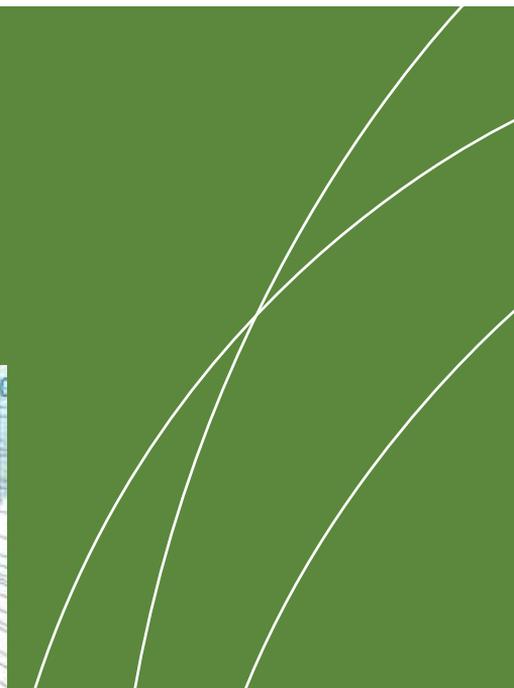


IFC Advisory Services in Mongolia

CORPORATE GOVERNANCE SCORECARD 2011

(This review was conducted in 2013 based
on available data from 2011)

In partnership with:





CORPORATE GOVERNANCE SCORECARD 2011

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available data from 2011)*

The International Finance Corporation
in collaboration with the
Financial Regulatory Commission of Mongolia and the
Corporate Governance Development Center of Mongolia

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Report

Acknowledgements

The Corporate Governance Scorecard (the Scorecard) is a part of the IFC's Corporate Governance Program in Mongolia that is assisting regulatory authorities, companies and organizations to develop their corporate governance (CG).

The Scorecard is a review and report on the CG practices of the 20 largest listed companies in Mongolia. Its development has been supported by both the International Finance Corporation, which supports regional and local initiatives to improve corporate governance in middle-income and low-income countries in the context of broader national or regional economic reform programs.

The preparation and publication of the Scorecard involved the participation of a significant number of dedicated people. The content of the Scorecard was developed collaboratively by Ms. Anne Molyneux, international adviser, Mr. Jigjid Unenbat, Corporate Governance Development Center, Mr. Anar Aliyev and the project team. The scorecard project was under direct supervision of Mr. Anar Aliyev, Operations Officer, Mongolia Corporate Governance Project, International Finance Corporation.

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Abbreviations

ACGA	Asian Corporate Governance Association
ADB	Asian Development Bank
ASEAN	Association of South East Asian Nations
ASIC	Australian Securities and Investment Commission
BOD	Board of Directors
CEO	Chief Executive Officer
CFA	Certified Financial Analysts
CFO	Санхүү хариуцсан захирал
CG	Corporate Governance
CGDC	Corporate Governance Development Center
COO	Chief Operating Officer
EBRD	European Bank for Reconstruction and Development
FRC	Financial Regulatory Commission
GMS	General Meeting of Shareholders
ICRA	Indian Credit Rating Agency
IDEA.net	Institute of Directors' East Asia Network
IFC	International Finance Corporation
IFRS	International Financial Reporting Standards
IPO	Initial Public Offering
ISA	International Standards on Auditing
MNT	Mongolian Tugrik
MOU	Memorandum of Understanding
MSE	Mongolian Stock Exchange
NGO	Non-governmental Organization
OECD	Organization of Economic Co-operation and Development
ROA	Return on Assets
ROE	Return on Equity
ROSC	Review of Standards and Codes
UK	United Kingdom
US	United States of America
USAID	US Aid Agency

A. Introduction

“Better corporate governance practices could help Mongolian banks increase efficiency, protect shareholder rights and improve their access to international capital markets.”

Bold Javkhlan, First Deputy Governor of Bank of Mongolia.

“The high-profile collapses of several large corporations in the past decade have created significant investor confidence gaps. Most of these scandals involved accounting fraud, which stemmed from the breach of shareholder rights protection and the lack of transparency, two pillars of corporate governance. As a consequence, corporate governance ratings have become an important element in calculating credit worthiness by investment management and credit rating institutions”¹.

In recent times, the Mongolian Government and several non-governmental organizations in Mongolia have been focused on developing better corporate governance (CG) in Mongolian companies. Mongolian authorities have expressed great interest in and have shown commitment to improve corporate governance. For example, new Company Law, adopted in October of 2011 (as mentioned throughout this report), introduced stronger corporate governance regulations, such as asking companies to define the role and composition of the board of directors, protect shareholders’ rights, and ensure corporate transparency. Under the new Company Law, the Board directors are also required to be trained on good CG practices. The Financial Regulatory Commission (FRC) was assigned the challenging and important role as the state agency in charge for the Law’s implementation.

Earlier in 2010, the Mongolian parliament promulgated a new Banking Law. In 2009, the Corporate Governance Development Center (CGDC) was established to lead developments in Mongolia. The World Bank undertook a Review of Standards and Codes (ROSC) in corporate governance in Mongolia which was completed in June 2009.

Additionally in March 2011, the Mongolian government approved National Program on the Corporate Governance Development and established later that year the National Council on Corporate Governance. The Council, which includes governmental authorities and representatives of the private sector and FRC, further strives to promote best standards on corporate governance through education, consultation and information. In particular, over 70 CG trainers from 9 institutions attended FRC organized training activities. Subsequently, these Mongolian training and consultancy institutions trained over 800 directors of Mongolian companies.

Several other initiatives have also taken place, such as the training of directors and journalists in corporate governance good practices in co-operation with the International Finance Corporation (IFC).

This scorecard is another of these developments.

A corporate governance scorecard is an effective tool for all stakeholders to assess

1. USAID and CGDC Mongolia, CG Toolkit, May 2013. The corporate governance Toolkit has been prepared by the United States Agency for International Development (USAID) through its Business Plus Initiative project.

companies' fulfilment of best practice. Its concise criteria provide relevant information that can be readily compared, a valuable asset for investors evaluating portfolio holdings and new investment opportunities"². It is a quantitative tool to measure compliance with a code or standard of corporate governance and can generate a score that indicates the level of compliance with the benchmark.

“Good corporate governance helps to bridge the gap between the interest of those that run a company and the shareholders that own it, increasing investor confidence and making it easier for companies to raise equity capital and finance in the investment process. Good corporate governance also helps ensure that a company honours its legal commitments, and forms value-creating relations with stakeholders including employees and creditors”³.

a. Purpose

This independent survey of corporate governance practices in Mongolia is the first of its kind for Mongolia. It is intended to be a baseline survey to establish a starting point and which is expected to create awareness of and increase knowledge of corporate governance in Mongolia. It is likely to be used for future comparative purposes, measuring progress on corporate governance in Mongolia.

The survey of the state of corporate governance in the largest 20 Mongolian listed companies was devolved from publicly available data, data available to investors and related to the 2011 financial year. The data assessed is that which was available during 2011 and especially at the close of 2011. It also included any data that became available after 2011 relating to 2011 company activities. The review was undertaken in 2013.

The largest 20 companies listed on the Mongolian Stock Exchange (MSE) by market capitalization as at 31 December 2010 (3 January 2011⁴) were reviewed. The companies together represented 89.7% of the total market capitalization of the MSE.

The goal of such a rating system was to develop a sound base for an assessment of the implementation of good corporate governance principles in Mongolia and to provide a framework for future policy discussions and corporate governance developments.

Indeed the development of improved CG Frameworks has been a focus throughout much of Asia and South Asia and most successfully in Thailand, Malaysia and Vietnam.

Thailand has used a scorecard system, such as this one, for more than 10 years to promote awareness of the need for CG and to point to development initiatives for companies and regulators. “Corporate governance reforms implemented in Thailand have enhanced investor trust and protected investors' rights, especially non-majority shareholders, increased board professionalism and promoted high levels of corporate transparency”⁵. “Thailand is a clear leader in corporate governance among Asian economies and emerging economies”⁶.

2. Christian Strenger, Member, German Corporate Governance Commission and Vice-chairman, Private Sector Advisory Group, Global Corporate Governance Forum.
3. OECD, Corporate Governance and Capital Markets in Eurasia: Two Decades of Reform, OECD, Paris, 2013.
4. 3 January is selected as the benchmark date as it was the first trading date of the 2011 financial year.
5. World Bank press release, April 25, 2013, accessible at www.worldbank.org
6. Robinett D., World Bank press release, April 25, 2013.

Vietnam has developed a similar scorecard with the aid of the IFC as a part of its Corporate Governance Program in Vietnam. Three successive scorecards enabled regulators and companies to pinpoint gaps in corporate governance practices. The project has resulted in amendments to Enterprise Law, Securities Law and to the Corporate Governance Code. Considerable training efforts and the production of the Corporate Governance Manual have grown the understanding and application of good governance principles in Vietnamese companies. The scorecard project also resulted in the development of quality indices, the Vietnam 30 indices, on both the Hanoi Stock Exchange and on the Ho Chi Minh Stock Exchange.

The scorecard system is generally a widely recognised way used throughout Asia to raise community awareness of the importance of corporate governance and of the necessity to improve corporate governance.

b. Objectives

The scorecard has a variety of goals addressing both the regulatory framework and company approaches to corporate governance. It is expected to:

- Provide a standardized, systematic framework from which regulators and investors may assess individual company corporate governance standards and the overall level of CG in Mongolia;
- Enable a company to assess the quality of its corporate governance and to stimulate companies to enhance their practices;
- Provide a systematic way to analyze corporate governance across industries, which is expected to assist improvements in corporate governance practices;
- Assist regulatory groups to identify strengths and weaknesses in corporate governance regulations and practices, leading to further reforms;
- Provide a base from which, in the future, companies, investors and regulators may assess progress in CG practices; and
- Be available to support general awareness and understanding of good corporate governance practices.

It is important to note that “the best corporate governance framework does not guarantee acceptance and implementation if companies are not complying with the framework”⁷. For example, within months of receiving the Golden Peacock Award for Corporate Governance in India, Satyam Computers was crushed by the public admission by its chairman of fraudulent practices over several years.

The scorecard analysis should point, however, to areas for improvement so CG in Mongolia can move through and beyond compliance to an effective CG system operating within companies. Therefore, the scorecard is a tool to focus discussion, raise awareness, and encourage change in CG standards.

7. Strenger C., *The Role of Corporate Governance Principles – The importance of compliance and main issues in Germany*, OECD Eurasian Roundtable, Kiev, 2004.

c. Principles underlying the Mongolia scorecard

The development of the scorecard has been guided by the following principles:

- It should reflect global principles and internationally recognised good practices;
- It was not based on the minimal requirements of the law and regulation in Mongolia but encouraged companies to adopt higher standards as is the practice elsewhere;
- It aimed to be comprehensive in its coverage and focused on policies and practices in place within companies; and
- The methodology had to be robust and objective and quality review practices were built into the methodology to assure the reliability of the assessment.

B. Executive Summary

“Good corporate governance helps to bridge the gap between the interest of those that run a company and the shareholders that own it, increasing investor confidence and making it easier for companies to raise equity capital and finance in the investment process. Good corporate governance also helps ensure that a company honours its legal commitments, and forms value-creating relations with stakeholders including employees and creditors”⁸.

In recent times, the Mongolian Government and several non-governmental organizations in Mongolia have been focused on developing better corporate governance (CG) in Mongolian companies. Mongolian authorities have expressed great interest in and have shown commitment to improve corporate governance. For example, new Company Law, adopted in October of 2011 (as mentioned throughout this report), introduced stronger corporate governance regulations, such as asking companies to define the role and composition of the board of directors, protect shareholders’ rights, and ensure corporate transparency. The Financial Regulatory Commission (FRC) was assigned the challenging and important role as the state agency in charge for the Law’s implementation. This scorecard is another initiative to improve CG in Mongolia.

A corporate governance scorecard is an effective tool for all stakeholders to assess companies’ fulfilment of best practice. Its concise criteria provide relevant information that can be readily compared, a valuable asset for investors evaluating portfolio holdings and new investment opportunities⁹. It is a quantitative tool to measure compliance with a code or standard of corporate governance and can generate a score that indicates the level of compliance with the benchmark.

The five major categories/areas utilized as a basis for the scorecard assessment of company corporate governance are those recognised by the OECD Principles¹⁰ as the keys to good

8. OECD, *Corporate Governance and Capital Markets in Eurasia: Two Decades of Reform*, OECD, Paris, 2013.

9. Christian Strenger, Member, German Corporate Governance Commission and Vice-chairman, Private Sector Advisory Group, Global Corporate Governance Forum.

10. *OECD Principles of Corporate Governance*, issued by the Organization for Economic Co-operation and Development (OECD) and amended in 2004, is an international benchmark for policy makers, investors, corporations and other stakeholders worldwide. They continue to advance the corporate governance

corporate governance:

- The rights of shareholders (Area A);
- Equitable treatment of shareholders (Area B);
- Role of stakeholders in corporate governance (Area C);
- Disclosure and transparency (Area D); and
- The responsibilities of the board (Area E).

The specific Mongolian Scorecard was constructed with questions that reflect the OECD Principles, Annotations and Assessment Methodology and specific corporate governance legal and regulatory frameworks in Mongolia, especially the FRC Corporate Governance Code of Mongolia. Other pertinent Mongolian legislative and regulatory instruments¹¹ were reviewed in the development of the scorecard. Where applicable, International Financial Reporting Standards (IFRS) and International Standards on Auditing (ISA) were considered relevant standards.

This scorecard corporate governance review surveyed the 20 largest publicly listed companies, listed on the MSE at 3 January 2011. Collectively these companies represented more than 89.7% of the total market capitalization in Mongolia and 5.9% of the then 336 listed companies. There are about 215 active operating companies on the MSE. The Scorecard took the view that by the fact of listing on the stock exchange, companies have a public obligation to adhere to the law and regulations and also to aspire to good corporate governance practices, beyond compliance with legal and regulatory requirements. Over 123 questions, each company was reviewed for its observed corporate governance practices in the five areas state above, as might be observed by an external investor from publicly available documentation.

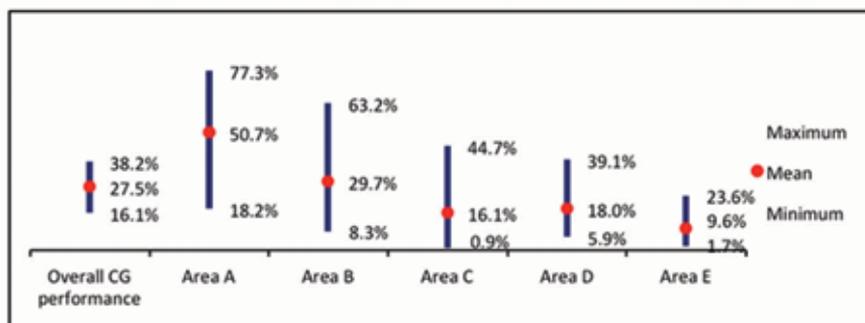
Overall results

The overall mean score of 27.5% indicates that companies have a long way to go in implementing good practices and that corporate governance in Mongolia was at the rudimentary stage and ready for improvement. The overall mean score indicates poor application of good corporate governance practices.

Chart 1. Overall corporate governance performance

agenda and provide relevant guidance for non-OECD as well as OECD countries. “Corporate governance is seen as one key element in improving economic efficiency and growth as well as enhancing investor confidence”.

11. Other legislative and regulatory instruments include Company Law, No 34, 1999 (applicable in 2011), Company Law (revised) October 2011, Securities Listing Rules of the Mongolian Stock Exchange, Securities Law, December 2002, and the Stock Exchange Information Regulation on Information Dissemination, November 2003. The Guidelines on Implementation of the Corporate Governance Principles on Banks, applicable to Mongolian banks was also influential.



The higher mean results of 50.7% in Area A – the Rights of Shareholders and of 29.7% in Area B – the Equitable Treatment of Shareholders would indicate that corporate governance practices in Mongolia have been driven by legislative and regulatory development. Both Area A and Area B are traditionally where legislative and regulatory frameworks have a stronger influence.

Companies need to understand that corporate governance is not only compliance with the law. Compliance with the law is mandatory. Good application of corporate governance practices requires a much higher standard beyond mere compliance and requires further positive action on the part of companies.

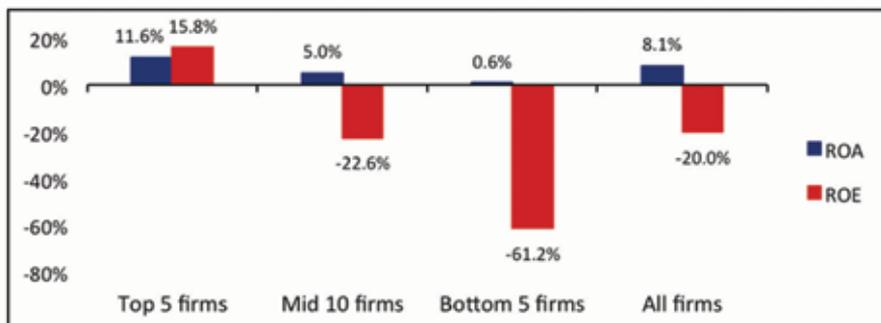
Areas of corporate governance in the review which permit a voluntary approach and more company choice have low mean scores. Area E, the Responsibilities of the Board and Area C, the Role of Stakeholders, allow for more company decision latitude and are less regulated. Mean scores of 9.6% for Area E and 16.1% for Area C would indicate these areas are not given sufficient attention by companies. Area D, Disclosure and Transparency achieved a mean score of 18.0%, thus indicating the need to improve information available to the public and the market. If companies wish to improve their corporate governance, there are opportunities in all areas but especially in relation to the role of stakeholders, in disclosure and transparency and in the practical application of the responsibilities of the board.

45% of companies achieved an overall score of between 30% and 39%; 45% of companies achieved an overall score of between 20% and 29%; 10% of companies achieved an overall score of below 20%. These results reflect that the concept of corporate governance is new to Mongolia and not understood or applied well.

Corporate governance and profitability

As indicated in the chart below when comparison is made between the top 5 firms with higher CG scores (not necessarily with good practices, but with comparatively better practices) and the bottom 5 firms with poorest corporate governance scores and practices, the firms with better governance are more profitable and achieve a better return on assets and return on equity.

Chart 2. CG practices and profitability (as measured by ROA and ROE)



The mean return on assets ratio (ROA) in the top 5 firms/quartile was 11.6% and the mean return on equity ratio (ROE) was 15.8%. This group outperformed the group of 5 firms with poorest CG scores in both these measures. Firms in the bottom quartile achieved a ROA of 0.6% and a ROE of -61.2%. Surely this provides an incentive for companies to take-up good corporate governance practices.

Larger companies tended to have better CG practices than smaller ones. This could be because as the company becomes more complex, better management and CG practices are introduced. Companies with substantial foreign ownership levels also have better observed CG practices. This may be because of the foreign influence or because foreign investors may target better governed companies as a means of better managing the investor’s risk.

Conclusions and recommendations

“A journey of a thousand miles must begin with a single step”¹².

Corporate governance in Mongolia, as indicated by this review, is in its infancy. This provides an opportunity to establish quality corporate governance policies and practices – a sound base for corporate governance in the future.

The results of this baseline survey point to a significant number of differences between globally expected standards and the reality of practices in Mongolia. A number of short term improvements which may be introduced quickly, ‘quick wins’ to progress corporate governance practices. However there are also longer-term actions that will require persistence and perseverance. These more endemic issues are likely to require collaborative efforts on behalf of legislators, regulators, the stock exchange and companies, ideally an agreed Master Plan to better governance.

Recommendations

CG developments need to move from theory to practice, from ‘talk to action’ and could focus initial activities in four important areas:

- Extensive promotion of this review to companies, consultants, chambers of commerce, regulators and other market participants interested in or the likely beneficiaries of

12. Lao Tzu, BBC Biography of Lao Tzu, BBC, London.

good corporate governance and deep training in good corporate governance practices for all participants is recommended.

- Development of coherence between all laws and regulations pertaining to CG and ensuring at least compliance with all laws and regulations.
- Far greater disclosure and transparency and development of policies, processes and materials to assist full disclosure. This is deeply embedded in past corporate approaches and is difficult to change. It needs to be demonstrated that greater transparency will not damage business.
- Fulfilment of the responsibilities of the board, supported by clearly articulated company structures, policies and procedures. In this individuals are influential and the engagement and commitment of key business leaders in Mongolia will be important.

Specific Priorities

Legislative and regulatory developments

1. Review and update the Mongolian Code of Corporate Governance (2007) to align it with recent global developments and for changes in Mongolia's Company Law (2011). For example, align the definition of 'independent directors' with globally accepted definitions.
2. Mandate the application of the Mongolian Code of Corporate Governance for listed companies¹³.
3. Mandate the preparation and provision of a comprehensive Annual Report in the form of one document that provides information on the company's activities and performance (financial and non-financial) over the past year and for the foreseeable future. The Annual Report should be provided to all shareholders and be available to the public on the company website.
4. Ensure company charters do not and cannot reduce the minimal requirements of Company Law.
5. Enhance and clarify corporate governance monitoring and enforcement powers, authorities and sanctions to ensure credible enforcement capacities.
6. Ensure active, visible and reported enforcement of legal and regulatory requirements related to corporate governance by regulatory bodies.
7. Promote awareness of the scorecard findings to company directors, bank, securities regulators and to media and relevant others.

Institution strengthening

1. Strengthen the knowledge of corporate governance within regulatory institutions.

13. It is noted that the CG Code is now mandated for listed companies under Securities Market Law and is applicable from 1 January 2014.

2. Ensure the FRC and the stock exchange has adequate resources available to undertake active and visible enforcement of corporate reporting and corporate governance requirements and to support leadership related to corporate governance development. Skills development is important in this.
3. Strengthen the accounting profession and company reporting, accounting and audit professional practices to be consistent and current with internationally accepted practices. Ensure IFRS and ISA required for application in Mongolia are the most recent standards. Build the quality of external audits and ensure auditor scepticism and build knowledge and practices of internal audit.
4. NGOs and private sector organizations (CGDC, Chambers of Commerce etc) might support the development from this scorecard of a Master Plan for CG development. Such a plan might include development of training programs, best practice materials and incentives to guide CG application in Mongolia. Examples of support materials needed would be a new Code, training programs, disclosure checklists, model audit committee policies and procedures etc. The challenge will be to get the active participation of the companies and directors.

Private Sector / Company developments

1. Development, publication and promotion of a good company structure for corporate governance including establishing board committees with committee charters, quality director nomination and election processes, board evaluation measures, quality risk management structures and practices, including an internal audit function.
2. Development and publication of quality company corporate governance frameworks, policies and procedures. For example, a company code of corporate governance, demonstrating company commitment to CG, a code of conduct for directors, information policies, investor relations policies, and policies related to conflict of interest transactions might be part of the framework.
3. Development of an understanding of the role a company secretary can and should play to support quality corporate governance and board practices.
4. Publication for broad consumption and provided to shareholders, a comprehensive Annual Report on company financial and non-financial activities and performance over the past year and for the foreseeable future.
5. Companies should develop, issue and publicly display detailed guidance on company processes for independent auditor selection, appointment and oversight and their commitment to quality corporate reporting practices, company disclosures (regular and ad hoc disclosures). They should also develop company policies and practices for corporate social responsibility and company information disclosure.
6. Development and engagement of key business leaders committed to better corporate governance practices, who may become ‘champions’ of corporate governance within their company and board.
7. Identify and build a group of potential independent directors capable of objective

judgment and knowledgeable on corporate governance practices.

Public Sector / Company developments

1. The state should become a ‘champion’ of good corporate governance practices as evidenced by public statements of support for good CG by leading individuals.
2. Quality CG practices should be mandated for companies in which the state has a majority shareholding, listed and otherwise, and hold company directors of state enterprises to account for the quality of CG in their companies.

C. Research Methodology

a. Basis of assessment

The OECD Corporate Governance Principles are the globally accepted benchmark for corporate governance. Behind these Principles stands the OECD/World Bank Methodology for Assessing the Implementation of the OECD Principles of Corporate Governance. Whilst this methodology is normally applied at the national level, thematic issues and essential criteria that are considered in the Methodology are also applicable at the company level and have been used in the development of this scorecard questionnaire.

In addition, other corporate governance assessment methodologies have influenced the development of this scorecard. The most recent initiative of the ASEAN Scorecard¹⁴ methodology has been reviewed and considered in the development of the assessment tool / questionnaire.

Similar to the ASEAN Scorecard methodology and assessment methodologies used in many Asian countries (Hong Kong, Singapore, Malaysia, Philippines, Thailand, Indonesia), the assessment of each company was based on reliable and externally available information, company data and documents - information that was publicly available to a current or potential investor. The relevant information was that which an investor could utilise to assess whether to invest, divest or hold / expand / sell down the investment.

Information sources relied primarily on information in an Annual Report and on a company’s website and included financial statements, corporate governance reports, codes and policies, sustainability reports, public and regulatory filings filed with the regulator and the stock exchange, notices for the General Meeting of Shareholders (GMS), reports on results of GMS, GMS minutes, and the Company Charter. Only information which was publicly available and which was easily accessible and understood was used in the assessment. To be given points in the Scorecard, disclosure had to be unambiguous and sufficiently complete.

It was important corporate governance principles and concepts are not just accepted at the conceptual level - a ‘compliance’ or ‘box-ticking’ approach was not sufficient. The

14. Under the ASEAN Capital Market Forum, a pan-ASEAN Corporate Governance Scorecard was applied for the first time in 2012. The report (ASEAN corporate governance scorecard: Country reports and assessments 2012-2013, Mandaluyong City, Philippines, Asian Development Bank, 2013) is available at adbpub@adb.org

assessment was about establishing from a ‘reasonably well informed person’ point of view, whether corporate governance concepts were applied in practice in the company. These practices were ‘observed’.

Caveat:

There are ‘pros’ and ‘cons’ to any corporate governance rating system. No corporate governance rating system, such as this one, can totally and accurately predict the level of real corporate governance within a company. This can only really be interpreted from an inside view; a view of the board as it goes about its business. This scorecard, therefore, captures only what is evident and released to the public and that is reflected in available documentary filings. As such the outcome may not be as finely tuned and informative as if the rating had been undertaken internally with the benefit of internal specific company knowledge. However such an internal approach may have its inbuilt biases.

Consistent with the ‘external investor’ perspective, the raters were chosen for their business knowledge and trained in corporate governance. They were and are appropriate to make relevant judgments. The raters were formally trained in corporate governance, in the philosophy of the scorecard and in the assessment process. The assessment was an exercise designed to be undertaken by independent consultants / raters, independent of both the companies involved and also independent of the stock exchange, the regulators and other interested parties.

The envisaged approach used both quantitative and qualitative methods based on reliable data sources and a relatively unbiased rating process. Qualitative information was reviewed according to expressed and agreed criteria thus ensuring reliable and consistent judgments. The review was independent of company co-operation.

The major categories utilized as a basis for the scorecard assessment of company corporate governance are those recognised by the OECD Principles¹⁵ as the keys to good corporate governance in companies:

- The rights of shareholders (Area A);
- Equitable treatment of shareholders (Area B);
- Role of stakeholders in corporate governance (Area C);
- Disclosure and transparency (Area D); and
- The responsibilities of the board (Area E).

OECD Principle I ‘Ensuring the basis for an effective corporate governance framework’ which requires “the corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of

15. *OECD Principles of Corporate Governance*, amended in 2004, is an international benchmark for policy makers, investors, corporations and other stakeholders worldwide. They continue to advance the corporate governance agenda and provide relevant guidance for non-OECD as well as OECD countries. “Corporate governance is seen as one key element in improving economic efficiency and growth as well as enhancing investor confidence”.

responsibilities among different supervisory, regulatory and enforcement authorities¹⁶ was not dealt with in this scorecard. It was not considered as it is not a role of company corporate governance but rather more an issue for governments and regulators. However, the scorecard results can highlight anomalies in the regulatory framework in Mongolia.

Initially, the corporate governance scorecard methodology was applied in Germany. However, many corporate governance scorecards in Asia have followed an approach initially agreed by the Institute of Directors East Asia Network (IDEA.net) that encouraged some comparability between Asian corporate governance systems. Both rely on the leadership of the OECD Principles and its Methodology for Assessment and local corporate governance issues as a basis for scorecards. This scorecard was also reflective of learning from these methodologies.

The specific Mongolian Scorecard was constructed with questions that reflect the OECD Principles, Annotations and Assessment Methodology and specific corporate governance legal and regulatory frameworks in Mongolia, especially the FRC Corporate Governance Code of Mongolia. Other pertinent Mongolian legislative and regulatory instruments¹⁷ were reviewed in the development of the scorecard. Where applicable, International Financial Reporting Standards (IFRS) and International Standards on Auditing (ISA) were considered relevant standards.

Mongolian Company Law (1999) relevant and applicable in 2011 required a mix of one-tier and two-tier boards; a corporate governance structure which is similar to that developed in China. Although a board of directors was responsible for strategic direction of the company, the Supervisory Board or Committee was mandatory for listed companies and was elected by the shareholders. The Supervisory Board was required to monitor compliance of the company's management and report to shareholders on the management activities and financial activities of the company.

In the revised Company Law (2011), applicable after 2011, the required corporate governance structure states that joint stock companies “shall have audit, salary and nominating committees and no less than two-thirds (2/3) of these committees shall comprise of independent members of the Board of Directors”¹⁸. The new Company Law was introduced in October 2011 and included several good CG practices in the law. However it did not seem to have been influential in companies in their reporting period to December 2011. Further the new Company Law was promoted by the Mongolian government after the close of the 2011 financial year.

In the development of the Mongolian Scorecard, an assessment of the strengths and weaknesses evident in corporate governance practices in Mongolia and in Mongolian companies, current at 2011 was incorporated into the scorecard questions.

16. OECD, *Principles of Corporate Governance*, OECD 2004, Paris.

17. Other legislative and regulatory instruments include Company Law, No 34, 1999 (applicable in 2011), Company Law (revised) October 2011, Securities Listing Rules of the Mongolian Stock Exchange, Securities Law, December 2002, and the Stock Exchange Information Regulation on Information Dissemination, November 2003. The Guidelines on Implementation of the Corporate Governance Principles on Banks, applicable to Mongolian banks was also influential.

18. Mongolian Company Law, 2011, Article 81.2.

Evidence of Mongolia's strengths and weaknesses in corporate governance came from:

- The World Bank ROSC Corporate Governance Country Assessment – June 2009
- The World Bank ROSC Accounting and Auditing Country Assessment – March 2008
- The EBRD Corporate Governance Legislation Assessment Project – November 2007
- The Guideline on Implementation of the Corporate Governance Principles on Banks
- The World Bank 'Doing Business Report 2013' on Mongolia, particularly the section on 'Protecting Investors'
- Other relevant research pieces on Mongolia corporate governance.

b. Review companies and period

This scorecard corporate governance review surveyed the 20 largest publicly listed companies, listed on the MSE at 3 January 2011. Collectively these companies represented more than 89.7% of the total market capitalization in Mongolia and 5.9% of the then 336 listed companies. There are about 215 active operating companies on the MSE.

The Scorecard took the view that by the fact of listing on the stock exchange, companies have a public obligation to adhere to the law and regulations and also to aspire to good corporate governance practices, beyond compliance with legal and regulatory requirements. Therefore, the date of initial public offering (IPO) and the fact that companies had been only recently listed or may be small companies was not considered relevant. Recent listing and small size may explain a poorer level of corporate governance but would not excuse it.

Also, some sectors in Mongolia may be subject to additional corporate governance requirements, such as those required by the Bank of Mongolia and the Basel Committee for Banking Supervision. These specific issues were not addressed in this scorecard questionnaire. In any event, no Mongolian banks were listed entities and were not a part of this study.

The scorecard reviewed not only adherence to Mongolian law and regulations. That is the proper role of Mongolian regulators. Corporate governance information to be reviewed was assessed under a combination of OECD recommended good practices, globally accepted good practices and the law and regulation in place in Mongolia as at 31 December 2011. To the extent law and regulations are changing and better practices are being introduced, early adherence to these better practices was considered. A new Company Law had been introduced and included improved corporate governance practices. However it was not mandatory for the 2011 financial year and reporting period.

c. Data

The data collection was based on a wide variety of publicly available information to the extent possible. These included: a company's annual report and financial report as disclosed at 31 December 2011, MSE filings, FRC filings, minutes of meetings, especially GMS minutes, GMS documents, Company Charters, company websites, public media and other sources of public information as was available.

In Mongolia, many listed companies were not required to present an Annual Report. In this circumstance, all information provided by the company was collectively treated as if it were in one place in an Annual Report.

Companies may have been undertaking good corporate governance practices and had not reported them. In such cases, a company CG score may be understated. In this respect this report is unapologetic. Transparency and disclosure are key to the investment decision and investors are looking for quality corporate governance information. They want information that builds confidence in how a company is governed.

d. Evaluation methodology - Areas / categories of scorecard instrument

The scorecard instrument categories and sequence were developed based on international standards as set out in the OECD Principles of Corporate Governance which encompass five key areas / categories for assessment, as discussed earlier.

These major categories are similar to those used in several other Asian jurisdictions and may allow some future broad corporate governance comparison with these jurisdictions. However, such future comparisons will be constrained by the fact that corporate governance is set in specific national legal and regulatory frameworks. The questionnaire and its rating criteria encompassed this local legal and regulatory environment.

The assessment covered the different aspects of company corporate governance practices. However these were inevitably linked and closely related. Therefore one assessment question / criterion may well be equally appropriate in another category of assessment. The guide for current location in the scorecard has been the emphasis in the OECD Principles of Corporate Governance.

e. Evaluation methodology - Weighting of areas / categories

Weighting practices have varied across jurisdictions when a scorecard system of corporate governance analysis has been established. Weightings may be applied to individual questions and / or to groups of questions.

It was determined for the Mongolia scorecard that weighting should be applied only to areas / categories or groups of questions and that the relative weightings should take account of the particular strengths and weakness of Mongolia’s corporate governance practices.

Agreed weighting of scored areas / categories, summing to a total of 100%, were:

Table 1. Questionnaire topic areas and score allocation

Category	Number of Questions	% of total score
The rights of shareholders	22	15
Equitable treatment of shareholders	19	15
Role of stakeholders in corporate governance	14	10
Disclosure and transparency	32	30

The responsibilities of the board	36	30
Total	123	100

Such a weighting process can be applied also to questions within each area. It was determined that in the Mongolia Scorecard all questions within a specific weighted area would be scored and have equal value. However each area had different numbers of questions that address the relevant issues related to the area.

f. Evaluation methodology – Review process

Each company rating had a ‘check and balance’ system applied and a strict methodology for each company assessment. Each evaluation, undertaken separately by two raters, was cross-checked by senior experienced members of the rating team to ensure accuracy, consistency and a reliable CG evaluation. The goal was to minimize assessor subjectivity throughout the process.

It was further determined that the quality of corporate governance practices referred to in each question should be recognised on three levels, utilising the terminology of the OECD Principles Assessment Methodology:

- **Observed** good practices (the highest level of CG practice) – **2 points**
- **Partially observed** good practices (the median level of CG practice and which would require at least fulfilment of Mongolian laws and regulations) - **1 point**
- **Not observed**, deficient, missing or non-compliant practices (the lowest level of CG practice) – **zero points**.

Some questions required a more limited ‘yes’/ ‘no’ or ‘no’/‘yes’ response. In these circumstances, 2 points were awarded for a positive response and zero points were awarded for a negative response. Further, some questions depended on a pre-conditioning event occurring. If such an event did not occur or was not evident, then no marks were awarded on that question and the total for that particular company was reduced. Each company was scored on every relevant question provided for in the questionnaire.

It is important to note that if information was not observable through publicly available materials, the question was scored accordingly, rated as ‘not observed’ and zero points were awarded.

The specific selected terminology used in this scorecard (‘observed’, ‘partially observed’ etc.) recognizes that the observation of good corporate governance practice may or may not result in good corporate governance practices. Indeed companies may have had in place good corporate governance practices that were not reflected in the available information.

It is expected that a company ‘recognised for good corporate governance’ based on global practices would score in the 65% to 75% range, or higher.

g. Evaluation methodology - Scoring system

Given the above determinations, to reach a total individual company weighted score, the

following calculation occurred:

- A. Each question in each subject area was assessed and all questions scores totalled.
- B. The sum of all the questions in the subject area (arrived at in A) were divided by the total score possible for all questions to give a percentage value for that subject area.
- C. Result in B was multiplied by the total area weighting to give a % for the company for that particular area.
- D. All weighted % scores across all five areas were totalled.

h. Evaluation methodology - Final company scores

The scorecard facilitates the grouping of companies into broad outcomes of ‘excellent’, ‘good’, ‘fair’, ‘needs improvement’ corporate governance categories. A ‘excellent’ rating would result in a company score of 75% and above; a ‘good’ rating would result in a score of between 65% and 74%; a ‘fair’ rating would result in a rating of between 50% and 64%; a ‘needs improvement’ rating would result in a rating below 50%.

At this stage, exact company scores are not expected to be publicised. Individual companies may inquire as to their particular score.

D. Analysis

The overall objective of the scorecard and this report is to improve the reality of corporate governance in Mongolia. In future years, this baseline study may be compared with the results of other studies in order to determine progress. In the interim it offers an opportunity for companies and regulators to better understand the nuances of the implementation of good corporate governance practices in Mongolia.

a. Overall results

The largest 20 companies listed on the Mongolian Stock Exchange (MSE) by market capitalization as at 31 December 2010 (3 January 2011¹⁹) were reviewed in this study. The companies together represented 89.7% of the total market capitalization of the MSE. The 20 companies represent 5.9% of the 336 total listed companies on the MSE. Whilst it is a fair representation of the market by market capitalization, the sample size of only 20 companies may throw up anomalies by virtue of the small number of companies.

The overall corporate governance performance is reflected in Table 2 and represented graphically in Chart 3 below.

Table 2: Mongolia overall corporate governance performance

	Mean*	Minimum*	Maximum*
Overall CG performance	27.5	16.1	38.2

19. As noted above, 3 January is selected as the benchmark date as it was the first trading date of the 2011 financial year.

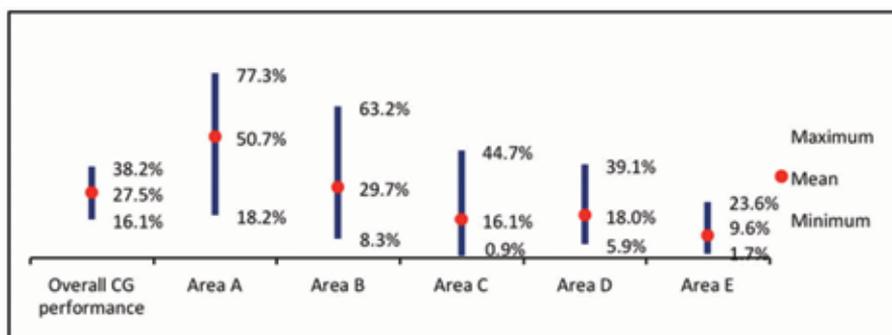
Area A - Rights of shareholders	50.7	18.2	77.3
Area B - Equitable treatment of shareholders	29.7	8.3	63.2
Area C - Role of stakeholders	16.1	0.9	44.7
Area D - Disclosure and transparency	18.0	5.9	39.1
Area E - Responsibilities of the board	9.6	1.7	23.6

Note: All scores are in percentages

The overall mean score of 27.5% indicates that companies have a long way to go in implementing good practices and that corporate governance in Mongolia was at the rudimentary stage and ready for improvement. The overall mean score indicates poor application of good corporate governance practices.

The higher mean results of 50.7% in Area A – the Rights of Shareholders and of 29.7% in Area B – the Equitable Treatment of Shareholders would indicate that corporate governance practices in Mongolia have been driven by legislative and regulatory development. Both Area A and Area B are traditionally where legislative and regulatory frameworks have a stronger influence. Many elements of good governance in both areas are reflected in legal and regulatory requirements. This is evidence of a rule-driven style of corporate governance framework. Companies need to understand that corporate governance is not only compliance with the law. Compliance with the law is mandatory. Good application of corporate governance practices requires a much higher standard beyond mere compliance and requires further positive action on the part of companies.

Chart 3. Overall corporate governance performance



Areas of corporate governance in the review which permit a voluntary approach and more company choice have low mean scores. Area E, the Responsibilities of the Board and Area C, the Role of Stakeholders allow for more company decision latitude and are less regulated. Mean scores of 9.6% for Area E and 16.1% for Area C would indicate these areas are not given sufficient attention by companies. Area D, Disclosure and Transparency achieved a mean score of 18.0%, thus indicating the need to improve information available to the public and the market. If companies wish to improve their corporate governance, there are opportunities in all areas but especially in Areas C, D and E.

Table 3: Number of companies in each score range

	No. of companies in each score range	% of companies in range
CG score range	2011	
Below 20%	2	10
20% - 29%	9	45
30% - 39%	9	45
40% - 49%	0	0
50% - 59%	0	0
60% and above	0	0
Total no. companies	20	100

45% of companies achieved an overall score of between 30% and 39%; 45% of companies achieved an overall score of between 20% and 29%; 10% of companies achieved an overall score of below 20%. These results reflect that the concept of corporate governance is new to Mongolia and not understood or applied well. Whilst this is the first assessment of companies undertaken in this style and format, all scores are low and indicate a need to raise awareness of the importance of corporate governance and of the fundamentals and details of its application.

By comparison, other countries in Asia, when applying somewhat similar scorecard assessment in various years, had the results listed in the table below. All mean CG scores achieved for a ‘first scorecard’ were higher than the mean score of Mongolian companies.

Table 4. Corporate Governance Assessments – Similar (but not identical) styles

Country	Year of Scorecard	Mean Score %
Vietnam	2009 (1 st scorecard)	43.9
Hong Kong	2006	70.6
Hong Kong	2008	72.0
Thailand	2001 (1 st scorecard)	50.0
Thailand	2011	77%
Philippines	2004 (1 st scorecard)	53%
Philippines	2008	72%

Many organisations and institutions, including those listed in the table below, are undertaking corporate governance assessments. The vast majority of these assessments apply the OECD Principles of Corporate Governance. Mongolia should be aware of these reviews in order to understand availability of information on corporate governance environments and of the importance of corporate governance to potential investors.

Table 5. Corporate Governance Assessments – Different styles

Other CG Reviews – Countries Reviewed	Developer of Scorecard	Year of Assessment

ROSC Reviews of Malaysia, Thailand, Mongolia, Korea, Vietnam, India	World Bank	Various
Indonesia, Malaysia, Philippines, Singapore, Thailand, Vietnam	ASEAN	2013
Singapore, Hong Kong, Japan, China, Korea, Thailand, Malaysia, Indonesia, India, Taiwan, Philippines, Australia	ACGA/CLSA	2012
India	India Credit Rating Agency (ICRA)	Regular
China	CFA Institute	2007
Indonesia, Thailand, Korea	ADB	2004

The importance of corporate governance is reflected in the fact that securities markets regulators in major markets (Canada, US, UK, Hong Kong, Singapore, Australia²⁰) are reviewing the corporate governance of issuers in emerging markets as a part of a program to advise their retail investors.

All these assessments provide a reference point for Mongolia’s corporate governance environment to be used by investors, regulators and companies.

b. Corporate governance relationship with performance and profitability

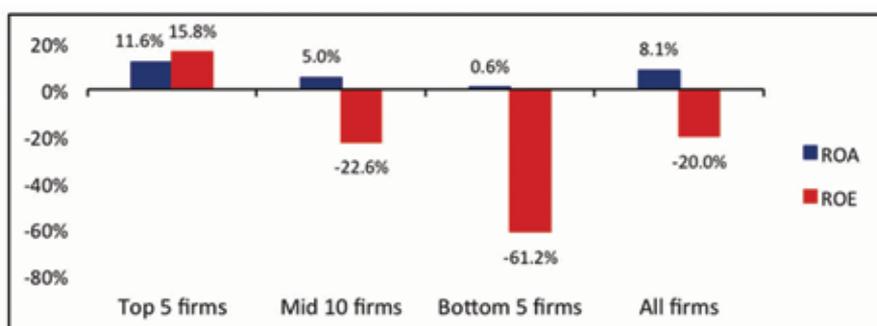
In the following analysis and for ease of comparison, firms are grouped into three groups. The first group included the 5 firms with the better CG scores and CG ranking. The second group includes 50% of firms or the 10 firms with moderate CG rankings compared to the whole group. The third group includes the 5 firms in the bottom CG rankings.

As indicated in the chart below when comparison is made between the top 5 firms with higher CG scores (not necessarily with good practices, but with comparatively better practices) and the bottom 5 firms with poorest corporate governance scores and practices, the firms with better governance are more profitable and achieve a better return on assets and return on equity. The mean return on assets ratio (ROA) in the top 5 firms/quartile was 11.6% and the mean return on equity ratio (ROE) was 15.8%. This group outperformed the group of 5 firms with poorest CG scores in both these measures. Firms in the bottom quartile achieved a ROA of 0.6% and a ROE of -61.2%.

Indeed, when comparing all three groups, firms with better governance practices achieved higher levels of profitability, ROA of 11.6%, than companies in the middle and lower groups with poorer corporate governance scores.

Chart 4. CG practices and profitability (as measured by ROA and ROE)

20. See Australian Securities and Investment Commission (ASIC), Report 368 – Emerging market issuers, Sydney, 27 August 2013.



These findings should encourage firms to pursue corporate governance whilst pursuing profit. The observed relationship between CG and profit is in line with global research undertaken by several researchers²¹ which indicates companies with better corporate governance demonstrate more efficient management, better allocation of resources, and more sustainable wealth creation, leading to better profitability. However, in the case of Mongolia, the correlation between corporate governance and profitability, whilst observable, is not strong or significant. This may be because of the small number of companies reviewed and the fact that scoring was based on public information in an environment where public disclosure is not the norm.

A review of ROE results demonstrate a similar pattern with the five companies with better corporate governance achieving a ROE of 15.8% and the five companies with poorest corporate governance practices achieving a negative ROE of -61.2%.

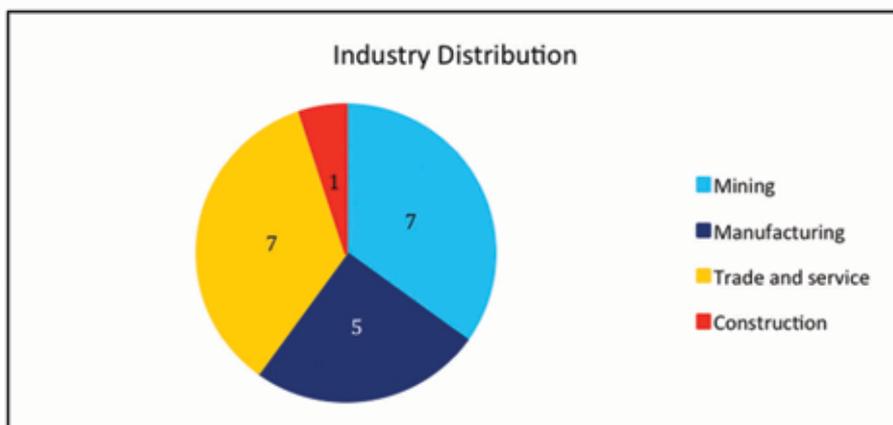
A similar relationship between corporate governance scores and market performance is not observable. Market performance of the reviewed companies, as represented by the Tobin's Q and the Market to Book ratio, do not show a significant relationship with firm corporate governance practices. This may be because there are many other coincident reasons affecting the market and thus market performance. Young, transition markets, such as exists in Mongolia, are likely to be volatile, perhaps inefficient, and with companies subject to thin trading volumes. There are likely to be issues in Mongolia with market liquidity as typically a few investors hold the majority of listed securities. Further the sample size of only 20 companies may also contribute to the lack of correlation. Typically the local investor in Mongolia may not care about how the companies operate or are governed.

c. Corporate governance performance by industry and length of listing

The 20 companies under review were from various industry sectors. The two predominant industry sectors were the mining sector, mostly comprising coal mining companies and one iron ore mining company, and the trade and service sector, which includes a wide variety of businesses including telecoms, brokerage, departments store, hotels, a tour operator and an importer of medicines.

21. Much research has been undertaken in this area to confirm a correlation between CG and improved operational performance and profitability by Stijn Claessens, Bernard Black, Credit Lyonnais (South Asia), ABN/AMRO, Brown and Caylor and Sung Je Byun.

Chart 5. Review group industry distribution



The individual corporate governance scores varied marginally across diverse industry sectors. Mean scores per industry varied from a top mean score of 31.6% to a low of 24.4%. The highest individual company score of 38% achieved was achieved by a company in the ‘Trade and Service’ industry as was the lowest individual company score of 16%. Manufacturing industry achieved the highest mean score of 31.6%.

Table 6. Industry sectors

Industry Sector	Number of Companies	Mean %	Minimum %	Maximum %
Construction	1	31	31	31
Manufacturing	5	31.6	23	37
Mining	7	27.1	17	31
Trade and Service	7	24.4	16	38

The industry in which companies operate did not seem to indicate a relationship with the quality of corporate governance at individual companies.

The length of time a company was listed also did not seem to influence the quality of corporate governance. Fourteen companies or 70% of the review sample were listed before 2000 and were listed between 1992 and 1998. The mean CG score of these companies was 26%. By 2011 it would be expected that these companies would know well the regulatory environment and also the expectations of shareholders regarding good governance and be applying such measures. The average CG score would indicate otherwise.

Six companies (30%) in the review group were listed more recently, after 2000. The mean CG score of these 6 companies was 31%.

Of the five companies with the better CG scores, 40% were listed in the period 1992 – 2000 and 60% were listed more recently, between 2006 and 2008.

It would seem that aspirations of good governance and of applying better corporate governance are an individual company decision.

d. Corporate governance performance by firm size

When one compares the CG scores of the largest companies, defined as those 4 companies with total assets at 3 January 2011 over 100 trillion MNT, the mean corporate governance score is higher at 30.4% than the mean corporate governance scores of all other companies at 26.8%. This indicates that larger firms have better corporate governance. This may be reflective of the need to manage larger and more complex businesses better. Additional corporate governance policies and practices may assist in ensuring compliance with legal requirements and in mitigating risk. Better CG practices may also be demanded by financing partners and/or shareholders. In many similar scorecards, this is often the case. More research is required to understand the relationship between funding and CG.

Table 7: Corporate Governance score comparison between larger and smaller firms

Company size	Number of companies	Mean %	Minimum %	Maximum %
Largest companies	4	30.4%	27.6%	34.2%
All other companies	16	26.8%	16.1%	38.3%

However the highest individual company CG score of 38.3% in the survey was achieved by a mid-sized firm. This would indicate that individual firms, no matter the size, can and do make appropriate changes in relation to corporate governance when the company is committed to do so. Another mid-sized company achieved the lowest score in the survey of 16.1%, indicating the importance of the individual company decision about development of good corporate governance practices or lack thereof.

e. Corporate governance performance by ownership criteria

The report reviewed the levels of foreign and state ownership of the companies to discern if there was a relationship between these elements and the quality of corporate governance observed in the companies reviewed.

The results, as indicated in the table and graph below, showed that the 5 companies with better CG scores also had higher levels of foreign ownership. In the five companies with the highest CG scores, the maximum foreign ownership level was 89.0%. The mean foreign ownership level in the five companies with better scores was 51.1%. All other companies with the poorer CG scores had a mean foreign ownership of 17.2%.

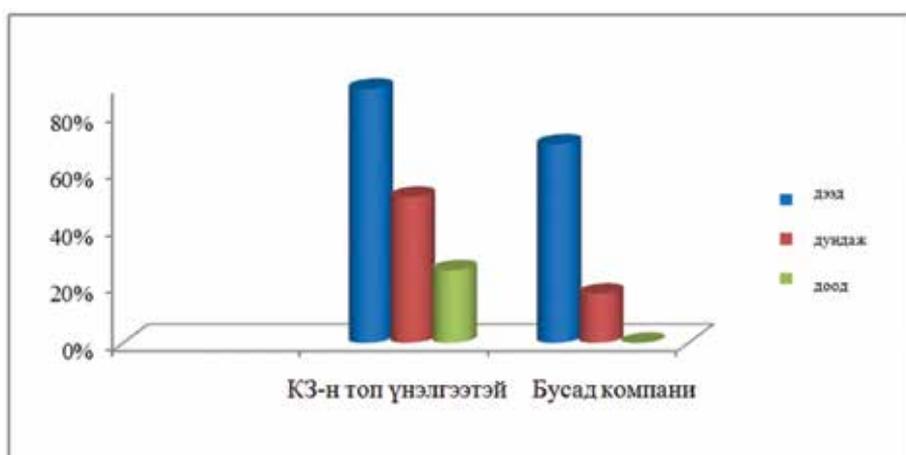
Table 8: Corporate Governance score and foreign ownership

Company CG score	Number of companies	Mean CG scores	Mean foreign ownership %	Minimum foreign ownership %	Maximum foreign ownership %
5 companies with top CG scores	5	34.8%	51.1%	25.4%	89.0%

All other companies with poorer CG scores	15	25.0%	17.2%	0.0%	69.5%
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Put another way, the five companies with a foreign ownership level of over 40% achieved a mean CG score of 30.0%. All other companies, fifteen companies, with a foreign ownership level below 40% achieved a mean CG score of 26.7%. Nine companies with a foreign ownership level below 10% achieved a mean CG score of 24.9%. The lower level of foreign ownership, the lower level of CG practices observed.

Chart 6. CG scores and foreign ownership



We observe a correlation between better CG and foreign ownership. These results may reflect the influence of foreign ownership in demanding better corporate governance practices or may indeed reflect the fact that foreign investors are attracted to and may even target companies already demonstrating better corporate governance as a means of mitigating their own risk.

A similar relationship between levels of state ownership and better corporate governance is not observed. In the survey group there were five companies with substantial state share ownership of between 51.0% and 90.0% ownership. In these five companies the mean CG score was 25.4%, even lower than the mean score for all companies of 27.5%. In all other fifteen companies with 0.0% state share ownership, the mean CG score was 25.9% - a marginally higher mean CG score.

Indeed, in the five companies with the top CG scores, there was 0.0% state ownership.

Table 9. Corporate Governance score and state ownership

Company CG score	Number of companies	Mean CG score	Mean state ownership %	Minimum state ownership %	Maximum state ownership %
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5 companies with top CG scores	5	34.8%	0.0%	0.0%	0.0%
15 companies with poorer CG scores	15	25.0%	21.45%	0.0%	90.0%

This would indicate that state ownership and state influence does not yet positively impact corporate governance practices. This finding presents an opportunity for the Mongolian government, where it has major share ownership, to ‘champion’ better governance and to demand this of the entities in which it holds a controlling stake on behalf of the people of Mongolia.

f. Corporate governance performance and board characteristics

The board is key and central to good governance. Private sector boards have evolved considerably over the past 10 years. Expectations of directors have grown inexorably. A board is expected to provide strategic guidance to the company, to monitor and oversee management, and ensure the board itself is accountable to the company and the shareholders. Therefore, much attention has been given to the composition of the board to ensure it has, collectively, the skills, knowledge and experience to fulfil its role and obligations. In good practices, a ‘balanced’ board is the goal – a balance between executive and non-executive directors; a reasonable number of ‘independent’ directors; and a balance of knowledge, skills and experiences. The goal of a ‘balanced board’ is that there be a balance of power and authority and so that no one individual or group has unfettered decision making power.

Board sizes in Asia vary across jurisdictions from Singapore and Malaysia between 5 and 12 members; Vietnam has between 5 and 11 members²². In the legal environment of Mongolia, the minimum size for a board in Mongolia is set at a minimum of 9 members in Company Law. This is a relatively large minimum size, given the small size of many listed companies and perhaps could be reviewed downwards. The average board size is 9.2 members.

In our study, 85% of companies had boards of 9 members; three companies (15%) had larger boards. In both groups the mean corporate governance score was 27.5%, indicating board size may not contribute to corporate governance differences. For information the average board sizes of several countries in Asia are listed in the table below.

Table 10. Comparative analysis – board size

Size of Board –Comparative analysis ²³			
Country	Average board size	Minimum size	Maximum size
Indonesia	6.9	5	10
Malaysia	8.3	5	12
Philippines	10.5	7	15

22. Source: ADB and ASEAN, ASEAN Corporate Governance Scorecard, Country Reports and Assessments 2012-2013, Asian Development Bank, 2013, Mandaluyong.

23. Venkatesh, S., The composition and compensation practices of boards of directors, LAP Lambert Academic Publishing, 2010. Indonesia operates a two tier board structure.

Singapore	11.1	8	14
Thailand	13.1	10	19
Vietnam	6.1	5	11
Mongolia	9.2	9	11

Thus in the review, board size does not seem to contribute to better CG practices. Each company should appoint the board that will enable it to fulfil its role, is an adequate size for board committee work, that enables the board to manage the company’s business and which is appropriate for the size and complexity of the business.

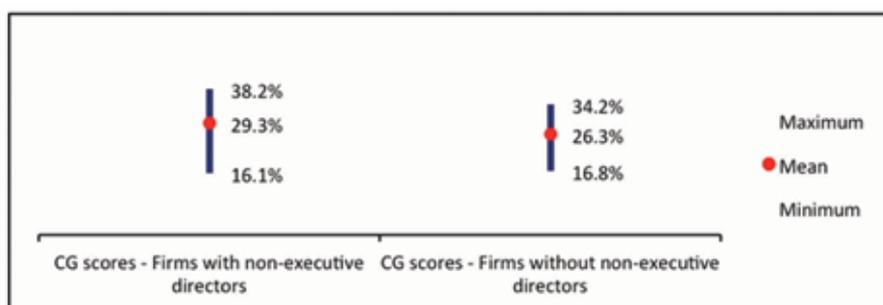
g. Corporate governance and proportion of non-executive and independent directors

Mongolian Company Law (1999) did not stipulate the required proportion of non-executive or independent directors. It does refer to specific duties of independent directors in Article 76.2. The Mongolian Code of Corporate Governance 2007 recommends at “least one-third of the board ... be independent members”²⁴. However application of the Code is voluntary and independent directors were not generally evident.

However the new Company Law (2011) does require “the board of directors of a public company and of a state-owned company shall have at least nine (9) members, and one third shall be independent members”²⁵.

In the companies surveyed, in 60% of companies, non-executive directors were not observed. 8 companies (40% of the review group) identified their non-executive directors. In these 8 companies, the non-executive directors comprised between 66.7% and 100% of the total board membership. These are high proportions. Of the firms identifying non-executive directors, the mean CG score was 29.3%, outperforming the mean CG score of all other firms with a mean CG score of 26.3%. This suggests that companies with a higher proportion of non-executive directors may contribute to better corporate governance practices. However in reviewing this finding, we must exercise caution as the results of only 8 companies is very small and may be skewed.

Chart 7. Corporate Governance performance and non-executive directors



24. Mongolia, Code of Corporate Governance, 2007, Ulaanbaatar.

25. Company Law, 2011, Article 75.4, Ulaanbaatar.

Four companies (20%) did identify ‘independent’ directors. There were a mean number of 3 independent directors in these companies with a maximum of four independent directors and a minimum of two. However it was not entirely clear as to how the companies distinguished ‘independent’ directors from ‘non-executive’ directors. Information was not provided to enable distinction. The definitions of ‘independence’ in the new Company Law and in the Code of Corporate Governance in Mongolia vary and both are not aligned with the best practice definition offered by the International Finance Corporation.

h. Corporate governance of top 5 companies and bottom 5 companies

Finally we thought it good to compare the companies with the top five CG scores against those companies with the five poorest CG scores to see if some good practices come to light.

Of those companies with the top 5 CG scores and the poorest 5 CG scores, the industry representation was as follows:

Table 11. Industry sectors of top5 and bottom 5 companies by CG score

No.	Industry sector of top 5	No.	Industry sector of poorest 5
1	Trade and service	2	Mining
3	Manufacturing	3	Trade and service
1	Construction		

This would indicate that no particular industry is better or worse in implementation of corporate governance practices. Rather, together with other information, the indication is the application of good corporate governance principles and practices reflects a specific company approach, but one that is not yet widespread in Mongolian companies.

The table below may provide some insights into good practices to be encouraged.

Table 12. Comparison of companies with best CG scores v companies with poorest CG scores

	CG Mean CG Score	Mean Board members	Mean Non-executive directors	Mean ROA	Mean ROE	Foreign O’ship	State O’ship
Companies with top CG scores	34.8%	9.4	5.8	11.6%	15.8%	51.1%	0.0%
Companies with poorest CG scores	20.0%	9.2	3.0	0.6%	-61.2%	17.4%	21.1%

The companies with the better CG scores achieved an average score of 34.8%. Whilst this is better than the average score of the poorest companies which achieved an average score of 20%, both scores of observed CG practices are poor, leaving considerable scope for improvement.

Board size does not vary much, largely because of a minimum of 9 board members being mandated.

However the companies with better scores did have a higher incidence of non-executive directors, almost double that of the companies with poorer scores. A non-executive director is a member of the board of directors of a company who does not form part of the executive management team. Non-executive directors should be the custodians of the governance process. They are not involved in the day-to-day management of the company but monitor the executive activity and contribute to the development strategy. The Cadbury Report explains non-executive directors as persons who “apart from directors’ fees and shareholdings [are] independent of the management and free from any other business relationships which could materially interfere with the exercise of independent judgment”²⁶.

In best CG practices at least one-third to one-half of boards should be non-executive directors, who should also be independent of the company. However it must be clear that a non-executive director may not necessarily be an independent director. Non-executive and independent directors can bring additional skills, new ideas and contacts to the company, not available within its management ranks.

Profitability in companies with better CG was higher. ROE was 77% higher and ROA was 11% higher in the companies with better CG scores. Global thinking suggests better CG does lead to better management, with clearer roles, responsibilities and strategies, better decision making based on better information and better investor protection.

Finally higher levels of foreign ownership at a mean of 51.1% were evident in the companies with better CG scores. There were higher levels of state ownership evident with a mean of 21.1% ownership in the companies with poorer CG scores. Encouraging foreign ownership may introduce a CG discipline into the company. Alternatively companies with better CG scores may attract foreign investment. Research into the effect of corporate governance to the investor decision undertaken in 2002 by McKinsey and Co would indicate that “global institutional investors are prepared to pay a premium of up to 40% for companies with good corporate governance practices”²⁷. Premiums varied across jurisdictions; the premium in Asia was an average of 22%.

E. Specific Findings

In this section of the report, the aggregate results of each question are considered. The goal is to highlight each area where companies were implementing good corporate governance practices and to suggest practices for improvement. In this entire section of the Scorecard Report, areas of strength are colour-coded blue and areas of weakness are colour-coded red.

26. Sir Adrian Cadbury, Cadbury Report, 1992, London.

27. McKinsey, Global Investor Opinion Survey, McKinsey, 2002, New York. Available at: www.mckinsey.com/governance. Recent research published in 2013 by Bell, Filatotchev and Aguilera confirms this view. The paper is titled Corporate Governance and Investors Perceptions of Foreign IPO Value: an institutional perspective.

a. OECD Principle II and Area A - Rights of shareholders

The Principle considers that the corporate governance framework, including companies and regulators, should protect and facilitate the exercise of shareholder rights. Normally many of the basic rights of shareholders are enshrined in law. These basic rights generally include the right to register and transfer shares, the right to participate in and be generally informed on decisions concerning fundamental corporate changes, the right to effectively attend, participate and vote in the general meeting of shareholders, and to elect and remove members of the board of directors and to receive a share in the profits of the company through a dividend.

In Mongolia, basic shareholder rights are required in Company Law and are reflected in Article 47 (Company Law 1999) and in Article 32 and Article 34 in the Company Law (2011) and any additional shareholder rights may be specified in the most recent version of the company's charter.

In evaluating the rights of shareholders, companies' practices were reviewed against a set of measures consisting of 22 questions. In reviewing all five areas in our study, this Area A is the area of best performance of the reviewed companies, achieving an aggregate mean percentage score of 50.7% or 7.6% out of a possible 15% for Area A. However this is still only barely a 'pass' score and needs improvement to reach global good practices.

Table 13. Evidence of Implementation of the Rights of Shareholders

Measure	Score %
Possible maximum score for this area	15.0
Maximum achieved*	11.6
Minimum achieved*	2.7
Mean*	7.6

* Scores are expressed as a percentage of the maximum allowable for Area A of 15%.

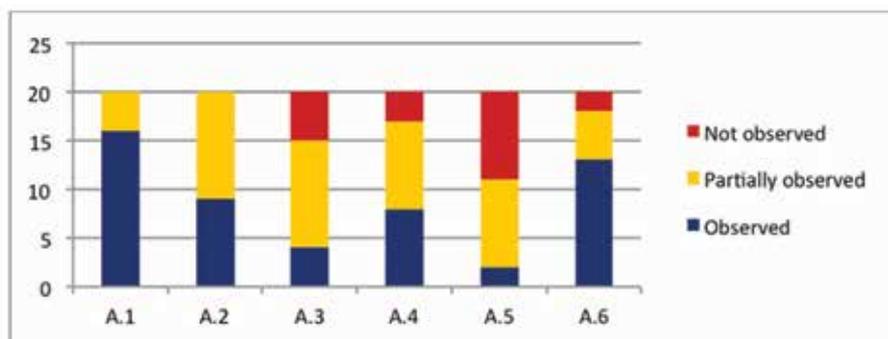
The overall rights of shareholders seem to be reasonably established in law or in company documents. Consistent with practices in other countries in Asia, there seems to be better application of the relevant CG elements if they are enshrined in law or in some prominent legal document. Areas of relative strength are the clarity of shareholders' voting rights and in the shareholders' rights to approve major corporate transactions. Further in most cases, the General Meeting of Shareholders was held within four months of the end of the fiscal year and there seemed to be adequate company systems in place to enable shareholder attendance and participation in the GMS. However, given the impact of the legal provisions in this area, it is a concern that the minimum achieved by one company was only 2.7%.

II. Rights of Shareholders – Basic shareholder rights and additional rights (A.01 – A.06)

Questions A.1 to A.6 were drafted to assess the way in which the companies and company charters considered the basic rights of shareholders. In general adequate information was provided on the rights attached to each class of shares, especially regarding voting

rights (A.1). It was also clear that shareholders had a right to approve major company transactions, such as mergers, acquisitions and divestments (A.6). However the threshold of size of transaction is often not set, leaving the application of this a little gray.

Chart 8. Basic shareholder rights



A.1 Are the voting rights of shareholders clear and unequivocal?

A.2 Does the company offer ownership rights, more than basic rights (voting rights, right to freely transfer shares and right to timely information)?

A.3 Do shareholders have the right to nominate and remove members of the BOD?

A.4 Are the dividend and dividend payment policies transparent?

A.5 Are dividends distributed according to the policies and procedures to all shareholders in a timely manner?

A.6 Do shareholders have the right to approve major corporate transactions (mergers, acquisitions, divestments and / or takeovers)?

However most companies tended to provide to shareholders the minimum expected rights and few additional rights over and above the minimum. Further, whilst shareholder rights are reasonably well founded in law and regulation, not all companies give full recognition to the normal shareholders rights. For example, two companies did not hold the GMS within the prescribed time.

Dividends are determined by the board in accordance with the company charter and in accordance with the provisions of the prevailing Company Law and shareholders do not approve the dividend and its distribution. This practice identifies a gap between OECD good practices and Mongolian practices. Shareholders should approve dividend policy and dividends. In several companies information was poor and it was difficult to determine when the dividend was distributed and which shareholders received dividends. All shareholders in the same share class should receive the same dividend per share. In some cases, there was evidence of the FRC demanding proof that the previous year's dividend was in fact distributed. In general, companies did not provide extensive information on

the dividend process, which should include a rationale for the current level of dividend (A.2, A.4). Dividend distribution information was available but there was not provided to shareholders sufficient information on the actual distribution amounts for each class of shares and / or about the timing of dividend distributions (A.5).

Transparency regarding dividends and dividend policy is good practice. Shareholders should know what level of company profits is being paid out in dividends and what is being retained for reinvestment for future growth of the company. It is recognised that dividend payments may vary according to the stage of development of the company but this should be transparent to shareholders and investors.

A quality dividend policy should make clear:

- Sufficient information to enable shareholders to understand dividend policy decisions and the rationale for total dividend payments from profits;
- The amount per share of the dividend and how and when it will be paid.
- Specific dividend information should include
 - The declaration date – date on which the dividend becomes a liability of the company;
 - The ex-dividend date – the date after which no dividend accrues to the share;
 - A date of record – shareholders registered on this date will receive a dividend; and
 - A date of payment – when checks are mailed to shareholders.

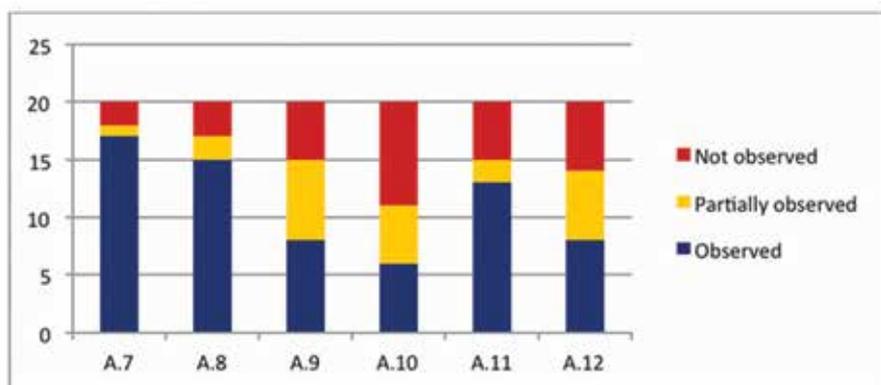
It is important to note that in most corporate governance frameworks throughout the world and Asia, shareholders generally have an unequivocal and effective right to nominate and remove the members of the board of directors. This is not the practice in Mongolia (A.3) as directors are often appointed by the board members themselves despite the applicable Company Law (1999) stating this is an “exclusive authority (of the Shareholders Meeting) to consider and decide the election of members of the Board of Directors”²⁸. Some companies do not set a threshold above which shareholders may nominate their own board candidate for election or do not disclose the threshold and even do not disclose the information on how board members were elected.

II. Rights of Shareholders – Participation in GMS (A.07 - A.12)

Shareholders most commonly exercise their shareholder rights at the General Meeting of Shareholders. The GMS is the highest governing body of the company. Therefore the questionnaire focussed on the key right of shareholders to attend and effectively participate in the GMS.

28. Mongolia – Company Law 1999, Article 63.1.7

Chart 9. Participation in GMS



A.7 Was the GMS held within four months of end of fiscal year?

A.8 Are there adequate company systems for shareholder attendance and participation at GMSs?

A.9 Are the GMS' meeting notices effective?

A.10 Are the policies and processes for shareholders to ask questions at the GMS clear and time is allowed on the agenda?

A.11 Does GMS information of the past year record opportunities for shareholders to ask questions?

A.12 Is the attendance at the last GMS of Chairman / other board members / CEO / evident?

Most companies adhered to Company Law requirements to hold the GMS within four months of the end of the fiscal year (A.7). However two companies did not fulfil this requirement and there was little evidence of the consequences of this omission. Company Law Article 60.3 stipulates that the authority of the board would / should be terminated if the GMS was not held within the relevant time period.

As usual around the world, there was a rush to hold the GMS within the prescribed time. Sixteen of the twenty companies reviewed held their GMS between 25 April and 30 April 2011. It seems there are adequate systems in place for shareholder participation as GMS in that they were held at convenient times and in accessible places (A.8). However one company held the GMS in a place far away from the capital, Ulaanbaatar, thus making it difficult for smaller shareholders to attend, but in general, companies did not seem to create barriers to shareholder participation.

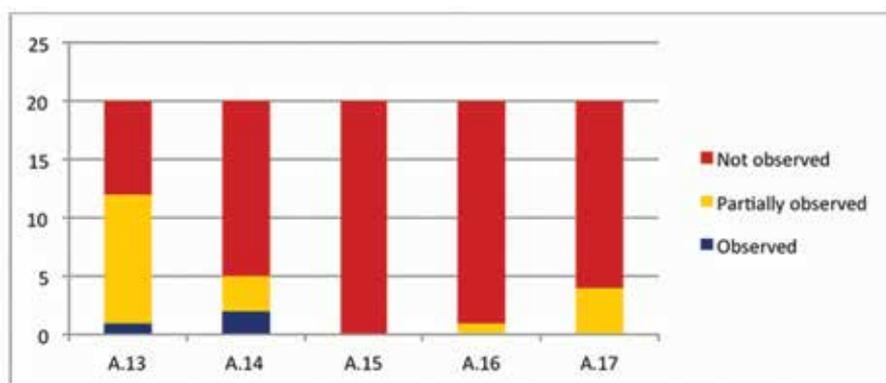
If the systems for shareholder participation were in place, the rating team then considered elements that would demonstrate if shareholder participation was in fact effective. Key indicators of effective participation at the GMS would be if shareholders are provided with

full and adequate information (A.9) to truly exercise their voting rights. 40% of companies provided good information to shareholders but there is little or no information posted on company websites. Shareholders have the right to challenge the board and management by asking questions at the GMS (A.10). On this practical point, the evidence was less clear. Only 6 companies allowed sufficient time on the agenda for shareholder questions. Yet the question time generally was recorded in the GMS minutes (A.11). A key part of the dialogue between shareholders and the directors relies on the attendance of the chairman, the CEO and the directors at the GMS. Such attendance could be better reported in the GMS minutes and in an Annual Report on an individual basis (A.12). There is evidence that the chairman and the CEO normally attend the GMS. Information is less clear regarding the attendance of directors.

III. *Effective participation in director nomination, remuneration and auditor relations (A.13 - A.17)*

Despite global developments of increased shareholder participation in key governance decisions, such as the appointment and removal of directors, the review of remuneration policies and in the appointment of the external auditor, effective shareholder participation in these areas is not yet the norm in Mongolia. In all but a few cases the information about voting methods are clear and in the company charters. However information provided for the director nomination process and on the backgrounds of the director nominees themselves was insufficient – too brief and unclear (A.13). In particular it is important for companies to provide a statement of the other boards each director is on in order to assess the possible level of commitment to his/her role in this company. This was generally not available. Adequate remuneration policies were generally not available to shareholders in 75% of cases and shareholders generally did not vote on director and key executive remuneration at the GMS (A.14).

Chart 10. *GMS and director nominations, remunerations and auditor relations*



A.13 Are GMS policies and processes in the past two years (notices and information) sufficient for shareholders to evaluate individual board nominations?

A.14 Do shareholders effectively vote (receive information on, make their views known and vote) on board and key executive remuneration annually?

A.15 Did the external auditor attend the GMS and the express his views on audit/financial statements issues?

A.16 Did the shareholders effectively approve the appointment of the external auditor?

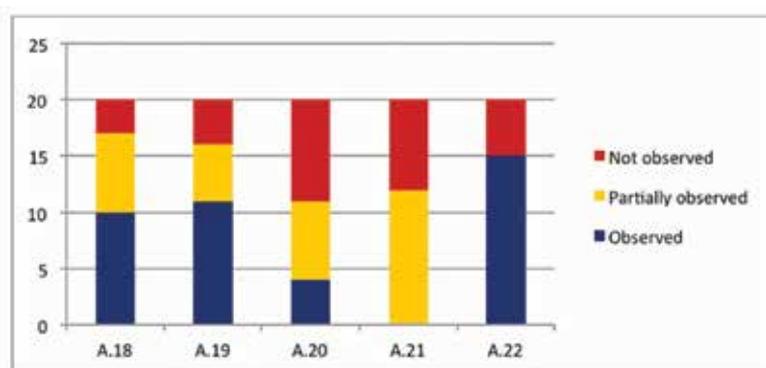
A.17 Did information on the appointment of the external auditor include information on independence?

In 100% of cases the auditor was not in attendance to answer questions on the financial statements and / or there was no information to indicate he was there in attendance (A.15). It is good practice for the auditor to attend and respond to shareholder queries on the financial statements. Additionally, in 95% of the reviewed companies, the company charter allows for the board to nominate and appoint the external auditor (A.16). This practice is less than good practice and should change as it diminishes shareholder rights. The external auditor is appointed to give shareholders confidence in the financial reports from the company. It is a normal shareholder right to appoint a qualified and independent auditor. Auditor independence is important and should be clearly identified as a condition precedent for the appointment of the auditor (A.17). Consideration and mention of auditor independence was only partially observed in 20% of cases.

IV. Rights of Shareholders – GMS effectiveness and processes (A.18 – A.22)

The OECD Principles and elements of Mongolia Company Law require quality procedures at the GMS. For example, the Company Law requires an annual report of business operations²⁹. In general 50% of companies provided a good CEO report, board report and audited financial statements. However, the review shows that a comprehensive report is not readily provided with the GMS notices by some 35% (A.18) of companies and far too little report information was observed in a further 15% of companies. Global standards and practices would expect an annual evaluation of the company’s performance, a statement regarding the performance of the board, and a summary of issues discussed at board meetings and a statement of board supervision of the CEO and senior management and of any projected company plans.

Chart 11. GMS effectiveness and processes



A.18 Is a full report provided to GMS on company and BOD performance?

29. Company Law 1999, Article 66.4.7

A.19. Are resolutions at the GMS determined by ballot and voting procedures are rigorous?

A.20. Did the GMS notice include explicit information on accessible systems for proxy voting and voting in absentia?

A.21. Do GMS meeting minutes and the company website disclose individual resolutions, with voting results for each agenda item?

A.22. Are there no additional items included in the GMS minutes not included on the original meeting notice?

However most companies did have in place rigorous ballot and voting procedures (A.19) but these were not well communicated to shareholders in the GMS notices. The proxy voting process and papers were often not included in the notice of meeting papers (A.20). This is particularly important for shareholders who cannot attend the GMS. Also noticeably lacking was the broad dissemination of the GMS minutes and resolutions. 60% of companies provided some information on the GMS decisions but information was neither comprehensive or timely (A.21). Company websites would be a most useful tool for this dissemination, yet these are notably poor. It is good practice to disclose to all shareholders the minutes of the GMS within 15 days of the close of the meeting and full information on the decisions taken at the GMS as was required by Article 74.1 of Company Law (1999). However the information, if it is available is not disseminated widely. Dissemination of the minutes would keep all interested parties in the market fully informed.

Finally most GMSs seemed to follow the announced agenda and no additional agenda items seem to have been added in 75% of companies reviewed (A.22). Importantly voting for board members was not on the GMS agenda in some companies cases and yet was voted on at the GMS. This is a concern as no papers were provided to support such an important shareholder decision.

b. OECD Principle III and Area B - Equitable treatment of shareholders

According to this principle, companies should ensure the equitable treatment of shareholders including minority (non-controlling) and foreign shareholders. All shareholders should have equal opportunity to participate in the GMS, to dividends, information etc. In addition, shareholders should have the opportunity to obtain effective redress for violation of their rights. It is most important for the credibility of the capital markets that investors, especially minority shareholders be protected from abuse, including the misuse and misappropriation of company assets. Under this principle, insider trading and abusive self-dealing or related-party transactions should be prohibited and procedures set up to manage board and key executives conflicts of interest and related-party transactions.

Table 14. Evidence of Implementation of Equitable Treatment of Shareholders

Measure	Score %
Possible maximum score for this area	15.00
Maximum achieved*	9.48
Minimum achieved*	1.25

Mean*	4.46
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* Scores are expressed as a percentage of the maximum allowable for Area B of 15%.

Overall the companies surveyed have not complied well in this area with a mean level of compliance of 29.7%. Many of the requirements are plain under the law in Mongolia. However it is evident that adherence to the law in this area is not good.

I. Equitable treatment of shareholders – share rights, voting rights and changes to rights

In good practice, it is expected that changes to the company charter and major conflict of interest transactions should be approved by shareholders and for both of these major issues, the shareholder approval threshold should be 2/3 of the majority of shareholders. Company Law (1999) stipulated that the threshold for approval of changes to the company charter was “an overwhelming majority of the shares held by shareholders eligible to vote who attend the (GMS) meeting”³⁰. Whilst 70% of companies demonstrated reasonable policies in place in this respect and adhered to Company Law Article 17, in general, the company charters were not sufficiently specific on the approval threshold or on how the conflicted transactions should be approved (B.1). It seems Mongolian practice is to follow the explanation in a Supreme Court decision of 2/3 majority for such transactions³¹.

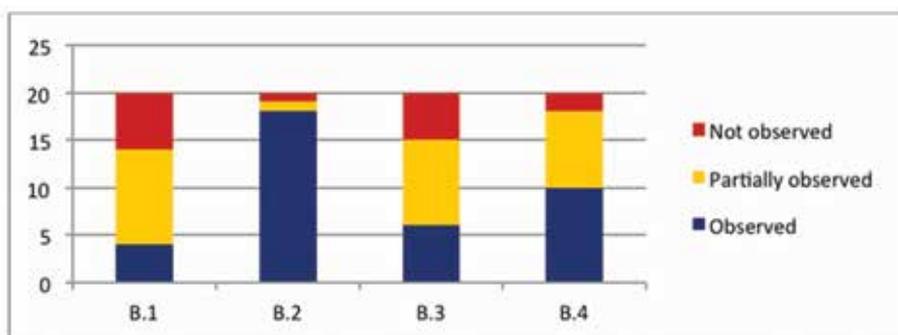
Most companies also followed Company Law in applying the ‘one share, one vote’ policy (B.2) and clearly stating this. Most companies noted that each share in a class of shares would have similar rights attached to them (B.3). However rarely did companies provide sufficient information on the voting majority required to vary shareholder rights. Normally in good practices such a majority is 75% and also 75% of the particular class of shares whose rights are being amended.

When it comes to the practical involvement of shareholders approving fundamental company changes, such as changes to the company charter or authorisation for the issuance of additional shares, the policy is generally stated in company charters but often there is little practical information that would demonstrate the company was implementing the policy (B.4). For example, there is little evidence of detailed processes to enable the shareholder vote on these issues. There is also little evidence of information requirements for the possible shareholder vote.

Chart 12. Share and voting rights

30. Article 17.1, Articles 63.1.1 and Article 03.1.12, Article 64.5 and Chapter 12 of the Company Law (1999) operated to together require this threshold. However it is not clear what an ‘overwhelming majority’ is.

31. This refers to Supreme Court decision No 27 of 2007 which is applicable in the 2011 reporting period.



B.1 Must changes to the company charter and major conflict of interest transactions be approved by shareholders?

B.2 Does the company have a ‘one share, one vote’ policy?

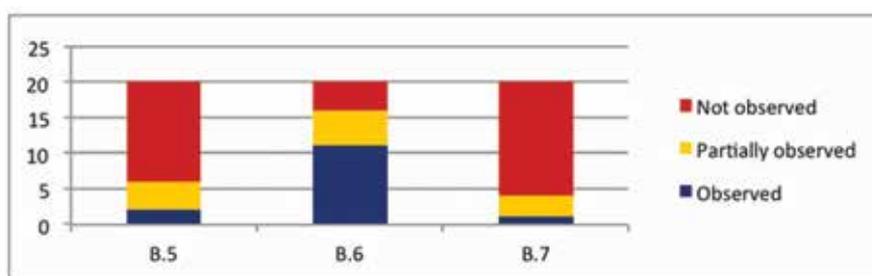
B.3 Does each share in the same class of shares have the same rights?

B.4 Do shareholders have the right to approve fundamental company changes?

II. Minority shareholders capacity to impact board appointments

In only about 10% of companies it was clear in company documentation how shareholders could impact the composition of the board. Some companies did lay out how the cumulative voting methods could work, but generally insufficient details were provided on the nominations process and in the GMS agenda documentation (B.5). More than 50% of companies did require that directors be re-nominated and re-elected at regular intervals (B.6). However the intervals for election varied. 20% of companies require this of their directors annually; 20% require this every 3 years; 15% require it every 4 years; others gave no information as to the interval for election.

Chart 13. Practical application of shareholder rights



B.5 Can minority shareholders impact the composition of the board? Is there evidence this occurs?

B.6 Are directors’ required to be re-nominated and re-elected at regular intervals?

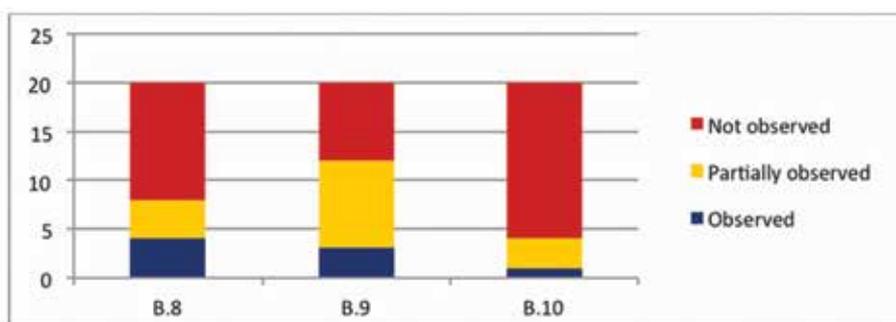
B.7 Is cross border voting facilitated by the company?

Further whilst proxy voting is possible in about 20% of Mongolian companies, cross border voting is not mentioned in most company charters. Information related to GMS resolutions is not provided in English to further facilitate the participation of foreign shareholders (B7). Foreign shareholders need to be able to know and understand the activities of the company.

III. Shareholders and the right to redress

Many listed companies may have a controlling shareholder. In this situation, the controlling shareholder has the potential for abuse of minority shareholders. Therefore, all shareholders have an interest in the major shareholders of the company. Shareholders need to know what is the company group structure and who are the major shareholders so they can better monitor potentially discriminatory relationships or transactions. In more than half of the companies reviewed, the group structure was not provided or was unclear. Rarely were organizational charts available and inter-company relationships explained in company documents or the financial statements (B.8). Lacking sufficient shareholder and company structure information, it was difficult to ascertain if there existed structures or mechanisms that might violate minority shareholder rights. 3 companies made specific statements that they would protect minority shareholder rights, establishing thresholds of a 5% shareholding above which cross shareholdings were to be disclosed (B.9). Most companies did not provide policies and processes to receive shareholder complaints and deal with them (B.10).

Chart 14. Company structures and shareholders rights to redress



B.8 Is a description of the company group structure available and clear and transparent?

B.9 Is there evidence of structures / mechanisms that have the potential to violate minority shareholder rights?

B.10 Are there mechanisms that provide effective redress for complaints of shareholders?

Mongolian Company Law (1999), Article 83, does provide for shareholder redress through the court system. However, in many jurisdictions this is costly and does not provide timely resolution. Globally many companies are introducing complaints and dispute resolution mechanisms to deal with shareholder complaints.

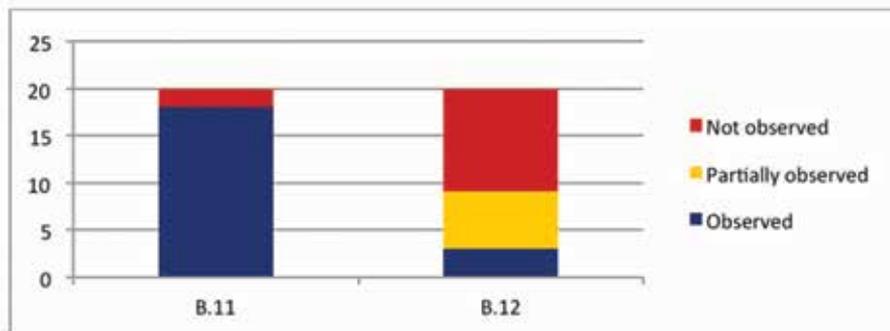
Recently, “most Asian jurisdictions have introduced measures, or have existing ones, to provide non-controlling shareholders with protection from expropriation by controlling shareholders. ... Measures being undertaken are:

- Ensuring regulators have the capacity to monitor companies in fulfilling and to impose substantial sanctions for wrongdoing related to transparency requirements;
- Clarifying and strengthening the duty of board members to act in the best interests of all of its shareholders;
- Providing shareholders who suffer financial losses, relative to controlling shareholders, with more effective private and collective rights of action against guilty controlling shareholders or directors”³².

IV. Shareholders at the GMS

One of the best protections for smaller shareholders is the right to approve any fundamental changes to the company charter and changes to shareholder rights. Shareholders therefore should be interested in and participate in the GMS to the extent possible and directors should facilitate such attendance. To ensure shareholder participation in the GMS, a notice period of 20 to 30 days is considered good practice. 90% of companies surveyed gave good notice of the GMS. Most notices went out about 30 days before the meeting (B.11). One company gave no notice at all of the GMS. Shareholders should protest this treatment.

Chart 15. GMS notices and agenda



B.11 How many days before the GMS were the meeting notices sent out?

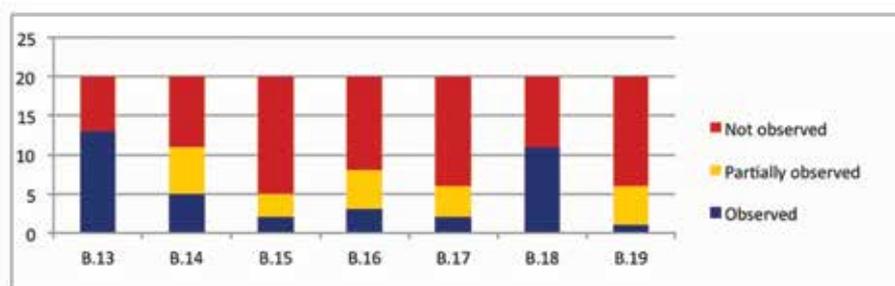
B.12 Can a small shareholder place an item on the GMS agenda?

Despite the ability to attend the GMS, in the companies surveyed, it remains difficult for smaller shareholders to place an item on the GMS agenda. Only two companies allowed for this in their GMS policies and procedures. A few other companies provided this opportunity to shareholders with a shareholdings of 5% and above 5%. This threshold is quite high and does not provide a real opportunity to small shareholders to get an item on the GMS agenda (B.12).

32. OECD, Reform Priorities in Asia: Taking Corporate Governance to a Higher Level, OECD Paris, 2011. Another relevant paper for background reading on this issue is: OECD, Working Paper No. 9, Disclosure of Beneficial Ownership and Control in Indonesia, F. Jurdant, OECD, Paris, 2013.

It is expected that all directors will act in good faith in the best interests of the company and all shareholders. Directors should assume their responsibilities in an even-handed manner with respect for all shareholders. In so doing they have a duty to be loyal to the company. Company Law (1999) requires they do not act for personal benefit or in their own interests. In good practices, therefore, they should not make a personal profit from their relationship with the company or from information available to them as a consequence of their relationship with the company. Insider trading and abusive self dealing should be prohibited.

Chart 16. Insider trading, conflict of interest, and related-party transactions



B.13. Are there any known cases of insider trading involving the company directors, management or staff in the past year?

B.14. Are there company policies and systems in place that effectively prohibit the misuse of information by directors, management and staff?

B.15. Does the company disclose trading in company shares by insiders?

B.16. Are there effective company policies for the company to approve relevant related-party (conflict of interest) transactions?

B.17. For **large** company transactions, does company policy require the provision of information to explain RPTs and require shareholder approval of RPTs above a certain threshold?

B.18. Have there been cases of non-compliance with requirements relating to related party transactions in the past year?

B.19. How does the board deal with declarations of conflict of interest?

In most cases in the group of companies surveyed there was little evidence of cases of insider trading by company directors or key executive staff in the past year (B.13). Information in the press and other regulatory documents usually provide indicators of such illegal trading. Enforcement in this area is challenging owing to the difficulties of monitoring and obtaining proof. However in markets where the regulator may not be well resourced or is not sufficiently active in monitoring trading in shares, lack of information may be deceptive. Companies should have in place policies to regulate insider trading and requiring disclosure of trading in shares by ‘insiders’. Only 25% of companies had some

policy to deal with this (B.15).

There should also be policies and systems to prohibit the misuse of information by directors, key executives and employees. Policies should include a ‘code of conduct’ for all directors and employees, a confidentiality policy protecting company information, nominated persons for required disclosures, and share trading policies. Companies had some policies in place to prevent the misuse of information but these were largely limited to employee misuse through clauses in employee contracts. In any event the processes were not sufficiently detailed or comprehensive (B.14). Only 25% of companies had good policies and processes in place to control the use of inside and company information.

Good and effective company policies to deal with conflicts of interest as they arise are important. Related-party transactions (RPTs) are a possible source of abuse of small shareholders. Good practice would require they be clearly defined (often a good definition used is that in IAS 24 Related Party Disclosures, issued and applicable after 1 January 2011) and policies and mechanisms evident and effective to control and approve RPTs where necessary. Only about 40% of companies had policies in place for related party transactions and in many cases these policies were not robust or comprehensive (B.16). Given the poor policies in place, it is not surprising therefore that there was little evidence of non-compliance regarding RPTs. In general there was insufficient information on the matter (B.18). Further there was little evidence of the board considering and dealing with RPTs as a matter of course (B.19). Directors who have a conflict of interest should be obliged to disclose the conflict as soon as it arises, not have any input or vote on the transaction and withdraw from any dealing in the transaction. Others, often independent directors, should manage the transaction and see it is dealt with on commercial terms at arm’s length from the conflicted party and be guided by a company Code of Ethics or Code of Conduct.

All related party transactions should be disclosed to the board and some may require shareholder approval, depending on their size and impact. Large related party transactions should require an explanation of the transaction be provided to shareholders and require shareholder approval above a set threshold. Thresholds around the world vary. For example shareholder approval thresholds in China are set at 30% of total assets; in the United Kingdom the threshold is 25% of total assets; in Singapore the threshold is set at 5% of net tangible assets. In the companies reviewed, 30% of companies had some mention of large related-party transactions but few had set thresholds for shareholder approval (B.17).

c. OECD Principle IV and Area C - Role of stakeholders

OECD Principle IV states that “ the corporate governance framework should recognise the rights of stakeholders as 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”³³. This principle is further endorsed in the Mongolian Code of Corporate Governance, Section VI, which details expectations of companies regarding stakeholders in line with global practices.

In its transition from a socialist economy, the Mongolian government has committed to sustainable development and is a member of the United Nations Intergovernmental Forum

33. OECD, Principles of Corporate Governance, OECD, 2004, Paris.

on Mining, Minerals, Metals and Sustainable Development, a voluntary initiative focussed on partnership for sustainable development. Companies operating in Mongolia should be aware of this focus and therefore should be considering stakeholders and looking beyond just a focus on the company and its shareholders.

Whilst the concepts of stakeholders and of sustainability are new to Mongolia, the consideration of stakeholders is important in the economy and is especially important in an economy heavily focused in the mining industry, as demonstrated by the quote below from the Hong Kong listed Mongolian Mining Corporation’s website.

“For MMC, sustainable development is about creating value in society whilst managing financial and operational risk for the Company. By taking a holistic view of corporate growth, our actions and decisions go beyond sectoral and legislative requirements to ensure that we are accountable for the social, economic and environmental impacts of our mining activity and continue to grow while making lasting contributions to the development of the country”³⁴.

Table 15. Evidence of Implementation of the Role of Stakeholders

Measure	Score %
Possible maximum score for this area	10.00
Maximum achieved*	4.47
Minimum achieved*	0.09
Mean*	1.61

* Scores are expressed as a percentage of the maximum allowable for Area C of 10%.

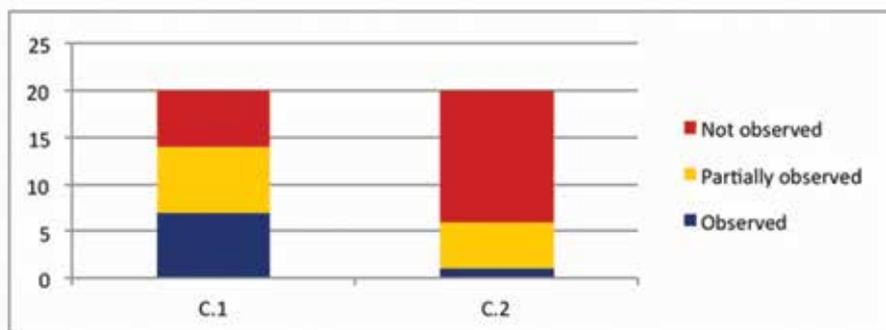
In the survey group, companies achieved a mean score of 16.1% for this area. Therefore out of a possible total score of 10% for this section of the scorecard, companies achieved a mean score of 1.61%. The role of stakeholders in corporate governance and the concept of corporate responsibility are relatively new to Mongolia. Consideration of stakeholders as a part of corporate governance will include consideration of employees, suppliers, consumers and customers, creditors, the environment and the community at large.

I. Recognition of stakeholders

Less than 75% of companies recognized company obligations to key stakeholders as evidenced by mentions of banks, customers, suppliers, the community in their public communications. The tone of these communications on company websites and in financial reports indicated that companies recognised the role of stakeholders as important. However many companies did not provide sufficient information to enable an observer to fully understand a company’s approach to its stakeholders and detailed policies were not observed (C.1). In only 30% of cases was there evidence of mechanisms for stakeholders to contact the company and to bring their grievance to the attention of the company and of the company having in place persons to deal with stakeholder complaints (C.2).

34. MMC, accessed at <http://www.mmc.mn/citizen-sustainable.html>

Chart 17. Recognition of stakeholders



C.1 Does the company recognize company obligations (in law and agreements) to key stakeholders and engage them?

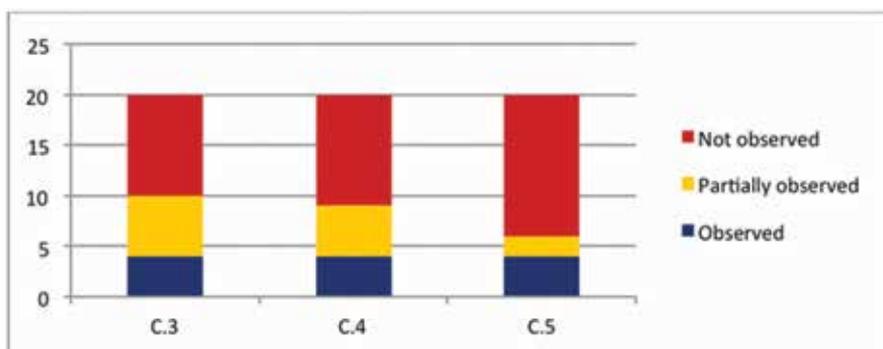
C.2 Does the company have in place mechanisms that permit/allow for stakeholder complaints and redress for grievances?

In general in this area, Area C, most companies paid closer attention to any relationship with stakeholders if it is enshrined in law (C.1). Where stakeholder relations are more voluntary in nature, adoption of good practices is less observable.

II. Relations with stakeholders – employees and the environment

About 50% of companies recognised the contributions of workers to the company and provide performance enhancing employee benefits, such as training activities and social events. Some companies provide information on their website of the benefits of becoming a company employee. However in most cases, pension plans and profit sharing plans and other benefits aligned to company value creation were not mentioned (C.3).

Chart 18. Employees and the environment



C.3 Does the company provide a range of performance enhancing employee benefits to align company and employee interests?

C.4 Do company policies/information recognize the safety and welfare of employees?

C.5 Do company policies/information demonstrate a commitment to the environment?

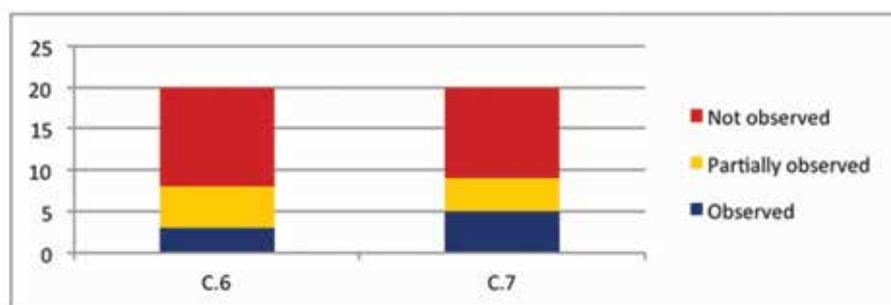
Whilst most companies gave some information regarding annual health tests for employees, there was not in evidence policies ensuring the safety and welfare of employees (C.4). Good practices would expect such a policy to contain consideration of employee training and development programs, performance targets on health and safety, a company Code of Ethics, stating the values of the company towards its employees and would have in evidence a system of communications whereby an employee with a grievance could bring it to the company’s attention.

Individual company commitment to the environment was generally not evident in 70% of the group surveyed (C.5). Good practices would expect this commitment be demonstrated in company documents, on the company website and in public communications and through a description of the company’s environmental enhancing activities and any eco-friendly policies.

III. Relations with stakeholders - investors

Consistent with the findings of this study regarding disclosure and transparency (see next section, Area D), companies were generally poor in disclosing stakeholder activities to investors. Globally there have been significant developments on the part of investors seeking companies in which to invest which are responsible to employees, their communities and towards the environment. Companies do need to establish policies in this area and communicate these to investors if they wish to attract them. It is considered good practice for companies to produce a separate corporate responsibility report annually. Few companies, about 40%, disclosed their stakeholder activities either in company documentation or on their website (C.6).

Chart 19. Stakeholder communications



C.6 Does the company disclose its stakeholder activities to all investors?

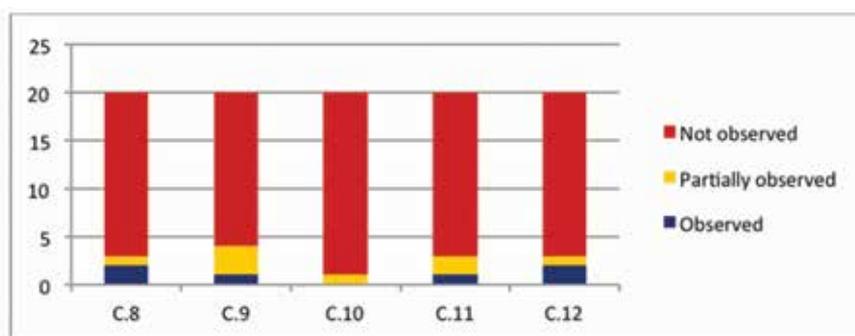
C.7 Are stakeholders able to directly communicate on company activities with the BOD, or management?

In addition, under 50% of companies provided clear communication mechanisms where stakeholders, especially investors, can contact and communicate with the company (C.7), through a nominated communications officer with contact details available.

IV. Responsible, ethical expectations

The role of a company as a good corporate citizen is becoming increasingly important. There is the expectation that companies will have in place a Code of Ethics for employees and also for directors and senior management which will articulate company expectations of how personnel should conduct themselves and conduct business on behalf of the company. The Code of Ethics serves as a guide to personnel and which serves to protect the company's reputation.

Chart 20. Ethics



C.8. Does the company have in place a written Code of Ethics/Conduct applicable to employees?

C.9. Does the company have in place a Code of Ethics for directors and senior management?

C.10. Is there evidence of implementation of the Code of Ethics?

C.11. Does the company have in place anti-corruption /anti bribery programs and policies?

C.12. Have mechanisms been introduced that facilitate communication to board members of illegal and unethical company practices?

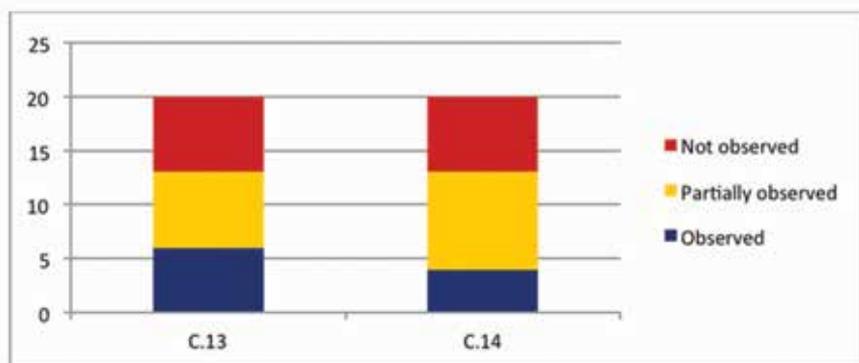
85% companies did not disclose the existence of a Code of Ethics and some companies had broken web links to a Code of Ethics (C.8) preventing accessibility. Most companies did not disclose if a Code of Ethics applied to directors and senior management as well as employees (C.9). Additionally, there was little evidence of implementation of a Code of Ethics in 99% of cases (C.10).

The companies reviewed did not seem to have in place quality anti-corruption policies and mechanisms (C.11 and C.12) or provided insufficient data on their ethical practices. If these were in place, mention of anti-corruption efforts in communications and public documents, a Code of Ethics in place and training on ethics for all personnel in place would be observed. To be active in this area, a company should provide confidential access to the board and/or the Audit Committee so illegal and unethical behaviour could be reported to the company. Many companies and jurisdictions are requiring the introduction of 'whistle blowing' mechanisms with 'safe harbours' and guarantees for whistle blowers.

V. Commitment to the community and creditors

65% of companies did recognize the company responsibility to the broader community. However details on their activities with and for the community were patchy. Companies were observed and recorded the hosting of social activities for the community (C.13). In a similar vein, there was reasonable information available from the company document to confirm the consideration of creditors’ rights (C.14). Information was available in financial reports issued by the company. However information was not generally observed on company websites.

Chart 21. Community and creditors



C.13 Is there some company recognition of its obligations to the broader community?

C.14 Is there a clear framework for the enforcement of creditors’ rights?

d. OECD Principle V and Area D - Disclosure and transparency

OECD Principle V requires that 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 the governance of the company.

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

1. The financial and operating results of the company.
2. Company objectives.
3. Major share ownership and voting rights.
4. Remuneration policy for members of the board and key executives.
5. Related party transactions.
6. Foreseeable risk factors.
7. Issues regarding employees and other stakeholders.

8. Governance structures and policies, in particular the content of any corporate governance code or policy and the process by which it is implemented.”³⁵

Actual and potential shareholders require access to regular, reliable and comparable information in sufficient detail for them to be able to exercise their ownership rights on a fully informed basis. A disclosure regime that promotes transparency is therefore a pivotal feature of markets and aids the establishment of confidence in the markets. Companies and regulators have therefore to ask ‘what should be disclosed?’ All information should be disclosed that affects the economic decisions of users. Information is material if its omission or misstatement could influence the economic decision.

In practice regulators have stipulated in a variety of instruments the key matters for disclosure. However, applying only legal requirements for disclosure is a minimalist approach to transparency and disclosure. This is not the recommended approach and is not the normal practice in most companies throughout the world.

Companies should strive to be as transparent as possible, through the media and on company websites, in order to give confidence to investors and therefore to attract capital. Investors who are provided with high levels of disclosure by well governed companies are likely to provide capital to those companies at lower costs³⁶. “A strong disclosure regime that promotes real transparency is a feature of market-based monitoring of companies and is central to shareholders’ ability to exercise their ownership rights on an informed basis”³⁷. Each company should develop and publish a Disclosure Policy which demonstrates a commitment to meet all disclosure obligations and, beyond this, to fully informing shareholders and market participants.

Adequate disclosure and transparency are not the norm for Mongolian companies, either in required or voluntary disclosures.

In Mongolia, disclosure requirements are articulated in various documents, including the Company Law, the Securities Listing Rule of the Mongolian Stock Exchange, Securities Market Law, and the Law on Accounting and accounting standards. In addition, the Corporate Governance Code of Mongolia provides several recommendations as to good disclosure practices. Together these instruments, as it is in most jurisdictions, make the disclosure requirements complex.

Table 16. Evidence of Implementation of Disclosure and Transparency

Measure	Score %
Possible maximum score for this area	30.00
Maximum achieved*	11.73
Minimum achieved*	1.77

35. OECD Principles of Corporate Governance, 2004, OECD, Paris.

36. Two studies confirm this proposal: J. Derwall and P. Verwijmeren, 2007, found that companies with better CG enjoyed a lower cost of capital and A. Dyck and L. Zingales, 2004, found that there is a correlation between weak governance and higher capital costs and between strong governance and low capital costs.

37. OECD, CG Principles, OECD 2004.

Mean*	5.40
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* Scores are expressed as a percentage of the maximum allowable for Area D of 30%.

The Table above indicates that disclosure and transparency in Mongolia needs to be improved. An aggregate mean score of 5.4% out of a total score possible for Area D of 30% is the indicator. Companies generally provide minimal information and in many cases, not even the legally required full complement of information. Perhaps the development of a disclosure checklist would aid companies in meeting their legal disclosure requirements, as a minimum.

The 32 scorecard questions related to this area focus on key areas, including, the quality and content of the Annual Report and the company website, disclosures on key issues such as the auditor and the audit report, major shareholdings and related party transactions, and information disclosure policies and processes.

The GMS (already considered in Part A of this section of the Report), the Annual Report and the company website are key points of communication with investors, current and future, and collectively should convey all material and relevant information for investors and stakeholders.

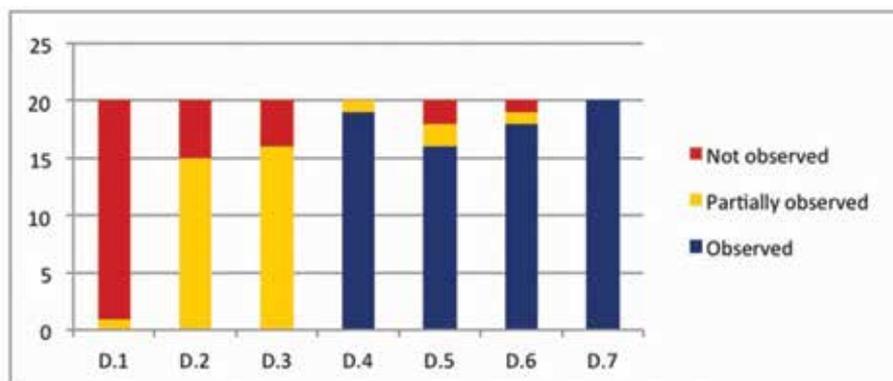
NOTE: in the absence of an Annual Report, this review took all the relevant documents collectively as an ‘Annual Report’. The sub-sections below (i) to (v) refer in the heading to an ‘Annual Report’ in the context and meaning of ‘all relevant documents’ as described above.

However this approach is not to say the current disclosure regime, without an Annual Report as it is known and understood in the rest of the world, is acceptable. Investors are unlikely to spend the time to gather and trawl through information as did the reviewers.

I. Annual Report – Financial information

Whilst companies in Mongolia do not generally provide an Annual Report, a considerable weakness and drawback to transparency and disclosure, many companies do provide annual financial statements certified by the CEO and the Chief Accountant (D.4) and drawn up in accordance with internationally accepted accounting standards (D.5). These annual financial statements do give a picture of the financial performance of the company (D.6). However, the accuracy of the accounting information provided was not checked by the raters and the expertise of company accounting staff was not tested.

Chart 22. Annual Report - Material and financial disclosures



D.1 Is there evidence that the concept of ‘material information’ is well understood by the company?

D.2 Are the financial reports disclosed in a timely manner and publicly available?

D.3 Did the company provide quarterly and semi-annual reports in the past year?

D.4 Do the CEO and Chief Accountant certify the annual financial statements, audited and unaudited?

D.5 Does the company state its use of current internationally accepted accounting standards?

D.6 Do the Annual Report and financial statements give a full and clear picture of the financial performance of the company?

D.7 Has there been any accounting / audit changes, qualifications or queries related to the financial statements in the past two years?

In addition, there is little evidence of changes to the financial statements after issue and/or queries from the regulators as to the financial statements in the most recent two years. This may indicate the financial statements do in fact reflect the valid position of the company or just may reflect the fact of an inactive regulator and inadequate monitoring (D.7).

However, annual financial statements are not the only information which should be disclosed to the public. There is little evidence that the companies reviewed understand the full ramifications of the concept of ‘material information’, including risk information. In some cases, an information disclosure policy has been developed and considers the disclosure of information that will affect the share price. However, comprehensive consideration of all the possible elements of a disclosure policy is not broadly evident (D.1).

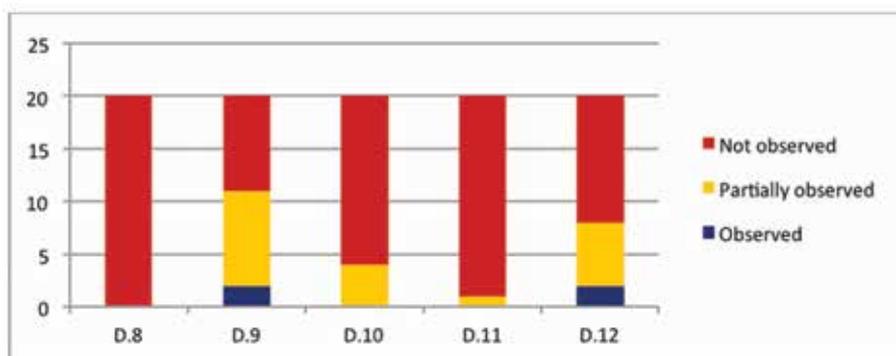
Further, the timeliness of financial reporting is difficult to discern. Ideally annual financial statements should be filed within 90 days of the close of the fiscal period or within 24 hours if the information is extraordinary. Neither of these was indicated in available information

disclosure policies (D.2). Also, despite the FRC’s requirements for the filing of quarterly reports, none of the companies reviewed filed half-year or quarterly reports (D.3) or at least such reports were not in evidence or available on either the company website or the FRC website.

II. Annual Report – Information on company operations and share ownership

In the absence of an Annual Report and in the context of limited information provision generally, it was observed that only a few companies had references to the company vision, mission, strategies and ethics policies. These were generally located in the business plan submitted to the FRC but were not considered sufficiently comprehensive (D.8) when compared with global expectations. Non-financial information should provide information on the mission, vision, strategies, key business objectives, business risks and uncertainties, the corporate governance of the entity and the ethics policy. There is little or no disclosure on corporate governance despite being encouraged to provide this by the corporate governance framework.

Chart 23. Annual Report – company operations and share ownership



D.8 Does the Annual Report include a full and clear picture (non-financial) of company operations, its competitive position and other non-financial matters?

D.9 Are details of current largest shareholdings (directly held and indirectly held (deemed)) provided?

D.10 Are BOD directors’ shareholdings (directly held and indirectly held (deemed)) disclosed?

D.11 Are senior management’s shareholdings (directly held and indirectly held (deemed)) disclosed?

D.12 Are the company shares broadly held?

Disclosure of share ownership, major shareholders, director share ownership and management share holdings, held either directly or indirectly, was not readily available either in company information or on the company website (D.9, D.10, D.11 and D.12). The main source of information in this respect was the MSE website and/or the FRC website. However the

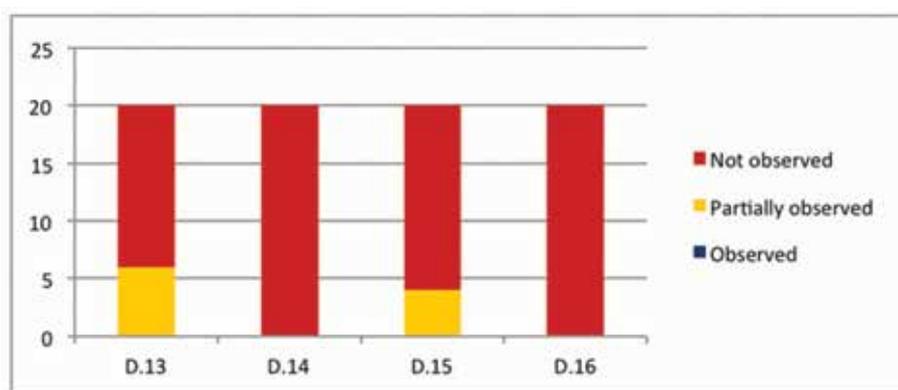
currency of share ownership information was not clear.

The lack of share ownership information presents a problem for investors and regulators when monitoring conflicts of interest. Investors need information on other shareholders, and especially regarding major shareholders, in order to assess their capacity to influence/control the company, its direction and to monitor for conflicts of interests, related party transactions and insider trading. Transparency is required of major shareholders about their shareholdings and any major changes to shareholdings over a threshold (usually set between 2% and 5% shareholding) by shareholders should be publicly reported.

III. Annual Report – Disclosures on directors

Consistent with the companies' minimalist approach to disclosure and transparency, there was little information provided on the directors themselves. 70% of companies did not provide sufficient information on the education, background, board experience, and none of the companies reviewed provided information about board committee appointments and appointments of company directors to other boards (D.13). Information, such as it was provided, was generally found in FRC filings. Shareholders are particularly interested in the individuals they entrust with their investment and who are on the board and leading the management of the company and seek these details.

Chart 24. Annual Report - Director information



D.13 In the Annual Report are director board experience and other relevant experience disclosed?

D.14 In the Annual Report, are non-executive directors specifically identified?

D.15 Does the Annual Report specifically identify 'independent' directors?

D.16 Does the Annual Report disclose BOD meeting attendance of individual directors?

In the 20 reviewed companies, no company information distinguished between executive and non-executive directors (D.14). Indeed, in the relevant Mongolian Company Law such a distinction is not made. A few companies did distinguish non-executive' and 'independent'

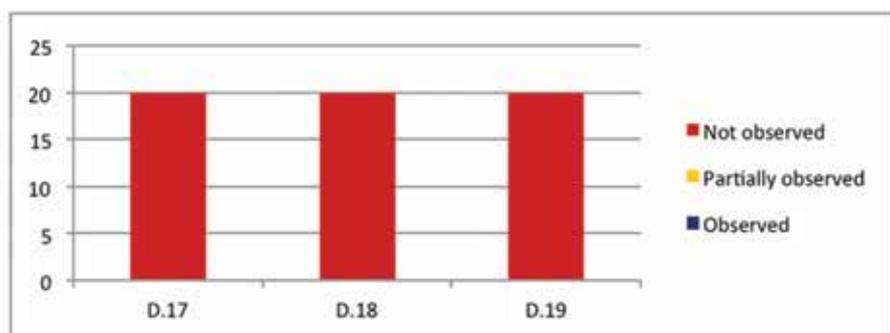
directors but no companies provided a rationale for an individual director’s classification as ‘independent’ (D.15). Companies are encouraged under the Mongolian Corporate Governance Code to ensure at least one-third of their board members are ‘independent’.

Finally, disclosures did not identify individual board members’ attendance at board meetings. It is usual and good practice to provide in the Annual Report a summary of individual board attendance and also notation of the manner of attendance (in person, by teleconference, by videoconference etc.) (D.16). Shareholders need some relevant information regarding the individual director’s commitment to the company.

IV. Annual Report – Remuneration disclosures

As can be discerned from the chart below, adequate disclosure of remuneration policies (D.17) and/or of key executives (D.18) was not provided by any entity reviewed. Indeed, to discern the adequacy of remuneration of executives related to their performance, clarity is also required about the specific roles and responsibilities each senior executive holds. This information was not provided adequately in 100% of the companies reviewed (D.19).

Chart 25. Annual Report - Remuneration



D.17 Is the basis (level and mix) of board remuneration disclosed in the Annual Report?

D.18 Does the latest Annual Report disclose the remuneration of key executives?

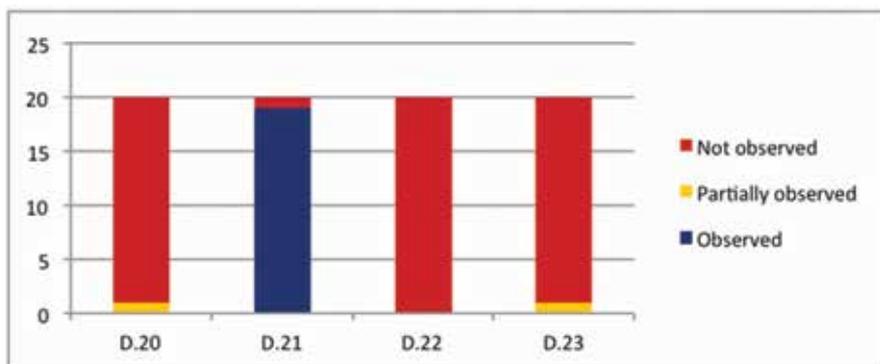
D.19 Does the latest Annual Report identify the company’s main executives and their responsibilities?

It is a signal of good CG practices that there is transparency on remuneration. The policy should be made available in general terms and directors’ remuneration should be broken down into pay for attendance at board meetings and for other extra accountabilities (board committee activities and the like) and also should be linked to the long-term performance of the company. Similarly, individual senior, key executives and their responsibilities should be identified and their total pay for 12 months made evident, linked to the long-term performance of the company and the individual’s performance and base pay distinguished from bonuses, options warrants etc. Again all remuneration should be included in the remuneration report including any termination and retirement benefits.

V. Annual Report – Other key disclosures

The chart below and the prevalence of red indicates that companies do not make disclosure or adequate disclosure of a company policy for approval and disclosure on related party transactions (D.20) and foreseeable business risks (D.22). All companies reviewed except one did not provide a separate corporate governance report (D.23). In all these areas, improvement is recommended.

Chart 26. Annual Report – Other key disclosures



D.20 Does the company show evidence of a policy requiring review, approval and disclosure of related-party transactions?

D.21 Are statements requesting directors to report their transactions in company shares evident?

D.22 Does the Annual Report explain foreseeable business risks?

D.23 Does the Annual Report include a separate, quality corporate governance report?

Of particular importance in smaller close knit economies, such as prevails in Mongolia, is the disclosure of a related party policy dealing with the practices and approvals processes when related party transactions arise.

A good related party policy would include consideration of:

- the transactions that need to be reported to the board for board approval, often by independent directors or non-interested parties, and which ones require shareholder approval, with appropriate thresholds set for board approval and for shareholder approval;
- the parties involved and the closeness of their relationship;
- clarity on the asset being transferred;
- the basis of pricing of the asset and compensation involved;
- Information on RPTs should show the name of the related party and relationship

with the counter-party, including reference to any conflict of interest, the transaction amount, and reasons why the asset is being transferred and why now.

It is important to note that the transactions in company shares of insiders, such as directors or key executives, are an important signal to the market and to other investors. Any dealings in company shares by these individuals should be reported within two days to the regulators and to the markets in good practices. Question D.21 would indicate that either all such trading by insiders is reported in a timely manner to the regulator and the market or that the regulator is not actively monitoring and questioning companies on these matters. Trading in shares on information that would be material to the market (insider trading) is prohibited in most markets.

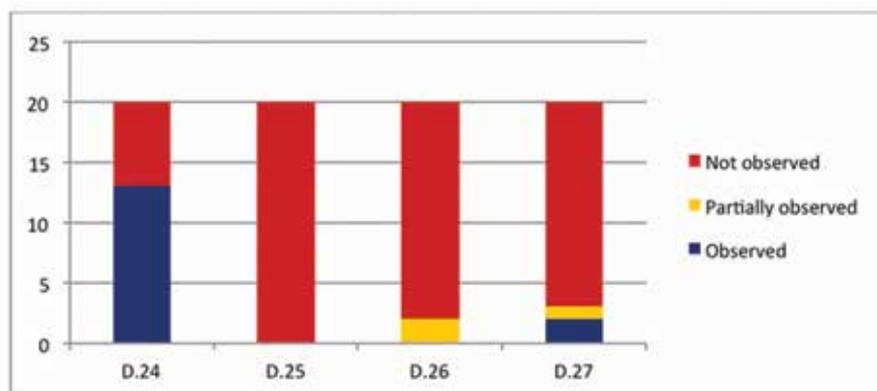
In the case of the reporting and disclosure of foreseeable business risks, quality reporting would include information on risks related to the industry, geographies in which they operate, financial, political and market risks. It would include an outline of the risk management processes in place, practices evident and of the requirements for risk reporting within the company. Whilst some companies included mention of risks in their business plan or other reports to the GMS, information was considered insufficiently comprehensive as to provide a clear picture of business risks to investors (D.22).

A quality corporate governance report assists in building the company's reputation for good governance. It is usually a statement to interested parties of the board's and the company's commitment to corporate governance and to the transparency of its governance. Often it is either a separate report or a separate section in the Annual Report and would include a statement of the CG structures in the company (the board and board committees and responsibilities), how the company adheres to each clause of the Mongolian Corporate Governance Code and where it does not, and provides robust reasons why there is not adherence.

VI. Disclosures related to external audit and audit oversight

An external audit conducted by a competent, qualified and independent external auditor is a major part of the company's control framework and gives assurance and credibility to the financial information issued by the company. In Mongolia, Company Law (1999) (Article 91) required an external audit review and report on the financial statements of joint stock companies and the Law on Audit also so stipulates. This is also required in the new Company Law (2011) in Article 94.2. 35% of the companies reviewed did not have a named authorised independent external auditor review the financial statements and/or the review, if it occurred was not according to current International Standards on Auditing (ISAs) (D.24). In comparison to global practices, this is unusual. Normally all listed companies are required to have the financial statements reviewed by an independent external auditor.

Chart 27. Disclosures related to external audit and audit activities



D.24 Does the company have an annual external audit undertaken by an authorised auditor?

D.25 Is there a policy that reviews the external auditor when undertaking non-audit services?

D.26 Is the external auditor’s opinion publicly disclosed?

D.27 If a change of auditor is noted in the past two years, were the reasons for the change disclosed?

A key element in the value of an audit is that the auditor is independent of the company. It is therefore a concern that no company has in place a policy to review the external auditor’s continuing independence in the light of other activities/non-audit services provided to the company in the areas of tax preparation, accounting support and consulting services (D.25). Therefore, external auditors may not be free from conflicts of interest. The board and/or board committees should oversee the audit to ensure external audit independence and monitor for conflicts of interest. The regulatory structures in Mongolia should also monitor and oversee external audit professionals for their independence and professionalism.

In the absence of a comprehensive Annual Report and in the light of little available public information, the external auditor’s report/opinion on the financial statements is generally not publicly available (D.26). Auditor’s reports/opinions do not appear on the company websites. However, some companies did file the auditor’s report/opinion with FRC filings. Only one company had an easily accessible audit report on their website in English and Mongolian as is deemed good practice.

In most cases, the appointment of a new auditor was not noted in the most recent two years. In one case where the change was noted, the good practices of disclosing the reasons for the change were observed (D.27).

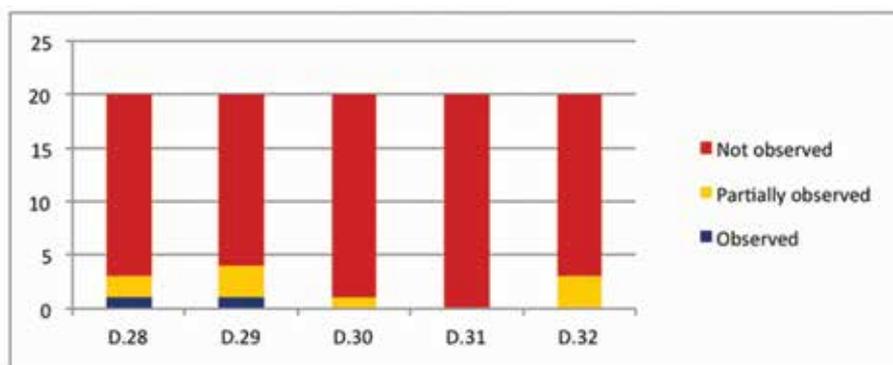
VII. Channels for disseminating information

The OECD Principles and annotations declare “the channels for dissemination of

information can be as important as the content of the information itself. The Internet and other information technologies also provide the opportunity for improving information dissemination. With respect to continuous or current disclosure, good practice is to call for ‘immediate’ disclosure of material developments”³⁸.

Most of the companies reviewed did not provide an adequate variety of communication methods (D.28). An Annual Report, including a corporate governance report, audited financial statements with the audit opinion, analyst briefings, press releases and other current information should be readily available on the company website. Further such information should be comprehensive and accessible (D.29). Information expected by investors also includes the company group structure, current financial information such as quarterly reports, business strategies, shareholding structures and organisation structures. Information, if it is to attract non-Mongolian investors/funding, should be presented in English and Mongolian.

Chart 28. Information dissemination



D.28 Does the company provide a variety of communication methods?

D.29 Is the information on the company website comprehensive and accessible?

D.30 Does the company have a policy and process to ensure continuous ad hoc disclosure of important matters?

D.31 Does the company have an effective investor relations / information policy and program?

D.32 Does the company provide easy public access to and contact details for the Investor Relations person or unit?

Given the propensity to minimal disclosures, companies generally did not seem to have in place policies and processes for continuous ad hoc disclosures of important matters (D.30), including clear processes for updating company information and nominated company persons accountable for information provision. The quality of information and its access was sparse and poor. Whilst some companies had an investor corner on their websites,

38. OECD, Principles of Corporate Governance, 2004, Paris.

no company had an identifiable investor relations policy and program (D.31). Company charters are generally silent on the matter. Most companies did not show evidence of a nominated investor relations person available with full email and phone contact details available (D.32). Disclosure procedures are comparatively basic.

e. OECD Principle VI and Area E. Responsibilities of the board

An effective, independent and professional board of directors is essential for good corporate governance. The board of directors should act in the best interests of the company and the shareholders as a whole. It sets the strategy of the company, protects shareholder rights and oversees executives and executive bodies and financial operations of the company.

“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”³⁹. Board structures and procedures will vary from country to country, depending on the legal and regulatory requirements.

The 36 scorecard questions related to this area look selectively at key areas of board responsibility, including the corporate governance environment of the company, the role of the chairman and board leadership, board composition and structure, and the board role in oversight and company control.

Table 17. Evidence of Implementation of Responsibilities of the Board

Measure	Score %
Possible maximum score for this area	30.00
Maximum achieved*	7.08
Minimum achieved*	0.51
Mean*	2.88

* Scores are expressed as a percentage of the maximum allowable for Area E of 30%.

Disclosure and transparency and the responsibilities of the board were identified as two major areas of importance and influence in a company’s corporate governance. As such these two areas have been weighted the heaviest with each category having a maximum possible score of 30%.

An aggregate mean score of only 2.88% out of a possible total score of 30% indicates the responsibilities of the board are not well observed in the review group and indicates the need for better understanding and practices in this area. Even the best Mongolian company practices in Area E achieved only a top score of 7.08% out of a possible 30%. In many jurisdictions, board responsibilities have proven to be a major influential factor in the perception of corporate governance of the company.

I. Corporate governance and board environment

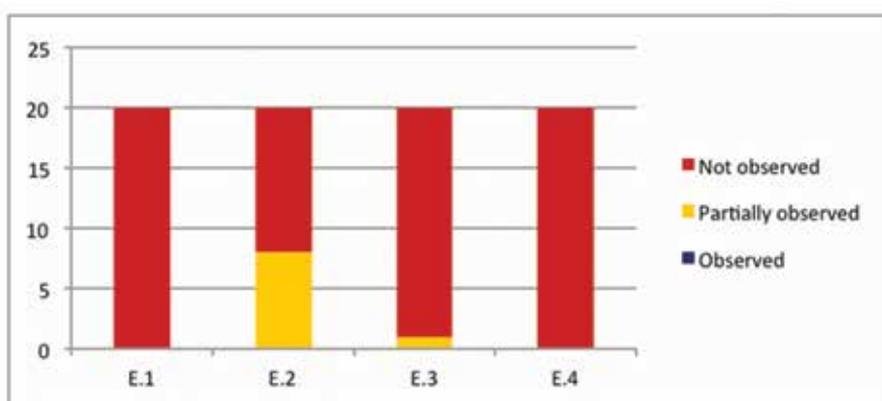
If companies demonstrate they have a good corporate governance environment, usually the company will have a clear statement of the code or principles it will adhere to. Such

39. OECD, Principles of Corporate Governance, OECD 2004, Paris.

clarity is normally derived from the fact that there is in one document (a company specific CG guideline or Code) a statement of board values and a commitment to board and director responsibilities, information on the processes for nomination and dismissal of directors and senior management, a recognition of the need for co-ordination between the board and management and commitment to regular evaluation of the board itself and of management.

In Mongolia, this would be expected in the company charter. However in most cases, there was little observed mention of board values, coordination between board and management and of the performance evaluation of the board (E.1). There is also little comprehensive evidence that the board ‘sets the tone at the top’ regarding expected corporate behavioural standards and values (E.2) and very few had clear strategies in place.

Chart 29. Board and corporate governance environment



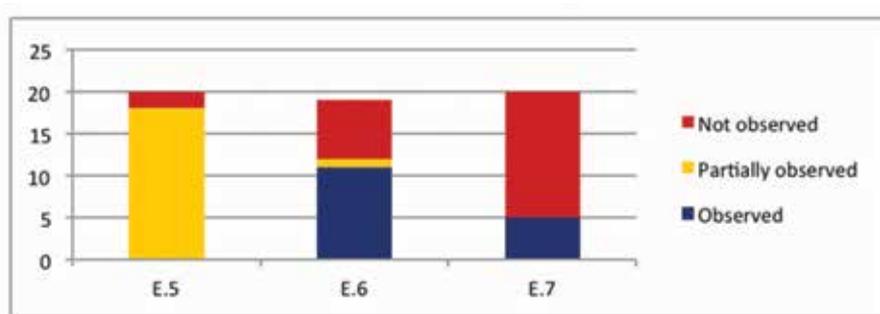
- E.1 Has the company promulgated and disclosed a quality CG guideline or CG Code?
- E.2 Does the company have clear company values and direction led by the BOD?
- E.3 Are the roles and responsibilities of the BOD clearly stated?
- E.4 Are the types of decision requiring BOD approval clear?

Indeed, company documents, including the company charters, generally lacked recognition that it is a role of the board to review strategy. The word ‘strategy’ was rarely used and what might be construed as strategies usually fell into document related to financial plans and budgets. Little or no mention is made of the role of the board in establishing and monitoring the effectiveness of corporate governance practices, of aligning remuneration with the long term strategies of the company, of ensuring a transparent board nomination process or for ensuring the integrity of financial and accounting systems (E.3). In most cases, the language in company charters regarding the responsibilities of the board only mirrors Company Law requirements and global good practices have little influence. Transaction authority policies clearly delimiting the authority of management and stating those decisions reserved solely for board decision making are not in evidence and disclosed (E.4). Such policies are helpful in delineating the role of the board and the role of executive management.

II Chairman of the board and board leadership

The role of the chairman of the board is one of leadership. He is expected to provide leadership for the board and ensure board and individual director effectiveness. He should establish and implement structures, policies and procedures for efficient and effective board meetings, board operations and company oversight. More and more is being expected of the modern chairman of the board. He is expected to closely liaise with the CEO and the chairmen of board committees, to develop appropriate board agendas, to ensure quality and sufficient information flows to the directors and to ensure regular board evaluation and development occurs.

Chart 30. Chairman of the board



E.5 Is the Chairman’s role clearly described?

E.6 Is the Chairman a non-executive director?

E.7 Is the Chairman ‘independent’ of the company?

In the Mongolian companies reviewed, there is little evidence of expectation of a very broad role for the chairman being articulated (E.5). Information on the expectations of the chairman are limited to one or two sentences and mostly consider only the chairman’s role as leading the board meeting. Separation of the roles of the CEO and Chairman is considered good practice by the OECD and many countries as it preserves a balance of power in the two most important roles in the company. Company Law (1999) in Mongolia supports this practice as under Article 80.3 the CEO cannot be the board chairman. 55% of companies adhere to this policy. However in several companies the board chairman is another executive director, such as the Deputy CEO (E.6). Such a practice would indicate that the structure of these companies is to avoid a clash with Company Law but to achieve power in the hands of management nevertheless. In these cases, the reasons behind the legal requirement do not seem to be understood or respected. The CG Code of Mongolia recommends the board of directors should “take measures to limit or annul the powers of the executive director (management) of the company”⁴⁰.

In only 25% of companies is the chairman considered ‘independent’ of the company (E.7).

An ‘independent director’ would be defined as not a major shareholder, without close

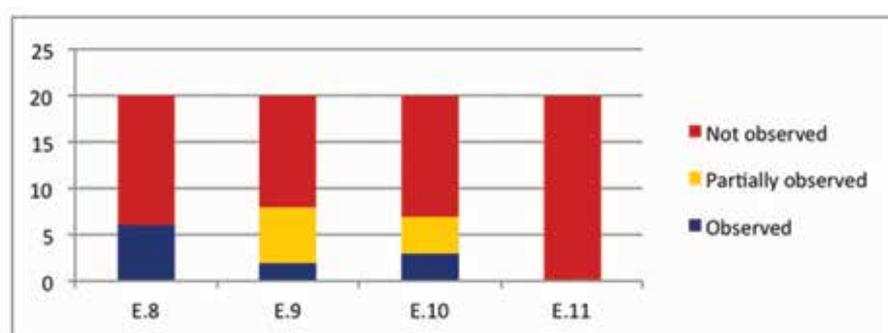
40. Financial Regulatory Commission of Mongolia, Corporate Governance Code of Mongolia, 2007, Ulaanbaatar.

relations with company management, is not a current or former employee or business associate of the company and is not the immediate past CEO or recently employed by the company. As observed, the principle of ‘independence’ of the chairman is not respected.

III. Board balance, skills and competences, independence

It is a commonly accepted good practice that one-third of the board should be non-executive directors and preferably independent directors. Indeed, the CG Code for Mongolia recommends that “the composition of the board of directors should have a sufficient number of independent directors”⁴¹. In globally accepted terms, an independent director must be capable of objective decision making without the possible or deemed influence of conflicts of interest of close associations with the company, with no direct or indirect material interest in the company, as described above, in the context of the chairman of the board.

Chart 31. Board independence and balance



E.8 How many BOD members are non-executive?

E.9 What percentage of the BOD is ‘independent’?

E.10 Is there evidence of the BOD being a ‘balanced board’?

E.11 Does company information and director information clearly state/disclose the number of board seats each director holds?

Non-executive directors are evident in only 30% of reviewed companies (E.8) and information on non-executive directors is available in only a few instances. Further, ‘independent’ directors are even harder to identify. In many cases, either independence is not defined in company documents and / or independent directors are not specifically identified (E.9). Independence was briefly defined in the applicable Company Law⁴² and is defined in the new Company Law (2011), Article 79. Both definitions are narrower than the commonly accepted global definition.

41. Ibid.

42. The definition of independence is defined in Company Law (1999) Article 76.2 if “neither he (her) nor his (her) spouse, parent, children, brothers, sisters, or affiliated persons, has been a governing person of the company, or any of its controlled or subsidiary companies, within the past three (3) years”. The Company Law (2011) definition is broader than the Company Law (1999) definition but it is still narrower than the globally accepted definition.

The International Finance Corporation (IFC) has expressed a globally accepted definition of ‘independence’ as a director who “has no direct or indirect material relationship with the Company other than membership of the board and who:

- a. is not, and has not been in the last five (5) years, employed by the Company or its Affiliates;
- b. does not have, and has not had in the past five (5) years, a business relationship with the Company or its Affiliates (either directly as a partner, shareholder (other than to the extent to which shares are held by such Director pursuant to a requirement of Applicable Law in the country relating to directors generally), and is not a director, officer or senior employee of a Person that has or had such a relationship);
- c. is not affiliated with any non-profit organization that receives significant funding from the Company or its Affiliates;
- d. does not receive and has not received in the past five (5) years, any additional remuneration from the Company or its Affiliates other than his or her director’s fee and such director’s fee does not constitute a significant portion of his or her annual income;
- e. does not participate in any share option (scheme/plan) or pension (scheme/plan) of the Company or any of its Affiliates;
- f. is not employed as an executive officer of another company where any of the Company’s executives serve on that company’s board of directors;
- g. is not, nor has not been at any time in the past five (5) years, affiliated with or employed by a present or former auditor of the Company or any of its Affiliates;
- h. does not hold a material interest in the Company or its Affiliates (either directly or as a partner, shareholder, director, officer or senior employee of a Person that holds such an interest);
- i. is not a member of the immediate family (and is not the executor, administrator or personal representative of any such Person who is deceased or legally incompetent) of any individual who would not meet any of the tests set out in a) to h) (were he or she a director of the Company);
- j. is identified in the annual report of the Company distributed to the shareholders of the Company as an independent director; and
- k. has not served on the Board for more than (ten(10) years)⁴³.

For the purposes of this definition, “material interest” shall mean a direct or indirect ownership of voting shares representing at least (two percent (2%)) of the outstanding voting power or equity of the Company or any of its Affiliates.

There is little information on the backgrounds of the directors in 65% of companies and so there is little evidence of the board having a range and balance of skills and competences

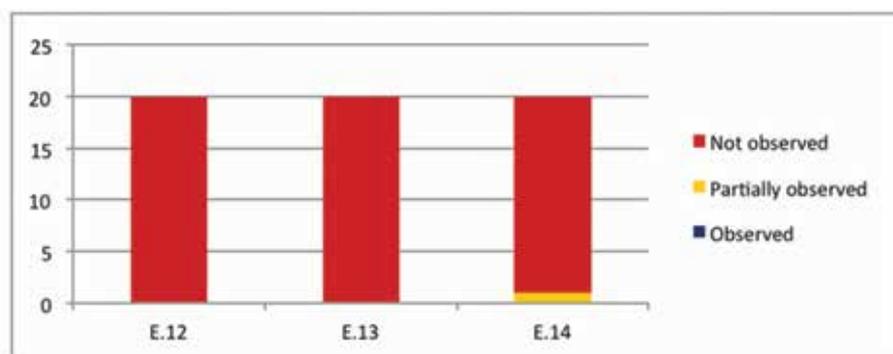
43. As accessed on 11 August 2013 at www.ifc.org

(E.10). A well balanced board should have directors with a range of skills and experiences, including in the industry, business knowledge, accounting and finance, legal and marketing skills, a balance of executive and non-executive directors. Indeed it is hard to ascertain the current commitments of a director as the number of other board seats a directors holds and any committee positions he may hold is not disclosed in 100% of the companies reviewed (E.11).

IV. Board induction, evaluation and training

To ensure competence of the board and given that each director is liable to fulfill his duties from the commencement of his appointment, it is a good practice to provide an induction program to all new board members. Such a program would orient the board member to the company, its business, strategies, risks, current financial position and to the current directors and senior management. Induction programs are not observed in 100% of companies reviewed (E.12). If the programs are in place, there is not public information to indicate this. Further, there is no evidence of periodic evaluation of the board and its activities (E.13). As more is expected of directors, so boards have sought to professionalise their approaches and evaluation and continuous improvement has become an expected norm.

Chart 32. Board induction, evaluation and training



E.12 Does the company have a board induction policy and program for new appointments to the BOD?

E.13 Does the BOD undertake an annual self assessment / evaluation of itself? Directors? Committees?

E.14 Did BOD members and the CEO participate in annual CG training and report this?

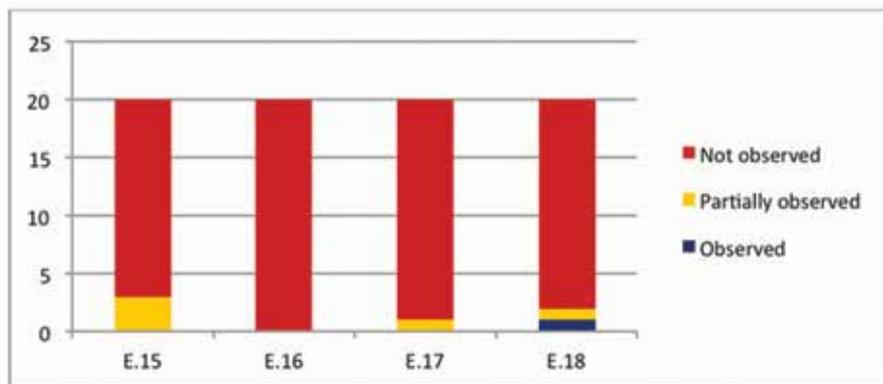
Rarely was there evidence of references to director, board or CEO training in corporate governance (E.14).

V. Board effectiveness – information, meetings and records

Board and board committees should meet as often as required to effectively manage their responsibilities and govern the company. Further, unless stated otherwise in the company charter, the board should meet at least monthly as mandated in Company Law (1999 and

2011). Little information is available about the number of board meetings held in a year and concerning director attendance at these meetings (E.15).

Chart 33. Board effectiveness – Board meetings



E.15 How often did the BOD meet in the past year?

E.16 To enable participation, were all BOD meetings for one year scheduled at the commencement of the year?

E.17 Has each BOD member attended at least 75%⁴⁴ of all BOD meetings held during the year?

E.18 Are there mechanisms in place to ensure board members receive adequate notification of the board meeting for all BOD meetings?

To be effective, a good practice is that a board has in place a working plan that includes regular topics that will be agenda items for discussion and decision and a schedule of meeting dates, to facilitate forward notice and regular attendance at the board meetings by directors. Such an organised work plan and schedule of meetings was not in evidence (E.16). One company did report to shareholders on director attendance at board meetings. However, it is difficult to determine if all directors attended at least 75% of all board meetings, due to the paucity of information (E.17).

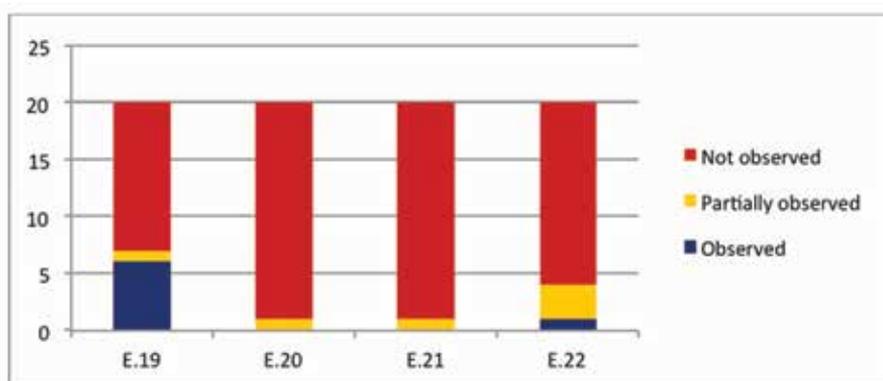
Policies and procedures should be in place to ensure directors receive timely notice of meetings and receipt of meeting papers. Often a Company Secretary is nominated as the responsible person to ensure smooth meeting processes and that directors receive meeting papers at least 7 days in advance of a meeting. These operational procedures and practices were rarely in evidence (E.18). In this respect, it is good to note the new Company Law (2011) mandates the appointment of a secretary to the board to undertake these responsibilities.

VI. Board effectiveness – company strategy, risk and oversight

44. The Corporate Governance Code of Mongolia stipulates attendance minimum of 1/3 of all meetings. This is a minimal requirement.

According to the OECD Principles of Corporate Governance, the board should fulfill certain key functions including “reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance”⁴⁵. In Mongolia, it was observed that some 30% of companies did approve strategies and business plans of the company. However there is little evidence of how or if there is oversight of the implementation of the plans (E.19). In 95% of cases, there is however little evidence of the boards dealing with company risks and of the existence of risk management systems and reporting is lacking or inadequate (E.21). Further whilst it may occur, there is also little evidence in 95% of cases of regular management reports being provided to the board, of board discussion of any management reports and of reports on company activities and financial position (E.20).

Chart 34. Board effectiveness – Strategy and risk oversight



E.19 Is there evidence the BOD is responsible for the strategy and business plans of the company?

E.20 Is there evidence the BOD receives regular management reports on the company activities and its financial position?

E.21 Is the BOD responsible for and oversees the risk management system of the company?

E.22 Does the BOD assess the CEO and key executives annually?

Investors are keen to see that the board is active in its oversight of the company and of management. It is expected that the board would assess the performance of the CEO and key executives annually and that the performance evaluation is linked to the long term performance of the company. Good detail on performance evaluations was observed in only one case (E.22). Three other companies showed evidence of performance evaluations but insufficient mention of the relationship between the long term performance of the company and executive performance.

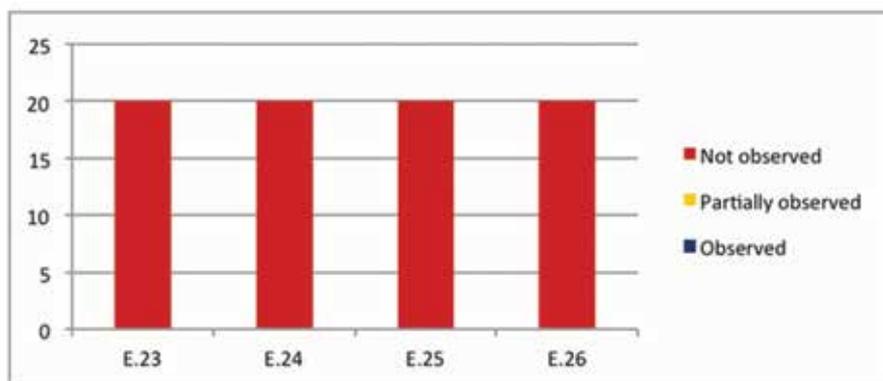
VII. Board effectiveness – Board committees

As the business of a company becomes more complex and the demands on the board

45. OECD, Principles of Corporate Governance, OECD, 2004, Paris.

increase, board committees are often established to assist the board in management of its responsibilities. The applicable Company Law (1999) does not address the role or position of board committees. It is unsurprising therefore that companies generally do not demonstrate evidence of good board committee practices.

Chart 35. Board effectiveness – Board committees



E.23 Has the BOD established BOD committees (Audit Committee, Remuneration (salary and bonus) Committee and Nomination Committee) or designated a BOD person?

E.24 Are reports from each of the BOD Committees evident and disclosed to shareholders?

E.25 Does the company disclose the Nominating Committee's criteria used in selecting new directors and the process for identifying such individuals?

E.26 Do reports of the Nominating Committee activities explain plans for succession of management and the BOD?

The chart above shows that no company had established board committees and good board committee practices (E.23 to E.26), not even the three most globally prevalent board committees of Audit, Remuneration and Nomination Committees, as are commonly encountered in corporate governance. In Asia 94% of companies have an Audit Committee, 75% have a remuneration committee and 56% have a Nomination Committee⁴⁶. Board committees for audit, salaries and nominations are now mandatory under the new Company Law (2011).

In good practices, each board committee should have its own charter or terms of reference explaining its role, membership, scope of activities and reporting procedures. All board committees must comprise only board members, should be led by an independent director, be comprised mainly of independent directors, if possible, should report to the board on its activities and make relevant recommendations for board decisions. Board committee reports should be disclosed to shareholder. It is important to note that even if the board delegates some of its responsibilities to a board committee, the board remains the ultimate decision making authority and retains responsibility for all board decisions.

46. Source: Gavin Grant, Beyond the Numbers: Corporate Governance in Asia and Australia (London, Deutsche Bank 2007).

Board structures and procedures vary. Some countries have two-tier boards that separate the supervisory function and the management function into different bodies. Mongolia in 2011 was in transition from one structure to another. In Mongolia in the 2011 reporting period, companies were required to have a Supervisory Board reporting to the GMS as specified by the company charter. This group/person is not strictly in the nature of a board committee. Given the Supervisory Board is no longer required in Mongolia, it was not addressed in the scorecard.

VIII. Board effectiveness – Company control

“The board is expected to monitor and manage potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. It is an important function of the board to oversee the internal control systems covering financial reporting. These functions are sometimes assigned to the internal auditor which should maintain direct access to the board”⁴⁷.

In the new structure for company oversight set by Company Law 2011, much of these activities will fall to an Audit Committee. An Audit Committee must be established and should meet at least once per quarter. It is a good practice to tie the meetings of the Audit Committee in with the financial reporting / external audit schedule and also with board meetings.

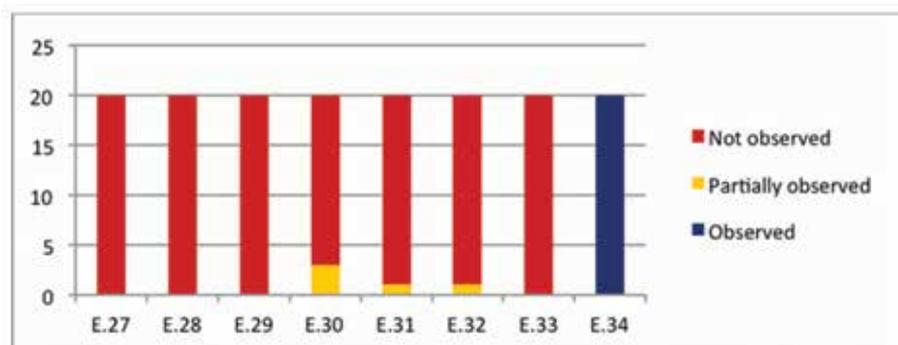
In good practices, the Audit Committee typically will focus on financial reporting, risk management, internal controls and internal audit and external auditing. It will oversee company compliance with legal and regulatory requirements and the effective operation of company controls. It will ensure quality financial reporting and the integrity of accounting and financial information provided for decision making and to shareholders. The Audit Committee should recommend to the board and to the shareholders the external auditor for appointment or reappointment. Normally the shareholders at the GMS will be the ultimate appointor of the external auditor.

It is the role of the Audit Committee to ensure the external auditor is independent, competent and qualified. It will fall to the Audit Committee to ensure a proper and robust audit of the financial statements and of the accounting and finance systems of the company is completed. The Audit Committee should monitor the progress of the audit and be the central point in the company for discussions with the auditor on issues arising. The Audit Committee should be accountable for ensuring an recommendations from the external auditor are implemented by management.

Given the notion of an Audit Committee is new to Company Law and to the regulatory environment in 2011, it is not unusual that 100% of companies had not implemented a quality Audit Committee environment (E.27 to E.29). However it is an opportunity to set the role, authority and activities of an Audit Committee into a quality corporate governance framework.

47. OECD, Principles of Corporate Governance, OECD, 2004, Paris.

Chart 36. Board effectiveness – Company control



E.27 Does the Audit Committee meet at least 4 times per year?

E.28 Does the Audit Committee recommend to the BOD and shareholders on the appointment and reappointment of the external auditor?

E.29 Is there evidence of the practical Audit Committee oversight of the external auditor?

E.30 Does the company have a separate internal audit function, which reports directly to and has unfettered access to the Audit Committee of the BOD and/or the BOD?

E.31 Do company documents cover/explain internal control structures, policies and practices?

E.32 Does the Annual Report disclose the internal audit function report on its review of the company's material controls and risk management?

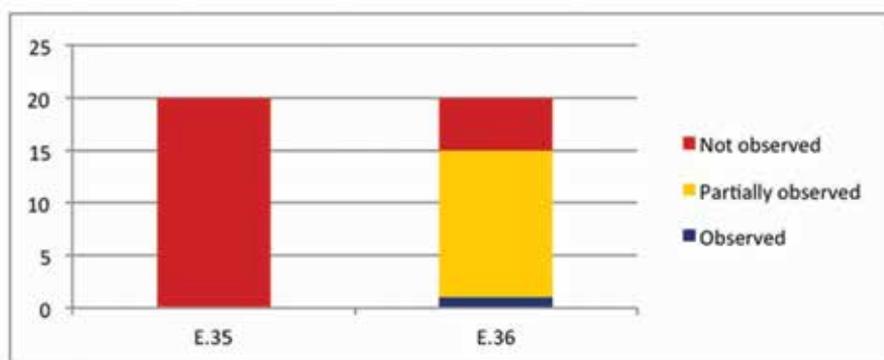
E.33 Is there evidence of the Audit Committee review of the Annual Report and financial statements?

E.34 Is there any evidence of non-compliance with applicable laws and regulations of the company over the last year?

Part of the role of an Audit Committee is to ensure strong internal controls and an internal audit function exists either within the company or it is outsourced. In both cases, the internal audit function should have unfettered access to and report directly to the Audit Committee and through them to the board. An internal audit function is observed in 15% of the review group. Most of these do not report to a board committee or, failing that, directly to the board (E.30). In fact companies were generally weak in providing evidence of internal control policies, structures and practices (E.31). In only one case was there evidence of the report of the internal audit function on its independent review of the company's internal control processes, material controls and risk management (E.32). Given the Audit Committee is only just being established, it is expected that in 100% of cases there was no evidence observed of an Audit Committee review of the financial statements (E.33).

There was no obvious evidence of company non-compliance with applicable laws and regulations over the 2011 reporting period in 100% of cases (E.34). Such a result may be interpreted in various ways. The FRC website had such information available for 2012 and 2013 years but none for the 2011 period. This may mean no transgression on the part of all companies in the sample group, or little oversight on the part of the FRC, or no reporting on the part of the FRC.

Chart 37. Board effectiveness – Company Secretary



E.35 Is the company secretary trained in legal, accounting and/or company secretarial practices

E.36 Does the BOD/ co secretary keep meeting minutes and resolution records of each meeting?

Finally, to support efficient and effective board work, many companies appoint a company secretary or board secretary. Professional corporate secretaries usually have legal backgrounds, understand corporate and securities law, have sufficient business knowledge to understand the company’s business and have strong interpersonal skills that allow them to help the chairman steer boards. In Mongolia, 100% of companies do not provide information on the qualifications and background of the company secretary (E.35). Yet the work of a company secretary is evident in 75% of cases where the company charter requires the board secretary to keep board meeting minutes and records of board meeting resolutions. It is not clear however if these minutes and records are readily available to all board members for reference as is good practice (E.36).

F. Conclusions and Recommendations

“A journey of a thousand miles must begin with a single step”⁴⁸.

Corporate governance in Mongolia, as indicated by this review, is in its infancy. This provides an opportunity to establish quality corporate governance policies and practices – a sound base for corporate governance in the future.

The review was undertaken at a time when a key legal instrument, the new Company Law,

48. Lao Tzu, BBC Biography of Lao Tzu, BBC, London.

had been introduced, but which was not yet applicable. Any future CG assessment would be expected to show the benefits of the changed regulatory environment and improved CG practices. However, corporate governance is a long journey; it is not a destination as corporate governance is continually evolving. Reform needs also not to be a static process but one which is ever evolving. Investor expectations of corporate governance are continually rising. Directors and regulators in Mongolia should keep an eye on international developments in corporate governance.

The results of this baseline survey point to a significant number of differences between globally expected standards and the reality of practices in Mongolia. A number of short term improvements which may be introduced quickly, ‘quick wins’ to progress corporate governance practices. However there are also longer-term actions that will require persistence and perseverance. These more endemic issues are likely to require collaborative efforts on behalf of legislators, regulators, the stock exchange and companies, ideally an agreed Master Plan to better governance.

The adoption of globally accepted corporate governance norms is influenced by legal and regulatory requirements and also by individual company approaches. For possible improvements, listed companies should look immediately to the issues detailed in the ‘Specific Findings’ section of this report. Companies, directors and senior management should become aware of corporate governance good practices through training and development programs. In each of the five areas reviewed, there is evidence of some basic understanding but the implications and details of each area seem not to be implemented or are not observable. There is an opportunity for those leading corporate governance in Mongolia to provide guidance to assist the application of good practices. Companies then will need to make a commitment to good governance and commit adequate resources to its development.

Recommendations

CG developments need to move from theory to practice, from ‘talk to action’ and could focus initial activities in four important areas:

- Extensive promotion of this review to companies, consultants, chambers of commerce, regulators and other market participants interested in or the likely beneficiaries of good corporate governance and deep training in good corporate governance practices for all participants is recommended.
- Development of coherence between all laws and regulations pertaining to CG and ensuring at least compliance with all laws and regulations.
- Far greater disclosure and transparency and development of policies, processes and materials to assist full disclosure. This is deeply embedded in past corporate approaches and is difficult to change. It needs to be demonstrated that greater transparency will not damage business.
- Fulfilment of the responsibilities of the board, supported by clearly articulated company structures, policies and procedures. In this individuals are influential and the engagement and commitment of key business leaders in Mongolia will be important.

1. Knowledge of corporate governance in Mongolia could be developed further in not only the key players in corporate governance (directors, shareholders and regulators) but also in other influencers (media, auditors, stakeholder groups). Tailored training is recommended for all groups.

Directors should know their roles and responsibilities and be able to identify and apply quality board policies and practices. Regulators need to understand, have powers, authority and adequate sanctions to actively and visibly monitor and supervise legal and regulatory requirements of corporate governance. Regulators need to better understand current enforcement measures being taken in other jurisdictions. In particular, training is also recommended for members of the media so they may comment appropriately on corporate governance matters as they arise. Shareholders could better understand normal and expected basic rights of shareholders and actively exercise those rights.

In the development of training programs there is an extensive opportunity for the CGDC of Mongolia, Chambers of Commerce/business associations and NGOs such as the IFC.

2. There are specific matters which are mandated in law or regulation not adhered to by some companies and/or at least not in evidence from an external observer point of view. Adherence to the law should improve and compliance with the CG Code and basic Company Law should be mandated and enforced. For example, two companies did not hold the GMS within the legally mandated period. The regulatory consequences of this in law and in practice were not clear. Some companies did not issue or did not make public, relevant documents in relation to the GMS, such as notices, minutes, and details on voting processes. Many companies did not file quarterly reports as mandated.

Companies are required by the Law on Audit to ensure an independent annual audit. However, no consideration of the independence of the auditor was evident in most cases. Companies are required by Company Law to introduce policies and practices for conflict of interest transactions. These were not observed in most of the reviewed companies.

The Mongolian Code of Corporate Governance was voluntary for listed companies in 2011. In most cases, application of the code was not evident and explanations were not evident. The Mongolian Corporate Governance Code recommends boards to “approve the internal supervision procedure and its implementation mechanism”⁴⁹. If the mechanisms and policies were in place, they were not evident generally from company documentation.

There is a real role for regulators and stock exchanges to create positive and negative incentives for better corporate governance. They should demand and enforce better corporate governance. There is an opportunity for the CG National Council, a unit of the FRC, to focus on the CG of listed companies, its monitoring and enforcement and on the CG activities of the FRC and the MSE.

3. In general, information provided to investors, current and future investors, is incomplete or superficial, and lacking comprehensive details. Timely, accurate disclosure of all material matters regarding the company, its financial situation, performance, ownership and governance is necessary. Financial and non-financial disclosure and transparency need

49. Mongolia, Corporate Governance Code, 2007, Article 1.3.1 c), Ulaanbaatar.

improvement.

In the review group, information was difficult to locate and access, being in several locations. Quality information, available on an accessible company website, is vital to investors when making investment decisions and better information makes for better, more informed decision-making within the firm. Such information should include a complete Annual Report as mandated in most other jurisdictions, which would include financial statements and an auditor's report thereon, details of the strategies and risks facing the business, interim financial information, a corporate governance report explaining the company's corporate governance framework, how the company applies the requirements in the CG Code and providing robust explanations if elements of the CG Code are not applied. Also, the company information, available on a company website, should include full details of major shareholders and company policies relating to corporate governance, stakeholder relations, information disclosure and dissemination, conflicts of interest and related party transactions, insider trading. Each company could make a study of what constitutes global quality corporate reporting for its industry and provide similar detail to directors, shareholders and potential shareholders.

Companies, company boards, including individual board members and executives should assess the governance and disclosure practices of the company and institute a reform program. Shareholders and investors should demand, as a minimum, a quality Annual Report and timely ad hoc disclosures which utilise technology/company websites better.

4. When comparing the practices in Mongolia to the globally expected responsibilities of the board, again Mongolian companies fall short. Mongolian boards need to know the nuances of global good practices relating to composition and structure of boards, board policies, procedures and practices. Directors need to be very clear on their roles and responsibilities as distinct from executive management and on the structure of board committees to effectively manage the work of the board. They need to show leadership of the company by setting a 'tone at the top' for good CG and be overtly supportive of ethical practices. Companies could introduce a Code of Conduct for all directors and senior management. Independent directors need to be identified and appointed to boards, fulfilling the global definition of 'independence'. Independent directors may need training in the expected role of 'independents'. **Particularly urgent, is the need for companies to institute an effective Audit Committee, with by-laws stating the composition, authority and scope of activities of the Audit Committee.** Financial literacy of directors, especially of Audit Committee members, should be assured.

Boards need to understand best practices in corporate governance, improve their board functioning and effectiveness and company practices. Better corporate governance will support better operations and performance of the company.

Specific Priorities

Legislative and regulatory developments

1. Review and update the Mongolian Code of Corporate Governance (2007) to align it with recent global developments and for changes in Mongolia's Company Law (2011). For example, align the definition of 'independent directors' with globally accepted

definitions.

2. Mandate the application of the Mongolian Code of Corporate Governance for listed companies⁵⁰.
3. Mandate the preparation and provision of a comprehensive Annual Report in the form of one document that provides information on the company's activities and performance (financial and non-financial) over the past year and for the foreseeable future. The Annual Report should be provided to all shareholders and be available to the public on the company website.
4. Ensure company charters do not and cannot reduce the minimal requirements of Company Law.
5. Enhance and clarify corporate governance monitoring and enforcement powers, authorities and sanctions to ensure credible enforcement capacities.
6. Ensure active, visible and reported enforcement of legal and regulatory requirements related to corporate governance by regulatory bodies.
7. Promote awareness of the scorecard findings to company directors, bank, securities regulators and to media and relevant others.

Institution strengthening

1. Strengthen the knowledge of corporate governance within regulatory institutions.
2. Ensure the FRC and the stock exchange has adequate resources available to undertake active and visible enforcement of corporate reporting and corporate governance requirements and to support leadership related to corporate governance development. Skills development is important in this.
3. Strengthen the accounting profession and company reporting, accounting and audit professional practices to be consistent and current with internationally accepted practices. Ensure IFRS and ISA required for application in Mongolia are the most recent standards. Build the quality of external audits and ensure auditor scepticism and build knowledge and practices of internal audit.
4. NGOs and private sector organizations (CGDC, Chambers of Commerce etc) might support the development from this scorecard of a Master Plan for CG development. Such a plan might include development of training programs, best practice materials and incentives to guide CG application in Mongolia. Examples of support materials needed would be a new Code, training programs, disclosure checklists, model audit committee policies and procedures etc. The challenge will be to get the active participation of the companies and directors.

Private Sector / Company developments

50. It is noted that the CG Code is now mandated for listed companies under Securities Market Law and is applicable from 1 January 2014.

1. Development, publication and promotion of a good company structure for corporate governance including establishing board committees with committee charters, quality director nomination and election processes, board evaluation measures, quality risk management structures and practices, including an internal audit function.
2. Development and publication of quality company corporate governance frameworks, policies and procedures. For example, a company code of corporate governance, demonstrating company commitment to CG, a code of conduct for directors, information policies, investor relations policies, and policies related to conflict of interest transactions might be part of the framework.
3. Development of an understanding of the role a company secretary can and should play to support quality corporate governance and board practices.
4. Publication for broad consumption and provided to shareholders, a comprehensive Annual Report on company financial and non-financial activities and performance over the past year and for the foreseeable future.
5. Companies should develop, issue and publicly display detailed guidance on company processes for independent auditor selection, appointment and oversight and their commitment to quality corporate reporting practices, company disclosures (regular and ad hoc disclosures). They should also develop company policies and practices for corporate social responsibility and company information disclosure.
6. Development and engagement of key business leaders committed to better corporate governance practices, who may become ‘champions’ of corporate governance within their company and board.
7. Identify and build a group of potential independent directors capable of objective judgment and knowledgeable on corporate governance practices.

Public Sector / Company developments

1. The state should become a ‘champion’ of good corporate governance practices as evidenced by public statements of support for good CG by leading individuals.
2. Quality CG practices should be mandated for companies in which the state has a majority shareholding, listed and otherwise, and hold company directors of state enterprises to account for the quality of CG in their companies.

September 2013.

G. Appendices

a. List of companies reviewed

Companies are listed below and represent the 20 largest companies listed on the Mongolian Stock Exchange on 3 January 2011, the first trading day of 2011. They represent 89.7% of the total market capitalization of the Mongolia Stock Exchange (MSE) and 5.9% of the 336 companies that were listed on the MSE at 3 January 2011.

No	Code	Company Name	Company Name (EN)	Ticker	Industry/Sector
1	458	Таван толгой	Tavan tolgoi	TTL	mining
2	396	Багануур	Baganuur	BAN	mining
3	460	Шивээ овоо	Shivee ovoo	SHV	mining
4	90	АПУ	Apu	APU	manufacturing
5	209	Монголын цахилгаан холбоо	Mongolia Telecom	MCH	trade and service
6	309	Шарын гол	Sharyn gol	SHG	mining
7	354	Говь	Gobi	GOV	manufacturing
8	522	БиДиСек	BDSec	BDS	trade and service
9	461	Адуунчулуун	Aduun chuluun	ADL	mining
10	532	Хөх ган	Khuh gan	HGN	mining
11	524	Монголиа Девелопмэнт ресорсес	Mongolia development resources	MDR	construction
12	484	Улсын их дэлгүүр	State Department Store	UID	trade and service
13	13	Баянгол зочид буудал	Bayangol hotel	BNG	trade and service
14	444	Могойн гол	Mogoin gol	BDL	mining
15	191	Ээрмэл	Eermel	EER	manufacturing
16	521	Женко Тур бюро	Genco tour bureau	JTB	trade and service
17	3	Улаанбаатар зочид буудал	UB hotel	ULN	trade and service
18	530	Ремикон	Remicon	RMC	manufacturing
19	509	Монгол эм импекс	Mongol emimpex	MEI	trade and service
20	135	Сүү	Suu	SUU	manufacturing

b. Scorecard questionnaire

A Rights of shareholders (Scorecard weighting - 15%)		
OECD Principle II The corporate governance framework should protect and facilitate the exercise of shareholder's rights.		
No.	Question	Indicative (but not exhaustive) evidence
A.1	Are the voting rights of shareholders clear and unequivocal?	Full information provided – for each class of shares information is provided on voting rights, dividend rights, distribution rights
A.2	Does the company offer ownership rights, more than basic rights (voting rights, right to freely transfer shares and right to timely information)?	Right to approve dividend; Full information provided on the dividend process; equal treatments for share repurchases or issues;
A.3	Do shareholders have the right to nominate and remove members of the BOD?	Thresholds less than 5% share ownership; right to appoint and remove in company charter; no share classes excluded from this right; practice / use of procedural hindrances not evident
A.4	Are the dividend and dividend payment policies transparent?	Prior information on dividend policy, rationale for current dividend proposed (and all shareholders in same class receive same dividend), dividend specific amount available and payment date notified; dividend vote taken
A.5	Are dividends distributed according to the policies and procedures to all shareholders in a timely manner?	Dividends declared and distributed; equal distribution to all shareholders according the share class; paid within 30 days of dividend declaration
A.6	Do shareholders have the right to approve major corporate transactions (mergers, acquisitions, divestments and / or takeovers)?	Right to approve major transactions in company Charter; Right includes low thresholds for approval of such transactions ⁵¹
A.7	Was the GMS held within four months of end of fiscal year?	Required within four months of end of fiscal year; if outside this time GMS is not timely
A.8	Are there adequate company systems for shareholder attendance and participation at GMSs?	Meeting held at a convenient time and place (big city location and business hours time) and open to all shareholders (no complex registration processes); no change of date or location at last minute

51. Threshold in Company Law is 25% of company total assets; global best practices indicate 20% or less of total assets.

A.9	Are the GMS' meeting notices effective?	Notice of GMS provided directly to shareholders and notice of GMS also on website; adequate information provided with meeting notice, including: agenda; proposed resolutions; annual report and audited financial statements (not summary); report of auditor and supervisory board; material related to appointments of directors; information about auditors provided with meeting notice.
A.10	Are the policies and processes for shareholders to ask questions at the GMS clear and time is allowed on the agenda?	Statement in GMS notices, and place and time (30 minutes or more) allowed on the agenda.
A.11	Does GMS information of the past year record opportunities for shareholders to ask questions?	Review of GMS minutes to validate question period; Q and A recorded
A.12	Is the attendance at the last GSM of Chairman / other board members / CEO / evident?	Complete GMS meeting individualized attendance / absence record provided
A.13	Are GMS policies and processes in the past two years (notices and information) sufficient for shareholders to evaluate individual board nominations?	Policies and processes in place requiring names and experience; facilitation of shareholders to get to know the nominees; written declarations of integrity and personal information; clarity concerning the method of nomination; guidelines on cumulative voting processes. NB The rater may look to previous year's data if no nominations in current year.
A.14	Do shareholders effectively vote (receive information on, make their views known and vote) on board and key executive ⁵² remuneration annually?	Remuneration policy available; Information to include all benefits that pass to the director and key executives; Rationale related to the long-term performance of the company; Shareholder views are received at the GMS. Remuneration policy approved at GMS.
A.15	Did the external auditor attend the GMS and the express his views on audit / financial statements issues?	Auditor attendance and auditor availability for questioning recorded. Shareholder discussion with auditor recorded.

51. Key executives are likely to include the CEO, CFO, COO and perhaps one or two others. Normally it is the top 5 executives, whatever their roles as roles are likely to change from company to company.

A.16	Did the shareholders effectively approve the appointment of the external auditor?	Last auditor approval by shareholders to include: Name and experience of audit company to be in accordance with requirements re qualifications and authorisations. GSM voting evident.
A.17	Did information on the appointment of the external auditor include information on independence?	Information on / consideration of independence evident
A.18	Is a full report provided to GMS on company and BOD performance?	To meet requirements, must include: annual evaluation of performance of company; performance of BOD (frequency of BOD meetings, number of BOD meetings); summary of issues raised at BOD and decisions; supervision of CEO and supervision of other senior management; projected future plans.
A.19	Are resolutions at the GMS determined by ballot and voting procedures are rigorous?	Minutes state ballot, procedures to tally votes evident and voting declared before meeting continues (i.e. ballot resolutions) or in separate report to shareholders
A.20	Did the GMS notice include explicit information on accessible systems for proxy voting and voting in absentia?	Documents to appoint proxies in meeting notices (proxy forms sent); proxy appointment processes known; uncomplicated voting mechanisms (postal and electronic voting access); uncomplicated proxy appointment processes (e.g. notarisation NOT required).
A.21	Do GMS meeting minutes and the company website disclose individual resolutions, with voting results for each agenda item?	Disclosure in GMS minutes and / or on website of meeting resolutions and voting results for each agenda item.
A.22	Are there no additional items included in the GMS minutes not included on the original meeting notice?	Additional items are likely to include determinations for which the shareholders had insufficient preparation. Absence of such items would be scored as evidence of good GMS meeting preparation.
B	Equitable treatment of shareholders (Scorecard weighting - 15%)	
	OECD Principle III – 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.	

B.1	Must changes to the company charter and major conflict of interest transactions be approved by shareholders?	Co Charter should not be able to be changed without shareholder approval; shareholder approval of major conflict of interest transactions required; the approval of a 2/3 majority of shareholders required ⁵³
B.2	Does the company have a ‘one share, one vote’ policy?	One class of share only and one vote for each share Needs to be stated and not assumed
B.3	Does each share in the same class of shares have the same rights?	Rights attached to shares publicly available; same class – same rights (no golden shares, no preferred shares with voting rights disproportionate to capital commitment); GMS vote required to change shareholder rights; vote to be passed by a majority of 75% AND the voters representing at least 75% of shareholders in that class. If no information available on voting rights – not observed
B.4	Do shareholders have the right to approve fundamental company changes ⁵⁴ ?	Policy in charter; information re rationale for changes required; approval required at GMS / EGM (Right to vote on changes to company charter, authorisation for issuance of additional shares and requires a vote of at least 75% of total voting shares or proxies available at Shareholders’ Meeting).
B.5	Can minority shareholders impact the composition of the board? Is there evidence this occurs?	Method described in company documents (cumulative voting, board member nomination right), even if no director election occurred; nominations and agenda items in the GMS documents
B.6	Are directors’ required to be re-nominated and re-elected at regular intervals?	Policy of annual election of directors; limiting term of office of independent directors (max 6 years);
B.7	Is cross border voting facilitated by the company?	Policy in company charter; Proxy voting information and papers available to facilitate cross border investor participation; longer notice period (between 20 and 30 days); Information also in English (information may be sent to foreign investors in English)

53. Major transaction in Mongolian Company Law defined as one that exceeds 25% of the total assets of the company; ‘conflict of interest transactions’ policy should set the limits requiring shareholder approval.

54. Fundamental company changes are: Right to vote on changes to articles or company charter, authorisation for issuance of additional shares and requires a vote of at least 75% of total voting shares or proxies, major transactions, changes to shareholder rights.

B.8	Is a description of the company group structure available and clear and transparent?	Group structure evident (e.g. organisational chart) and explained; inter-company relationships evident and explained (little evidence of complex structures and close links with suppliers, customers or companies in a similar business); group structure explained in Annual Report and / or financial statements.
B.9	Is there evidence of structures / mechanisms that have the potential to violate minority shareholder rights?	Cross shareholding evident (threshold of 5% applies) Pyramid structures evident (threshold of 10% applies)
B.10	Are there mechanisms that provide effective redress for complaints of shareholders?	Company complaints policies and processes (process is timely and cost effective includes required response); company commitment to mediation
B.11	How many days before the GMS were the meeting notices sent out?	Longer period of notice, the better (20 to 30 days is good practice)
B.12	Can a small shareholder place an item on the GMS agenda?	Policies and procedures for doing so in company documents, Thresholds (under 5%)
B.13	Are there any known cases of insider trading involving the company directors, management or staff in the past year?	Information in general press, regulatory documents
B.14	Are there company policies and systems in place that effectively prohibit the misuse of information by directors, management and staff?	Policy / Code of conduct evident; insiders defined; information use, protection and disclosure policies; confidentiality policies; nominated person for legal disclosures; share trading policy / blackout period requirements evident
B.15	Does the company disclose trading in company shares by insiders?	Rules in place for insider trading in shares; disclosure policy evident; trading (by directors, senior managers and executive directors) disclosures evident
B.16	Are there effective company policies for the company to approve relevant related-party (conflict of interest) transactions?	Related party transactions (RPTs) are clearly defined; policies and mechanisms are in place to control (written contracts, price determination, arms' length market basis)RPTs; Policies and mechanisms in place to approve (by BOD or shareholders) RPTs; Low thresholds in place for shareholder approval ⁵⁵ .

55. Thresholds vary across jurisdictions (PRC 30% of total assets; Singapore requires shareholder approval of transactions greater than 5% of net tangible assets).

B.17	For large company transactions, does company policy require the provision of information to explain RPTs and require shareholder approval of RPTs above a certain threshold?	Explanation to be provided (information required nature of transaction, parties, other beneficiaries, value in Annual Report, financial statements); shareholder approval required; Thresholds evident for RPTs approval (greater than 5% of total assets)
B.18	Have there been cases of non-compliance with requirements relating to related party transactions in the past year?	Non compliance means either transactions not in accordance with company policies; OR RPTs not disclosed and/or did not appear on unaudited financial statements, but did appear on audited FS.
B.19	How does the board deal with declarations of conflict of interest?	Obligation to inform evident; policies laid down for good practices after disclosure to the board (independent directors to make decisions, conflicted party withdrawal / not vote / abstention); ethical policies / code in evidence
C	Role of stakeholders (Scorecard weighting – 10%)	
	OECD Principle IV - Recognize the rights of stake-holders established in law or mutual agreements and foster co-operation with stakeholders	
C.1	Does the company recognize company obligations (in law and agreements) to key stakeholders and engage them?	Mention of customers, suppliers, creditors, community in public communications; communications show relationships considered important (through code of conduct, honouring business agreements, timely payments, co-operative efforts)
C.2	Does the company have in place mechanisms that permit / allow for stakeholder complaints and redress for grievances?	Grievance or complaints mechanisms evident; responsible persons or group to deal with grievances; consultative processes evident
C.3	Does the company provide a range of performance enhancing employee benefits to align company and employee interests?	Employee representation on boards; mechanisms within the company to consider employee views; ESOP / ESP available (employee share plan / option plan); other benefits available (pension plan, profit sharing plan, education program) or other long-term incentives to employees to align them with company value creation

C.4	Do company policies / information recognize the safety and welfare of employees?	Mentioned in public communications and considered important and shown through: i) written policies ii) employee training development programs; and iii) internal issue redress mechanisms iv) Performance targets re health and safety v) Code of ethics.
C.5	Do company policies / information demonstrate a commitment to the environment?	Mentioned in public communications; description of company's environmental enhancing activities / approaches; international standard the company adheres to regarding the environment (e.g. ISO 14000) recognised; performance targets set for environment.
C.6	Does the company disclose its stakeholder activities to all investors?	Quality corporate responsibility report evident as a standalone document or as part of the Annual Report and details on the website
C.7	Are stakeholders able to directly communicate on company activities with the BOD, or management?	Mechanisms (contact names and numbers) in place for this, such as nominated communications policies and process for contact with either BOD, or management
C.8	Does the company have in place a written Code of Ethics/Conduct applicable to employees?	Code of Ethics evident
C.9	Does the company have in place a Code of Ethics for directors and senior management?	Code of Ethics evident
C.10	Is there evidence of implementation of the Code of Ethics?	BOD endorsement; staff ethics training; issues reporting facilitated to BOD / BOD committee
C.11	Does the company have in place anti-corruption / anti bribery programs and policies?	Mentioned in public communications; actively led/ pursued by the BOD; Code of Ethics in place; training on ethics evident
C.12	Have mechanisms been introduced that facilitate communication to board members of illegal and unethical company practices?	Procedures in place (direct confidential access to BOD, or Audit Committee); safe harbours provided (confidentiality guarantees, company protection) Whistleblower policy evident
C.13	Is there some company recognition of its obligations to the broader community?	Community and / or philanthropic activities mentioned in communications

C.14	Is there a clear framework for the enforcement of creditors' rights?	Full and timely information on performance (quarterly and annual reports) available to banks and creditors
D	Disclosure and transparency – (Scorecard weighting – 30%)	
	OECD Principle V – 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.	
D.1	Is there evidence that the concept of 'material information' is well understood by the company?	i)Information disclosure policy; ii)statements and actions indicate that matters to be disclosed include those relevant for the understanding of the legal, financial and profit position of the company; iii)that may affect the prices of securities, and investors and shareholders decisions; iv)and is demonstrated in financial statement notes related to accounting policies
D.2	Are the financial reports disclosed in a timely manner and publicly available?	Time period set for issue of information set; audited FS filed ahead or on time in the past years (i.e. within 90 days after close of financial year; or within 24 hours if extraordinary disclosure); quarterly reports within 25 days of end of quarter; available to all on website (more than just provided to shareholders)
D.3	Did the company provide quarterly and semi-annual reports in the past year?	Quarterly reports and semi-annual reports
D.4	Do the CEO and Chief Accountant certify the annual financial statements, audited and unaudited?	Financial Statements certified for: accurate and fair presentation; existence and application of control processes on financial / accounting records; oversight of internal accounting controls.
D.5	Does the company state its use of current internationally accepted accounting standards?	Statement that IFRS current accounting standards and guidelines are applied
D.6	Do the Annual Report and financial statements give a full and clear picture of the financial performance of the company?	Two comparative years available; language is understandable; not misleading; information comprehensive (full set of externally audited financial statements (P&L, BS, Cash Flow Statement, SOCIE, notes) (NOTE: if the company is a parent company, it shall include 2 sets of FS – one for the parent and one that is consolidated.)

D.7	Has there been any accounting / audit changes, qualifications or queries related to the financial statements in the past two years?	Audit qualification; accounting re-statement required; FRC / MSE inquiry
D.8	Does the Annual Report include a full and clear picture (non-financial) of company operations, its competitive position and other non-financial matters?	Management report available in Annual Report; language is easily comprehended; information comprehensive (non financial information; mention of vision and business objectives; ownership structure, commitment to value creation; policy on business ethics);
D.9	Are details of current largest shareholdings (directly held and indirectly held (deemed)) provided?	Most recent data (updated within 1 year); % ownership of all shareholders owning above 5% share evident; largest shareholders named; in Annual Report and on website
D.10	Are BOD directors' shareholdings (directly held and indirectly held (deemed)) disclosed?	Recent data (updated within one year) on BOD holdings; individual breakdown of shareholdings evident
D.11	Are senior management's shareholdings (directly held and indirectly held (deemed)) disclosed?	Recent data (update within one year) on key executive shareholdings disclosed; individual breakdown
D.12	Are the company shares broadly held?	Dispersed shareholding structure leads to easier protection of minority shareholders; shareholdings of major shareholders reported; Less than 10% closely held
D.13	In the Annual Report are director board experience and other relevant experience disclosed?	BOD member name, background, skills/ education, BOD experience, BOD committee appointments, other board appointments
D.14	In the Annual Report, are non-executive directors specifically identified?	Non-executive directors identified
D.15	Does the Annual Report specifically identify 'independent' directors?	BOD independent directors information available (name, background, skills / education, experience, committee appointments); rationale for independence available
D.16	Does the Annual Report disclose BOD meeting attendance of individual directors?	BOD individual board attendance summary provided; attendance style options disclosed (in person, telephone, videoconference)
D.17	Is the basis (level and mix) of board remuneration disclosed in the Annual Report?	BOD remuneration policy information available; remuneration broken down for attendance at board meetings; link to long-term performance; related to extra duties and accountabilities.

D.18	Does the latest Annual Report disclose the remuneration of key executives?	Individual executives identified; link between company long-term performance and remuneration (including stock bonus / options/ warrants) mentioned (if stock bonus, stock transferability should be limited for a period); total remuneration for 12 months for key individuals evident; remuneration includes termination and retirement benefits
D.19	Does the latest Annual Report identify the company's main executives and their responsibilities?	Names; qualifications; positions; responsibilities
D.20	Does the company show evidence of a policy requiring review, approval and disclosure of related-party transactions?	Evidence of policy in place; disclosure includes name, relationship with counter-party, transaction amount; approval process at BOD and by shareholders evident; threshold for disclosure of RPT transactions low (e.g.0.1% of Net Equity)
D.21	Are statements requesting directors to report their transactions in company shares evident?	If there is a request from regulators, directors are not being voluntarily transparent regarding their shareholding
D.22	Does the Annual Report explain foreseeable business risks?	Language is easily comprehended; information comprehensive (for example, risks described – related to industry, geography, financial market risks); risk management policy in place; risk management practices evident; risk reporting in place
D.23	Does the Annual Report include a separate, quality corporate governance report?	Separate CG Report available (separate section in AR); CG Report comprehensive; states compliance with corporate governance code and how it is implemented; CG Report includes mention of CG structures in the company
D.24	Does the company have an annual external audit undertaken by an authorised auditor?	Annual external audit; auditor authorised; auditor name and firm name stated; audit according to current ISAs
D.25	Is there a policy that reviews the external auditor when undertaking non-audit services?	Company policy that prevents auditor undertaking non-audit services without approval
D.26	Is the external auditor's opinion publicly disclosed?	In Annual Report and on website (in Annual Report)

D.27	If a change of auditor is noted in the past two years, were the reasons for the change disclosed?	Reasons for change disclosed; (reappointment of same auditor / same audit firm is not a change of auditor)
D.28	Does the company provide a variety of communication methods?	i) Annual Report; ii) website, iii) analyst briefings, and press releases; iv) And current information available and accessible
D.29	Is the information on the company website comprehensive and accessible?	i) Downloadable Annual Report; ii) Company group structure; iii) Current financial information; iv) current business operations information; v) strategy; vi) CG report; vii) shareholding structure; viii) organizational structure; ix) in Mongolian and English
D.30	Does the company have a policy and process to ensure continuous ad hoc disclosure of important matters?	Policy in place; persons nominated to be accountable; website ⁵⁶ and clear processes (e.g. company information updated)
D.31	Does the company have an effective investor relations / information policy and program?	Nominated person, policies and procedures in place
D.32	Does the company provide easy public access to and contact details for the Investor Relations person or unit?	Available; name / unit details provided; email and phone contacts; disclosure policy in place.
E	Responsibilities of the board (Scorecard weighting – 30%)	
	OECD Principle VI 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	
E.1	Has the company promulgated and disclosed a quality CG guideline or CG Code?	i) CG guidelines in one document should include: ii) BOD values and responsibilities; iii) convening and voting at GMS; iv) nomination / dismissal of directors; v) BOD meeting processes; vi) Appointment / dismissal of snr. management; vii) Co-ord between BOD, management; viii) Performance evaluation of BOD, and management

56. Use of electronic reporting as a means for reporting and filing is good practice but also must be available with the regulator.

E.2	Does the company have clear company values and direction led by the BOD?	Written vision / mission; strategy clear and in place BOD sets ‘tone at top’ in behaviours and public statements and makes or has statements of values
E.3	Are the roles and responsibilities of the BOD clearly stated?	Role to: i) review strategy; ii) review financial plans, budgets and capital requirements; iii) monitor the effectiveness of CG practices; iv) align remuneration with company long-term performance; v) ensuring a transparent BOD nomination process; vi) monitoring conflicts of interest; vii) ensuring the integrity of the co accounting and financial reporting systems; viii) overseeing the process of disclosures and communications.
E.4	Are the types of decision requiring BOD approval clear?	Transaction authority policies in place with limits on management authority; reserved powers of the BOD clear; Both policies disclosed
E.5	Is the Chairman’s role clearly described?	Description of role evident and comprehensive
E.6	Is the Chairman a non-executive director?	Separation of roles of CEO and Chairman is considered best practice by OECD as it preserves a balance of power in the two most important roles in the company
E.7	Is the Chairman ‘independent’ of the company?	Not a major shareholder or representative of major shareholder (no shareholding above 5%); No close relations in company management; No current or former employment/business association with the company in the last 3 years; Not immediate past CEO
E.8	How many BOD members are non-executive?	Non-executive directors identified; 1/3 to be non-executive directors
E.9	What percentage of the BOD is ‘independent’?	Independence defined in Annual Report ;Independent directors identified; Minimum 1/3 to be independent, (cross check advisable) (VIP is independent state of mind and objectivity)
E.10	Is there evidence of the BOD being a ‘balanced board’?	Range of skills evident; experience in the industry; business knowledge; accounting/ finance skills; balance of exec and non-exec directors. (if CEO is also Chairman, at least 50% of BOD is independent; if CEO is not also Chairman, at least 1/3 of BOD is independent)

E.11	Does company information and director information clearly state/disclose the number of board seats each director holds?	Full information on number of board seats held; board committee positions noted; all BOD members hold 6 or less board seats ⁵⁷
E.12	Does the company have a board induction policy and program for new appointments to the BOD?	Induction policy in place; includes information to be provided; introductions to board and key executives;
E.13	Does the BOD undertake an annual self-assessment / evaluation of itself? Its directors? Its committees?	Must have evidence of the evaluations of each of BOD, individual directors and committees
E.14	Did BOD members and the CEO participate in annual CG training and report this?	Report on training of BOD members and CEO available; and all BOD members and CEO participated in training
E.15	How often did the BOD meet in the past year?	At least one meeting each quarter; Better for 4-6 meetings to be held; individual BOD attendance recorded
E.16	To enable participation, were all BOD meetings for one year scheduled at the commencement of the year?	Schedule evident and available at the beginning of the year.
E.17	Has each BOD member attended at least 75% ⁵⁸ of all BOD meetings held during the year?	Attendance records kept; attendance reported to shareholders by individual; number of directors attending 75% of all BOD meetings
E.18	Are there mechanisms in place to ensure board members receive adequate notification of the board meeting for all BOD meetings?	Company Secretary nominated as responsible; policies and processes in place; BOD documents distributed at least 7 days in advance of meetings.
E.19	Is there evidence the BOD is responsible for the strategy and business plans of the company?	BOD evidence of approval of strategy; BOD evidence of oversight of the strategy and business plans
E.20	Is there evidence the BOD receives regular management reports on the company activities and its financial position?	Regular reporting required; Reports evident on activities and financial position; BOD discussion on reports

57. Best practices indicate that a limit of 5-8 BOD seats should be held – less if the person is a Chairman of the BOR or a Committee of the BOD. 5-6 BOD seats is acceptable good practice.

58. The Corporate Governance Code of Mongolia stipulates attendance minimum of 1/3 of all meetings. This is a minimal requirement.

E.21	Is the BOD responsible for and oversees the risk management system of the company?	Evidence of risk management system in place (management identifies risks and has mechanisms to mitigate risks); evidence of risk reports considered by BOD
E.22	Does the BOD assess the CEO and key executives annually?	Annual evaluation occurs; performance evaluation linked to long-term company performance evident
E.23	Has the BOD established BOD committees (Audit Committee, Remuneration (salary and bonus) Committee and Nomination Committee) or designated a BOD person?	Committees established or a designated director in place; led by an independent director; Committee charters disclosed; Committee reports to BOD noted; Attendance records of individual committee members at committee meetings kept and disclosed
E.24	Are reports from each of the BOD Committees evident and disclosed to shareholders?	A report on the activities of each committee should be included in the Annual Report or the CG Report.
E.25	Does the company disclose the Nominating Committee's criteria used in selecting new directors and the process for identifying such individuals?	Criteria available and disclosed; Process for identifying BOD nominees disclosed
E.26	Do reports of the Nominating Committee activities explain plans for succession of management and the BOD?	Nominating Committee information available; Succession planning evident
E.27	Does the Audit Committee meet at least 4 times per year?	Meetings at least once a quarter; Meetings scheduled to tie in with financial reporting events and BOD meetings
E.28	Does the Audit Committee recommend to the BOD and shareholders on the appointment and reappointment of the external auditor?	EA appointed by the shareholders; EA recommendation from Audit Committee
E.29	Is there evidence of the practical Audit Committee oversight of the external auditor?	Evidence available and includes mention of selection of independent auditor, discussions with auditor on progress of audit, discussions with auditor on company issues

E.30	Does the company have a separate internal audit function, which reports directly to and has unfettered access to the Audit Committee of the BOD and / or the BOD?	Internal audit function evident and separately established (either within the company or outsourced); IA reports directly to the Audit Committee or the BOD
E.31	Do company documents cover/explain internal control structures, policies and practices?	AR, BOD / Audit Committee reports / documents on: Internal control structures; internal control policies are evident; and internal control practices evident
E.32	Does the Annual Report disclose the internal audit function report on its review of the company's material controls and risk management?	Independent review and report undertaken annually; review noted in the Annual Report; review included controls and risk management
E.33	Is there evidence of the Audit Committee review of the Annual Report and financial statements?	Receipt and review of Annual Report and financial statements evident
E.34	Is there any evidence of non-compliance with applicable laws and regulations of the company over the last year?	Non-compliance would indicate that the BOD has not sufficient controls or monitoring processes in place
E.35	Is the company secretary trained in legal, accounting and / or company secretarial practices	Company secretary professionally qualified
E.36	Does the BOD / co secretary keep meeting minutes and resolution records of each meeting?	Rules require records be kept; records available to all BOD members;

IFC Ulaanbaatar office

MCS Plaza Building, 4th Floor
4 Seoul Street
210644 Ulaanbaatar, Mongolia
Phone: (976)7007-8286
Fax: (976)7007-8285

Contact: Anar Aliyev
Operations Officer
Email: aaliyev@ifc.org

Contact: Munkhtsetseg Badarch
Associate Operations Officer
Email: mbadarch@ifc.org
Mongolian Corporate Governance Project

www.ifc.org

IFC Hong Kong office

14/F One Pacific Place
88 Queensway, Admiralty, Hong Kong
Phone: +852-2509-8512

Contact: J.Christopher Razook
Senior Corporate Governance Officer, EAP
Email: CRazook@ifc.org