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*Developing
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of Best Practice*

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T O O L K I T 2
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V O L U M E 2

Process



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Initiating the Process

MODULE 1 AT A GLANCE:

The process of developing a corporate governance code of best practices can be initiated successfully either from the top down or the bottom up, depending on the setting and the circumstances. The parties and individuals involved in the initial stages of developing the corporate governance code also are likely to have a substantial impact on the nature, scope, content, and ultimate success of the code.

This module reviews:

- The parties involved in the initial stages of developing a corporate governance code
- The formation of the crafting committee
- The appointment and functions of the key individual members

INITIATING AND LEADING THE PROCESS

Corporate governance codes of best practice have been initiated by both the private sector and public institutions. Government commissions, capital market authorities, stock exchanges, institutional investors, business groups, director associations, and professional organizations have all developed and issued corporate governance codes.

QUOTE

INITIATING CODES OF BEST PRACTICE

“Numerous private sector and government-related organizations, institutional investors, and stock markets have, in the past decade, become active in driving corporate governance reform. One of their most influential efforts has been to issue guidelines (also called principles, recommendations or codes of best practice). Adapted to their respective cultures and business structures, these guidelines and codes generally promote practices designed to enhance accountability to shareholders, improve board independence, and foster corporate responsibility.”

—Holly Gregory, *The Globalization of Corporate Governance*, 2002

The initiator is the person or organization that is the first to identify the need to improve corporate governance practices within a country. The lead organization is the one that coordinates the code crafting process, whereas the implementing organization is the one that formally adopts the code at the end of the process. The initiating, leading, and implementing organizations may be one and the same. In some cases there is more than one implementing organization. The initiator may well become the leader of the crafting process, but that process can also be handed over to a different organization. In some cases, as in Turkey, a private sector initiative may result in the development of a first draft for a code that then serves as a basis for a more institutionalized process. In these cases the organization taking on the initiative typically also becomes the institution to formally adopt the code. Even if codes do not always bear their names, initiating organizations play an essential role because

they are the groups that not only recognize the need for improved corporate governance practices but also create the momentum for developing a code. *(Volume 1, Annex 5 provides a comparative list of codes, including the organizations that have developed or adopted existing codes of corporate governance.)*

No single type of organization is best suited to initiating or developing a corporate governance code. Virtually every possible combination has resulted in the adoption of quality codes. What is essential is that all interested parties be involved in the process and represented on the crafting committee. It is important that the lead organization consults with various institutions and organizations and considers their possible contribution to the code crafting process. The careful selection of participating parties not only ensures that all important issues are taken into account in the content of the code but also helps secure support from these parties when it comes to implementing the code. *(For a discussion on consulting with stakeholders, see Volume 2, Module 3. The code implementation process is discussed in Volume 2, Module 5.)*

The role of capital market institutions

Securities and exchange commissions and stock exchanges provide important membership on the corporate governance code crafting committee or task force. Especially when recommendations are targeted on listed companies, the active participation of these institutions is critical to ensure that the finalized code is officially adopted and implemented. Codes of best practice are not always initiated by market regulators, but many have been developed under the leadership of capital market authorities and stock exchanges, including those in Australia, China, Indonesia, Pakistan, and Slovak Republic, to name just a few.

EXAMPLE

INITIATION BY MARKET REGULATORS

AUSTRALIA

The Australian Stock Exchange set up a Corporate Governance Council, which brought all of the major stakeholders together to develop and agree on a set of best practice corporate governance standards for listed companies in Australia. The council identified several topical issues requiring the development of standards, which were subsequently addressed in the Principles of Good Corporate Government and Best Practice Recommendations, published by the exchange in 2003.

**THINKING
POINT**

What role should the government play in initiating the code crafting process?

The role of the government

As the importance of corporate governance becomes better understood, governments increasingly wish to encourage the development of good practices, on the grounds that these are associated with developing an attractive investment climate, contributing to economic growth, and improving national competitiveness. *(For a discussion of the importance of corporate governance for the broader economy, go to Volume 1, Module 1.)*

In many cases the government has initiated the process of developing a corporate governance code by appointing an organization or a task force to draft a report on recommendations for improving corporate governance practices in the country. Yet, only in a few cases has the government actually played a leading role in developing a corporate governance code, preferring to keep a low profile in favor of the private sector.

Regardless of its level of involvement, the government is often perceived to be an essential source of support. In some cases, the government has been a significant provider of financing and personnel. In the United Kingdom, for example, staff from various government departments including the Department of Trade and Industry and the Treasury, were assigned to assist Derek Higgs in preparing the Report on the Effectiveness of Non-Executive Directors, issued in 2003.

EXAMPLE**ROLE OF THE GOVERNMENT****CHINA**

China is an example of a government taking the lead in developing a code of best practice. The Code of Corporate Governance for Listed Companies in China was developed by the State Economic and Trade Commission (now known as the State Asset Management Commission) and the China Securities Regulatory Commission.

ROLE OF THE GOVERNMENT

GERMANY

Various corporate reform efforts in Germany have been led by the government. In September 2001 the chancellor appointed the Baum Commission to review the management and control of companies and the modernization of the stock corporation law. The commission's report recommended the development of a German code of best practice, which was adopted in February 2002 and amended in May 2003.

DENMARK

Denmark's Ministry of Economic and Business Affairs formed the Nørby Committee in March 2001 to assess corporate governance practices and recommend improvements that would help prepare Danish companies to compete in global markets.

REPUBLIC OF KOREA

At the request of the Korean Ministry of Finance and Economy, a committee on corporate governance was established as a nongovernmental body in March 1999 to develop a code of best practices. The committee was composed of 14 members from the fields of business, finance, accounting, law, and academia, along with an advisory group of 13 law, securities, and financial specialists.

NEW ZEALAND

In June 2003 New Zealand's minister of commerce asked the Securities Commission to develop corporate governance principles for the country. After an extensive public consultation process, a corporate governance code was issued in February 2004 setting out best practice for various corporate governance matters including the composition and operation of board committees, director remuneration, and codes of ethics.

The role of private organizations and professional associations

Frequently the leading professional associations play a major role in developing corporate governance codes, often forming a majority of the membership within the code development committee. Representation from the following professions should be considered:

- *Legal profession.* Lawyers frequently play a major role in developing corporate governance codes. In particular, their knowledge of the existing legal parameters within which companies operate may be very useful, so that the code does not contradict or repeat any existing laws. Lawyers who are skilled in drafting legislation may also prove very useful to the code crafting committee.
- *Accounting profession.* Accountants have specialized knowledge concerning financial reporting and disclosure that can be extremely important in constructing a corporate governance code.
- *Auditing profession.* Auditors also have specialized and valuable knowledge concerning financial reporting and disclosure, the role of the audit committee, internal controls, and risk management.
- *Directors institutes.* These institutes can help ensure that the crafting committee covers the interests of corporate directors, particularly in the areas of fiduciary duties, business judgment, risk, and internal control.
- *Corporate/company secretary associations.* Members of these associations have valuable information on the interests of company secretaries, particularly in the areas of company registration, filing responsibilities, and compliance issues.
- *Shareholder associations.* These associations can offer expertise in shareholder interests, particularly in the areas of disclosure policy, the conduct of general (shareholder) meetings, and voting regimes.
- *Trade unions.* In some countries, such as Germany, where employee representatives sit on boards of directors, it may also be useful to include a trade union representative on the crafting committee.

ROLE OF PRIVATE, PROFESSIONAL GROUPS

BANGLADESH

The Bangladesh Enterprise Institute, a private, nonprofit institution, was the first organization in the country to recognize the need for and promote the drafting of a corporate governance code.

BRAZIL

Brazil's first code of corporate governance was initiated in 1995 by the Instituto Brasileiro de Governanca Corporativa (IBGC), a private, self-financed, independent institution.

SRI LANKA

Sri Lanka's corporate governance code was an initiative of the Institute of Chartered Accountants of Sri Lanka. The institute played a leading role throughout the process of developing and crafting the code. Although several other stakeholders had expressed interest at different times in developing a code as a part of a more general reform process, no work had actually been done before the institute began actively promoting its initiative.

UNITED KINGDOM

The Turnbull Report on Internal Control was an initiative developed by the Institute of Chartered Accountants of England and Wales (ICAEW) at the request of the London Stock Exchange. The ICAEW took the lead again in 2005, when it led a review of the Turnbull report.

The role of the business community and financial sector

In many countries, the corporate and financial sectors have been the first to recognize that improvements in corporate governance can lead to increases in the competitiveness of companies and improvements in the efficiency of financial markets. Business associations and leading financial institutions or institutional investors may play a major role in developing a corporate governance code. Some of these initiatives suggest that corporate governance codes need not necessarily be developed by national bodies only and that directly interested parties may also take the initiative of introducing corporate governance best practices. One example is the set of guidelines developed in 1998 by the California Public Employees Retirement System (CalPERS) laying a foundation for ensuring accountability of a corporation's management to its owners.

EXAMPLES

ROLE OF THE BUSINESS AND FINANCE COMMUNITIES

CANADA

In January 2004, the Canadian Coalition of Good Governance, whose members manage approximately \$500 billion in assets on behalf of pension fund contributors, mutual fund unit holders, and other individual investors, developed Corporate Governance Guidelines for Building High Performance Boards. *(For further information on these guidelines, refer to www.ccgcc.ca.)*

SLOVAK REPUBLIC

The National Bank of Slovakia was one of the main supporters of the country's code of corporate governance.

TURKEY

The Turkish Industrialists' and Businessmen's Association (TUSIAD) initiated and led the development of the first corporate governance best practices code developed in Turkey. This organization is composed of senior executives of the major industrial and service companies in Turkey, including several that are among global Fortune 500 companies.

ROLE OF THE BUSINESS AND FINANCE COMMUNITIES

ROMANIA

The lead body for the Bucharest Stock Exchange code was the Strategic Alliance of Business Associations. Leadership from this organization provided important status and recognition for the corporate governance initiative.

FORMING THE CRAFTING COMMITTEE

The lead organization plays a key role in setting up the crafting committee and getting the process on track. Several steps typically take place before the first meeting of the committee. These tasks include:

- Consulting main stakeholders.
- Appointing a chairman.
- Appointing a project manager. Often the project manager is an employee from the lead organization, who is given a leave of absence to work on the initiative.
- Appointing the project team. The lead organization may consider providing project members (often on a part-time basis).
- Appointing a secretary and organizing secretariat services and meeting facilities. The lead organization may have secretariat services and meeting facilities that it can provide to the committee at subsidized rates, cost, or (in some cases) at no charge.
- Securing funding.
- Organizing premeeting discussions between the chairman and individual members of the committee.

Selecting a chairman

The chairman is pivotal in creating the conditions for the overall effectiveness of the code crafting process, and so his or her selection should be undertaken with care and deliberation. The chairman is typically the first committee member to be appointed, especially when government initiates the code development

process. In some cases committee members representing various institutions can also appoint a chairman from among themselves. In most other cases the chairman is selected from within the ranks of the lead organization. A wise lead organization consults with other parties before appointing the chairman to facilitate future relations with these organizations.

The table below provides examples of chairmen who led the code crafting process and indicates their professional background at the time of their chairmanship.

CHAIRMEN AND THEIR PROFESSIONAL POSITIONS			
COUNTRY	CHAIRMAN	CODE/REPORT	POSITION
Belgium	Daniel Cardon de Lichtbuer	Belgian Cardon Report	Chairman, Banque Bruxelles Lambert (BBL)
Belgium	Baron Maurice Lippens	Belgian Lippens Report	Chairman, Fortis
Canada	Peter Dey	Dey Report	Partner, Osler, Hoskin, and Harcourt LLP
France	Marc Vienot	Vienot Reports I & II	Chairman, Societe Generale
France	Daniel Bouton	Bouton Report	President, Societe Generale
Germany	Gerard Cromme	Cromme Report	Chairman of the Supervisory Board, Thyssen Krupp
Italy	Stefano Preda	Preda Report	CEO, Italian Stock Exchange (Borsa Italia)
Netherlands	Morris Tabaksblat	Tabaksblat Report	Chairman, Reed Elsevier
South Africa	Mervyn King	King Report I & II	Former high court judge
Spain	Enrique de Aldama	Aldama Report	President, Confederation of Employers Organizations, and Chairman, Obralia
Switzerland	Peter Bockli	Bockli Report	Director, Nestle SA and Union de Banques Suisses (UBS)
United Kingdom	Adrian Cadbury	Cadbury Report	Former Chairman, the Cadbury Group, and Director, Bank of England

THINKING POINT

How would you define the respective roles of the chairman and project manager?

Once selected, the chairman should be given the necessary support to guide the committee through the difficult and challenging process ahead.

Chairmanship is a highly personalized activity and is not governed by any set of fixed rules. Every successful chairman does it his or her own way, and these ways can and do differ widely. It is therefore only possible to generalize about how the chairman's role should be performed. (*The management of the code crafting process is discussed in Volume 2, Module 2.*)

The chairman is responsible for leading the committee in setting the values and standards of the project and for maintaining a relationship of trust among the project manager, the secretariat, and the committee members. The chairman should also evaluate the performance of individuals and of the committee as a whole on a regular basis. (*For a discussion on evaluating committee performance, see Volume 2, Module 2.*)

The chairman should be informed, experienced, trusted, and supportive of the project manager. At certain times, however, a degree of detachment from the project manager can be valuable in ensuring objective debate on controversial matters.

Appointing a project manager

Once the chairman has been selected, the code crafting committee usually needs to identify a suitable person to manage the committee's work. A strong relationship between the chairman and the project manager lies at the heart of an effective committee. The respective roles of the chairman and the project manager vary from one committee to another and depend on the chairman's involvement. The relationship often works best where the chairman and the project manager have a complementary mix of skills and experiences.

EXAMPLE

THE ROLE OF THE PROJECT MANAGER

SOUTH AFRICA

Phil Armstrong was appointed as the principal convener (project manager) of the code crafting committee chaired by Mervyn King. One of the main tasks of the convener was to coordinate the activities of five task teams established to deliver expert research and advice on each of the topics assigned to them by the committee.

In general the chairman should not seek executive responsibility and should let the project manager take credit for his or her achievements.

The role of the project manager is typically to:

- Develop the operating plan and master schedule, which reflect the objectives and priorities established in the terms of reference
- Maintain a dialogue with the chairman for putting the operating plan into action
- Ensure that the objectives and standards of performance are understood by all parties
- Put in place adequate operational planning and financial controls for the project
- Closely monitor the project activities to ensure the plans are being followed
- Closely monitor the project spending against the budget
- Maintain operational performance, which is likely to involve overseeing any research activities and supervising the crafting of the code
- Take remedial action when unexpected problems occur and inform the committee as needed

DESIRABLE ATTRIBUTES IN A PROJECT MANAGER

<p>STRATEGIC PERCEPTION</p> <ul style="list-style-type: none"> • Foresight • Creativity • Organizational awareness • Long-term perspective • Strategic awareness • Ability to make decisions • Critical faculty • Decisiveness • Judgment 	<p>INTERACTION WITH OTHERS</p> <ul style="list-style-type: none"> • Confidence • Coordination • Flexibility • Presence • Integrity • Learning ability • Motivation • Persuasiveness • Sensitivity
<p>COMMUNICATION</p> <ul style="list-style-type: none"> • Listening skills • Openness • Verbal fluency • Presentation skills • Written communication skills • Responsiveness 	<p>ANALYSIS AND USE OF INFORMATION</p> <ul style="list-style-type: none"> • Detail-oriented • Open-minded • Numeracy • Ability to identify issues
<p>ACHIEVEMENT OF RESULTS</p> <ul style="list-style-type: none"> • Business acumen • Delegation skills • Exemplar • Drive • Resilience • Risk acceptance • Tenacity 	

The desirable personal attributes of a project manager are listed in the table on page 11. This list may be useful when constructing a job specification for a project manager.

Appointing the committee's secretary

The development of a code can generate an extensive volume of documentation. To ensure that all of the processes are methodically recorded, the documentation should be organized to provide a complete record of all meetings, consultations, correspondence, and discussions. A cross-referenced documentation system should be developed and managed by an experienced individual. In countries with an Anglo-Saxon legal tradition, this role is often undertaken by a chartered secretary.

The objective of the documentation system is to provide:

- Adequate support to the discussion and decisionmaking processes
- A chronological account of the events that have taken place
- Written summaries of discussions and decisions reached
- A synopsis of all comments and recommendations made to the committee
- Easy access to research results and background documentation

A clear record of all meetings is important. There have been instances where the recommendations contained in a code of best practices have been challenged, and committee members have had to defend their decisions. In such an event, discussion notes and meeting minutes can be useful evidence concerning the thought process that led the committee to reach its particular recommendation.

In addition, some suggestions do not reach the stage of becoming "recommendations" in the code for a variety of reasons. Documenting these reasons may be useful, and even necessary, if a query is raised about how the committee reached a decision on a particular topic.

Selecting the members of the committee

Although a number of stakeholders are likely to publicly endorse the code crafting process, only a few key persons within a small number of institutions are likely to carry out the onerous tasks associated with developing a code. It is therefore advisable that these key people and institutions be identified and the necessary support elicited from them as early as possible.

The members of the code crafting committee should be knowledgeable about corporate governance best practices both nationally and internationally. Factors in their selection should also include their ability to:

- Provide valuable input to effective decisionmaking and constructive debate. Committee members should be able to question intelligently, challenge rigorously, and decide dispassionately.
- Uphold the highest standards of integrity and probity and promote highest standards of corporate governance.
- Develop effective relationships and open communications both inside and outside the committee.
- Establish a close relationship of trust with the chairman, project manager, secretariat, and other committee members.
- Understand and represent the perspectives of important sectors, interests, and stakeholders.

THINKING POINT

What organizations should be represented on the crafting committee?

Some chairmen have found it useful to establish some contact and rapport with each of the committee members before the initial committee meeting so that good interpersonal relationships can be created before the crafting process formally begins. The interaction within a diverse group of persons, possibly having conflicting or competing interests, can at times be a difficult situation to handle, and the early bonding between members of the committee and the chairman, perhaps on an informal basis, can often help smooth the process from the outset.

During the crafting process, certain vested interests may need to be challenged, and the members must have the ability to persuade their organizations of the benefits of the proposed changes. It is important to obtain widespread support across the business community when developing a corporate governance initiative. If the key stakeholders support the initiative in the first place and are consulted and involved during the development phase, they are far more likely to be important champions and endorsers of the initiative when it is launched and implemented. However,

many code committees have discovered significant advantages associated with selecting some members of the committee who are independent in judgment and have no potential conflicts of interest or vested interests that need to be protected.

It is important to consider carefully which institutions should be fully on board at the start of the code development process and which consulted only at a later stage. Such decisions, of course, depend on the objectives of the code and the business environment of each country. Because the crafting committee needs to reach consensus on each recommendation, having too many players early on can have the perverse effect of paralyzing the process. *(For a detailed description of the consultation process, go to Volume 2, Module 3.)*

EXAMPLES

ORGANIZATIONS REPRESENTED ON THE CODE CRAFTING COMMITTEE

SRI LANKA

The code crafting committee in Sri Lanka consisted of representatives from the Securities and Exchange Commission, the Colombo Stock Exchange, the Registrar of Companies, the Sri Lanka Accounting and Auditing Standards Monitoring Board, the Institute of Chartered Accountants of Sri Lanka, the Chambers of Commerce, and the Bar Association, as well as several representatives from the Central Bank and leading banks.

PERU

The lead organization in developing the Principles of Good Governance for Peruvian Companies was the National Supervisory Commission of Companies and Securities. Other members of the committee included representatives from the:

- Ministry of Economy and Finance
- Superintendency of Banking and Insurance
- Lima Stock Exchange
- Association of Banks
- National Confederation of Private Business Institutions
- Association of Capital Market Promoting Companies
- Center of Studies on Capital and Financial Markets

EXAMPLES

ORGANIZATIONS REPRESENTED ON THE
CODE CRAFTING COMMITTEE

UKRAINE

The drafting of the code was undertaken by a Task Force on Corporate Governance and Shareholder Rights, a body organized under the patronage of the Securities and Stock Market State Commission. The task force included representatives from various government departments and agencies, representatives of nongovernmental organizations, and representatives of international organizations such as the International Finance Corporation.

GERMANY

The code crafting committee comprised representatives from the German Stock Exchange and from the professional organizations (particularly the accountancy bodies). It also had members from shareholders associations, institutional investors, leading banks, and trade unions.

Hiring consultants and experts

Many committees decide to engage the services of an experienced local or international consultant to assist in researching and drafting the content of the code or monitoring the development of the code. Before deciding on hiring a consultant, it is important for the committee to assess its needs and draw up the specific tasks expected from the consultant. The consultant's task can be exclusively focused on researching and drafting the code. Alternatively, the consultant's role can be much broader and include management support activities or marketing advice. *(For a description of the key tasks included in the terms of reference established to hire a consultant in Sri Lanka to help develop the corporate governance code, see Volume 2, Annex 1. For a sample letter engaging a consultant, see Volume 2, Annex 2.)*

EXAMPLE

HIRING A CONSULTANT

BANGLADESH

A consultant from an international development agency provided advice concerning the composition and formation of the task force crafting a code of best practices in Bangladesh. In addition the consultant provided advice on preparing code drafts.

International agencies may be able to guide the code crafting committee on identifying suitable consultants as well as financing some of the costs. Care should be taken to ensure that the consultant selected is sensitive to the national and cultural values of the host country. Moreover, when involving international organizations or hiring well-known international experts, it is important for a local organization to maintain leadership of the initiative in order to create effective local ownership and to ensure effective implementation of the code.

Managing the Process

MODULE 2 AT A GLANCE:

Pioneering corporate governance initiatives, including the development of codes of best practice, may have a tendency to drift unless some discipline is imposed to help manage the project. The code crafting committee should establish milestones, setting determinable results to be delivered at specified intervals, so that the project manager, the chairman, and the committee members can monitor progress. This module provides guidance on managing and monitoring the code crafting process and discusses the importance of maintaining a master schedule to keep the project on track.

This module reviews:

- Developing a master schedule
- Setting the terms of reference for the committee's work
- Dealing with internal and external challenges

THINKING POINT

How should the committee organize the various aspects of its work?

GETTING STARTED

The members of the code crafting committee are typically busy and influential leaders or experts who have limited time to devote to the affairs and functions of the committee. Prospective committee members should be given an estimate of the amount of their time the project will require before they are asked to give their commitment to the committee's work.

Practical organizational procedures, as well as the framework for developing the content of the code, should be discussed at the committee's first meeting. The dates and agendas of subsequent meetings, a working plan, and the objectives and terms of reference of the committee are typically the focus of the committee's first meeting. It is thus important that all committee members attend the first meeting.

Developing a master schedule

Developing a corporate governance code is often more complicated than one might expect and involves many tasks in addition to drafting, such as conducting research, consulting stakeholders, and raising awareness. As with most high-profile projects, adopting a working plan, or master schedule, is therefore essential to help the committee manage a range of activities that often need to take place simultaneously. Together with effective "buy-in" from all parties, the master schedule can aid the committee in meeting tight deadlines, anticipating potential conflicts and difficulties, and avoiding slippages that could knock the project off course.

It is highly recommended that individual members of the committee be given responsibility for ensuring that specific activities are completed by the deadline agreed upon in the master schedule. That approach not only ensures that deadlines are met but helps the project manager monitor the progress of different parts of the project. The table on the next page provides an example of a master schedule.

The timing and content suggested in this sample master schedule may vary depending on the setting and the particular issues that a committee faces. The committee might need to meet more or less often, for example, to review successive drafts of the code, discuss research and consultation feedback, and deal with unexpected issues. Sufficient time should be allocated in between meetings for all parts of the consultation process—especially if support for the development of a code is weak or the importance of corporate governance is not well understood.

SAMPLE MASTER SCHEDULE

MEETING	MONTH	MEETING AGENDA	SUBSEQUENT ACTIVITIES
First meeting	Month 1	<ul style="list-style-type: none"> • Discuss master schedule • Agree on the committee's terms of reference • Consider challenges facing the committee • Consider the target and scope of the code • Consider implementation mechanisms and nature of the code's provisions • Decide on appointment of a consultant • Agree on initial press release 	<ul style="list-style-type: none"> • Finalize detailed master schedule • Hire consultant • Review international best practices • Review the country's current governance laws, regulations, and practices • Review the country's corporate governance development needs and priorities • Issue a press release explaining the process and describing the committee's terms of reference
Second meeting	Month 2	<ul style="list-style-type: none"> • Agree on finalized master schedule • Discuss the country's corporate governance needs and priorities • Review general research findings • Agree on broad outline of the code • Consider need to establish subcommittees • Evaluate the committee's work and progress 	<ul style="list-style-type: none"> • Consider methods of consultation • Draft the consultation document
Third meeting	Month 3	<ul style="list-style-type: none"> • Discuss the draft of the consultation document • Agree on consultation strategy and methods • Evaluate the committee's work and progress 	<ul style="list-style-type: none"> • Finalize consultation document • Set up consultation process • Start researching specific content of the code
Fourth meeting	Month 4	<ul style="list-style-type: none"> • Agree on consultation document • Discuss specific research findings and content • Evaluate the committee's work and progress 	<ul style="list-style-type: none"> • Continue research on specific content of the code • Start consulting with key stakeholders • Begin drafting code

SAMPLE MASTER SCHEDULE			
MEETING	MONTH	MEETING AGENDA	SUBSEQUENT ACTIVITIES
Fifth meeting	Month 5	<ul style="list-style-type: none"> • Discuss consultation feedback • Discuss research findings • Discuss first draft of code • Evaluate the committee's work and progress 	<ul style="list-style-type: none"> • Continue consulting with key stakeholders • Finalize first draft of the code • Develop dissemination and implementation strategy
Sixth meeting	Month 6	<ul style="list-style-type: none"> • Discuss second draft • Discuss consultation feedback • Approve dissemination and implementation strategy • Evaluate the committee's work and progress 	<ul style="list-style-type: none"> • Modify second draft • Draft foreword and preamble
Seventh meeting	Month 7	<ul style="list-style-type: none"> • Agree on final code • Agree on dates of launching events • Approve design and format of code • Agree on press release • Evaluate the committee's work and progress 	<ul style="list-style-type: none"> • Final proofreading of code • Arrangement of launch • Issue press release • Distribution of code • Liaison with media • Liaison with key stakeholders
Eighth meeting	Month 8	<ul style="list-style-type: none"> • Assess impact of launch • Agree on time frame and methods to assess code impact • Agree on time frame to review the code • Final evaluation of the committee's work 	

Time frames for developing corporate codes of best practice can vary widely. In most cases the process takes about six months, although some have been finalized within three months and others have taken a year and a half to complete. For example, the Korean Committee on Corporate Governance was established in March 1999 and met eight times over a period of six months. The German corporate governance code was also developed over a six-month period, between September 2001 and February 2002. *(For guidance to each step of the crafting and implementation process discussed in this toolkit, please refer to the User Guide)*

THINKING POINT

What are the specific goals of the code?

Developing terms of reference

One of the first tasks for the code crafting committee is discussing and setting the project's terms of reference. Agreeing on the terms of reference can help avoid later misunderstandings or potential conflicts on the goals and scope of the code. The terms of reference may include the following:

- The overarching objectives of the code
- The specific goals or purpose of the code
- A description of the circumstances that led to the development of the code
- The scope of the code or the type of companies to which the code is targeted
- The primary areas that the code's recommendations are to cover
- A description of the compliance mechanisms recommended for the code

Terms of reference vary depending on the country's corporate governance framework, the reasons why a code is being developed, and who has taken the initiative for developing a code. Initiatives led by the private sector tend to focus more on specific goals of the code and the impact of corporate governance on corporate performance. Government-led initiatives tend to emphasize the overarching objectives of the code and the importance of improving corporate governance practices for the country as a whole. Both aspects are important. *(For a discussion on initiating and leading the development of a corporate governance code of best practices, refer to Volume 2, Module 1.)*

The project's terms of reference are usually found in the code's introduction or preamble. They can be very detailed or quite broad. In most cases they not only provide the committee with a framework for establishing best practice recommendations but also provide users and stakeholders with the background leading to the drafting of the code and a rationale for its adoption and enforcement *(For a discussion on why corporate governance matters, refer to Volume 1, Module 1.)*

While reviewing the terms of reference, the crafting committee should also engage in preliminary discussions on whether the code should be a broadly based statement of principles or a more narrowly drawn document focused on details. The committee may also decide it wants to make recommendations for improving laws and regulations based on its research findings. Certain provisions of the code, for example, could be flagged for incorporation in the country's legal framework or adoption as listing requirements. This approach can be especially useful in countries where the legal corporate governance framework is still weak.

SAMPLE TERMS OF REFERENCE

INDIA

The Shri Kumar Mangalam Birla Committee, whose recommendations were adopted by the Securities and Exchange Board of India (SEBI), set out the following goals in its detailed terms of reference:

- To recommend suitable amendments to the listing agreement executed by the stock exchanges with listed companies and any other appropriate measures to improve the practice of corporate governance in the listed companies. Areas of governance to be considered included provision of information, both financial and nonfinancial; the manner and frequency of such disclosures; and the responsibilities of independent and nonexecutive directors.
- To draft a code of corporate best practices.
- To suggest safeguards for companies to adopt that govern the use of inside information and insider trading.

SOUTH AFRICA

In 2001, the second King committee on corporate governance adopted the following guiding principles as its terms of reference:

- To review the first King Report and to assess the need for revisions in light of local and international developments since the report was adopted in 1994.
- To review and clarify the recommendation in the first King Report for an “inclusive approach” to embrace the interests of a wide range of stakeholders for the sustainable success of companies (without subverting the primary interests of shareholders as stated in South African corporate law).
- To recognize the increasing importance placed on nonfinancial issues worldwide and to consider and recommend reporting issues associated with social and ethical accounting, auditing, and reporting, and safety, health, and environment issues.
- To recommend how company compliance with a new code of corporate governance for South Africa can be measured and compared through a “balanced scorecard” approach.

SAMPLE TERMS OF REFERENCE

BELGIUM

A committee chaired by Maurice Lippens was established to draft a single code of best practice on corporate governance for all listed companies. The committee's objective was to draft a code aligned with international practice and European Union recommendations.

The committee should also consider compliance issues. Should compliance with the code be fully voluntary, or should the committee make recommendations to encourage and enforce compliance? One popular approach is the “comply or explain” mechanism, introduced by the Cadbury Committee in the United Kingdom. Under this approach, companies are asked to comply with the code (or certain of its provisions) or explain why they have not. *(For a more detailed discussion on the scope of codes and their compliance mechanisms, refer to Volume 1, Module 2.)*

These questions will most likely arise again as the drafting of the code progresses, but an up-front discussion on these issues may be of great help in establishing the master schedule as well as researching the content of the code. *(For a discussion on researching the code's content, refer to Volume 2, Module 4.)*

LEVELS OF COMPLIANCE

AUSTRIA

The Austrian Code of Corporate Governance has the following three categories of provisions:

- **Legal requirements.** These are provisions that companies listed on Austria's stock exchange must comply with or face legal penalties.
- **Comply or explain.** These are provisions of the code that companies must either comply with or give their reasons for failing to comply.
- **Recommendations.** These provisions are entirely voluntary. Noncompliance requires neither disclosure nor explanation.

DEALING WITH DIFFICULTIES

During the crafting process, chairmen and project managers are likely to have to deal with issues and challenges that they had not anticipated. Problems can arise either with stakeholders from outside the committee or from within the committee itself. It is therefore advisable to anticipate possible problems and adopt management and monitoring techniques that can help deal with any issues that may stall the code crafting process. As a general rule, a certain amount of “slack” time should always be built into all phases of the project to permit problem solution and conflict resolution.

Dealing with outside resistance

Any new initiative may meet with a certain amount of resistance and skepticism as well as practical obstacles. Most code crafting committees experience at least one of the following problems.

Lack of understanding and skepticism

The importance of corporate governance and the purposes of a code of best practice are not always well understood. Successful committees develop a strong rationale for the code development process and build sufficient time into the schedule for consultation with important stakeholders.

QUOTE

DEALING WITH GENERAL SKEPTICISM: POLAND

“In developing the Corporate Governance Code for Polish Listed Companies...in 2002, the major challenge was to acquire active involvement from market participants. Lack of knowledge and familiarity with the issue was part of the problem. The macroeconomic slowdown and bearish market also played a role: many believed that the problem was the lack of investment opportunities rather than bad corporate governance, which many believed could or should be improved on an individual basis. There was also some skepticism whether the implementation of corporate governance standards would bring the expected economic results or how much could be achieved through corporate governance codes—and voluntary guidelines.... Furthermore, there were doubts whether the problems and solutions applicable to the Anglo-Saxon model could be suitable for Poland whose company law is based on the German model. There was a common opinion that the main bottleneck for the development of the Polish corporate governance system was weak enforcement and the court system, which cannot be addressed by a corporate governance code.”

—Maciej Dzierzanowski, Gdansk Institute for Market Economics,
and Piotr Tamowicz, Polish Forum for Corporate Governance

Lack of support

It is common for committees to find little enthusiastic support from business leaders and investors. In particular, these groups may associate corporate governance changes with bureaucratic “red tape” and “box ticking.” It is imperative that the committee is able to persuade key stakeholders of the merits and benefits associated with reform of corporate governance and the adoption of a code of best practices. (*For a discussion on raising awareness and consulting with stakeholders, refer to Volume 2, Module 3.*)

QUOTE

LACK OF SUPPORT: SRI LANKA

“There was initially a rather lukewarm reaction to the code drafting process and hence it was necessary to generate interest amongst the business community. This was achieved through regular press and media briefings undertaken by the committee which helped to kindle an interest in the need and benefits of such a code.”

—Ajith Nivard Cabraal, chairman of the
Corporate Governance Committee

Lack of existing legal framework

Many transition and developing countries have an inadequate legal framework. The code crafting committees in these countries typically need to focus on developing recommendations that may serve as a first step to reforming the corporate governance legal environment while considering possible compliance and enforcement procedures. Some committees, as in Ukraine, have dealt with the problem by recommending that the code eventually be turned into a law. In these cases it is important for the committee to distinguish best practices, which should remain voluntary, and minimum standards, which must be legally adopted.

Lack of funds

Developing a corporate governance code does not require a large outlay of funds, but the process can turn out to be more expensive than expected. Securing funding well in advance can be very helpful in planning consultation events with stakeholders, promoting the code, and hiring consultants. At the start of the project, the project manager should be aware of the amount and

sources of available funding. Funding can be sought from international organizations, professional associations, private firms, and banks as well as from stock exchanges. Organizations that provide financial support to the code crafting committee are typically acknowledged in the foreword or introduction to the code. For some organizations, being publicly associated with a corporate governance reform initiative and the development of a code of best practices may constitute an important incentive for providing funds or in-kind support.

EXAMPLES

FUNDING**BANGLADESH**

Several international development agencies such as the United Kingdom’s Department for International Development, the Commonwealth Secretariat, and the Global Corporate Governance Forum provided financial support for the development of the Code of Corporate Governance for Bangladesh. The initiative was also supported by the Bangladesh Bank.

HUNGARY

The Corporate Governance Recommendations developed by the Budapest Stock Exchange were funded with substantial support from the British Government’s Know How Fund.

QUOTE

FUNDING: REPUBLIC OF KOREA

“Financial backing of the Committee has been provided by the Korea Stock Exchange, Korea Securities Dealers Association, Korea Listed Companies Association and Korea Investment Trust Companies Association. Their support is sincerely appreciated.”

—Jae-Chul Kim, Code of Best Practice for Corporate Governance, 1999

To help identify potential problems and deal with them at an early stage of the initiative, some project managers find it useful to generate

a “Strengths/Weaknesses/Opportunities/Threats” (SWOT) analysis. Once such a SWOT analysis is conducted, a clear plan can be developed to overcome the identified difficulties and minimize negative reactions. A SWOT chart is shown in the table below.

EXAMPLE OF A SWOT ANALYSIS	
<p>STRENGTHS</p> <ul style="list-style-type: none"> • Enthusiastic and well-respected chairman • Strength of committee membership • Buy-in from key stakeholders • Government support • Support from development agencies and international organizations, such as the World Bank Group or the Asian Development Bank 	<p>WEAKNESSES</p> <ul style="list-style-type: none"> • Low interest or apathy from key stakeholder groups • Lack of existing legal framework • Low funding • Low media interest • Competing initiatives
<p>OPPORTUNITIES</p> <ul style="list-style-type: none"> • A financial crisis or corporate scandal, generating calls for corrective action • New government and momentum for reform • Publication of World Bank corporate governance Report on the Observance of Standards and Codes (ROSC) 	<p>THREATS</p> <ul style="list-style-type: none"> • Political uncertainty, such as a pending general election • Conflicts within the crafting committee

Dealing with internal challenges

Problems do not always come from the outside. Difficulties may also arise within the crafting committee that slow down the development of the code. Members may disagree on the process as well as over the content of the code.

DEALING WITH CHALLENGES

GERMANY

“The major challenges encountered during the drafting process were to overcome different opinions by members of the commission due to their role as representatives of specific interest groups, e.g. investors, corporations, unions, academics. One solution was the introduction of two types of criteria: mandatory recommendations (‘shall do’) and voluntary suggestions (‘should do’). Some of the critical issues that could not be agreed were thus classified as should-do suggestions.”

—Christian Strenger, Government Commission on German Corporate Governance and DWS Investment, March 2003

BANGLADESH

In developing the corporate governance code for Bangladesh, the task force met the following challenges:

- Lack of understanding about the nature of codes versus laws and regulations: “We tried to say that the code could emphasize certain aspects of the law, and would in many cases ask companies to go beyond the law (i.e. ‘raise the bar’). Only slowly did the task force and some government officials understand that concept.”
- Lack of consensus on terms of reference: “Task force members often focused on reforms necessary in policy, infrastructure, and law and order, rather than focusing on best practices for companies and organizations.”
- Lack of stability: “The speed with which civil servants and government officials change positions makes it difficult for them to gain exposure and understanding of corporate governance and the role of the government. In addition, it is difficult to develop relationships within government departments.”
- Lack of consensus about the nature of the recommendations: “A practical difficulty in drafting the code was deciding between general principles or more detail-oriented guidelines. Given the lack of understanding regarding what corporate governance is, specific recommendations seemed both helpful and more likely to lead to compliance. . . . However, more general guidelines or a principle-based document would have maybe been easier to gain consensus on. The question was whether such a consensus would have made much sense?”

—Wendy Werner, Bangladesh Enterprise Institute

THINKING POINT

What are the main challenges your code crafting committee faces?

To prevent a build-up of conflicts within the committee, the chairman and the project manager should ensure that:

- The committee agenda takes full account of the issues and concerns of all committee members.
- The committee agenda is forward looking and concentrates on discussing important issues rather than merely ratifying proposals from the project leader.
- Sufficient time is allowed for discussion of complex or contentious issues.
- Informal meetings are arranged beforehand if necessary to enable the efficient use of time for the committee discussions. It is particularly important that committee members perceive that they have sufficient time to consider critical issues and are not faced with unrealistic deadlines for decisionmaking.
- Active engagement by all the members of the committee is encouraged.
- The chairman promotes effective relationships and open communications among the project manager, the secretariat, and the committee members.
- The project leaders provide committee members with accurate, timely, and clear information.

To head off possible conflicts and identify potential problems, as well as to monitor the committee's work progress, chairmen may consider evaluating the work of the committee and the performance of individual members. It may be useful to allow a few minutes at the end of each meeting for this evaluation to take place. Typically the chairman may start by summarizing the work session and achievements to date before discussing specific issues. The evaluation process is most effective when it builds on feedback from all committee members. The evaluation typically considers two sets of questions:

- Is the committee operating well? Are the members competent and balanced in their approach to drafting the code? Does the committee meet regularly? Do the agendas advance the work of the committee? Are the minutes accurate?
- Does the committee possess any features associated with a poorly run committee meeting? Is it so big as to be unwieldy or so small as to be unrepresentative? Do the members offer too small a range of expertise? Do the members see their role as one of protecting their own vested interests? Is the information provided by committee members inadequate?

The way decisions are made can also indicate how well a committee is operating. A committee is poorly run if decisions are made without serious debate or challenge, if they are made by cabals within the committee or outside the committee meeting, or if they can be overturned by a dominant individual. An inability to make difficult and unpleasant, but necessary, decisions is also a sign of trouble. Other indicators are failure to monitor the committee finances and failure to stay on schedule (which often happens when deadlines and responsibilities have not been clearly established at the beginning of the process or if the scope of the project has been underestimated).

(For a guide on evaluating committee performance, see Volume 2, Annex 3.)

Consulting Stakeholders

MODULE 3 AT A GLANCE:

Consulting with stakeholders is crucial to developing a successful corporate governance code of best practices. Getting feedback from all the constituencies involved in setting, implementing, and enforcing the corporate governance framework is essential for:

- Assessing the country’s corporate governance reform needs
- Validating the committee’s terms of reference
- Developing and testing the content of the code
- Ensuring support for the code, better implementation, and ultimately a higher level of compliance with the code’s provisions

There are many ways of consulting with stakeholders, and it is important for the committee to establish a consultation strategy early in the code crafting process and select methods of engaging key stakeholders.

This module reviews:

- Key stakeholders and their level of involvement
- Methods of consultation

STAKEHOLDERS AND THEIR LEVEL OF INVOLVEMENT

Widespread support from policymakers, regulators, and the business community is essential to the successful development and introduction of a corporate governance code of best practice. If the key stakeholders support the initiative in the first place and are consulted and involved during the development phase, they are far more likely to be important champions for the initiative when it is launched and implemented.

Engaging stakeholders

The development of a corporate governance code requires an inclusive approach. The perceptions and interests of all the interested parties should be considered; no stakeholder group should be excluded from the process. At times the views of some of the key stakeholders are likely to conflict with others. In such instances, the challenge for the code crafting committee and its chairman is to obtain a workable compromise and to integrate stakeholders' comments while hewing to the objectives of the code and the country's corporate governance reform needs. *(On integrating consultation feedback, see Volume 2, Module 4.)*

The value to the committee of maintaining good relationships with stakeholders cannot be overemphasized. If for some reason key stakeholders are not made a part of the process or their views are not sought, they may grow increasingly critical of, and even hostile to, the code crafting process. In such circumstances, their actions could delay or stall the process.

Project managers may find it useful to develop a checklist that identifies who the major players are. The key stakeholders and supporters of a corporate governance code crafting process may vary depending on the scope and target of the code, but they typically include:

- The stock market and securities regulator
- The stock exchanges
- The department of commerce or registrar of companies
- The central bank
- Professional associations, including associations of accountants, auditors, corporate lawyers, bankers, and company secretaries
- Investor and shareholder associations
- Institutes of directors
- Chambers of commerce, trade associations, and business associations

(For a discussion on the various stakeholders that may be involved in developing a corporate governance code, refer to Volume 2, Module 1.)

EXAMPLE

STAKEHOLDER CONSULTATION: BRAZIL

During the consultation process, Brazil's code crafting committee consulted many entities, including :

- The Brazilian securities and exchange commission (Comissão de Valores Mobiliários)
- The São Paulo Stock Exchange
- The national development bank (BNDES)
- The association of listed companies (Abrasca)
- The association of minority investors (Animec).

In addition, personal visits, emails, and the Internet were used to consult other stakeholders.

Stakeholders need to be involved at every stage of the code crafting process. Yet the committee may decide to engage individual stakeholders differently and seek various levels of feedback. There are typically three levels of stakeholder engagement:

- *Notify and inform.* The committee may want to notify and inform parties on the progress of the initiative to raise broad awareness, provide opportunities for feedback, and ensure that no organizations and individuals can claim that they were unaware of the initiative.
- *Consult.* The committee may want to actively seek the advice and expertise of certain parties at specific stages in the crafting process to improve the content of the code, validate and measure the impact of certain recommendations, and ensure that important parties cannot claim that they were not consulted in the process of developing the corporate governance code.
- *Involve.* The committee may want to actively involve some constituencies to ensure their support and their willingness to adopt the code once it is published.

Code crafting committees may find it useful to set up a consultation management table to keep track of plans for engaging with specific stakeholders at various stages of the code development process. The table on page 33 provides an example of what such a table might look like.

SAMPLE STAKEHOLDER CONSULTATION MANAGEMENT TABLE

STAKEHOLDER	NEWS OF NEW CORPORATE GOVERNANCE INITIATIVE	COMPOSITION OF CODE CRAFTING COMMITTEE	CHAIRMANSHIP OF THE COMMITTEE	CONSULTATION DOCUMENT/ DRAFT CODE	PUBLICATION AND ADOPTION OF CODE
Companies, business organizations	Inform	Involve	Consult	Involve	Inform and involve
Financial institutions	Inform	Involve	Consult	Involve	Inform and involve
Institutional investors	Inform	Involve	Consult	Consult and involve as necessary	Inform and involve
Legislature	Inform	Consult	Consult	Inform and consult as necessary	Inform and involve
Executive branch	Inform	Consult	Consult	Inform and consult as necessary	Inform and involve
Regulatory bodies	Inform	Consult	Consult	Inform and consult as necessary	Inform and involve
Stock exchanges	Inform	Involve	Consult	Inform and consult as necessary	Inform and involve
Professional bodies	Inform	Involve	Consult	Involve	Inform and involve
Universities	Inform	Involve	-	Involve	Inform
Media	Inform	Inform	-	-	Inform and involve as appropriate
Lawyers	Inform	Involve	-	Involve	Inform
Trade unions	Inform	Inform	-	-	Inform
Shareholder associations	Inform	Inform	-	Involve	Inform
International organizations	Inform	Inform, consult, or involve as necessary	-	-	Inform

Prioritizing stakeholders

It may be difficult at times to decide how much a specific group should be involved in the code crafting process. A power/interest matrix can be a useful mechanism for considering the necessary level of the committee's involvement with different stakeholder groups. Such a matrix classifies stakeholders in relation to the power they hold and the extent to which they are likely to show interest in the corporate governance initiative. The committee can then make decisions about the relationship it wishes to adopt toward each specific stakeholder.

STAKEHOLDER POWER / INTEREST MATRIX		
	LOW INTEREST	HIGH INTEREST
HIGH POWER	Keep satisfied (consult)	Keep engaged (involve)
LOW POWER	Minimal effort (notify)	Keep informed (inform)

In this context, power is associated with the mechanisms by which the activities of stakeholders are able to influence the process of developing the corporate governance code (that is, the extent to which individuals and groups of people are able to persuade, induce, or coerce the developers of the code to follow certain courses of action). Clearly, those stakeholders who are considered to have both high power and high interest need to be regarded as key players whose involvement in the process is crucial. Completion of the matrix usually leads to further consideration of strategies and plans for:

- Communications and consultation with different stakeholders
- Mechanisms for involving stakeholders in decisions and plans
- Influencing specific stakeholders, particularly if it is necessary to increase their support

Several issues are important to consider when placing stakeholders on the power/interest matrix. These include:

- The support needed, wanted, or expected from any stakeholder group
- The level of influence held by stakeholders and the implications of their possible withdrawal or lack of cooperation
- The politics of balancing a variety of stakeholder interests
- The need to nurture and control some of the key players

The table below shows how specific stakeholders groups might be positioned on the power/interest matrix in a specific scenario.

SAMPLE STAKEHOLDER POWER/INTEREST MATRIX SCENARIO		
	LOW INTEREST	HIGH INTEREST
HIGH POWER	Media	Business community Stock exchanges Securities regulator
LOW POWER	-	Ministry of foreign trade Shareholder association

This table presents a scenario where the media have been identified as having a low level of interest in the corporate governance initiative. If the committee regards journalists as key opinion makers, however, it may wish to take a proactive approach to educate them about corporate governance. Such an approach can help ensure that the media will give corporate governance issues a higher priority and greater visibility.

The table also shows that the ministry of foreign trade has a high level of interest in the corporate governance initiative. The government, however, may wish to have no involvement in the code crafting committee's deliberations.

Another analytic tool that is commonly used is the power/unpredictability matrix (see table at top of page 36). This matrix identifies the stakeholders that require specific attention and a high level of communication. As in the previous case, power means the extent to which individuals and groups of people are able to persuade, induce, or coerce the developers of the code to follow certain courses of action. Unpredictability refers to the extent to which stakeholders are expected to behave in a predictable manner during the process of developing and implementing the code. The existence of powerful and unpredictable stakeholders should be avoided as far as possible. Unpredictability can often be lessened by improving communication with these key stakeholders.

The second table on page 36 shows how a power/unpredictability matrix can be used. In this scenario both the media and companies have been identified as being very important for the successful implementation of the draft code, but

THINKING POINT

Which stakeholders are likely to be influential in your code drafting process?



STAKEHOLDER POWER/ UNPREDICTABILITY MATRIX

	PREDICTABLE	UNPREDICTABLE
HIGH POWER	Committee has a moderate need to communicate	Committee has a high need to communicate
LOW POWER	Committee has a low need to communicate	Committee has a moderate need to communicate

their reaction to the initiative is highly unpredictable. In this situation the committee should focus its efforts on moving these two stakeholders into the predictable column of the matrix, along with financial institutions and the government. The preferred strategy is likely to be improved communication with the two stakeholders. That would increase the committee's understanding of the stakeholders' perspectives and make it more likely that the committee's actions would satisfy the interests of the media and companies.

SAMPLE STAKEHOLDER POWER/UNPREDICTABILITY MATRIX

	PREDICTABLE	UNPREDICTABLE
HIGH POWER	Government, financial institutions (moderate need to communicate)	Media, companies (high need to communicate)
LOW POWER	Shareholder association (low need to communicate)	Trade unions (moderate need to communicate)

THINKING POINT

What are the resources available to your committee for consulting with stakeholders?

Time and resources

The committee should give careful consideration to how much time and resources need to be allocated to each stakeholder. Consideration also should be given to identifying the person within the committee who will be responsible for maintaining the relationship with specified key stakeholders. The following table provides an example of a tool that can be used for allocating resources to communicate with key stakeholder groups

SAMPLE CONSULTATION TIME MANAGEMENT TABLE				
	CONSIDERABLE TIME/RESOURCES	MODERATE AMOUNT OF TIME/RESOURCES	SMALL AMOUNT OF TIME/RESOURCES	RESPONSIBILITY (COMMITTEE MEMBER NAME)
Companies	X			Mr. Jones
Financial institutions		X		Mr. Jones
Institutional investors		X		Mr. Jones
Legislature				Mr. Smith
Executive branch			X	Mr. Smith
Regulatory bodies	X			Mr. Bond
Stock exchanges	X			Mr. Bond
Professional bodies		X		Ms. Jackson
Universities			X	Dr. Roberts
Media	X			Mr. Jones
Lawyers		X		Ms. Jackson
Trade unions			X	Mr. Smith
Shareholder associations		X		Ms. Jackson
International organizations			X	Mr. Jones

METHODS OF CONSULTATION

Various types of consultation methods can be used, alone or in combination, throughout the code crafting process. A successful committee determines well in advance which methods will be most successful at what point in the process. In designing its consultation plan, the committee should consider:

- The country's cultural context and various stakeholders' preferred communication style

- The committee's available resources (staff and budget)
- The type of feedback needed and expected
- Communication technologies available to stakeholders and committee members

The table below displays the methods of consultation used most often, along with their respective advantages and disadvantages.

ADVANTAGES AND DISADVANTAGES OF DIFFERENT FORMS OF CONSULTATION

TYPE OF CONSULTATION	ADVANTAGES	DISADVANTAGES
Consultative document	<ul style="list-style-type: none"> • Evokes interest • Allows respondents to make a considered response 	<ul style="list-style-type: none"> • Low response rate • Responses can be coordinated by pressure groups • Responses may not be representative
Postal questionnaires	<ul style="list-style-type: none"> • Evokes interest • Convenient • Allows respondents to make a considered response • Inexpensive 	<ul style="list-style-type: none"> • May not evoke sufficient number of responses • May not generate a representative sample • May not evoke response from key stakeholders • May suffer from questionnaire overload
Email questionnaires and website surveys	<ul style="list-style-type: none"> • Evokes interest • Fast • Convenient • Allows respondents to make a considered response • Inexpensive 	<ul style="list-style-type: none"> • May not evoke sufficient number of responses • Responses may not be representative • May not evoke response from key stakeholders
Telephone questionnaires	<ul style="list-style-type: none"> • Evokes interest • Convenient • Inexpensive 	<ul style="list-style-type: none"> • Time consuming for respondent and interviewer • Responses may not be representative • Problems with coding and recording oral responses
One-on-one interviews	<ul style="list-style-type: none"> • Evokes interest • Can deal with controversial issues in a detailed and individual manner 	<ul style="list-style-type: none"> • Can be time consuming • Views expressed are often personal rather than representative • Problems with coding and recording responses if semistructured or unstructured interviews are employed.
Events (such as workshops, focus groups, and conferences).	<ul style="list-style-type: none"> • Evokes interest • Can focus on controversial issues 	<ul style="list-style-type: none"> • Can be time consuming • Responses may not be representative • May not generate a representative sample • Can involve significant administrative support to organize
Media debate	<ul style="list-style-type: none"> • Evokes interest • Can focus on controversial issues • Popular views expressed • Can provide useful critical feedback 	<ul style="list-style-type: none"> • Issues can be distorted and sensationalized • Responses may not be representative • Excessive focus on easily understood themes; complex themes ignored • Excessive focus on controversial themes

Consultation tools

Various documents and tools related to the consultation process may be used to seek feedback and support while developing a code of best practice. Typically these documents include press releases, exposure drafts, questionnaires, and surveys.

The committee should oversee all primary consultation documents that are to be used. Copies of all proposed documents should be circulated to all committee members in ample time to allow members to read and give careful consideration to the drafts before they are discussed at the committee's meetings. When important issues of principle are to be discussed, chairmen may suggest that members submit their comments in writing to the committee's secretary.

The consultative document, or exposure draft

The primary consultation tool when developing a code of best practice is the consultative document, also known as an exposure draft. The purpose of this document is to canvas opinions on a draft of the code before it is finalized. The consultative document should briefly describe the committee's terms of reference and explain the purpose and the scope of the initiative. The document can be more or less sophisticated, depending on the stage of the process at which it is circulated and how much background research the committee has already conducted. The early draft of the code should nevertheless at least include the tentative structure and broad guidelines of the code. *(For more information on the background research needed before a code is drafted, refer to Volume 2, Module 4.)*

The primary advantage of having a consultative document ready at the early stages of the crafting process is to engage stakeholders on the broad goals of the code. However, circulating an early draft runs the risk of fostering too much debate and slowing down the process. Circulating a more sophisticated exposure draft later in the process can help elicit more specific and technical feedback, but some stakeholders may feel left out if they are not asked to participate in the initial discussions on the broad orientation of the code and the issues at hand. To resolve those problems, committees may consider issuing a simple consultative document at an early stage of the work and then issuing a second, more detailed draft before finalizing and agreeing on the code.

As a rule the consultative document should be as short as possible and use simple language to encourage a high response rate. Responses are nevertheless often low in both quality and quantity. Complementary forms of consultation may therefore be needed to increase the response rate and help get more specific feedback.

E X A M P L E**CONSULTING STAKEHOLDERS: TURKEY**

A major challenge for Turkey's code crafting committee was involving all market participants in the consultation process, but the initial response rate to the consultative document was significantly lower than anticipated. Additional methods of consultation were developed to elicit a greater response. Notably, the committee organized frequent meetings with key stakeholders and met for two days with business representatives, securities experts, and academics to finalize the code and consolidate the recommendations.

Surveys and questionnaires

Surveys and questionnaires are useful and complementary tools that can guide stakeholders in their responses and provide the committee with more targeted and precise feedback.

When developing a large-scale survey, the committee should seek advice from market research and statistical experts on obtaining representative responses. Such advice is particularly important where there are significant interest groups with predicted differences in perspectives. Different segments of the business community in particular may have varying characteristics that affect their perspectives. For example, a committee seeking feedback from a broad range of companies would want to consider the following characteristics:

- *Sophistication of company.* Companies listed on a number of stock exchanges in different countries often have a more sophisticated perspective than unlisted companies. Listed companies are likely to have more sophisticated internal control systems to comply with accounting standards and disclosure requirements.
- *Size of company.* It is common to find significant differences in responses between large and smaller listed companies. Larger companies, for example,

are often much more in favor of separating the positions of chairman and chief executive officer than are small companies.

- *Sector.* Significant differences are normally found in the perspectives of the public and the private sectors. For example, state-owned enterprises may be more concerned about public safety standards than the private sector.
- *Role of respondent.* In certain consultations, the chairman of a company may respond differently from the CEO, for example; the views of controlling shareholders are likely to differ from the views of minority shareholders. It is therefore advisable for committees to solicit responses from a variety of office holders or shareholders.
- *Geographical.* Regional differences may also need to be considered. For example, the rural response may differ from the urban response.

Postal questionnaires

Many committees develop a questionnaire that covers the key points and issues associated with the proposed code. These questionnaires should not be too lengthy and burdensome for the people asked to complete it. In some countries, key organizations—particularly financial institutions—have been complaining about “survey overload,” and in these situations the response rates often have been much lower than anticipated.

Many committees have found it useful to test the questionnaire with some of the key stakeholders on a “one-on-one” basis. This testing may provide early warning signs to the committees that the questions are not eliciting helpful responses or that respondents may be uncomfortable with specific aspects of the proposed code.

Responses to questionnaires need to be processed methodically, and care should be given on how best to analyze the results. Statistical analysis of questionnaire responses is skilled work and should be handled by a person who is competent and knowledgeable in this area. In some cases committees have employed university professors to lead the research. (*For a discussion on the reliability of questionnaire and survey results, refer to Volume 2, Module 4.*)

Internet consultation

The Internet has become an important vehicle for collecting feedback during the code crafting process. The consultation document as well as successive drafts,

THINKING POINT

What methods of consultation would best engage your stakeholders?

email questionnaires, and website surveys can be circulated through the Internet. Using the Internet can prove both cost and time effective and help reach a greater number of people. The Internet also has the advantage of allowing respondents to reply at a convenient time for them.

There are two ways to use the Internet. Sending emails constitutes a targeted, proactive way of reaching and engaging specific stakeholders or individuals. For a broader consultation, the lead organization as well as other organizations represented on the crafting committee may consider collecting feedback by posting consultation documents, drafts of the code, or questionnaires and surveys on their respective websites. Most countries have come to use the Internet to circulate their draft codes and solicit feedback. The Republic of Korea, Poland, and Turkey, for example, collected the views of many stakeholders through this channel. Some disadvantages are associated with this method, however, including not obtaining a sufficient number of responses, receiving irrelevant responses, and receiving few if any responses from the most prominent stakeholders.

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E****SENDING EMAILS: SOUTH AFRICA**

To maximize consultation, an email was sent to a wide range of individuals and institutions who were familiar with or concerned about corporate governance issues. Among those consulted were academics, business owners, business associations, and corporate institutions.

Telephone questionnaires

Telephone questionnaires can also evoke significant interest in the corporate governance initiative. Using the telephone can be a very convenient, inexpensive, and popular method of acquiring information. It is, however, time consuming for both the interviewer and the respondent. Moreover, unless the interviewers are experienced and well trained, proper coding and recording of responses can be problematic. (*A sample telephone interview cover letter can be found in Volume 2, Annex 4.*)

In addition, good research practice dictates that care should be taken to ensure that a representative sample of the target populations is interviewed. Quotas are one way to determine a statistically representative sample. An example of a quota system in operation is described in the example box.

EXAMPLE

TELEPHONE INTERVIEWS: UNITED KINGDOM

During the drafting of the Higgs Report (2002), 605 telephone interviews were completed during a five-week period with directors of listed companies in the United Kingdom. The profile of the sample had to be consistent with the population of directors overall. To make the sample representative, quotas were set that required interviews with:

- 72 chairmen (12 percent of the sample),
- 257 executive directors (42 percent), and
- 276 nonexecutive directors (46 percent).

The sample was structured to ensure that no more than one chairman, one executive director, and one nonexecutive director from the same company were interviewed. (If respondents held more than one directorship, they were asked to comment on the one that took up the greatest proportion of their working time.)

Quotas were also set for the number of interviews with directors from:

- 62 FTSE 100 companies (10 percent of sample)
- 131 FTSE 250 companies (22 percent)
- 412 other listed companies (68 percent).

The demographic profile of the interviewees was also set to be in line with the population of directors overall:

- 35 respondents had to be women (6 percent of sample)
- 7 respondents had to be a member of a minority ethnic group (1 percent)

One-on-one interviews

One-on-one interviews can be very useful to obtain detailed feedback from selected prominent individuals on technical or controversial aspects of the code. Interviews may be semistructured, with the interviewer and respondent engaging

in an almost free-form discourse. This type of interview helps clarify any questions a respondent might have about the content of the code and gives the interviewer an opportunity to provide further explanations on specific proposed guidelines and provisions. The more structured the interview, however, the more specific the responses and the easier the recording of responses becomes. One-on-one interviews can be very time consuming and should be reserved to solicit feedback from experts and highly influential stakeholders. The respondent views expressed in these types of interviews are often personal rather than representative.

Consultation events

Consultation events can take various forms. Some events can be organized at the early stages of the consultation process; examples are workshops and public meetings to build stakeholder support or raise general awareness. Other types of events, such as stakeholder forums and focus groups, can be organized later in the code crafting process to obtain specific feedback on proposed provisions of the code.

The structure of the consultation events should be carefully planned:

- Participants should receive sufficient notice of the event. (The amount of notice may vary according to country but should be at least three weeks)
- The notice should clearly specify that the event is being organized to obtain views of the participants in relation to the consultation process. The consultative document is normally attached to any notice of a meeting.
- The event should be scheduled for a convenient time, and the overall time allocated typically should not exceed two hours.
- At the beginning of the event, the chairman or another member of the committee should provide an overview of the consultative process. Views, comments, and suggestions should be invited from the attendees. A wide-ranging discussion should be allowed to take place without any restrictions being placed on the speakers. It is also desirable to have a rapporteur present at the event, who could take notes and prepare a summary of the submissions made for committee members to use in their discussions of the code.
- Toward the end of the event, the chairman should thank the participants and assure them that the committee will take their views into account.
- A few days after the event, a letter of appreciation should be sent to all participants, again thanking them for their involvement. (*A specimen letter of appreciation is given in Volume 2, Annex 5.*)
- The committee should be provided with a full report on all consultation events.

Preliminary meetings and workshops

Preliminary meetings and workshops typically occur when the idea of crafting a best practice code is first being discussed and tested among major stakeholders. These meetings usually involve key market players and reform leaders and focus on the country's basic corporate governance issues and the general improvements needed in the country.

EXAMPLES

PRELIMINARY CONSULTATION MEETINGS

KENYA

In November 1998 a workshop was sponsored and supported by leading organizations in Kenya with an interest in corporate governance, including :

- The Nairobi Stock Exchange
- Capital Markets Authority
- Institute of Certified Public Accountants
- The Kenya Chapter of the Association of Chartered Certified Accountants
- Participants from many leading corporate organizations.

It was agreed that a second forum would be held in March 1999 to discuss major topics and principles of good corporate governance. It was at this seminar that a decision was made to formulate a code of best practice for corporate governance in Kenya. A committee was subsequently set up and authorized to determine the feasibility of a permanent body to oversee the implementation of a code.

BANGLADESH

In 2003 the Bangladesh Enterprise Institute established a task force to develop a corporate governance code in 2003. One of the task force's first acts was to conduct a seminar titled "Strengthening Corporate Governance in Bangladesh," which was attended by the minister of law and justice and the governor of the Bangladesh Bank (the country's central bank). This seminar highlighted the poor governance structures prevailing in banks and other corporate entities that were contributing to the instability of the country's financial and corporate sectors. The seminar also took note of the resulting irregularities that led to a higher cost of capital and acute difficulties in doing business, which in turn resulted in poor competitiveness. High-level participants at the seminar unanimously agreed that a code of best practice on corporate governance was urgently needed to help correct these problems.

Stakeholder forums

Stakeholder forums can be used to invite interested stakeholders to meet with members of the committee to discuss specific topics to be addressed by the code. The topics discussed are typically controversial issues where consensus has not yet been obtained. Many countries have found stakeholder forums to be a useful method of building consensus and obtaining feedback from key stakeholder groups.

EXAMPLES

STAKEHOLDER FORUMS

POLAND

The code crafting committee organized three meetings targeted at different groups of market participants—investors, public companies, and board members.

SRI LANKA

The code crafting committee had separate meetings with each of the identified stakeholders to obtain their candid comments about the content of the code. These meetings provided a forum to exchange views freely and served as an important venue for understanding and appreciating the concerns, needs, and objectives of each of the groups.

Focus groups

Focus groups typically take place once the main principles or guidelines of the code have been developed in a draft format and the committee feels further refinement is needed. Focus groups normally are composed of specific experts and representatives of key stakeholder groups the committee invites to a meeting to discuss specific and technical issues.

Public meetings

Public meetings can provide a wide range of constituencies with the opportunity to ask questions, express their concerns, and learn more about the objectives and purpose of the code. These meetings can occur both at an early stage of the consultation process, to explain the goals of the initiative, and once the code has been finalized, to promote its implementation and explain its content.

EXAMPLES

PUBLIC MEETINGS

MACEDONIA

Macedonia's code drafting committee used an open, inclusive process in its consultation process. It organized more than 27 public debates, 3 of which attracted audiences of more than 500.

UKRAINE

As a first step, a series of seminars and workshops were organized in five major cities across Ukraine to educate the private sector about the role of country corporate governance codes and to solicit feedback and recommendations on what the private sector thought would be useful for a code in Ukraine.

Raising awareness through the media

The media can be a very effective vehicle for raising public awareness about the code crafting process. It can also be helpful in supporting the implementation of the code itself and better corporate governance practices in general. Maintaining good relations with the media and providing journalists with the appropriate information is thus an important task for the committee.

An initial news release explaining the purpose and the mechanisms of the code crafting initiative is often one of the first documents a code crafting committee produces. The news release should build on the committee's terms of reference and include the following information:

- The objectives of the committee
- Details of the membership of the committee (representatives of the key stakeholder groups should be mentioned)
- Quotations from the chairman and other influential persons concerning the need for and the benefits to be obtained from improving corporate governance within the country.
- Contact details for the committee secretariat for journalists requiring further information.

(For a discussion of terms of reference, see Volume 2, Module 1.)

Many project managers have sought advice from the communications director of government departments or large organizations in putting together a press list. *(A sample news release can be found in Volume 2, Annex 6.)*

Committees may also consider engaging the media through press events and media debates. Chairmen and committee members should nevertheless not become distracted by the seductive appeal of the media during the crafting process. The main focus of the committee should be on developing the content of the code. In some cases media reports may heighten controversy over specific issues and generate a public debate over the code crafting initiative itself. Broad issues may be distorted and sensationalized, while complex themes are ignored. When controversial issues are debated through the media, committees often feel they are placed in a reactive and defensive position rather than keeping a proactive role.

Once agreement on a final code has been reached, the committee can focus its full attention on publicizing the final document. Now is the time when media coverage can help in implementing the code and building momentum spurring compliance with the recommended reforms. *(For a discussion on implementing the code, refer to Volume 2, Module 5. For additional information on consultation, see the extracts from the Code of Practice on Consultation, developed by the United Kingdom Regulatory Impact Unit, in Volume 2, Annex 7.)*

Researching and Drafting the Code

MODULE 4 AT A GLANCE:

Researching and drafting the content of a new corporate governance code of best practice is the ultimate goal of any committee and underlines all of its activities. Once the code crafting committee has established its terms of reference and decided on the goals and objectives of the code, it must research the content of the code and begin the drafting process. Verbiage for corporate governance codes of best practice does not come prepackaged, and thorough background research is the key to a successful code. In addressing the country's corporate governance reform needs, the final code should follow international best practice but without contradicting existing laws and regulations. This module discusses the various steps involved in researching the content of the code, integrating feedback from stakeholders, adopting the right style and format, and agreeing on the final code.

This module reviews:

- Researching existing international best practice and models
- Assessing the country's legal framework and reform needs
- Integrating consultation feedback
- Adopting the right style and format
- Agreeing on the final code

REASERCHING THE CONTENT OF THE CODE

To produce an effective code, the committee must conduct thorough background research based on its terms of reference and the agreed scope and objectives of the code. *(For a discussion on the committee's terms of reference and the objectives of the code, refer to Volume 1, Modules 2 and 3 and Volume 2, Module 2.)*

The gathering of background information involves:

- Reviewing international best practices
- Understanding current laws, regulations, and practices within the country
- Reviewing the country's corporate governance reform needs

Setting up subcommittees or working groups

Committee members can easily become overwhelmed by the massive amount of information that needs to be reviewed and collected internationally and at the local level in order to adequately translate international standards into country best practice. Some code crafting committees have therefore found it useful to create working groups or subcommittees to increase the efficiency and quality of the research process.

THINKING POINT

Should your committee set up specific subcommittees?

The decision to set up subcommittees needs to be considered in the early stages of the code crafting initiative to avoid any confusion at later stages. It is important that working groups are well-coordinated and that they submit reports with key findings to the full committee to ensure that all members are familiar with the big-picture results. To ensure that the research process does not stall the crafting process, the chairman should be prepared to prevent detailed debates during committee meetings over quirky results that can sometimes arise from the work of subcommittees. The committee's attention should stay focused on the content of the code being produced.

To help with researching the code's background and content, committees may also hire consultants or international experts and seek help from academics. In all cases it is important that the research be carried out in a systematic manner, by individuals who are familiar with general and specific corporate governance issues. *(For further details on hiring consultants, refer to Volume 2, Module 1.)*

ESTABLISHING SUBCOMMITTEES

SOUTH AFRICA

The King II committee review was structured into five task teams that focused on:

- *Boards and directors.* This task team looked at a wide range of issues in the area of board governance and director conduct with particular reference to international developments and institutional investor requirements. It specifically looked into issues regarding board practice; the status and responsibilities associated with executive, nonexecutive, and independent directors; and executive and nonexecutive director remuneration. It also revisited the “business judgment rule,” which holds corporate boards harmless for business judgments made with diligence and good faith.
- *Accounting and auditing.* This task team considered developments surrounding auditing and nonaudit advisory services, accounting standards in relation to international developments, auditor skills associated with nonfinancial reporting, and the King Committee’s previous recommendations regarding legal support for accounting standards in South Africa.
- *Internal audit, control, and risk management.* This task team reviewed and updated guidelines dealing with board and company practices related to risk management and reporting.
- *Integrated sustainability reporting.* This task team investigated recommendations for integrating corporate-related nonfinancial matters into the overall governance and reporting framework of companies in South Africa. The areas covered included health, safety, environment, and public interest and community issues, and their economic impact or relevance.
- *Compliance and enforcement.* This task team considered the supervision and enforcement of existing rules and regulations governing companies in South Africa and recommendations to improve compliance with governance guidelines.

About 50 people served on the task teams. They were carefully selected to embrace a wide range of interests from the private and public sectors, institutional investors and shareholders, civil society, government, and regulators. This broad representation was intended to ensure a wide reference for investigation and consideration of the recommendations arising from the review.

EXAMPLE

SEEKING EXPERT ADVICE: UNITED KINGDOM

Most of the research that underpinned the Higgs Report on the Effectiveness of Non-Executive Directors, issued in 2004, was undertaken by three carefully selected experts: Dr. Terry McNulty, of the Leeds University Business School, and Dr. John Roberts and Dr. Philip Stiles, of the Judge Institute of Management, University of Cambridge.

Reviewing international best practices

Unlike in 1992 when the pioneering Cadbury code was issued, many countries have now developed their own corporate governance code, international standards have been adopted, and a tremendous amount of work has been done in the field of corporate governance. Consulting existing international best practice is extremely important for any committee working on developing or reviewing a corporate governance code and should be undertaken at the outset of the process. A complete review of international best practices is necessary for several reasons:

- First of all, the committee needs to familiarize itself with existing international best practice in order to satisfy one of the main purposes of issuing a corporate governance code, which is to raise corporate governance standards at the country level.
- On a more practical level, consulting international best practice will also help the committee in selecting an existing model on which it can base the structure of its own code.
- Finally, by examining detailed provisions from various codes, the committee can gain precious time by identifying important recommendations and borrowing specific language that can be included in or serve as a basis for the new code.

Considering the number of existing codes and best practice recommendations available today, the biggest challenge for the committee may well be in deciding which of the existing codes, recommendations, and provisions are most relevant to the country. Reviewing international corporate governance principles or standards provides a good starting point

THINKING POINT

Can existing codes serve as benchmarks or models for your code?

for the committee's background research work and can help the committee develop an overall framework or benchmarks against which it can structure its own corporate governance code.

For example, the committee may begin by considering whether the OECD Principles of Corporate Governance can serve as a basis for the national code. Adopted in 1999 and revised in 2004, these principles constitute common best practice standards that countries with different cultures, corporate structures, and legal environments could agree upon without being unduly prescriptive. Issued to assist governments in their efforts to evaluate and improve their frameworks for corporate governance, the OECD principles constitute the most frequently used model for developing country codes. Other regional models, such as the guidelines developed by the Commonwealth Association for Corporate Governance or the Corporate Governance Andean Code, should also be consulted, especially when developing a code in anglophone African countries or South American countries. *(For a discussion on international standards and guidelines, refer to Volume 1, Module 2.)*

The committee may also find it useful to consult the policy objectives Ira Millstein developed in 1997 in a report to the OECD entitled "Perspectives for Public Policy Improvement." These objectives were developed to assist policymakers and regulators in shaping the corporate governance environment and benchmarking their corporate governance practices. They are still as pertinent and challenging as when they were first written and provide excellent guidance for developing a code. *(These policy objectives are set out in Volume 2, Annex 8.)*

As a second step, the committee should research existing country codes. Considering the number of existing codes, it may be useful to structure the research by comparing the table of contents and the scope and objectives of various codes before analyzing specific provisions. Such a procedure can help the committee exclude irrelevant models and avoid the hasty import of inadequate "foreign" codes or clauses. A wise committee selects model codes that build on values, issues, concerns, and practices that are similar to those of the committee's country. It is also recommended that the committee pay closest attention to the most recent codes, to avoid including any "outdated" clauses in the new code. *(For a comparative list of major country codes, refer to Volume 1, Annex 5.)*

USING INTERNATIONAL BEST PRACTICE MODELS

UKRAINE

The draft code was based on the OECD Principles of Corporate Governance, which the drafting committee then tailored to respond to the unique features of corporate legislation and corporate activity in Ukraine.

MACEDONIA

In Macedonia's code of best practices, there was some "transplantation" of corporate governance issues from international sources (particularly from the Anglo-Saxon models). These transplants included:

- The decision to recommend a one-tier board of directors
- The recommendation that courts stay out of commercial and business decisionmaking as far as possible (this is the so-called business judgment rule)
- The decision to encourage self-regulation within the capital market

The committee reviewed the following documents before drafting its code:

- 1996 and 2002 drafts of Macedonian company laws
- EU directives and regulations on transparency
- The UK Winter Report
- The EU action plan for modernizing company laws and encouraging the adoption of corporate governance codes
- Recommendations from the European Corporate Governance Forum
- The OECD Principles of Corporate Governance
- The OECD South East Europe Corporate Governance White Paper
- Country studies on legal systems
- The U.S. Sarbanes-Oxley Act regulating accounting and auditing practices

BANGLADESH

A number of codes and guidelines were used as resources in the process of drafting the corporate governance code for Bangladesh. The models were selected based on their applicability to the current situation in Bangladesh and the scope of the code, which covered state-owned enterprises as well as financial institutions. Where a lack of sophistication was perceived in the Bangladesh practices, foreign codes were used to provide guidance. For example, specific provisions on the fiduciary duties of directors as well as on reporting and disclosure requirements were "borrowed" from or based on language used in other country codes.

USING INTERNATIONAL BEST PRACTICE MODELS

BRAZIL

Brazil's first code was based upon the International Comparison of Board Best Practices prepared by Gregory and Forminard, the Cadbury code, and the codes of General Motors and NACD (National Association of Corporate Directors) best practices. The second code was based upon the OECD principles. The reason why these specific models were selected was because the code committee considered such codes as benchmarks.

GERMANY

The most recent code was influenced by the UK Combined Code and the first German Code of Best Practice, adopted in 2000. The latest code was also based on German law and took into account all national regulations and practices, including corporate governance issues arising from the two-tier board system.

REPUBLIC OF KOREA

The original Korean code issued in 1999 was based upon the OECD principles. The code reflected specific conditions in Korea regarding large business groups. A second, revised code was influenced to a great extent by the U.S. Sarbanes-Oxley Act.

POLAND

Before it drafted the Polish code of best practices, the committee analyzed foreign and international sets of corporate governance standards, including OECD and NASDAQ principles and the British corporate governance codes. The OECD Principles of Corporate Governance were particularly useful as a checklist to ensure that all critical areas were addressed. In general, foreign codes were used to help:

- Identify the problem areas that could arise
- Identify the issues of importance to the investor community

The specific provisions of the Polish code were subsequently adopted to suit the local circumstances and regulatory environment.

SWITZERLAND

The Code of Best Practice for Corporate Governance was based on:

- The United Kingdom's Cadbury Report
- The UK Hampel Report
- The UK Combined Code
- The French Vienot Report
- The German Baum Commission Report

EXAMPLES

USING INTERNATIONAL BEST PRACTICE MODELS

TURKEY

The code was prepared after a detailed analysis of the OECD Principles of Corporate Governance and existing country codes. The drafters of the code “borrowed” some principles outright and revised others to adapt them to local conditions.

Turkey’s code was based on the four principles of corporate governance: transparency, accountability, responsibility, and fairness. Using these principles, the committee decided to focus on the composition and functioning of the board of directors, which was considered a key component in the implementation of corporate governance principles in the context of the Turkish business environment.

ZAMBIA

The draft Code of Corporate Best Practice for Listed Companies in Zambia was influenced by the OECD Principles of Corporate Governance, South Africa’s King II Report, and the Commonwealth Association of Corporate Governance Guidelines.

The committee should bear in mind that while research into existing codes and best practice is helpful, existing models still need to be adapted to fit the country’s specific needs and circumstances.

Assessing the country’s corporate governance framework

Significant differences in the corporate ownership structures and legal frameworks exist between countries. While building on existing international best practice, the committee needs to be aware of these differences and avoid incorporating inappropriate governance recommendations into the new code. It is especially important that the committee review existing laws affecting corporate governance practices so that the code does not contradict existing laws. An effective code will complement the legal and regulatory environment that prevails in the country. Should the committee determine that existing laws are inappropriate or need to be changed to improve the country’s corporate governance framework, it can include recommendations to amend the legal framework in a separate section or appendix to the code. (For a discussion on the legal operating environment of codes, refer to Volume 1, Module 2; for a discussion on the role of codes in fostering legal reform, refer to Volume 1, Module 3.)

THINKING POINT

Does the code comply with existing laws?



TAILORING CODES TO THE LOCAL FRAMEWORK**THE LEGAL CONTEXT: BELGIUM**

The Belgium Corporate Governance Code is seen as complementing existing Belgian legislation; no provision of the code may be interpreted as derogating from Belgian law. The crafting committee based its code of best practices on the existing Belgian corporate law, in particular the provisions of the Belgian Code on Companies, and on financial law applicable to listed companies. In developing the code, the committee also paid great attention to the European Commission's recent initiatives in the field of corporate governance, specifically those implementing the Commission's plan, adopted in 2003, for modernizing company law and enhancing corporate governance in the European Union.

CORPORATE OWNERSHIP STRUCTURES: MEXICO

The Corporate Governance Code of Mexico builds on corporate governance codes developed in Canada, England, France, the Netherlands, South Africa, and Spain. Yet in developing the Mexican code, the Bolsa de Valores, or stock exchange, was mindful that the capital structure of Mexican corporations was very different from that of the United Kingdom or the United States. In these countries corporate capital is typically fragmented and held by major institutional investors, whereas in publicly traded Mexican companies, most of the capital is held by a few controlling shareholders.

THE CULTURAL CONTEXT: SOUTH AFRICA

The two King reports recognized the cultural, religious, and ethnic diversity that exists in South Africa and explicitly took into account the "African worldview and culture in the context of governance of companies in South Africa," including values such as spiritual collectiveness, consensus, humility, nondiscrimination, trust, and optimism.

THINKING POINT

What key issues should the code address?

Assessing the country's corporate governance reform needs

In addition to researching international corporate governance best practices and reviewing the existing local legal framework, the committee must also assess its own country's specific reforms needs. The code crafting committee may already have a general idea of the country's primary corporate governance practices and reform needs—these most likely led to the original initiative to develop or review a corporate governance code of best practices. It is nevertheless essential for the committee to review possible areas for improvement in greater detail and to consult all major stakeholders to help the committee formulate the best possible recommendations. *(For a detailed discussion on stakeholder consultation, refer to Volume 2, Module 3.)*

To help draw up an initial list of needed reforms, code crafting committees in developing countries should consult any existing assessments and awareness-raising reports conducted locally or with the support of international organizations. World Bank corporate governance country assessments and the OECD regional corporate governance white papers are good places to start.

The World Bank Corporate Governance Reports on the Observance of Standards and Codes

Perhaps the leading tools for assessing a country's private sector reform needs are the "Reports on the Observance of Standards and Codes" (ROSC), launched by the International Monetary Fund and the World Bank in the wake of the financial crises of the late 1990s. The ROSC exercise aims to identify vulnerabilities and guide policy reforms in the areas of private and financial sector development. The corporate governance assessment under the ROSC program is intended to strengthen property rights, reduce transaction costs and the cost of capital, and promote equity investment and growth. The assessment is structured around the OECD corporate governance principles, using a diagnostic tool developed by the World Bank. The assessment focuses on the legal and regulatory framework and corporate governance practices. It evaluates strengths and weaknesses in different markets and provides a basis for policy dialogue on the scope and prioritization of reforms. The Corporate Governance ROSC is conducted by the World Bank in cooperation with a country's relevant ministries, agencies, and professional bodies.

Countries participate in this assessment process voluntarily. After receiving an invitation, the World Bank commissions a local consultant to complete a

questionnaire, or template, mapping the country's legal and regulatory framework guiding corporate governance and collecting information on corporate governance practices. World Bank experts then typically visit a country to meet with government officials, market participants, investors, and issuers; they then draft an assessment report.

The assessment is divided into four parts: an executive summary; an overview of the country's capital market and its institutional framework; a review of corporate governance principle by principle, including policy recommendations; and a summary of recommendations highlighting areas for legislative reform, institutional strengthening, and voluntary and private initiatives. The assessments attempt to show how actual practices of market participants differ from benchmarks for compliance with the legal and regulatory framework. Thus a country's compliance with each OECD corporate governance principle is evaluated both quantitatively and qualitatively. Most countries agree to posting the results of the assessment on the World Bank website (www.worldbank.org/ifa/rosc_cg.html).

Corporate Governance Reports on the Observance of Standards and Codes have been published for the following countries or economies: Bulgaria, Chile, Colombia, Croatia, Czech Republic, Arab Republic of Egypt, Georgia, Hong Kong (China), Hungary, India, Indonesia, Jordan, Republic of Korea, Latvia, Lithuania, Malaysia, Mauritius, Mexico, Moldova, Morocco, Philippines, Panama, Peru, Poland, Slovak Republic, Slovenia, South Africa, Turkey, and Zimbabwe. *(The summary of a Corporate Governance ROSC conducted in India can be found in Annex 9.)*

The OECD Corporate Governance White Papers

In partnership with the World Bank and the International Finance Corporation and with support from various organizations including the Global Corporate Governance Forum, OECD has organized and led regional corporate governance roundtables in five regions: Asia, the Russian Federation, Latin America, Eurasia, and South East Europe. Over the last five years more than 25 meetings have taken place in 18 countries to assess corporate governance practices and build consensus on the reform agenda. Each regional roundtable has issued a white paper that can serve as a background reference for developing a country code. The regional corporate governance white papers can be downloaded from the OECD website at www.oecd.org.

The roundtables have revealed a wide range of corporate governance challenges across the five regions pertaining to enforcement, ownership and control, shareholder rights and equitable treatment, board effectiveness, the role of banks and other stakeholders, transparency, and disclosure. *(For a summary of key cross-regional findings, refer to Volume 2, Annex 10.)*

DRAFTING AND FINALIZING THE CODE

Once the basic research has been completed and any initial consultations conducted, it is time for the committee to start drafting the code.

Selecting the main drafter

Although the committee as a whole agrees on the final draft, usually a single individual drafts—or at the least coordinates the drafting—of successive versions of the code, integrating consultation feedback and comments or amendments agreed by the committee. This task is time consuming and requires a high level of commitment. The decision about who will be drafting the code has to be made at the first couple of meetings. The chairman and individual committee members may also address this question in individual meetings. In most cases the main drafter will be a committee member. Codes have been drafted by chairmen, project managers, and committee secretaries. The committee can also consider hiring an external consultant for this task. In this case the consultant must have a clear understanding of the committee's terms of reference and be given clear guidelines on the desired structure of the code and its scope and objectives. To avoid any miscommunication, the consultant should be asked to attend the committee's meetings.

Whether the primary drafter is a consultant or a member of the committee, it is important that the person be able to devote sufficient time to the task.

The drafter should also have:

- A good understanding of international corporate governance issues
- A good understanding of the country's corporate governance framework and needs
- Excellent language skills and experience with drafting reports or regulations
- The ability to work under pressure and to deal with conflicting or changing requirements

Codes typically undergo at least three drafts. The first general draft of the code is most likely to be the exposure draft, or consultation document, that is circulated among stakeholders to solicit their comment. (*For further details on the exposure draft, refer to Volume 2, Module 3.*) A second draft incorporates comments gleaned from stakeholders as well as committee members. The third draft may be the final draft, although committees often refine both the content and the language at least once more before a final code is voted on.

Members of the committee should receive copies of all drafts well ahead of meetings so that they have time to read and consider the content. Often the chairman will suggest that committee meetings be reserved for discussion of important issues of principle and that detailed comments on the draft code be submitted in writing to the committee's secretary.

Style and Format

When reviewing the successive drafts of the code, the committee needs to make basic decisions regarding the format, style, and length of the code; the level of detail of best practice recommendations and provisions; and how to deal with annotations or implementation guidelines. It is always better to separate background information relative to the country's corporate governance environment from the code itself, but annotations and guidelines relative to the implementation of the code's provisions can either be integrated after each provision, as in the Belgian corporate governance code, or be compiled in a separate section entitled "annotations to the code," as is the case with the OECD Principles of Corporate Governance. When choosing to integrate notes, comments, and implementation guidelines after basic recommendations or principles, it is important to differentiate these from the rest of the text in order not to confuse users as to what should be strictly enforced and what are suggestions for implementing the code.

A corporate governance code of best practices can be structured in various ways. Typically a code contains the following elements:

- A table of contents
- A foreword, usually drafted by the chairman of the committee, outlining the conditions that led to the development of the code and acknowledging specific contributions
- An introduction setting out the terms of reference of the committee, the scope and objectives of the code and recommended implementation mechanisms, and the codes and other documents that were consulted during the drafting process

SEPARATING THE MAIN RECOMMENDATIONS FROM IMPLEMENTATION GUIDELINES

BELGIUM

“Principle 1. The Company shall adopt a clear governance structure

1.1. Every company should be headed by a collegial board. The company should define and disclose the board’s terms of reference in its Corporate Governance Charter (hereinafter “CG Charter”)

Guideline The board’s role should be to pursue the long-term success of the company by providing entrepreneurial leadership and enabling risks to be assessed and managed.

Guideline The board’s responsibilities should be defined in the articles of association of the company and in the terms of reference of the board. It is the board’s duty to define its terms of reference detailing its responsibilities, duties, composition and operation, within the limits defined by the articles of association of the company.”

—The Belgium Code on Corporate Governance, December 2004

BANGLADESH

“Financial Reporting, Auditing and Non-Financial Disclosures

IV. Internal Audit

Principles:

- A. All listed companies must have an internal audit function within the organization. Private companies should consider establishing a system of internal controls if they do not have an internal audit department.
- B. The internal audit department should have a broad scope of work to investigate all levels of the organization and be independent from management, with direct access to the Board of Directors and the Audit Committee.
- C. Directors must take adequate action to protect the company and shareholders based on internal audit reports.

Guidelines:

- D. The internal audit department should have a letter from the board or chairman of the audit committee giving it the authority to access any records in any location at any time.
- E. The internal audit function should have the authority to propose initiatives and changes directly to the board.”

—Code of Corporate Governance for Bangladesh, March 2004

- A summary of recommendations, so that the main thrust of the code's content can be easily understood
- The code's recommendations or provisions divided by chapters
- Annotations to the code
- Possible recommendations to improve the legal framework for corporate governance
- Appendixes listing members of the committee, background information, survey results, and the like

To ensure that the code is readily understood by its users and the public, the committee should take care that:

- The code does not become too long. If included, background information or survey results should be put in appendixes or separate sections of the code.
- Precise and simple language is always employed and that terms are defined clearly. For example the role of an independent director has been defined in many different ways. The reader must be left with no ambiguity as to how the term is being defined within the code.
- The code is not overly legalistic in style, but sets out clearly expected behavior and practices.

Once finalized the code needs to be presented in an attractive, reader-friendly format. Many committees find it useful to engage the services of a designer or publishing firm.

Integrating consultation feedback

In the code crafting process, one of the most important and challenging aspects is revising the initial draft to reflect the consultation feedback. As a result of the consultation process and resulting discussions by the committee, it is likely that many refinements will need to be made to the draft code. Some responses and suggestions will have greater validity and importance than others. In any event, all suggestions and comments must be accorded careful and serious consideration. All comments and their disposition by the committee should be carefully recorded. As much as possible the committee should acknowledge the revisions incorporated into the draft as a result of the comments made by specific stakeholders.

Balancing stakeholder feedback

Although the major objective of the consultation process is to help develop and enhance the content of the code, it is also an important political process that will

help ensure buy-in from all parties and support the effective implementation of the code. Amending the draft code to reflect a certain level of compromise is thus unavoidable. Yet there are bound to be times when the views of some key stakeholders conflict with those of others. Some draft provisions may need to be modified or altered to suit the concern of certain groups, and seemingly useful recommended amendments may need to be dropped or ignored because of pressures from other groups. In such instances, the committee is usually put in a difficult position and may be seen as favoring some groups at the expense of others. To balance these conflicting positions in a fair and reasonable manner, it is important for the committee to stand by its own terms of reference. The clearer the initial objectives of the code are, the easier it will be to use them as criteria to accept or reject particular views. *(For a detailed discussion on assessing the importance and influence of stakeholders, refer to Volume 2, Module 3.)*

EXAMPLES

INTEGRATING FEEDBACK INTO THE CODE

REPUBLIC OF KOREA

Korea's code crafting committee circulated its exposure draft through the Internet and the media, and opinions were collected at a public hearing. Relevant comments were then integrated into the final draft, which was completed at a general meeting of the code crafting committee and its advisory group.

RUSSIAN FEDERATION

The consultation process in Russia resulted in several major changes to the draft code. The changes called for independent directors on boards, revised the role of the audit and other committees, improved shareholders' rights, and provided for the position of corporate secretary.

SOUTH AFRICA

More than 400 submissions were received in response to the first draft of the second King Report, including a large number from overseas. All observations were carefully reviewed and fully annotated by the applicable task teams and then submitted with recommendations to the King II code committee for final review. As a result of the responses, several significant changes were made to certain sections of the code.

EXAMPLES

RESOLVING DISAGREEMENTS: MACEDONIA

The Macedonian code crafting committee experienced significant difficulties obtaining consensus on issues associated with cumulative voting. This issue proved to be far more complex than the committee had anticipated. Important questions were asked, such as:

- Can shareholders in Macedonia be mobilized?
- Do the existing shareholders within the country understand the current system?
- Do shareholders in Macedonia want large boards?
- How effective can a single director representing minority shareholders be?

Discussing these issues with various stakeholders—especially shareholder groups—and understanding their concerns helped the committee formulate a workable consensus

THINKING POINT

Has the potential impact of each recommendation been assessed?

Another common challenge faced by code crafting committees is the strength of the code. Some stakeholders may claim that the proposed best practices are too stringent, while others may think that the code does not go far enough. A new set of conflicting pressures may therefore be placed on the committee to amend the draft code. Again, it is important for the committee to balance conflicting views in a fair and judicious manner, seeking the most appropriate compromise that is in keeping with the committee's agreed terms of reference. *(For a discussion on the committee's terms of reference, refer to Volume 2, Module 2.)*

Reliability of results

Committees may also come to question the reliability of interviews and survey results, especially if significant interest groups with predicted differences in perspectives are participating in the process. A certain amount of caution should therefore always be applied when integrating specific consultation feedback into the draft code. It is not always easy to determine whether a specific comment reflects the views of a single individual or the general opinion of the stakeholder group to which the individual belongs. This is especially true in the case of one-on-one interviews with a small number of selected individuals. Even in broader consultation exercises, committees must take care to ensure that the selected sample is representative of the surveyed group as a whole. If

possible and especially if the committee wishes to make survey results public, expert advice should be sought from market researchers and statisticians to obtain representative responses. These responses can be used to support the recommendations included in the code.

EXAMPLES

RELIABILITY OF CONSULTATION RESULTS: UNITED KINGDOM

During preparation of the Higgs Report, a total of 605 telephone interviews were completed with directors of British listed companies over a five-week period in 2002. The profile of the sample was consistent with the population of directors overall. Yet, the researchers wanted to be sure that their results were statistically reliable. Reliability depends on sampling tolerances, which vary with the size of the sample and the percentage size of the results. For example, on a question where half of the 605 respondents gave the same answer, the researchers determined that the chances were 95 in 100 that this result would not vary more than 4 percentage points, plus or minus, from a complete survey of the entire population using the same procedures. The smaller the sample, the less reliable the results.

Reviewing and approving the code

Once the modifications and amendments to the code have been integrated, the code needs to be reviewed in its totality. Too often drafting committees pay insufficient attention to the way modifications affect the construction and flow of the thought processes, paragraph layout, paragraph headings, spelling of words, and the accuracy of the grammar. Mistakes creep in, which can embarrass the authors and the publishers, as well as dilute the seriousness and the professional nature of the entire document. A skilled person should be entrusted with the important task of editing the final draft for logical flow of thought as well as grammar and presentation.

Modifications can have other unintended consequences. In exceptional situations, an amended clause may effectively nullify the effect of a clause elsewhere. Hence, the entire code should be carefully reviewed to make sure that it is internally consistent and contains no contradictions. The committee should take steps to ensure:

THINKING POINT

Do all committee members agree with the final version of the code?

- That every provision or best practice recommendation is valid, useful, acceptable, and desirable, based on previous discussions with any agencies that are likely to be affected by any of the governance changes being proposed.
- That the code content covers the major issues and reform needs of the country while complying with international best practice standards and investor expectations.
- That the code does not contradict existing laws and that any potential changes to the legal framework as a consequence of the code have been given consideration.
- That there are no ambiguities, contradictions, or duplications within the code and that legitimate annotations have not been treated as formal recommendations.
- That each individual recommendation is needed and contributes to enhancing the code.
- That the sense flows logically throughout the code and that all necessary cross-references have been made.

Once the final review process is completed, the committee typically meets to formally adopt the code. Every committee member should agree to the entire content of the code. It is most likely that once the code has been launched there will be many instances—especially at events involving the media—where critical comments and questions may be raised concerning the code. In such instances, the committee will have to defend its choices and recommendations, and public disagreement among committee members about the code could have a very negative impact on the code's implementation.

Implementing and Monitoring

MODULE 5 AT A GLANCE:

The major risk a corporate governance code faces is becoming a mere window dressing for corporate governance reform. Once the code has been issued, it must be widely disseminated and adopted by the main stakeholders to increase its chances of having a real and lasting effect on corporate practices. Moreover, to be of continuing use to policymakers and corporations, corporate governance codes of best practice need to be regularly updated to reflect current international best practice and local reform needs. Before disbanding, code crafting committees should consider mechanisms for measuring the impact of the code, keeping abreast of local and international corporate governance changes and reforms, and updating the code as needed.

This module reviews:

- Launching and disseminating the code
- Adopting and implementing the code
- Measuring the impact of the code
- Updating the code

LAUNCHING AND IMPLEMENTING THE CODE

Taking steps to see that the newly drafted code of best practice is widely disseminated, adopted by its target audience, and put into practice is the last major task of the code crafting committee. Thus, after the final version of the code has been agreed on but before the code is released to the public, the committee typically makes arrangements to:

- Unveil the final draft at a public launching event
- Disseminate the code
- Ensure that the major stakeholders are ready to adopt and help implement the code

Arranging the launch and disseminating the code

The release of the code creates important momentum for corporate governance reform and provides a unique opportunity to reach out to target users. It is important that the key stakeholders formally endorse the code—and that those endorsements are well publicized. Such endorsements normally pave the way for other major stakeholders to jump on the bandwagon and affirm their commitment to following the code's recommendations. To gain maximum attention for the new code, the committee will want to arrange a public launching, where the code is formally presented and endorsed by a representative gathering of key stakeholders. These stakeholders should include government leaders, regulators, business leaders, academics, and any other organizations that may want to endorse the code publicly.

Among the logistical arrangements the committee must attend to are:

- The organization of the launch event
- The number of copies of the code to be printed
- The distribution channels to be used
- The solicitation of key stakeholders to endorse the code
- The follow-up actions to be taken to promote and popularize the code

The launch event should be carefully planned to gain maximum visibility and support for the new code. It should be held at a convenient time for attendees in a location that is easy to reach. It may be useful to organize the event at the premises of one of the key stakeholders involved in the crafting process and or essential to the code's implementation, such as a stock exchange. Sufficient notice of the launch event should be provided. Key stakeholders should be invited well in advance and given complimentary copies of the code before the

event. The overall time allocated to presentations should not exceed two hours. Enough time should be allowed for the committee to present an overview of the key features of the code as well as to formally announce the endorsement by key stakeholders. The committee may want to introduce these stakeholders and invite them to say a few words about why the code is important and how it could be implemented.

To advertise the code to the broadest constituency, the committee should invite the media to the launch event, give journalists copies of the code, and provide them with an explanation of its content. The support of the media and its positive feedback on the code can prove very helpful in raising further awareness and ultimately implementing the code. *(For a discussion on relations with the media, refer to Volume 2, Module 3.)*

EXAMPLES

LAUNCHING THE CODE

SOUTH AFRICA

Widespread notification of the publication of the King II Code was circulated both locally and in the international media. The code was publicly launched in Johannesburg at a conference where the various elements of the King II Code and its implications were discussed. More than 700 people attended this conference. The King II Code was subsequently endorsed and adopted by a wide range of organizations and institutions, including the Johannesburg Stock Exchange, the government sector, and all relevant public institutions.

BRAZIL

The code developed by the Brazilian Institute of Corporate Governance (IBGC) was launched at the São Paulo Stock Exchange, where it was well received. Several companies and institutions had already agreed to adopt the code. Furthermore, the first and second editions of the code were extensively used in setting up the Novo Mercado, a special segment of the stock exchange designed for companies that voluntarily undertake corporate governance commitments that are in addition to those established in current legislation.

RUSSIAN FEDERATION

The Russian Institute of Directors, the Association of Independent Directors, and the Investor Protection Association played a significant role in supporting the code at the launch event. The code was subsequently endorsed by the Russian securities commission.

The publication of the code can be a costly operation, and paper copies need to be widely but wisely disseminated. The committee and the lead organization must decide whether printed as well as electronic copies of the code are to be distributed free of charge and arrange such distribution channels in advance.

Typically codes of best practice are considered public information that should be made freely available to all target users. In some cases, however, such as in South Africa, the code crafters consider that the code contains valuable intellectual property and that a charge should be made for it. In any case the committee needs to have planned for printing expenditures in its budget and arranged for the up-front financing well in advance.

EXAMPLES

DISSEMINATING THE CODE

POLAND

The Corporate Governance Code for Polish Listed Companies (PFCG) was released in both print and electronic versions. Copies of the printed code were distributed at the launching conference and were also mailed to relevant institutions and market participants free of charge. A weekly economic magazine published a series of articles presenting the code's principles and recommendations. The code was also included as an attachment in a white paper on corporate governance in Poland and distributed to many institutions and individuals.

RUSSIAN FEDERATION

The code was distributed to its target users through the Russian securities commission and its regional affiliates and posted on various websites.

BRAZIL

The Brazilian Institute of Corporate Governance published 6,000 copies of the first edition of its code and 10,000 copies of the second expanded edition. Another 3,000 copies of the code were printed in English. Copies of the code were sent to all directors of Brazilian listed companies and distributed during training programs, seminars, and monthly events. The code is also available on various websites.

Because the new code may also be consulted by potential international investors and could help create incentives for new investments, the committee should also consider having its code translated into English. Furthermore, an English version of the code can become a useful consulting tool for any other foreign committee engaging in developing a code.

Implementing the code

Once a code has been publicly launched, the committee's attention necessarily shifts from developing the content of the code to implementing and enforcing its main recommendations.

The effective implementation of corporate governance best practice recommendations typically depends on how fully the following factors come into play:

- *Substance*. Is the code supported by all major stakeholders? In other words, is it generally recognized that the code presents commonly accepted best standards?
- *Common sense*. Do companies recognize that these best practice recommendations will improve their access to capital and enhance their performance?
- *Market pressure*. Are shareholders, institutional investors, banks, and other providers of capital encouraging companies to follow the code's best practice recommendations?
- *Legal backing*. Are recommendations of the code being incorporated in regulations or listing requirements?
- *Enforcement*. Are recommendations of the code being monitored or enforced by market regulators?

The important question of implementing the code and how some of its provisions or recommendations should be enforced should be discussed during the crafting process. As in the case of the Corporate Governance Code for Bangladesh, the code itself can provide useful indications as to how the code could be implemented. The code can also more explicitly suggest, as in the case of the German corporate governance code, which provisions could be made mandatory and which ones should remain best practice recommendations that not all companies may be expected to follow right away.

QUOTE

RECOMMENDATIONS FOR IMPLEMENTATION

“Individual organizations can comply with the code by writing the provisions into their Articles of Association and incorporating the code into company procedures and reporting practices. . . . The most effective regulatory step to implement the Code of Corporate Governance could be its adoption by the Securities and Exchange Commission. Such a step could begin with a “comply or explain” phase, which requires an organization to comply with the code’s provisions, but if there are aspects in which the organization does not comply, the reason for such noncompliance must be explained. As has been the case in many other countries, the code could also be incorporated into the listing requirements of the Dhaka and the Chittagong Stock Exchanges. A complementary requirement would be compulsory director training for the board of directors of all listed companies. . . . However, the first step can and should be the initiative of corporations and organizations themselves, through the implementation of this code. . . .”

—Code of Corporate Governance for Bangladesh

Since most codes are targeted mainly at listed companies, securities commissions and stock exchanges have taken the lead in implementing corporate governance codes and reports in most countries. Implementation has taken two basic forms: Either provisions of the code are made mandatory through regulations and listing rules, or companies are given the option of complying with the code or explaining and disclosing why they did not. (*For a discussion on the comply-or-explain mechanism refer to Volume 1, Module 2.*)

When making certain provisions of the code mandatory through regulations and listing rules, care should be given that these provisions can be enforced by the regulating agency and that target companies are able to follow the new rules without the cost of compliance being too high. In many cases, it is not always clear how compliance is monitored and enforced. Enforcement can include the option of delisting, which is often implied but rarely made explicit.

Securities commissions and stock exchanges are not the only organizations to play a key role in monitoring and implementing corporate governance best

practices. Other organizations such as central banks, professional organizations, and specific agencies, such as the United Kingdom Financial Reporting Council, can also take the lead in helping raise corporate governance standards and improve practices.

EXAMPLES

IMPLEMENTING THE CODE

INDIA

Corporate Governance changes in India have been driven by the Securities and Exchange Board of India (SEBI). The recommendations made by the Kumar Mangalam Birla Committee were accepted by the SEBI, which made all of the key recommendations mandatory. The recommendations now apply to all listed companies and are enforced by the stock exchanges through listing agreements.

SOUTH AFRICA

In principle, the King II Code operates on a comply-or-explain disclosure regime, and all companies are required to disclose the extent of their compliance. However, certain clauses of the code are now in the process of being selectively adopted within regulatory supervision measures or legislation. Legislation and accompanying regulations relating to banks, insurance companies, and other financial institutions have already incorporated some clauses from the King II Code.

Since March 2003 all companies listed on the Johannesburg Stock Exchange (JSE) have been required to provide a detailed explanation of their compliance with the recommendations of the King II Code and to provide reasons where they do not comply (or an indication of any aspects with which they intend to comply in due course and the timing). The JSE is currently revising its listing rules, however, and is expected to make some of the recommendations set out in the King II Code mandatory.

A detailed Protocol on Corporate Governance in the Public Sector has also been approved by the cabinet but has not yet been fully implemented. Its application and enforcement is expected to be under the supervision of the country's auditor-general, with explanatory guidelines to be issued by the Treasury.

THINKING POINT

*Who will be monitoring
implementation of the
code and its impact?*

When several bodies are involved in monitoring and implementing corporate governance best practices, it is important to ensure clarity and coherence of roles of the various agencies involved. In particular the responsibility boundaries between different institutions are likely to need delineation. In the field of disclosure for example, various aspects regarding auditing practices can be regulated by both the profession and the stock exchange. Care must be taken that the monitoring activities of the two groups do not overlap or conflict with each other.

Because of the number and complexity of corporate governance codes and reports issued in the United Kingdom, a framework and infrastructure for developing, monitoring, and reviewing the corporate governance system has been developed. This framework could also be considered by other countries. *(For a description of this framework, refer to Volume 2, Annex 11.)*

REVIEWING AND UPDATING THE CODE

If they are to fully serve their purpose over the long run, corporate governance codes of best practice need to be reviewed and updated on a regular basis to reflect:

- Evolving standards of best practice
- Changes in the country's corporate governance framework and practices
- Improvements in the quality and the impact of the code

Keeping the code current

Codes can become obsolete in a comparatively short period of time. Since the early 1990s international financial markets have grown stronger as well as more competitive, and financial instruments have become more complex and sophisticated. These important trends have heightened awareness among policymakers of the need to continually monitor and update corporate governance structures and the requirements for improved transparency and disclosure. The recent review of and modifications to the OECD Principles of Corporate Governance are a perfect example of how international standards can evolve over a relatively limited time. *(For a summary of the most significant modifications made to the original OECD principles, refer to Volume 2, Annex 12.)*

EXAMPLE

REVIEW OF THE REVISED COMBINED CODE

UNITED KINGDOM

The Financial Reporting Council (FRC) has announced that the Revised Combined Code (2003) will be reviewed regularly to make sure that it is working effectively and to identify whether any amendment is necessary. The FRC has said it also recognizes the value of stability, and there is no presumption that each review will lead to changes. In 2004 it was announced that the first review would take place in the second half of 2005. If any changes are proposed, the FRC has made a commitment to conduct a public consultation.

Most crafting committees have therefore taken care to set out in the introduction to the code the need to revise its content on a regular basis. Some codes specify a time frame, whereas others consider that circumstances should trigger the necessary update. The advantages of setting a time frame for the review are twofold: it saves time on discussing whether or not the code needs to be reviewed, and it helps committees ensure that a follow-up and monitoring structure is put in place. Reviewing the code does not mean that the code will necessarily be revised, but it does ensure that the code will not become outdated and that its implementation is properly monitored.

QUOTE

PROVIDING FOR THE UPDATE OF CODES

BRAZIL

“It should be noted that CVM [Comissão de Valores Mobiliários] views corporate governance as a dynamic process rather than a fixed set of measures. This code will be updated annually in line with changes in regulation and in the Brazilian and international markets.”

—CVM Recommendations on Corporate Governance,
June 2002

QUOTES

PROVIDING FOR THE UPDATE OF CODES

REPUBLIC OF KOREA

“The Committee. . .admits that this code may have shortcomings stemming largely from the short preparatory period allotted of six months. Also, the Code of Best Practice is evolutionary in nature and should be reviewed in light of changes in circumstances.”

—Jae-Chul Kim, Code of Best Practice for Corporate Governance, September 1999

BELGIUM

“The Committee believes that the Code should lend itself to revisions in the future in order to take account of the experience gained and the changes in legal and business practices. Therefore, the Committee will endeavor to have proper follow-up in place.”

—Maurice Lippens, The Belgium Code on Corporate Governance, December 2004

GERMANY

“As a rule the Code will be reviewed annually against the background of national and international developments and be adjusted, if necessary.”

—German Corporate Governance Code, May 2003

Permanent corporate governance committees

It is important to identify, designate, or set up an entity responsible for keeping abreast of corporate governance international and local changes, assessing the code's impact, and keeping it up to date. In some countries, code crafting committees have transformed themselves into standing commissions. In other cases the task of evaluating the impact of the code and monitoring corporate governance practices has been taken over by the main implementing agency such as the stock exchange. Examples are given on pages 76 and 77.

SETTING UP PERMANENT MONITORING STRUCTURES

CANADA

In 1994 the Toronto Stock Exchange issued guidelines for improved corporate governance known as the Dey Report. In the report the exchange recommended that “a successor committee. . . monitor developments in corporate governance and evaluate the continued relevance of our recommendations.”

DENMARK

It seemed natural for the Copenhagen Stock Exchange to continue the Nørby Committee’s work. The Copenhagen Stock Exchange Committee on Corporate Governance was formed to ensure the continued development of a management culture and management structures in listed companies. The composition of the committee was essential—not least because the stock exchange recognized the wisdom of adapting the recommendations to changing situations. The Copenhagen Stock Exchange’s supervisory board charged the committee with the following terms of reference:

- To monitor the development of corporate governance in the interaction between company managements, shareholders, and other stakeholders
- To monitor the development of the requirements generally governing corporate governance
- To collect the companies’ views and experience on implementing the Nørby Committee’s recommendations
- To assess the need for revising the Nørby Committee’s recommendations for corporate governance

GERMANY

The government commission that drafted the code of corporate best practices has acted as a permanent standing commission since the publication of the code in February 2002. The commission reviews the code regularly (at least annually), taking assessments of its impact into consideration.

REPUBLIC OF KOREA

After the original code was completed, the Korean Stock Exchange set up a Korea Corporate Governance Center in 2001. The center oversees issues related to the code so that it can be revised when necessary.

POLAND

The Polish Forum for Corporate Governance has been developing a publicly available rating system as a tool for monitoring the implementation of its corporate governance code. Such monitoring should also allow for the periodic review of the code provisions.

EXAMPLES

SETTING UP PERMANENT MONITORING STRUCTURES

TURKEY

The committee that developed the code was also entrusted with the task of assessing its impact and revising the code as needed.

SRI LANKA

The Committee on Corporate Governance of the Institute of Chartered Accountants in Sri Lanka (ICASL) retained a standing committee of the ICASL for several years after the first code was issued in 1997. In 2002 a Code of Best Practice on Audit Committees was issued, and a revised Code of Corporate Governance was issued in 2003.

THINKING
POINT

What criteria would you use to measure the impact of your code?

Measuring the impact of the code

Before undertaking any revisions to a code of best practices, it is essential to measure the impact of the current code and analyze its shortcomings. Measuring the direct impact of a corporate governance code of best practices is not always easy. Nor is it easy to determine which improvements in corporate governance are attributable to the existing code and which to other reform efforts. The following criteria have been used to assess the overall impact of codes.

Numbers of references to the code in the media

Some countries have adapted methods of evaluating advertising effectiveness and used criteria such as the number of media references and the number of articles devoted to the code. The data and information acquired may not be comprehensive since it is unlikely that all media comment will be identified. Also the financial reports, TV business news, business stories, stock exchange publications, and other similar literature may not all be positive, and so the monitoring body may need to distinguish between positive and negative comment.

Number of official endorsements of the code

One of the main objectives of corporate governance codes of best practice is to create consensus on a reform agenda and to persuade all major stakeholders to

MEASURING THE NUMBER OF OFFICIAL ENDORSEMENTS: SWITZERLAND

The Code of Best Practice on Corporate Governance was endorsed by the:

- Swiss Association of Pension Funds (ASIP)
- Association of Private Limited Companies
- Confederation of Swiss Employees
- Swiss Investment Foundation for Sustainable Development (ETHOS)
- Federation of Swiss Industrial Holding Companies
- Swiss Society of Chemical Industries
- Umbrella organization for small and medium enterprises (SGV)
- Swiss Banking Association
- Swiss Institute of Certified Accountants and Tax Consultants
- Swiss Insurance Association
- Swiss Retail Federation
- Swiss Society of Financial Analysts and Portfolio Managers (SSFP)

agree on a set of best practices. Some committees have therefore measured the success of the code by counting the number of target stakeholders that have publicly endorsed it.

Impact on overall corporate practices.

Surveys and country corporate governance assessments can measure changes in corporate practices resulting from the new code. An indirect measure might be the changes made to company by-laws. A more direct measure would count improvements related to board structures and practices, the disclosures of information, shareholder voting policies, and the like.

Impact on the corporate governance legal and regulatory framework

Some countries have used codes as a way to foster corporate governance reforms and to test the ground for developing new laws and regulations. The success of the code can therefore be assessed by measuring how quickly and to what extent new legislation is introduced and the overall corporate governance framework improved.

EXAMPLE

MEASURING THE IMPACT ON THE CORPORATE GOVERNANCE FRAMEWORK: SOUTH AFRICA

Philippe Armstrong, the main convener of the King II committee has identified several effects the committee's report has had on corporate governance activity in South Africa.

- The Johannesburg Stock Exchange revised its listing rules and increased the mandatory provisions.
- The Banks Act and regulations were revised.
- Insider trading and other financial markets statutes were introduced.
- A Register of Delinquent Directors was established.
- Legal backing for the accounting standards was provided.
- A review of corporate law was proposed.
- Protocols for state-owned enterprises and national Treasury regulations were introduced.

More recently, the government introduced the Municipal Finance Management Act placing extensive governance obligations on officials and executives associated with municipal financial administration. This proposal has provided a clear signal from policymakers that corporate governance is identified as a matter of national significance.

Impact of specific chapters of the code

Some committees or monitoring entities may also want to get a better understanding of which aspects of the code have had a greater impact. This may help focus attention on areas where improvements are more difficult to implement.

Level of compliance of listed companies.

Stock exchanges can be asked to provide information or assess the general compliance of companies with new listing rules based on the code. If a comply-or-explain mechanism has been introduced with the code, the stock exchange should also assess whether companies actually do disclose if they are in compliance with the code's recommendations and effectively explain their reasons for not complying.

MEASURING THE LEVEL OF CORPORATE COMPLIANCE

GERMANY

Gerhard Cromme, the chairman of the German Code Commission, reported that out of 72 recommendations, about 95 percent are followed by all DAX enterprises. Twenty-two of the DAX-30 enterprises report full compliance, with only one disclosed exception. Among the blue-chip DAX-30 companies, only 16 exceptions were disclosed.

For M-DAX enterprises, compliance is only half as good as for the DAX-30 enterprises. One sticking point was a modification to the code made in 2004: companies broadly resisted individualized disclosure of board member remuneration.

CANADA

A study was commissioned to evaluate the impact of the Dey Report five years after its publication. The objective of the research was to assess the extent to which corporate governance of public companies reflects the Toronto Stock Exchange (TSE) guidelines and to identify opportunities for the TSE and the Institute of Corporate Directors (ICD) to support sound practices. Chief executive officers from 1,250 TSE listed companies were invited to participate, and 635 replied. That response rate of approximately 51 percent was two or three times the national response rate for participation in business surveys.

The survey found that progress had been made toward implementing all TSE guidelines. Fully 95 percent of the CEOs said that the size of their board was suitable for individual accountability. However, only 18 percent had written up descriptions of the directors' position or installed a process for assessing board effectiveness. The CEOs' attitudes to the TSE guidelines ranged from enthusiasm to skepticism. Most respondents believed that:

- There was too much emphasis on and formalization of corporate governance
- The temptation for more regulation of governance should be avoided
- The TSE should use moral suasion to improve corporate governance
- The guidelines did not always make sense for smaller companies

Respondents felt that the compensation structure for directors was satisfactory, but few saw the need to have a formal process for evaluating the effectiveness of directors.

Areas where CEOs thought additional guidelines might be helpful included diversification of boards with respect to gender and race, preparing boards to deal with the internationalization of markets, and preventing long-standing boards from perpetuating their own entrenched weaknesses in the absence of any catalyst for change.

EXAMPLE

**MEASURING THE IMPACT OF SPECIFIC RECOMMENDATIONS:
 SOUTH AFRICA**

To measure the actual impact of specific aspects of the King 2 report, CLSA Emerging Markets developed a framework based on the key seven characteristics of good corporate governance established in the report: discipline, transparency, independence, accountability, responsibility, fairness, and social responsibility.

The impact of a code can be evaluated using these characteristics in the following manner:

	HIGH IMPACT	MEDIUM IMPACT	LOW IMPACT	NO IMPACT
Discipline				
Transparency				
Independence				
Accountability				
Responsibility				
Fairness				
Social responsibility				

Dealing with unsatisfactory results

The initial results of survey and studies measuring the impact of codes can sometimes be misleading. In some cases key findings can even be negative. When critics arise, they often fall into two opposite categories. In the first case the code is described as being too weak and not having sufficient impact on corporate practices and the reform agenda. In the second case codes are considered to be too prescriptive. Whether it is because of market pressure or regulatory requirements, companies complain that compliance is too burdensome and costly.

UNSATISFACTORY RESULTS**MISSTATEMENTS OF COMPLIANCE: SRI LANKA**

In Sri Lanka many companies state in their annual reports that they are complying with a wide variety of corporate governance practices. It is common knowledge, however, that many companies do not follow the corporate governance practices even though they say they do. An empirical study conducted by a firm of consultants in September 2002 confirmed the common knowledge. The study found that many claims that companies were following the corporate governance guidelines were grossly exaggerated or largely unsubstantiated.

BOX TICKING EXERCISE: UNITED KINGDOM

In October 2004 the Association of Chartered Certified Accountants (ACCA) published a survey it conducted on the impact of corporate governance rules and recommendations in the United Kingdom. Many board chairmen and company finance directors believed that the rules were having a negative impact upon competitiveness. Almost three-fourths of the top directors believed that compliance was taking up time that could more usefully be spent on improving the company. The ACCA concluded that “the new code appears to be a box ticking exercise instead of making a real difference.” Directors placed “satisfying the needs of the regulator” ahead of monitoring internal controls, managing risk, and improving the strategy and operations of the business.

INSUFFICIENT COMPLIANCE: THE NETHERLANDS

A study entitled “Corporate Governance in the Netherlands 2002: The Present Position” revealed that fewer than half of the listed companies complied with the comply-or-explain principle. The present corporate governance committee therefore recommended to the legislature that the comply-or-explain mechanism for listed companies should be given a statutory basis in the Civil Code.

THINKING POINT

Has a time frame been set to review and update the code?

To learn from and build on dissatisfaction with features of the existing code, monitoring committees need to review both the relevance of the content of the code and how the crafting process was conducted. Reviewing the notes, evaluations, and reports produced by the initial code crafting committee can lead to a better understanding of what might have gone wrong or been overlooked. In many cases the crafting committee may not have devoted enough time to the consultation process, and some essential stakeholders may have been neglected. In other cases, the committee may have made so many compromises in order to secure the support of a wide range of stakeholders that the content of the code may have been diluted. Alternatively, the code may be too ambitious and require companies to take on more than they are willing to do or are able to afford. Or the code may have recommended inappropriate implementation and enforcement mechanisms, even though the same mechanisms may have worked perfectly well in another country or context.

A code of best practice may not have its intended effect for any number of reasons. A committee that is assessing the impact of a code and looking for ways to improve it may find the following questions helpful:

- Were the committee's terms of reference clearly defined?
- Did the committee function well and were the right stakeholders represented?
- Did the code raise undue expectations?
- Was the right expertise sought?
- Were the country's current practices and reform needs well assessed?
- Were the models for the code well selected?
- Were any major issues left out of the code?
- Was sufficient time devoted to the consultation process?
- Were the perceptions and concerns of major stakeholders well understood?
- Was the impact of the code's provisions well assessed?
- Did the final code complement and enhance the existing corporate governance framework?
- Was the code set out in a clear, unambiguous, and reader-friendly format?
- Was the code properly disseminated and promoted?
- Did the code receive the required support?

When assessing the code's impact and shortcomings, it is also important to remember that codes of best practice are part of a more general corporate governance framework. As important a role as they play in fostering reforms and improving corporate governance practice, codes of best practice can only fulfill the purpose for which they are intended. They cannot reform an entire country's business practices overnight.

ANNEXES

1. Sample tasks for a consultant contract
2. Sample engagement letter for a consultant
3. Evaluating the committee's performance
4. Sample letter for telephone interview
5. Specimen letter of appreciation
6. Sample press release
7. U.K. code of practice on consultation
8. The Millstein Report (1997)
9. Summary of a corporate governance country assessment
10. Corporate governance challenges identified by the regional corporate governance roundtables (2004)
11. Monitoring and enforcing corporate governance best practices in the United Kingdom
12. The review of the OECD principles of corporate governance

ANNEX I. SAMPLE TASKS FOR A CONSULTANT CONTRACT

Following is a description of the key tasks included in the terms of reference for a consultant providing technical support to a code crafting committee in Sri Lanka:

Key Tasks

The advice and inputs expected from the Consultant engaged to provide technical support to develop a Code would be as follows:

- Advise the Code Crafting Committee on the present state-of-the-art internationally accepted Corporate Governance Principles and make recommendations as to which principles should be included in the host country's proposed Code.
- Assist in the preparation of the budget for the Code crafting process and assist the Committee to identify and access financing and/or funding sources, if necessary.
- Advise the Committee as to whether a suitable Code presently applicable in another part of the world or an internationally recognized set of principles such as the OECD Principles, could be used by the Committee as a basic guideline, and if so, decide upon the parameters for the "borrowing" and adapting of the principles.
- Advise the Committee as to how the proposed Code covers the major issues confronting the host country while responding to major international issues as well.
- Advise the Committee on planning the consultation process and hold discussions with the key stakeholders prior to the preparation of the Consultative document.
- Advise the Committee on how to draft and circulate a questionnaire to obtain the views of business, professional, and other stakeholders so that the survey results can become the foundation on which the proposed Code will be constructed.
- Advise the Committee on how to organize and co-ordinate a sufficient number of workshops to obtain responses, views, and comments.
- Advise the Committee on developing and maintaining an effective system of documentation
- Once responses from the consultation have been received, assist the Committee in considering the views, responses, and suggestions made by different stakeholder groups and advise the Committee on the relevance and validity of such submissions. Thereafter, provide professional inputs to enable the Committee to consider whether any modifications are required and if so, assist the Committee in making amendments.
- Advise the Committee on any legal recommendations, Stock Exchange or [regulatory] implications, and any other type of institutional or investor support, etc.
- Advise the Committee on suitable mechanisms to ensure that target companies disclose their compliance with the proposed Code as well as explain the methods by which they have implemented the provisions of the proposed Code.
- At the final draft stage of the proposed Code, critically assess every clause of the proposed Code to ascertain...whether each recommendation contained in the Code would contribute towards improving the corporate governance practices in the country and provide the Committee with brief comments on the effectiveness of each clause.
- Advise the Committee as to how the proposed Code could be enforced among different stakeholders.
- Assist the Committee to convene the "public" events to release the Code and to explain the provisions of the Code to stakeholders.
- Undertake any other matters that the Committee may entrust to the Consultant, and to advise the Committee as and when the Committee seeks the views and/or advice from the Consultant.

ANNEX 2. SAMPLE ENGAGEMENT LETTER FOR A CONSULTANT

Following is a sample letter, from Sri Lanka , for engaging a consultant to support the work of the code crafting committee:

.....

(give name and address of consultant)

.....

Dear.....(give name of consultant)

Consultancy assignment re: developing a Code of Best Practice on Corporate Governance

On [date], upon the recommendation of, you have been appointed as[title]. I am writing to set out the terms of your appointment.

It is agreed that this is a contract for services and is not a contract of employment.

You will be responsible to the Corporate Governance Code Crafting Committee set up under the auspices of [state the name of the group/organization initiating the Code Development Process] and you will be expected to function and discharge your services in accordance with the agreed time table to be developed in consultation with the Chairman and the Committee.

Appointment

Your appointment will be for a term of months commencing on [date], unless otherwise terminated earlier by and at the discretion of either party upon [one month's] written notice.

Time commitment

We require you to attend all meetings of the Committee which will be on a monthly basis, and we expect you to provide advice to the Committee expeditiously in order to ensure that the Code Crafting exercise is completed within a period not exceeding X months from the date of commencement of this assignment. The completion of the Code crafting exercise will be marked by the release of the Code.

Fees

You will be paid a total fee of, which would be settled in stages, as follows:

At the time of:

Commencement of assignment (10%)

The Consultative document being ready for issue to Stakeholders (50%)

The Code being published (40%)

Total =====

Outside interests

In the event that you become aware of any potential conflicts of interest, these should be disclosed to the chairman and secretary as soon as apparent.

Confidentiality

All information acquired during your appointment is confidential and should not be released, either during your appointment or following termination (by whatever means), to third parties without prior clearance from the chairman.

We look forward to your close co-operation towards the crafting of our country's Code of Best Practice on Corporate Governance.

Thanking you,
Yours sincerely,

Chairman
Corporate Governance Code Crafting Committee

ANNEX 3. EVALUATING THE COMMITTEE'S PERFORMANCE

Following are some of the questions that have been used in the United Kingdom by chairmen to help them in evaluating the performance of their committee:

- How well has the committee been performing against the performance objectives that have been set?
- Is the composition of the committee appropriate, with the right mix of knowledge and skills to maximize performance?
- Are relationships inside and outside the committee working effectively?
- Has the committee responded to any problems or crises that have emerged, and could or should these have been foreseen?
- Are the terms of reference for the committee the right ones?
- How well does the committee communicate with the secretariat and the project manager?
- Is the committee up to date with the latest developments in corporate governance?
- Are relationships and communications with key stakeholders managed effectively?
- Are the processes for setting the agenda effective? Do they enable committee members to raise issues and concerns?
- Is the project manager being used appropriately and to maximum value?
- How well prepared and informed are the committee members?
- Do committee members demonstrate a willingness to devote time and effort to understand the issues and a readiness to participate in events outside the meetings, such as forums, conferences, and workshops?
- What has been the value and quality of contribution of the various committee members at meetings?
- How effective and successful are their relationships with fellow committee members, the project manager, and the secretariat?
- Does the performance and behavior of each committee member engender mutual trust and respect within the committee?
- How well do the committee members communicate with key stakeholders?
- Are the committee members able to present their views convincingly yet diplomatically, and do they listen and take on board the views of others?
- Is appropriate, timely information of the right length and quality provided to the committee?
- Is the secretariat responsive to requests for clarification and amplification?
- Does the committee provide useful feedback to the project manager on its requirements?

ANNEX 4. SAMPLE LETTER FOR TELEPHONE INTERVIEW

Following is an example of a letter sent to individuals to be interviewed by telephone. The letter was used by the Higgs Committee in the United Kingdom for a survey it conducted in 2002.

Salutation

You may know that the Chancellor, Gordon Brown, and Secretary of State for Trade and Industry, Patricia Hewitt, have asked me to conduct an independent review of the role and effectiveness of non executive directors.

I attach great importance to building a detailed understanding of the role of the director through primary research. I have therefore asked MORI to conduct, on my behalf, a survey to collect views from a representative cross section of non executive directors active in corporate governance today. I regard this research as crucial to the Review. I therefore very much hope that you will be able to contribute and find time to speak with MORI.

The research will be in the form of a telephone interview, which should take no longer than 10 to 15 minutes to complete, conducted at a time convenient to you. One of the MORI team will be in touch with you shortly regarding your participation. As with all MORI studies, this survey will be conducted in accordance with the Market Research Society Code of Conduct. **This ensures that all answers and comments are confidential and non attributable.**

Thank you in anticipation for your contribution to this works. If you have any queries please contact [give name] from the MORI team on [telephone number].

Yours sincerely

Derek Higgs, Non Executive Directors Review
Robert M Worcester, MORI Chairman

ANNEX 5. SPECIMEN LETTER OF APPRECIATION

Following is an example, from Sri Lanka, of a letter of appreciation to be sent by the chairman of the code crafting committee to participants at consultation events.

Dear [give name],

CONSULTATIVE FORUM ON CORPORATE GOVERNANCE

We write to express our sincere appreciation of your active participation at the above forum held on (give date). Your participation was a source of great encouragement and assistance to us in our effort to formulate the Code of Best Practice on Corporate Governance and we value your contribution very much.

Our Committee will be taking serious note of all representations made and views expressed at these seminars/workshops as well as of other submissions made directly to us. Our endeavor to craft the Code of Best Practice on Corporate Governance over the next few weeks will benefit immensely by such inputs and the fruits of our combined efforts will certainly be of significance to the capital market development initiative in our country.

We look forward to your continued co-operation and support in the future, and assure you of our highest consideration at all times.

Thanking you,
Yours sincerely,

Chairman
Corporate Governance Committee

ANNEX 6. SAMPLE PRESS RELEASE

Following is an example of a press release on the work of the Copenhagen Stock Exchange Committee on Corporate Governance.


KOBENHAVNS FONDSBØRS
COPENHAGEN STOCK EXCHANGE

PRESS RELEASE

P.O. Box 1040
DK-1007 Copenhagen K

Visiting Address
Nikolaj Plads 5
www.cse.dk

Tel: +45 33 33 33 00
Fax: +45 33 12 00 13
E-mail: cse@cse.dk

Copenhagen Stock Exchange Committee on Corporate Governance to continue its work 10 June 2004

The supervisory board has asked the Committee to complete a set of recommendations suitable for the 'comply or explain' principle.

The Copenhagen Stock Exchange Committee on Corporate Governance has received a large number of comments in response to its report published in January 2004. The Committee has evaluated the comments and will complete the consultation process by publishing its conclusion.

However, corporate governance is developing rapidly. Hence, the European Commission is likely to present two recommendations next autumn which, among other innovations, are set to introduce the 'comply or explain' principle.

Against this background, the supervisory board of the Copenhagen Stock Exchange has requested the Committee to continue its work to complete a proposal for revised recommendations that, in the eyes of the Committee, will be suitable for application according to the 'comply or explain' principle. The proposal for revised recommendations will be submitted for consultation beforehand.

The Committee has undertaken to assume this work and expects to complete it in late 2004.

The comments received in response to the report of January 2004 and their conclusion are available at www.cse.dk and www.corporategovernance.dk

The Copenhagen Stock Exchange has decided that the conclusion of the consultation process in the spring of 2004 shall not form part of its disclosure requirements for issuers of shares. This being the case, only the



CVR no. 19 04 28 77
Giro no. 4 02 70 00

ANNEX 6. SAMPLE PRESS RELEASE (CONT.)



recommendations following from the Nerby Committee's report from 2001 are covered by the Copenhagen Stock Exchange's recommendation.

President and CEO Hans-Ole Jochumsen says: *"For many years, the Copenhagen Stock Exchange has strived to ensure best practice in the Danish equity market to attract more investors to the market. It is therefore vital that Denmark sends a message signalling that we consider the debate on corporate governance a top priority. The 'comply or explain' principle is already widespread in the EU Member States, making it an obvious road for us to take. The 'comply or explain' principle is preferable to the introduction of corporate governance structures in legislation since the 'comply or explain' principle allows the companies to do as they please as long as they explain the background to their actions."*

Chairman of the Committee Lars Nerby Johansen adds: *"The Committee is of the opinion that the process implemented by the Committee with the report of January 2004 and the subsequent consultation process have been crucial to the Danish debate on corporate governance. The report and the consultation process have enabled us to follow up the viewpoints that have emerged since the first report from the end of 2001. In light of the Copenhagen Stock Exchange's preparation to introduce the 'comply or explain' principle, we will now consider the recommendations, meaning that we will be able to make our proposal for a set of recommendations, which, in our opinion, will work under this principle."*

The Committee's members include:

Lars Nerby Johansen, Chairman (President & CEO of Group 4 Falck A/S), Mads Øvlisen (Chairman of the Board of Directors of e.g. Novo Nordisk A/S), Sten Scheibye (CEO of Coloplast A/S), Peter Ravn (Managing Director of SimCorp A/S), Henrik Stenbjerg (attorney-at-law and partner of Kromann Reumert), Finn L. Meyer (state-authorised public accountant and senior partner of KPMG) and Lars Rohde (CEO of the Danish Labour Market Supplementary Pension Fund).

For further information please contact:

Hans-Ole Jochumsen, President and CEO, tel. +45 33 93 33 66 or
Lars Nerby Johansen, Chairman of the Committee, tel. +45 33 15 83 20

ANNEX 7. U.K. CODE OF PRACTICE ON CONSULTATION

Following are extracts from the United Kingdom's Code of Practice on Consultation (Crown copyright 2004). Although the six consultation criteria in this code apply to public consultations for developing policy by officials in the British government, they provide a useful framework for consideration by committees when developing a corporate governance code of best practice.

CRITERION 1

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development [of the corporate governance code]
 - 1.1 Consultation is a continuous process that needs to be started early in the [code] development process.
 - 1.2 It is important to identify proactively relevant interested parties and those whom the [corporate governance code] will be likely to affect. These groups should be contacted and engaged in discussions as early as possible in the [code] development process.
 - 1.3 Informal consultation with these stakeholders should be conducted prior to the written consultation period. Not only does this lead to a more informed consultation exercise but it also ensures that stakeholders are engaged early and have a better understanding of the [corporate governance code].
 - 1.4 The formal consultation period should always include a written consultation exercise. This written consultation period should be a minimum of 12 weeks. [Crafting committees] should consider the specific circumstances of their stakeholders and consider longer consultation periods at certain times, for example during the summer holiday period....
 - 1.6 Where a consultation takes place over a holiday period or lasts less than 12 weeks, extra effort should be made to ensure that the consultation is still effective, by supplementing the written exercise with other methods of consultation....
 - 1.8 ... It is important to engage proactively with individuals [and] organizations ... Written consultation is not the only or even always the most effective means of consultation. Other forms of consultation may help this process. These might include:
 - Stakeholder meetings;
 - Public meetings;
 - Web forum;
 - Public surveys;
 - Focus groups;
 - Regional events; and
 - Targeted leaflet campaigns.

ANNEX 7. U.K. CODE OF PRACTICE ON CONSULTATION (CONT.)

CRITERION 2

2. Be clear about what your proposals are, who may be affected [target companies], what questions are being asked and the timescale for responses.
 - 2.1 Ask focused questions, and be clear about the areas of [corporate governance] on which you are seeking views. Responses that do not refer to the specific questions asked should still be accepted. Encourage respondents to provide evidence, where appropriate, to support their responses.
 - 2.2 Explicitly state any assumptions made about those who are likely to be affected by the proposed [code]. Encourage respondents to challenge these assumptions.
 - 2.3 As far as possible, consultation should be completely open, with no options ruled out. However, if there are things that cannot be changed because, for example, they are part of [the country's legal requirements] , then make this clear. ...
 - 2.4 If there are particular areas where respondents' input would be especially valuable, make this clear as well. Responses are likely to be more useful and focused if respondents know where to concentrate their efforts.
 - 2.5 Representative groups should be asked when responding to give a summary of the people and organizations they represent.
 - 2.6 Provide a list of consultees as an annex to your consultation document and ask for suggestions of other interested parties who should be consulted. It may also be helpful to refer to any earlier or informal consultation.
 - 2.7 Clearly state the deadline for responses and any alternative ways of contributing to the process in the consultation document.
 - 2.8 Explicitly state both who to respond to and who to direct queries to, giving a name, address, telephone number and e-mail address. This may be the same person.

CRITERION 3

3. Ensure that your consultation is clear, concise and widely accessible.

3.1 Clear

Use plain language: avoid jargon and only use technical terms where absolutely necessary. A consultation should be as accessible as possible. Explain complicated concepts as clearly as possible and, where there are technical terms, use a glossary.

3.2 Concise

Provide an executive summary to the written consultation document that covers the main points of the document, preferably no longer than two pages. Even if the document is technical, ensure that the executive summary is accessible to all. ...

3.3 Accessible

Ensure that the consultation documents are available in paper format and with the fullest use of electronic means. They should be available and easily found on the internet from the day that the consultation is launched.

3.4 Efforts should be made to bring the consultation to the attention of all interested parties. As well as using the internet you should consider publicizing the consultation in ways most appropriate for the groups you wish to reach.

3.5 Respondents should be able to respond electronically if they chose. Produce documents in electronic formats appropriate to achieving wide accessibility. Consider the range of electronic response methods to ensure that providing a response is simple, engages a broad range of people and encourages deliberation. Costs to users should never be such that they are an obstacle to effective consultation.

...

3.8 ... Certain issues may demand particular approaches to consultation: for example, discussion groups or meetings may be appropriate, especially where representative groups' capacity to respond to formal consultation is limited....

...

ANNEX 7. U.K. CODE OF PRACTICE ON CONSULTATION (CONT.)

CRITERION 4

4. Give feedback regarding the responses received and how the consultation process influenced the [corporate governance code].
 - 4.1 Responses should be carefully and open-mindedly analyzed.... Particular attention may need to be given to representatives bodies, such as business associations, trade unions, ... and other organizations representing groups especially affected. In order to ensure that responses are analyzed correctly, it is important to understand whom different bodies represent, and the methodology used to gain members' input into the response.
 - 4.2 Particular attention should be paid to:
 - Possible new approaches to the question consulted on;
 - Further evidence of the impact of the proposals; and
 - Strength of feeling among the particular groups.
 - 4.3 The consultation document should state the date when, and the web address where, the summary of responses will be published. As far as possible this should be within three months of the closing date of the consultation. Those without web access should be able to request a paper copy of this summary....
 - 4.4 The summary should give an analysis of the responses to questions asked: for each question there should be a summary of responses to that question and then an explanation of how it is proposed to change the [draft code] in light of the responses received. There should also be information provided on themes that came out of the consultation which were not covered by the questions.
 - 4.5 Wherever possible the summary of responses should also include a summary of the next steps for the [corporate governance code], including reasons for decisions taken.
 - 4.6 Explain who will use the responses and for what purpose, and make it clear that responses, including the name and addresses of respondents, may be made public unless confidentiality is specifically requested. ...

...

CRITERION 5

5. Monitor your [committee's] effectiveness, including through the use of a designated consultation co-ordinator.

5.1 Each [committee] should have a nominated consultation co-ordinator
They should act as an adviser to those conducting consultation exercises.

5.2 Consultation should be evaluated for effectiveness, looking at numbers and types of responses, whether some methods of consultation were more successful than others, and how the consultation responses clarified the ... options and affected the final [version of the corporate governance code].

...

ANNEX 7. U.K. CODE OF PRACTICE ON CONSULTATION (CONT.)

CRITERION 6

Ensure your consultation follows...best practice....

6.1 When consulting on a review of a [corporate governance code], ensure consideration is given to opportunities for reducing bureaucracy and regulatory burdens ...

...

6.4 Consider any unintended consequences of the [draft code] and ask respondents to highlight these in their responses.

6.5 When consulting, ensure that you ask about the practical enforcement and implication issues of your [corporate governance code], including asking respondents for alternative approaches to implementation....

...

ANNEX 8. THE MILLSTEIN REPORT (1997)

In 1997 Ira Millstein wrote a report for the Organisation for Economic Co-operation and Development that provides a set of 25 “policy objectives.” These include 20 “Perspectives for Public Policy Improvement” designed to assist policymakers and regulators in shaping the corporate governance environment. The perspectives listed in the Millstein Report provide a framework for policymakers to benchmark their corporate governance practices in their own country. Although these policy objectives were formulated in 1997, they are as pertinent and challenging as when they were first written and provide excellent guidance for developing a code.

THE MILLSTEIN PERSPECTIVES FOR PUBLIC POLICY IMPROVEMENT

1. Flexibility

Policy makers and regulators should be sensitive to corporations’ need for flexibility in responding to the changing competitive environment and the related need for flexible adaptive governance structures. Regulation should support a range of ownership and governance forms so that a market for governance arrangements develops.

2. Regulatory impact

Policy makers and regulators should consider the impact of any proposed regulatory initiative on the ability of the corporate sector to respond to competitive market environments. They should avoid those regulations that threaten to unduly interfere with market mechanisms.

3. Regulatory focus

Regulatory intervention in the area of corporate governance is likely to be most effective if limited to:

- **Fairness** – ensuring the protection of shareholder rights and the enforceability of contracts with resource providers
- **Transparency** – requiring timely disclosure of adequate information concerning financial performance
- **Accountability** – clarifying governance roles and responsibilities and supporting voluntary efforts to ensure the alignment of managerial and shareholder interests as monitored by boards of directors—or in certain nations boards of auditors—having some independent members.
- **Responsibility** – ensuring corporate compliance with the other laws and regulations that reflect the respective society’s values

4. Clarity, consistency, enforceability

Policy makers and regulators should provide clear, consistent, and enforceable securities and capital market regulations designed to protect shareholder rights and create legal systems capable of enforcing such regulations. Such regulations should seek to treat all equity investors including minority shareholders fairly and should include protections against fraud, dilution, self dealing, and insider dealing.

ANNEX 8. THE MILLSTEIN REPORT (1997) (CONT.)

5. Litigation abuse

Regulations aimed at protecting shareholder rights should be designed to protect against litigation abuse.

6. Basic contract, commercial and consumer law

Policy makers and regulators should ensure that an adequate system of contract, commercial, and basic consumer protection law is in place so that contractual relationships are enforceable.

7. Regulatory impact on active investors

Policy makers and regulators should review whether their securities, tax, and other regulations unduly hinder active investors and whether their regulations concerning institutional investors inappropriately inhibit them from participating as active investors.

8. Corruption and bribery

Policy makers and regulators should ensure that corporations function in an environment that is free from bribery and corruption.

9. Accurate and timely disclosure

Regulators should require that corporations disclose accurate and timely information concerning corporate financial performance. Adequate enforcement mechanisms should be provided.

10. Consistent, comparable disclosure

Regulators should cooperate internationally in developing clear, consistent, and comparable standards for disclosure of corporate financial performance including accounting standards

11. Ownership disclosure

Regulators should extend such disclosure requirements to the corporate ownership structure including disclosure of any special voting rights and of the beneficial ownership of controlling or major blocks of shares

12. Disclosure improvement

Regulators should encourage ongoing improvements in both disclosure techniques and formats.

13. Corporate governance legal standards

Policy makers and regulators should articulate clearly the legal standards that govern shareholder, director, and management authority and accountability including fiduciary roles and legal liabilities. However because corporate governance and expectations concerning roles and liabilities continue to evolve, legal standards should be flexible and permissive of evolution.

14. Shareholder protection

Policy makers and regulators should protect and enforce shareholder rights to vote and participate in annual shareholder meetings.

15. Independent boards

Policy makers and regulators should encourage some degree of independence in the composition of corporate boards.

16. Sound audit practices

Policy makers and regulators should encourage sound audit practices, which include board selection of and reliance on an independent auditor.

17. Investor competition

Governments should avoid regulations that unduly inhibit the ability of institutional investors to compete with one another.

18. Law-abiding corporations

Policy makers and regulators should ensure that corporations abide by laws that uphold the respective society's values such as criminal, tax, antitrust, labor, environmental protection, equal opportunity, and health and safety laws.

19. Individual welfare

Policy makers and regulators should support and encourage education and training efforts, the provision of unemployment benefits, and other similar efforts aimed at promoting the welfare of individuals.

20. Income and opportunity divergence

Policy makers and regulators may wish to consider the implications of significant divergence in income and opportunity paths.

ANNEX 9. SUMMARY OF A CORPORATE GOVERNANCE COUNTRY ASSESSMENT

Following are the key findings of a corporate governance Report on the Observance of Standards and Codes (ROSC) conducted by the World Bank in India. The report was issued and published in 2004.

The 2004 ROSC assessed the observance of OECD Corporate Governance Principles in India using the criteria:

- Observed (O)
- Largely observed (LO)
- Partially observed (PO)
- Materially not observed (MO)
- Not observed (NO)

I. THE RIGHTS OF SHAREHOLDERS

IA	Basic shareholder rights	O	<ul style="list-style-type: none"> • Shares traded through a stock exchange are held in dematerialized form in the two depositories: National Securities Depository and Central Depository Services. • Registration in a depository is proof of ownership. • Companies must maintain a register of shareholders or outsource this function to a share transfer agent. • Shares traded through stock exchanges are transferred through book entry at the depositories. • Cash settlement occurs at designated clearing banks of stock exchange clearing houses. Clearance/settlement occurs in DVP2 on T+2. • Novation exists at National Stock Exchange (NSE), but not Stock Exchange, Mumbai (BSE). • Guarantee funds have largely eliminated settlement risk. Central Bank plans to introduce real time gross settlement in 2004. • Annual and half yearly accounts are mailed to shareholders; quarterly accounts are published in newspapers and posted on web pages of issuers and stock exchanges. • Companies must file memorandum, articles of association and periodic financial information with a Registrar of Companies (ROC). Investors can access this information for nominal fee (about USD 1). • Usually, directors are proposed by board and elected by shareholders. Shareholders can propose candidates up to fourteen days before AGM [annual general meeting], but shareholders seldom use this right. • Board proposes dividend, and AGM approves it.
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I. THE RIGHTS OF SHAREHOLDERS (CONT.)

IB	Rights to participate in fundamental decisions.	O	<ul style="list-style-type: none"> • Certain fundamental corporate decisions are the exclusive power of AGM and require 75 percent majority: • changing registered office; • authorizing capital increases; • waiving pre-emptive rights; buying back shares; • amending articles of association; • delisting; • acquisitions, disposals, mergers and takeovers; • changes to company business or objectives; • making loans and investments beyond limits prescribed under CA Section 372A, • authorizing board to: (i) sell or lease major assets; (ii) borrow money in excess of paid-up capital and free reserves, and (iii) appoint sole selling agents and apply to the court for the winding up of company.
IC	Shareholders' AGM rights	O	<ul style="list-style-type: none"> • AGM mandatory, according to Companies Act (CA). • 21 day AGM notice (meeting place, time, agenda) sent to all shareholders. • In case of special business, agenda must set out material facts, including nature of concern or interest of any director or manager. • Some companies reportedly hold AGMs in remote locations. • Quorum is five shareholders. If quorum is not met after half an hour, meeting is dissolved if called by shareholders, or postponed for one week if called by board. • Shareholders may vote in person or proxy. • CA allows postal voting for fundamental situations. • Any shareholder may apply to Company Law Board (CLB) to call AGM. • Shareholders with 10 percent of paid-up voting capital can call EGM [exceptional general meeting]. • Shareholders can vote by show of hands or demand poll, if they own at least 10 percent of voting rights.

I. THE RIGHTS OF SHAREHOLDERS (CONT.)

ID	Disproportionate control disclosure	LO	No nominee accounts. Shareholder agreements need not be disclosed to company/shareholders. Prevalence of complex cross-holdings across family or business groups still fails to provide a fully transparent picture for shareholders.
IE	Markets for corporate control should be allowed to function	O	SEBI [Securities and Exchange Board of India] Takeover Code has been successfully tested in 25 + hostile bids. Takeover Code requires anyone whose holdings cross 15 percent threshold to make offer for at least 20 percent more of shares.
IF	Cost/benefit to voting	MO	Pension funds seldom exercise voting rights, instead exert influence through nominee directors on the board of their portfolio companies.

II. EQUITABLE TREATMENT OF SHAREHOLDERS

IIA	All shareholders should be treated equally	PO	Shareholders can apply [to] the CLB, SEBI or the company "Grievance Committee" for redress. Derivative and class action suits exist. Doubts persist about the effectiveness of legal remedies in practice.
IIB	Prohibit insider trading	PO	Insider trading is a criminal offense, but enforcement is problematic. Senior management must disclose to board potential conflicts of interest. Directors must disclose share dealings beyond certain threshold.
IIC	Board/Mgrs. disclose interests	PO	Reportedly, misuse of corporate assets and abuse in related party transactions remain problems.

III. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

IIIA	Stakeholder rights respected	O	Board is required to discuss material issues regarding stakeholders.
IIIB	Redress for violation of rights	PO	Redress can be sought through civil and high courts; however, there are long delays and backlogs.
IIIC	Performance enhancement	O	SEBI has issued detailed guidelines on the issue of stock options.
IIID	Access to information	O	Relevant information is posted on company and stock exchange websites, but quality of info varies among companies.

IV. DISCLOSURE AND TRANSPARENCY

IVA	Disclosure standards	LO	Companies must send annual report to shareholders, stock exchanges, DCA [Department of company Affairs] and ROC; content regulated by statute. Disclosure does not extend to level of ultimate beneficiary and structure of business groups. Quality of financial reporting improving, but stock exchanges lack sufficient resources to ensure compliance and rely heavily on auditors.
IVB	Standards of accounting & audit	LO	Quality of financial disclosure determined by DCA, SEBI and ICAI [Institute of Chartered Accountants of India]. ICAI says India conforms with ISA [International Standards of Auditing]. Judicial delays diminish deterrence factor of some penalties.
IVC	Independent audit annually	PO	Auditors can provide consulting services to the company they audit up to the level of the audit fee, and fees disclosed in the annual report. Disciplinary proceedings can be lengthy.
IVD	Fair & timely dissemination	O	Dissemination channels include direct mailing, company websites, the stock exchange, and press announcements. Printing/distribution of annual report to all shareholders and necessity of publishing accounts of all subsidiaries add greatly to issuer costs.

V. RESPONSIBILITIES OF THE BOARD

VA	Acts with due diligence, care	LO	Unitary board structure. Basic fiduciary duties are not spelled out in legislation, but embedded in sparse existing jurisprudence.
VB	Treat all shareholders fairly	LO	Board members have a fiduciary obligation to treat shareholders fairly. Shareholders can appeal to SEBI or the courts At least 2/3 of board rotational.
VC	Ensure compliance w/ law	O	The company secretary ensures the board complies with its statutory duties and obligations.
VD	The board should fulfill certain key functions	LO	There is no rule vesting the responsibility of overseeing the process of disclosure and communication with the board. Small companies practice "box-ticking."
VE	The board should be able to exercise objective judgment	PO	Audit and remuneration committees are common. Audit committee has three members, all non-executive and a majority of them independent. Director may have membership on 15 boards and ten committees and may chair five committees.
VF	Access to information	O	Clause 49 mandates information to be placed before the board; it is sufficient to inform directors about firm's financial/non-financial situation.

A Summary of Policy Recommendations for India (ROSC, 2004)

I. THE RIGHTS OF SHAREHOLDERS		
IA	Basic shareholder rights	NA
IB	Rights to participate in fundamental decisions.	The provision dealing with the selling or leasing of major assets should be further refined to avoid any abuse.
IC	Shareholders AGM rights	<ul style="list-style-type: none"> • NA
ID	Disproportionate control disclosure	<ul style="list-style-type: none"> • Shareholder agreements should be disclosed.
IE	Control arrangements should be allowed to function.	<ul style="list-style-type: none"> • NA
IF	Cost/benefit to voting	<p>Regulators should consider introducing an obligation that institutional investors acting in a fiduciary capacity adopt and disclose their corporate governance and voting policy.</p> <p>Regulators should also disclose to the public how they manage material conflicts of interest that may affect the exercise of their corporate governance rights.</p> <p>Shareholder activism among retail investors should be encouraged.</p>
II. EQUITABLE TREATMENT OF SHAREHOLDERS		
IIA	All shareholders should be treated equally	<p>Depository receipt contracts should provide owners with same rights to vote as are accorded to holders of underlying shares.</p> <p>Consider strengthening regulators' enforcement power to offset backlog and delays of court procedures.</p>
IIB	Prohibit insider trading	<p>Implement SEBI's initiative of a unique client code for each investor.</p> <p>There should be greater cooperation between NSE and BSE on surveillance.</p> <p>Publish share trading by directors and senior management in the newspaper.</p> <p>Successfully prosecute one insider trading case to enhance perception of market integrity.</p>
IIC	Board/Mgrs. disclose interests	<p>While audit committees should pre-vet related party transactions, ultimate responsibility of judging whether a related party transaction is in the best interest of the company should remain with the board.</p>

III. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

IIIA	Stakeholder rights respected	• NA
IIIB	Redress for violation of rights	Refer to Insolvency and Creditor Rights ROSC.
IIIC	Performance enhancement	Closely follow the international debate on good practices regarding the treatment of stock options.
IIID	Access to information	NA

IV. DISCLOSURE AND TRANSPARENCY

IVA	Disclosure standards	SEBI and stock exchanges need to cooperate more closely to effectively monitor and enforce compliance with listing agreement. Steps must be taken to clarify division of responsibilities among stock exchanges, SEBI and DCA to avoid unintentional regulatory overlap and potential conflicts.
IVB	Standards of accounting & audit	See Accounting and Auditing ROSC. Significantly enhance fines to act as credible deterrents.
IVC	Independent audit annually	Recommendations of Naresh Chandra Committee on Corporate Audit and Governance are included in pending legislation, which should go forward. Consider different options to subject auditors to an auditor oversight body that operates in the public interest and that is not under the control of the auditing profession.
IVD	Fair & timely dissemination	Give shareholders option to decline full annual report in lieu of summary, whose content would be regulated by SEBI.

V. RESPONSIBILITIES OF THE BOARD

VA	Acts with due diligence, care	<p>The fiduciary obligations should be clearly spelled out in the legal or regulatory framework.</p> <p>Have same standards of care for executive and independent directors, with few exceptions.</p> <p>Provide directors with access to training.</p>
VB	Treat all shareholders fairly	<p>Have DFIs [development finance institutions] nominate expert independent directors on their behalf.</p> <p>Maximum term of independent directors should be capped.</p>
VC	Ensure compliance w/ law	NA
VD	The board should fulfill certain key functions	<p>Consider consulting shareholders with regard to general compensation policy for senior management, rather than individual packages.</p> <p>The department in charge of corporate communication should have a direct reporting line to the board.</p> <p>Clearly-defined board procedures are needed to allow board to effectively exercise its oversight function on risk management.</p>
VE	The board should be able to exercise objective judgment	<p>Given that multiple board memberships by one person can interfere with performance of directors, companies and shareholders should consider desirability of such a situation.</p> <p>Consider special training and certification program for audit committee members.</p> <p>Adequate across-the-board compensation for independent directors will help increase supply of high quality candidates and ensure sufficient time is devoted to their responsibilities.</p> <p>Compliance with the audit committee requirement should be monitored closely by regulators.</p>

ANNEX 10. CORPORATE GOVERNANCE CHALLENGES IDENTIFIED BY THE REGIONAL CORPORATE GOVERNANCE ROUNDTABLES (2004)

Following is a summary of the key findings from a series of regional corporate governance roundtables conducted by the Organisation of Economic co-operation and Development in partnership with the World Bank and the International Finance Corporation with the support of various other organizations including the Global Corporate Governance Forum. Each regional roundtable has issued a white paper that can serve as background reference for developing a country code. The white papers can be downloaded from the OECD website at www.oecd.org

The roundtables have revealed a wide range of corporate governance challenges across the five regions including:

Enforcement

Perhaps the most widespread sentiment expressed in the roundtables was the importance of improving the enforcement of existing law and regulations. While legal traditions vary across countries, there is a broad recognition that the structure, vigilance, and capacity of the regulatory and judicial framework form an integral part of the corporate governance environment. All roundtables have emphasized the need to “close the gap” between formal provisions and actual implementation.

Ownership and control

In many parts of the world, ownership and control is highly concentrated in individual companies or groups of companies. Concentrated ownership is often seen as a solution to the fundamental principal-agent problem of corporate governance. In the absence of a credible legal and regulatory framework, however, the expected benefits may not be realized. (This is especially true when control is also kept through control pyramids and cross-holdings, which lead to a separation of ownership and control). The situation is often further aggravated by insufficient information about ultimate ownership and the use of opaque control structures.

The potential problems that arise from this combination of concentrated ownership, weak shareholder protection and insufficient disclosure has been highlighted in all the regional roundtables. The white papers recommend that policymakers should focus on improving transparency and disclosure and making boards more effective as well as developing and protecting the rights and equitable treatment of shareholders.

Shareholder rights and equitable treatment

Perhaps the most important problem that follows directly from the combination of concentrated ownership, opaque control structures, weak minority protection, and insufficient disclosure is the frequent abuse of related-party transactions. Curbing such transactions should be one of the top priorities for corporate governance reform and a prerequisite for attracting minority investors on a long-term basis.

Improving Board Effectiveness

Roundtable participants described most company boards as either:

- passive rubber stamps or
- active participants in furthering the interest of the controlling shareholder.

While most countries have established the legal duties of board members to exercise care and act in the interest of the company and all shareholders, these legal requirements often have limited influence on actual board practices. This issue reflects the limitations of the judicial system. It has been noted that in many countries participating in the roundtables minority shareholders have never filed a successful suit against a board member.

The role of banks

In many of the roundtable countries, banks have ownership structures that may create conflicts of interest and undermine their own governance as well as their role as monitor.

The role of stakeholders

The regional roundtables revealed that the mechanisms for stakeholder involvement in the governance of companies did not always work as hoped and that stakeholders sometimes faced abusive actions by corporate insiders that impeded their ability to take action illegal operations or seek effective redress for violations of their rights.

Transparency and disclosure

International accounting standards now influence disclosure requirements in all regions covered by the roundtables. These require all companies to take the steps needed to implement these standards.

As a direct consequence of the efforts to curb abusive related-party transactions, the roundtables have called for improvements in the disclosure of ownership to encompass beneficial owners.

ANNEX 11. MONITORING AND ENFORCING CORPORATE GOVERNANCE BEST PRACTICES IN THE UNITED KINGDOM

Following is a summary of the roles and responsibilities of the United Kingdom's Financial Reporting Council, the agency that monitors the country's corporate governance system.

The United Kingdom established the Financial Reporting Council (FRC) in 1990 to promote good financial reporting through its subsidiaries, the Accounting Standards Board and the Financial Reporting Review Panel. In 2003 the government announced reforms of the council designed to create independent regulation of the accountancy and audit profession and to raise corporate governance standards. In 2004 the "new" FRC became operational.

The aim of the FRC is to promote public and investor confidence in corporate reporting and governance. It has the following roles and responsibilities:

- Sets, monitors, and enforces accounting and auditing standards
- Oversees the regulatory activities of the professional accountancy bodies and regulating audit
- Promotes high standards of corporate governance.

The FRC :

- Maintains and monitors the effectiveness of the Combined Code.
- Ensures that the guidance on internal control (the Turnbull Guidance) is up to date
- Influences EU and global developments in corporate governance.

The Financial Reporting Council's functions cover the entire length of the corporate reporting and governance chain. Its remit is much wider than that of any previous regime in the United Kingdom or any equivalent regime in countries with major financial markets. This wide remit allows the council to look at issues affecting corporate reporting in a more coherent way than was possible in the past. The council intends to target its resources on the links in the chain that present the greatest risk to confidence in corporate reporting and governance.

In addition, the Financial Reporting Council oversees:

- **The Accounting Standards Board (ASB)**

The ASB:

- Provides a framework within which others can exercise judgment in resolving accounting issues
- Issues or amends accounting standards and
- Works in collaboration with the International Accounting Standards Board, national standard setters, and EU institutions to develop international standards.
- **Auditing Practices Board (APB)**

This board develops standards and guidance to underpin good auditing practices.

- **Professional Oversight Board for Accountancy (POBA)**

This board is responsible for the independent oversight of the regulation of the accountancy profession and for the regulation of audits, including the monitoring of audit quality.

- **The Financial Reporting Review Panel (FRRP)**

This panel reviews the financial information provided by public and large private companies to determine compliance with relevant accounting requirements.

- **The Accountancy Investigation and Discipline Board (AIDB)**

This board operates an independent and transparent investigation and disciplinary scheme to handle public interest cases.

In carrying out its regulatory functions, the FRC states that

- It has a preference for market-based solutions
- Where it chooses to intervene in the operation of the market, it will do so with as light as touch as possible.
- It intends its interventions to send strong signals to the market

This philosophy conforms with the Better Regulation Task Force Principles of:

- Proportionality
- Accountability
- Consistency
- Transparency

The council considers three questions when advising on new proposals for corporate governance or company law.

- Will change promote enterprise, investment, and the free flow of capital in support of growth and innovation?
- Will change maintain the right balance between oversight by shareholders and the directors' ability to drive the business?
- Will the market be enabled to reward strong performers and punish those who do not serve investors' interests, or will the regulatory authorities become, de facto, the judges of performance?

The FRC's goal is to ensure that enterprise continues to flourish, that the capital markets remain effective, and that people have trust and confidence in business. The council sees the role of the state not as judging corporate performance but as enabling the market—most particularly shareholders—to do so. The council's approach is to give shareholders the opportunity, and the means, to make their own judgements and hold management to account.

ANNEX 12. THE REVIEW OF THE OECD PRINCIPLES OF CORPORATE GOVERNANCE

Following is a summary of the amendments made by the Organisation of Economic Co-operation and Development to its Principles of Corporate Governance in 2004 after a careful review.

The review process was carried out by the Steering Group on Corporate Governance and involved:

- Consultations with a wide group of interested parties, with non-OECD countries, and with several high-level roundtables chaired by the Secretary General.
- A survey of corporate governance developments since 1999
- Draft revised principles were placed on the website for comment in January 2004 and resulted in 100 replies, which were posted on the website.

The major changes in the Principles involved:

- A new chapter on implementation and enforcement
- Stronger shareholder rights
- Improved disclosure
- Whistleblower protection
- Tightened responsibilities of boards

The revisions tackled major issues that included:

- **Controlling executive and director remuneration**
 - boards to align key executive and board remuneration with the long-term interests of company and shareholders and establish a remuneration policy (chapter VI)
 - statement that special remuneration committee with independent directors regarded as best practice in more countries (chapter VI)
 - the remuneration policy to be disclosed (chapter V)
 - shareholders to have ability to make their views known on the policy and to approve equity components of the scheme. (chapter II)
- **Abuse in company groups**
 - clear statement on fiduciary duties of board members to the company and not to the company group (chapter VI)
 - explicit statement that boards to review related-party transactions using independent directors (chapter VI)
 - make general statement of board independence to cover those in a position to influence the company and not just management (chapter VI)
 - stronger annotations to disclosure of related-party transactions (chapter V)
 - stronger principle on board and executive disclosure of material interests (chapter III)
 - stronger call for protection of minority shareholders. (chapter III)
- **Self-dealing and abuse by insiders**
 - strengthened principle calling for boards to establish ethical guidelines and effective compliance procedures (chapter VI)

- boards to oversee internal controls and provide confidential access to whistleblowers (chapter VI)
- tightened disclosure standards to the board and to the market (chapter V)
- strengthened criteria for board independence and greater possibilities for shareholders to question boards and to participate (chapters VI and II)
- **Improved financial market integrity**
 - better disclosure by the company, including related-party transactions
 - boards to focus on overseeing internal controls and major accounting assumptions through independent audit committee (chapter V)
 - more emphasis on auditor independence and reference to IOSCO standards (chapter VI)
 - accountability of external auditors to shareholders and duty of professional care to the company (chapter V)
 - those providing analysis and advice to be free of conflicts of interest (chapter V)
 - improved enforcement (chapter I)
- **Improved enforcement**
 - greater role for shareholders and improved transparency
 - tightening of fiduciary responsibilities of boards
 - improved financial integrity
 - clear objectives for policy in establishing a system leading to transparent and efficient markets
 - legal and regulatory instruments to be transparent and enforceable
 - clear division of responsibilities between domestic authorities
 - supervisory, regulatory, and enforcement authorities should have authority, integrity, and resources to fulfill duties
- **Better exercise of ownership**
 - call for effective shareholder participation in key decisions such as the nomination and election of board members proposing resolutions and making views known on compensation policy (chapter II)
 - call for institutional investors acting in a fiduciary capacity to declare voting policies and how they handle conflict of interests (chapter II)
 - improved possibilities for shareholders to consult with each other on key governance issues (chapter II)
 - eliminating impediments to cross-border voting (chapter III)
 - more detailed annotations covering use of proxy voting and conduct of shareholder meetings (chapter II)



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