the rights of stakeholders.

Labor relations and employee rights are determined in the Labor Law and by the Executive Regulations of Labor Law. If necessary, the Cabinet may set a minimum wage. The Labor Law incorporates provisions for working hours, juvenile work, leaves, work hazards, and health and social services. The Labor Law does not address freedom of association (labor unions). Since 2001, the government has authorized the establishment of labor committees for citizens in local companies, including factories having more than 100 employees; however, no practical steps have been taken to implement this decision. The Labor Law does not provide for collective bargaining or the right to strike.

Overall, labor disputes are handled by two panels: the Primary Dispute Settlement Committee and the High Dispute Settlement Panel.

Few companies report on corporate social responsibility in their annual reports. No Saudi company is listed among worldwide companies that submit progress reports on the state of affairs of their corporate social responsibilities within the contest of the UN Global Compact Project. The CGR requires companies to establish a written policy on corporate social responsibility.

**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**

Although the CGR requires companies to establish mechanisms for the settlement of complaints or disputes between company and its stakeholders, it does not specify what these mechanisms are. Also, it does not determine specific mechanisms to differentiate types of stakeholders.

The CGR states that the board of directors shall set mechanisms for compensating stakeholders in case their rights are violated, but there are no details as to who is liable and what his liability is.

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

**Assessment: Partially implemented**

Share options and incentive schemes for other employees of the company have been recently introduced by the amendments of the Offers of Securities Regulations (the Resolution of the CMA Board of the CMA Number 1-28-2008, Dated 18/8/2008). At the time of completion of this report, the amendments had not been yet ratified. Board members can be compensated by a specific percentage of profits that do not exceed 10% of the total profits calculated after expenses and

profits distribution to shareholders have been deducted. Companies are recommended (CGR, Art. 123) to establish pension plans/funds and the AGM deliberates on deductions from the net profits amounts aimed at establishing social institutions for employees or financing the existing ones.

**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 (per the OECD Methodology) stakeholders in KSA do not directly participate in the corporate governance process.

Pension plans are set based on AGM deliberations and the CGR (Art., 10) recognizes the need to organize relationships with stakeholders and require companies to establish written policies for that purpose and ask the board to monitor its implementation (CGR, Art. 10. e/5).

**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 are no specific whistleblower protection mechanisms under the law.

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

**Assessment: Broadly Implemented**

**Effectiveness of bankruptcy, security/collateral, and debt collection/enforcement codes.** According to the WB's Doing Business rankings, KSA is the 2008 runner up reformer (after Egypt). This quest for improvement is confirmed in the creditor rights indicator as the availability of credit information has been substantially enhanced (6 is the highest value assignable, see Table 4) with the recent launch of a commercial credit bureau, whose reports also include credit exposures of companies. Creditors have several rights (including the right to object to capital reductions) which are overall enforceable, although delays in the court system have been reported. See *Doing Business 2008* at [www.doingbusiness.org](http://www.doingbusiness.org).

Creditor Rights Indicator	KSA	Regional Average	OECD Average
Legal Rights Index (out of a possible 10)	3	3.7	6.4
Credit Information Index	6	2.6	4.8
Public credit registry coverage (borrowers per 1000 adults)	0	3.6	8.6
Private bureau coverage (borrowers per 1000 adults)	23.5	8.1	59.3

#### 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: Broadly Implemented**

**Overview of Financial Reporting.** The CML follows the model of initial public disclosure along with periodic reporting (quarterly and annual) throughout the life of the company. While quarterly and annual reports need to contain a balance sheet, a profit and loss account, a cash flow statement, and any other information required by the CMA's rules, the annual reports must also contain a description of the issuer and its business, information regarding the board, officers and staff of the issuer, a statement by management of current and future developments expected to have significant effect on the company's financial position, and any other information required by the CMA. All financial reports (CML, Art. 45a/1-3) and management forecast (CML, Art. 45b/3) are considered confidential information until made public, and the issuer may not release this information to outsiders prior to filing the information with the CMA (LRs, Art. 26). The issuer must keep the CMA apprised of any material events that may affect the price of its stock that occur between the reporting periods. The

CMA and the Tadawul have the power to compel disclosure of any issuer-specific data at any time and force this information into the public domain. The CL charges the board of directors to prepare the company budget, a report on the company activity, profit and loss account, its financial position and the method proposed for distribution of net profits.

**Consolidation.** Companies are required to file consolidated financial statements (LRs, Art. 26).

**Management discussion and analysis.** The board is required to compile a report and present it to the AGM. The board report includes comprehensive statements on the nature of company activities, description of plans and decisions of the company, company assets, dividend policy description of shares and bonds, contracts involving conflict of interest, number of board meetings, and board remuneration. In particular, the board reports on its compensation during the previous fiscal year, in particular board members of salaries, share of profits, attendance allowances, expenses and privileges. In addition, the report shall include a statement of whatever the board members received in their capacities as officials or administrators, or whatever they received in return for technical or administrative tasks or consultations (LRs, Art. 27).

**Oversight, sanctions and remedies.** The Continuous Disclosure Department of the CMA is responsible for monitoring company's compliance with the disclosure requirements of CML and LRs. The department is composed of 50 staff and divided up in three thematic units: Review of Financial Statements Unit, Daily Monitoring Unit, and Qualified/Unqualified Opinion Unit. On-site inspections are conducted by the Enforcement Department (16 staff but on the raise) of the CMA based on referral reports provided by inspectors. Continuous Disclosure Department or Tadawul further collect data and report to the Board of Commissioners for approval. The CML grants the CRSD to impose a wide variety of sanctions ranging from censure, to cease and desist orders, to restitution. Further, at the request of the CMA, the CRSD has the power to levy a fine against any person responsible for knowingly violating the law or any rule. As an alternative to such action by the CMA, the Board of the Tadawul may impose such a fine on "anyone responsible for the violation of the law or regulations".

Investors in the Saudi securities market have private causes of action under the CML, Art. 55, 56, 57. For example, they may sue to recover damages resulting from any material misrepresentation in a prospectus. Civil damages can be awarded to investors.

#### Principle VA 2: Company objectives

##### Assessment: Broadly Implemented

When the company invites the public for subscription, it publishes a bulletin that includes the objectives of the company and when it registers in the Company Registry, it discloses its objectives.

The board of directors is required to disclose in the board report comprehensive plans and strategies of the company, any corporate restructuring, business expansion, or discontinuance of operations, and the future prospects of the issuer and any risks facing the issuer (LRs, Art. 27b.2).

#### Principle VA 3: Major share ownership and voting rights

##### Assessment: Partially Implemented

**Periodic disclosure of significant ownership.** Significant shareholding' changes are disclosed in the board report which is a required as an addendum to the annual financial statements (LRs, Art. 27). The report must contain the list of the shareholders whose interest has increased to 5% and whose interest has increased or decreased by at least 1% after that 5% holding has been reached. (LRs, Art. 30). In case of directors or senior executives purchasing shares, the disclosure to the CMA and the issuer is immediate in two cases: when they buy shares of the company or its affiliates; and when their holding's increase or decrease is equal to 50% or more of the shares they already own, or when their holding increases by at least 1% of the total shares of the company (LRs, Art. 30a 3 and 4). The disclosure of beneficial ownership information appears to be still limited in relation to intra-group relations and significant cross-shareholdings.

**Timely disclosure of significant ownership.** Any significant change in the holding or identity of persons holding more than 5% of the issuers listed company must be notified to the CMA by the company (LRs, Art. 32).

**Regulatory agency access to ownership information.** The CMA has regulatory access to ownership information. Indeed, the CMA and the Tadawul have the power to compel disclosure of any issuer-specific data at any time and force this information into the public domain at their own discretion.

**Disclosure of company group structures.** The company has to disclose in the prospectus a description of the group, if any, and the company's position within that group (LRs, Art. 12, annex 4).

#### 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 shall contain information on the qualifications and experiences of board members and total compensation and benefits of members and any employment contracts for members.

**Board member disclosure of holdings and transactions in the company's securities.** Directors and senior executives

shall disclose to the company and the CMA any ownership of or interest in at least 5% of any share or debt instrument. They also have to disclose increase or decrease of their shares or instrument (LRs, Art. 30a/3, 30a/4).

In addition, the board report shall contain information related to any contract to which the company is party and in which a director, the CEO, the CFO or any associate is or was materially interested. It should also contain description of arrangement or agreements under which a director or a senior executive has waived any emolument or compensation (LRs, Art. 27b/17, 27b/18).

Furthermore, a board member shall inform the board of his personal interest in the operations and contracts done for the company. This information is recorded in the board meeting minute. The chairman shall also inform the shareholders of the operations and contracts in which one of the directors has a personal interest. A special report from the auditor is attached to the notification (CL, Art. 69).

**Full disclosure of remuneration and remuneration policy.** The terms and the full written details of the proposed remuneration to directors and executives are sent to all the shareholders before the AGM which will take place to approve the remuneration packages. Director and/or senior executives are not allowed to vote on these decisions (LRs, Art. 36).

#### Principle VA 5: Related party transactions

**Assessment: Partially Implemented**

**Ex-ante disclosure of material related party transactions.** The LR's require companies to disclose promptly to the CMA any transaction between the company and a connected person (LRs, Art. 25b/9) but there are no requirements to disclose RPTs before they are carried out. Companies are required to disclose to the CMA information related to any contract between the company and the CEO, CFO, and any director (LRs, Art. 27b/17, see Principle IIIC). Large related party transactions do not need to be approved by shareholders, so there is no disclosure via materials for the shareholders meeting.

**Periodic disclosure of related party transactions.** Listing rules require prompt disclosure of RPTs to the CMA and periodically (annually) to list the transactions in the Board Report.

The CMA may in general suspend or cancel listing of securities if it sees it necessary to protect investors or maintain orderly securities market, or if the issuer fails substantively to follow the rules of registration and listing. The CMA may warn the company, issuing an order to abstain from continuing to violate the relevant rule, forcing the company to take the necessary steps to correct its behavior, or impose a fine.

#### Principle VA 6: Foreseeable risk factors

**Assessment: Broadly Implemented**

**Disclosure of material risks.** The CGR recommends that a formal risk assessment be undertaken at least annually (CGR, Section G). The board should include a statement on risk management in the annual report.

**Disclosure of internal risk control procedures.** The CGR states that companies shall determine the general framework of risks that they may encounter, and that companies shall establish the appropriate internal policies and disclose risks and policies in a transparent manner. The LR's require companies to report and describe any risks they face.

In practice, some companies disclose in their annual reports risks they face such as credit risk, interest rate risk, and currency risk.

#### Principle VA 7: Issues regarding employees and other stakeholders

**Assessment: Not Implemented**

**Disclosure of stakeholder issues.** Requirements to handle the relationship of the company with the employees and stakeholders are just beginning to emerge. The CGR recommends drafting company policies to regulate this relationship, but the CGR and its related disclosures are still too new to be tested.

#### Principle VA 8: Governance structures and policies

**Assessment: Partially Implemented**

**Disclosure of corporate governance report (including structure and operation of board).** The CGR provides basic guidelines for core governance standards and practices. It is designed to enhance the corporate governance of listed companies. Companies are required to submit the board report stating their areas of compliance or non-compliance with CGR. The board report is required to contain also a description of the issuer's significant plans and decisions, a description of the principal activities of the issuer and its group. (LRs, Art. 27 b.1 and 2).

**Comply-or-explain in force.** All listed companies are required to disclose their compliance or non-compliance with the CGR

**Regulator enforcement practice.** The CMA and Tadawul enforcement of the “comply or explain” provisions are yet to be tested as this is the first official year of compliance with the CGR.

**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**

**Compliance with IFRS.** Listed companies are required to comply with the local accounting standards (21 standards to date) issued by SOCPA. Saudi local standards are based on US GAAP, and IFRS, and where there are no local rules Saudi Arabia uses IFRS to fill the vacuum.

**Review/enforcement of compliance.** The development and reviewing of all accounting standards in KSA is the responsibility of the Accounting Standards Committee (ASC), which is part of SOCPA. SOCPA’s Committee has nine sub-committees (quality control, ethics, audit, accounting, etc) in charge of drafting and interpreting the relevant standards. Overall, the market scores high in compliance with the local standards.

**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 and Auditor Independence.** All listed companies are required to be audited. The local auditing standards are set by the Audit Committee of SOCPA.

Auditor independence is defined by The Code of Ethics and Professional Conduct promulgated by SOCPA. According to Certified Public Accountants’ Regulations, a certified public accountant (CPA) is not entitled to audit the accounts of enterprises or companies in which he has a direct or indirect interest. The audit committee of SOCPA issues standards to guarantee the independence of the auditor, as well as opinions and interpretations on auditor’s independence. For example, in 1998 Decision No.9/101/9 has defined the amounts of shares that undermine the independence of the auditors. The Code of Ethics and Professional Conduct differs with the IFAC independence requirements as the list of examples or cases, such as close family or business relationships that compromise the independence of auditors is not as exhaustive as the IFAC’s requirements.

The CGR (Art. 14c/4) recommends the establishment of audit committees, which are required to propose auditors who are independent. However, the CGR does not define the concept of "auditor independence".

**Auditor qualifications.** The external auditors should be registered CPAs holding a practicing certificate. They must have a Bachelor’s degree in accountancy or any other equivalent certificate. A CPA is not entitled to audit the accounts of public shareholding companies, banks and public corporations unless he has a minimum of five years of professional practice. An auditor cannot combine auditing services for one client and provide consultation services (administrative, financial, and other works of consulting nature) at the same time.

**Audit quality assurance / enforcement.** SOCPA is responsible for drafting and interpreting auditing standards and is entrusted to set ad-hoc committees. The auditing standards committee determines the topics for which auditing standards are to be issued, and consists of four professionals, four academics, two government representatives, and one company representative. The Quality Review Committee conducts monitoring programs to insure compliance with audit standards and examines the request referred to it from the CPA Violations Investigation Committee. It then submits a report summarizing violations. The report submitted to the investigation committee shall include, in addition to imputed violations, an explanation of related regulatory and professional requirements, and state the violations. SOCPA currently functions with limited resources which hinder its overall effectiveness.

**Board reporting of the audit relationship.** The CGR states that companies shall provide shareholders with all information so that they can exercise their rights completely. The audit committee recommends to the board of directors the appointment of auditors and the committee is to follow up on the auditor process and any non-audit work.

**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.** The external auditor must be approved by the AGM based on the audit committee and board’s recommendations, if companies have adopted an audit committee, otherwise the AGM appoints the auditor (CL, Art. 130). The external auditor is accountable for compensating the damage inflicted on the shareholders due to errors he commits while performing his function, and if the auditors participating in committing the error are multiple, they are jointly accountable (CL, Art. 133). The board determines the external auditor’s compensation and the auditor reports to the board. Good practice recommends the AGM to approve the external auditor’s remuneration.

**Penalties for auditors who fail to perform with due care.** According to the CML, a board member can be held liable for damages. Also the CMA can warn the concerned person, ordering him to abstain from the violation

Board members can be liable for providing misleading information to the public and risk imprisonment for period of three months and not exceeding one year, and with a fine not less than 5,000 SAR and not exceeding 20,000 SAR, or with one of two penalties. In case of recidivism, the penalty is doubled.

Penalties for those external auditors who violate the Certified Public Accountants Regulations are: reprimand, warning, suspension from practicing the profession for a period not to exceed six months, or removal of the name of the non-compliant from the Certified Public Accountant's Register.

**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.** The company must, without delay, keep the CMA apprised of any material events that may affect the price of its stock that occur between the reporting periods. If the securities in question are listed, the company must also report these events to the Tadawul. The CMA may suspend or cancel listing of securities if the issuer fails substantively to follow the rules of registration and listing (LRs, Art. 25a).

The issuer must, without delay, keep the CMA apprised of any material events that may affect the price of its stock that occur between the reporting periods. If the securities in question are listed, the issuer must also report these events to the Tadawul. The CMA may suspend or cancel listing of securities if the issuer fails substantively to follow the rules of registration and listing. (LRs, Art. 25)

Investors in the Saudi securities market have private causes of action under the CML. For example, investors can sue to recover damages. The CMA has the power to take public action whenever it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this law, the CMA's rules, or the rules of the Tadawul.

**Easy accessibility of disclosed information.** Summary information is disseminated through the official gazette, internet, stock exchange and newsletters. Material information disclosure is made through the stock exchange website. In general, companies publish some information on their websites including financial statements and annual reports.

**Prohibitions on selective disclosure of information.** There do not appear to be any prohibitions in the law or regulation on selective disclosure of information.

**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: Not implemented**

**Disclosure of conflicts of interest by analysts, brokers, rating agencies.** To note, APR currently regulates intermediaries, which appears to capture most of the core principles of the IOSCO Statement of Principles for Addressing Sell-side Securities Analyst Conflicts of Interest, 2003. However, the core measures of principles do not need to be addressed by the legal framework necessarily. (APR, Art: 5 , 9 , 29 , 30 , 40 , 41 , 50 , 53 and 54; MCR, Art: 18 and 19; M&A Regulation, Art 3.E).

## 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**

KSA has a one tier board system (CL, Art. 79, 1<sup>st</sup>). The board size of any KSA listed company is between three (CL, Art. 66, 1<sup>st</sup>) and eleven (CGR, Art. 12a), their mandate is to last a minimum of three years (CL, Art. 66, 2<sup>nd</sup>) and their re-appointment can always be granted unless the company articles of association stipulates otherwise (CL, Art. 66, 3<sup>rd</sup>). In 2007, the average board size of listed companies (94 companies in November 2007) was 8.4, as surveyed by the Hawkamah Institute of Corporate Governance, with the higher averages being recorded in the highly regulated sectors, i.e. banking, utilities, and Telecom. Representation of women on boards remains virtually non-existent (average 0.1%).

**"Duty of care" and "duty of loyalty".** Fiduciary duties are nascent legal concepts in KSA. The CGR (Art. 11c and 11d) requires the board's directors to carry out their duties in a responsible manner, in good faith, and with due diligence, and always to carry out the general interest of the company. The CL provides (Art. 76) a vague description of the duty of care

and identifies categories of directors' joint and several liabilities for mismanagement of companies' affairs and leaves to the company the duty to file the liability lawsuit via a decision of the AGM (CL, Art. 77). Shareholders can also file a liability lawsuit as long as the company entitlement to file such lawsuit is outstanding (CL, Art. 78). The CGR (Art. 11 c) expands the realm of fiduciary duties by introducing duty of diligence and duty of loyalty. Directors shall responsibly carry out their functions in good faith, with due diligence, and shall represent the interests of all the shareholders and not only the interests of the groups that elected them.

**Effective enforcement.** As various supervisory institutions are raising awareness on corporate governance, directors are beginning to understand their duties and obligations, and are specifically much more aware of their fiduciary duties under the law. Notwithstanding these developments, no further legislation or guidance to explain the practical interpretation of the fiduciary duties (i.e. duty of care is about constructively challenging the management, properly prepare for board meetings, or simply asking questions during board meeting) has been issued, there are almost no suits filed against directors, and there is no requirement which obliges directors to purchase member liability insurance (no directors in KSA have one). Most observers conclude that effective enforcement of violations of fiduciary duties is still in an early developmental phase in KSA.

**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.** As mentioned earlier, the "duty of loyalty" is still a nascent concept in KSA and was recently introduced by the CGR in October 2006. In the CGR (Art. 11d), directors are recommended to act in the best interests of all the shareholders and not only in the interests of the groups. The CGR (goes even further in granting shareholders full access to information which may enable them to exercise their rights (CGR Art. 4a and 4b). Redress mechanisms for shareholders are present in the CL as shareholders have the right to file a liability suit against directors, but no particular regime is specified in the law or the regulations for minority shareholders. In addition, to date there are no director's liability lawsuit cases brought before the courts.

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

**Assessment: Partially Implemented**

**Development of company codes of ethics / Board and interests of stakeholders.** CL neither requires nor recommends companies to adopt codes of ethics. The CGR (Art. 4b) requires companies to disclose all information which enable shareholders to properly exercise their rights, (Art. 10e) to draft policies in order to identify stakeholders and manage company's relationship with them, and (Art. 10e/4) to have a code of conduct for company executives and employees while the board is in charge of monitoring compliance with it. Several companies have implemented some form of codes of ethics and have posted them on their website

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

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

**Assessment: Broadly implemented**

**Central and strategic role played by boards.** The role of the board is broadly defined and boards of directors do appear to play a central and strategic role in many companies (CL, Art. 73 1<sup>st</sup>). The board's key functions (approval of strategic plans and company objectives, and overall company oversight) are specifically indicated in the newly issued CGR (Art. 10a), yet compliance is still in its early stages. On the enforcement side, no recourses against the board of the directors for breach of duty of care have been filed so far.

**Principle VID 2: Monitoring effectiveness of company governance practices**

**Assessment: Partially implemented**

**Board functions.** As mentioned earlier, the CL definition of board's role and functions is fairly broad. The CGR fills the legislative vacuum by listing clear board responsibilities. Boards are recommended to appoint senior executives and establish internal control measures, corporate governance code, disclosure policies, risk management policies, adequate capital structures, performance objectives, and to ensure that all the policies/activities are regularly reviewed, and updated when necessary (Art. 10). Boards are also recommended to establish policies and procedures to monitor company compliance with the laws and regulations (CGR, Art. 10f). However, the CGR is new and compliance is in its early stages.

**Board self-evaluation.** There are no provisions which call for boards to consider benchmarks by which to gauge board performance and most evidence suggests that very few companies have begun a formal process of board self-evaluation.

**Disclosure to investors.** CL, Art. 123, 148, and 214 require the board to submit an annual report detailing the company's

assets, its profits and losses, and its activities. The listing rules and the CGR also require companies to include a Board Report (CGR, Art.9) listing board composition, remuneration, board member affiliation, and the annual audit report.
<b>Principle VID 3: Selecting/compensating/monitoring/replacing key executives</b>
<b>Assessment: Fully Implemented</b>
<b>Board oversight of selecting and replacing key executives.</b> The CL, Art. 73 gives clear power to the board to appoint senior executives directors. The CGR (Art. 11e and 15) goes even further and recommends companies to set up a nomination and remuneration committee which has the task to: suggest board appointments, review board structure, assess its performance and recommend changes. Succession planning and performance evaluation schemes for board members and executives do not appear to be present and/or widespread among listed companies.
<b>Principle VID 4: Aligning executive and board pay with long term company and shareholder interests</b>
<b>Assessment: Partially Implemented</b>
<b>Develop and disclose remuneration policy.</b> The legal framework (CL, Art. 74) indicates the annual board report as the document where to disclose adopted methods of remuneration for directors (e.g. a salary, a sitting fee, an allowance, in-kind privileges, or rate of profits), and remuneration thresholds (board fees cannot exceed 10% of the net profits). The CGR goes further and (Art. 9) requires now (with the recent amendments being effective in 2009) the board report to include details as to the compensation and benefits of individual members of the board, top five executives, and financial manager, and recommends the institution of a remuneration committee (CGR, Art. 15).  There does not appear to be any specific provision which regulates how compensation of the board of directors and key executives has to be aligned with the long term interests of the company and shareholders.
<b>Principle VID 5: Transparent board nomination/election process</b>
<b>Assessment Partially implemented</b>
<b>Clear and transparent board nomination process.</b> The ordinary AGM appoints, on the basis of the recommendations of the Nomination Committee (CGR, Art. 15) and removes board members (CL, Art. 66, 67 68). The appointment is for three years, and it is always permissible to re-appoint members of the board unless the company statute states otherwise. Any member of the board of directors can resign from his position provided that he does so by choosing good timing. In addition, the board member must be owner of shares whose value is no less than 10.000 SAR.  If the seat of any member in the board is vacated, the board shall appoint provisionally a member to fill the vacancy provided that the appointment is presented at the first meeting of the ordinary AGM.  For banks and other financial institutions, final approval by SAMA is required.  <b>Effective shareholder participation in board nomination process.</b> There are newly introduced specific measures that allow minority shareholder participation in the board election process, and those include cumulative voting (CGR, Art. 6). The regulation still needs to be fully adopted and is voluntary by nature so it will be difficult to test its effectiveness at this stage.  <b>Disclosure of nomination procedures.</b> There appear to be no requirements for the disclosure of board nomination procedures in the CL and/or CGR.
<b>Principle VID 6: Oversight of insider conflicts of interest, including misuse of company assets and abuse in RPTs</b>
<b>Assessment: Not Implemented</b>
<b>Board oversight of internal controls.</b> The CGR also requires the board to lay down rules for internal control systems which include written policies to regulate: 1) conflict of interests, 2) financial disclosure, 3) control procedures for risk management, and 4) annual review of the control systems in place.  According to the CL, Art. 69, board members should not be directly or indirectly engaged in the formulation and roll out of company's contracts unless the AGM has stated so. In case of public bidding, the interested board member (i.e. the individual with the best bid) needs to discharge his responsibilities and inform the board of the interest, and the chairman to inform the AGM and ask the company's auditor to produce a special report that describes the case. The CGR goes even further (§13 c) asking companies to set up board committees comprised of a sufficient number of non executive board members expressly engaged on monitoring (-) conflicts of interest, (-) appointments of executives, (-) integrity of financial information.  <b>Board oversight of related party transactions.</b> Neither the CL nor the CGR specifies any requirements for board oversight of conflicts of interest, procedures for monitoring shareholder conflicts of interest, approval of related party transactions, or independent oversight of the process. The listing rules do require boards to disclose in their report related party transactions but there is no requirement for shareholders to approve the transaction before it takes place is present. The CGR requires

the board to adopt a code of conduct that covers conflicts of interest for directors and management. It also states that the board must have unrestricted access to all organization information, records, and documents.

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

**Assessment: Partially implemented**

**Board oversight of financial reporting.** The board for every fiscal year is responsible to approve the financial documentation of the company to be presented at the AGM, and the chairman, the CEO and CFO sign off before it is circulated to shareholders and third parties (CL, Art. 89 and LRs, Art. 26a). The board report also contains a statement that proper books of account have been maintained (LRs Art. 27 and 22).

**Board oversight of internal controls and external auditors.** The CL requires the board to facilitate the job of the external auditor when the latter requests documents, reports, other company books and records, and clarifications (CL, Art. 131). The CGR integrates this provision by encouraging the board to lay down clear rules for internal control systems and ensure the integrity of financial and accounting procedures and the appropriate control procedures for risk management, and review the effectiveness of the internal control systems annually (CGR, Art. 10a-b) The CGR also encourages the establishment of audit committee charged to execute the functions described above. The audit committees should be composed of three board members (executive is not entitled to sit on the committee) and a financial specialist should be included (CGR, Art.14a). Main functions of the Committee rotate on internal and external audit supervision and review, and review of interim and annual financial statements and internal accounting policies in force (CGR, Art. 14). In practice, the CGR is new and implementation is in its early stages.

In practice, not all companies have an internal audit function. Internal auditors should report to the audit committee and with a dotted line to the CEO, but in KSA they report to CEO, CFO, the largest shareholder or the audit committee. In banks, one of the functions of the audit committee is to meet with the chief internal auditor or the officer or employee of the bank acting in a similar capacity, and with the management, to discuss the effectiveness of the internal control procedures as practiced in the bank.

**Internal compliance programs.** The CGR also requires that companies establish a code of corporate governance and that they monitor compliance with it.

**Principle VID 8: Overseeing disclosure and communications processes**

**Assessment: Broadly implemented**

**Board oversight of disclosure process.** According to the LRs, the board should oversee disclosure of several aspects of material information included in the board report. This includes statements about compliance or non compliance with the CGR, a description of the company plans and decisions and future prospects, an explanation for any material differences with the operating results of the previous year, and board and senior executive remuneration.

**Board responsibility for communications strategy.** LRs and CGR require or encourage the board to effectively describe the principal activities of the company, and communicate the corporate strategy/future plans to all the shareholders.

In practice, the CGR is new and implementation is in its early stages.

**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 recently issued CGR sets six criteria to define an “independent board member”, (Art. 12), and requires the majority of the board to be non-executive, a minimum of two board members or at least one third of the board (whichever is greater in number) to be independent, and limits their directorate commitments to serve on other five. The definition of independence is fairly complete and mainly pivots on controlling intra-group and family related appointments but the CGR or the law does not assign specific responsibilities or board committees’ memberships to the independent directors. It is left to the companies’ articles of association to define how independent directors will contribute to the completion of board tasks.

**Separation of Chairman / CEO.** The position of CEO and board chair are required to be separated (CGR, Art. 12d) and CEOs and senior executives cannot sit (CGR, Art. 14 and 15) on the recommended audit and/or nomination Committees. Independence is not required for the chairman of the board.

**Company disclosure of independence.** The CGR, Art.9e and the LRs, Art. 27 specifically require the company to state

which directors are non-executive or independent, or to describe board committee composition, indicating names of chairmen and members.

**Independent oversight of key board tasks including:**

**Financial Reporting.** The CGR requires the establishment of an audit committee, comprising no less than three members and including at least one specialist in financial and accounting matters. Senior executive of the company are not eligible for an audit committee seat. The external auditor is appointed by the board based on the recommendation of the audit committee which is also in charge of his remuneration, which good practice suggests be a function of the AGM, and dismissal while the Chairman of the board is required to enable the external auditor to perform his duty and report to the board any difficulty arisen (CGR, Art. 14c and CL, Art. 131). The audit committee is also responsible for periodic reviews of the accounting systems, internal audit function, and interim and annual financial statements to be presented to the board for final approval. Again, besides the exclusion of senior executives from the audit committee composition, there is no specific requirement for audit committee members to be independent from management.

**Board and executive nomination.** The CGR requires (Art. 15) boards to set up nomination and remuneration Committees in charge of recommending board appointments, of periodically reviewing board structure and assessing its performance, and of ensuring the independence of its members. The CGR charges also the committee to draft remuneration policies for board members and top executives.

**Principle VIE 2: Clear and transparent rules on board committees**

**Assessment: Broadly implemented**

**Requirements and experience with committees of the board.** The CGR recommends boards of listed companies to appoint "suitable" board committees, and requires companies to have at least an audit and a remuneration committee, with encouraged participation of non-executive directors. The CGR welcomes additional committees based on companies' needs but their role is not specified. Members of the audit committee have to be at least three; one being a specialist in financial and accounting matters. Nothing is specified for the remuneration committee's composition. While the CGR defines the responsibilities of the committees, their terms of reference, independence, remuneration and evaluation is left to the AGM and companies' internal policies. No specific provisions on chairmanship of these committees are provided.

**Disclosure of mandate, composition, and working procedures of important committees.** The CGR (Art. 9) also requires that the board of directors' reports for listed firms include brief descriptions of relevant information about each board committee, including their composition and a description of their activities.

**Principle VIE 3: Board commitment to responsibilities**

**Assessment: Partially implemented**

Eligible directors must be individuals, and must not have been previously disqualified or be un-discharged bankrupts.

**Directorate Commitments.** According to Art. 66 of the CL, "the Council of Ministers may specify the number of boards of directors in which the member may be appointed". Art. 12h of the CGR states that an individual cannot hold membership in the boards of directors of more than 5 public shareholding companies at the same time. IFC's and Hawkamah's regional survey shows that surprisingly cross-board memberships are fairly low in Saudi Arabia, which almost 85% of the Saudi directors hold only one mandate and 11% hold two mandates, but that virtually no directors are present on more than four boards. Controlling families average 33% membership per board, but in some cases their representatives can occupy up to 75% of the board seats.

**Company disclosure of board member activity.** The CL, Art. 74 requires companies to disclose in the board report the amount and composition (salaries, shares of profit, expenses) of remuneration paid to board members based on meeting attendance, and it specifies the thresholds that cannot be exceeded (10% maximum of the net profits of the companies after expenses are deducted). Although the disclosure requirements are fairly detailed, companies do not appear to be required to link up attendance, performance, and related remuneration of board members. There are no requirements on recommended frequency of board meetings, although the board report includes board member's attendance information and the CGR Art.16 requests boards to meet regularly upon the Chairman's invitation. Same applies to board committees. The CGR requires also boards to document meetings, deliberations and related voting.

**Requirements for initial and on-going training.** There are no requirements for on-going or induction training. Some director training has reportedly been provided by different providers.

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

**Assessment: Fully Implemented**

**Board access to information.** The CGR, Art. 11g requires that the board have unrestricted access to all information, records, documents, and retaliates the concept especially for non-executive members, to allow them to discharge their roles

and responsibilities effectively. Several secrecy provisions are also included in the CL related to business strategies and actions plans, although the market appears to be facing several insider dealing issues.

**Free access to qualified advisors.** There is no specific requirement in this case, although it appears that boards have access to expense companies for professional advice on corporate issues. The CGR requires that the board has an agreed procedure enabling board members to obtain independent professional advice at the company's expense; further, all directors have access to the advice and services of the company secretary. The CGR also recommends that board committees should be free to take independent outside professional advice as and when necessary (CGR, Art. 3). There were no reports of non-compliance with this recommendation. Given that most directors are insiders (agents of the controlling shareholders) this is not a problem in practice.



## Saudi Arabia Terms/Acronyms

<b>AGM:</b> Annual General Shareholder Meetings
<b>APR:</b> Authorized Persons Regulation
<b>CEO:</b> Chief Executive Officer
<b>CFO:</b> Chief Financial Officer
<b>CL:</b> Companies Law
<b>CMA:</b> Capital Market Authority
<b>MAR:</b> CMA Merger and Acquisition Regulations
<b>CML:</b> Capital Market Law
<b>CRSD:</b> Committee for the Resolution of Securities Disputes
<b>EGM:</b> Extraordinary General Shareholder Meetings
<b>GCC:</b> Gulf Cooperation Council
<b>GSM:</b> General Shareholder Meetings
<b>GCGF:</b> Global Corporate Governance Forum
<b>IAS:</b> International Accounting Standards
<b>IFC:</b> International Finance Corporation
<b>IFRS:</b> International Financial Reporting Standards
<b>IMF:</b> International Monetary Fund
<b>IOSCO:</b> International Organization of Securities Commissions
<b>ISA:</b> International Standards on Auditing
<b>LRs:</b> Listing Rules
<b>MoU:</b> Memorandum of Understanding
<b>NCB:</b> National Commercial Bank
<b>PIF:</b> Public Investment Fund
<b>ROSC:</b> Corporate Governance Report on the Observance of Standards and Codes
<b>SAR:</b> Saudi Riyal
<b>SAMA:</b> Saudi Arabian Monetary Agency
<b>SDC:</b> The Securities Depository Center
<b>SOE:</b> State Owned Enterprise
<b>Tadawul:</b> Saudi Stock Exchange

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

To see the complete list of published ROSCs, please visit  
[http://www.worldbank.org/ifa/rosc\\_cg.html](http://www.worldbank.org/ifa/rosc_cg.html)

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

---

Contact us at [CG-ROSC@worldbank.org](mailto:CG-ROSC@worldbank.org)