



THE WORLD BANK

Report on the Observance of Standards and Codes (ROSC)

Corporate Governance

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Corporate Governance Country Assessment

Ghana
May 2005

Overview of the Corporate Governance ROSC Program

WHAT IS CORPORATE GOVERNANCE?

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

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

WHY IS CORPORATE GOVERNANCE IMPORTANT?

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

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

THE CORPORATE GOVERNANCE ROSC ASSESSMENTS

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

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

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

By the end of June 2005, 48 assessments had been completed in 40 countries around the world.

REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)

Corporate governance country assessment

Ghana

May 2005

Executive Summary

This report provides an assessment of Ghana's corporate governance policy framework, enforcement and compliance practices. It highlights recent improvements in corporate governance regulation, makes policy recommendations, and provides investors with a benchmark against which to measure corporate governance in Ghana.

Ghana is a promising capital market with remarkable recent performance, significant momentum and will for improvement. Continuing challenges are presented however, by its weak institutional base and capacity, as well as by persistent gaps in enforcement.

The report identifies several key next steps that focus on implementation, including:

1. A concentrated effort to raise awareness of corporate governance, transparency and accountability. The effort should include director training, possibly with Securities and Exchange Commission certification requirements.
2. An overhaul of the institutional framework and capacity, including training, resources, and effectiveness. Particular focus should be directed at promoting the new specialized commercial court, and private arbitration; developing a central depository system for equities; creating an effective companies registry; and improving enforcement of accounting/auditing by the Institute of Chartered Accountants.
3. Continued legislative review and modernization.
4. An improvement of SEC resources and training would enable it to focus on rule-making and enforcement of disclosure quality, related party transactions, insider trading, ownership disclosure (especially by directors and insiders), management of conflicts of interest among market operators, and shareholder redress. Improved electronic market surveillance by the Ghana Stock Exchange will assist with this ambitious agenda.

These measures will help develop Ghana's capital markets, attract investors, and promote best practice of investor protection.

Acknowledgements

This assessment of corporate governance in Ghana was conducted in March 2005 by Tatiana Nenova of the Corporate Governance Department of the World Bank, as part of the Reports on Observance of Standards and Codes Program. The ROSC was based on a corporate governance template-questionnaire completed by Lawfields Consulting. Messrs. /Mmes.: Eric Obese-Jecty, Paul Rusten, Kofi-Boateng Agyen, Papa Demba Thiam, Christopher Juan Costain, Dr. Michael Mah'moud and Dr. Francis Appiah provided advice and comments.

The assessment reflects technical discussions with the Securities and Exchange Commission - Ghana, the Bank of Ghana, the Ghana Stock Exchange, the Ministry of Justice, the Registrar General, the Attorney General's Business Law Division, the State Enterprise Commission, as well as commercial banks, issuers, and numerous market participants.

The ROSC assessment for Ghana was cleared for publication by the Securities and Exchange Commission of Ghana in January, 2006.

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Country assessment: Ghana

Ghana's capital markets development will be greatly stimulated by improved enforcement, and stronger institutional capacity of most regulators and key administrative and judicial bodies. The legal and regulatory framework is less of a priority for reform in this respect. Business practices still fall short of promoting an ethical, responsible and transparent corporate governance environment. Corporate governance and capital markets awareness of retail investors is largely non-existent. Institutional investors are not very active. Boards tend to be captive to majority shareholders, and the governance process tends to bypass smaller blockholders and retail investors. Concerns over loss of control, costs of listing, transparency and accountability keep many medium and larger firms from listing.

Market profile

Well-performing market with high potential; poor awareness of corporate governance

The Ghana Stock Exchange (GSE), in existence since 1990, is quite illiquid with a market turnover ratio of less than one percent. It has a market capitalization of US\$2.1 billion (24% of GDP) for 2004, excluding Anglogold Ashanti whose market capitalization is US\$8.7 billion. There is a limited bond market. There are 29 listed companies as of March 2005. IPOs are on the rise, and GSE was one of the best emerging market performers for 2003-4. Institutional investors are somewhat passive, focused on short-term profit rather than corporate governance issues. Awareness of corporate governance is in incipient stages. Ownership concentration is high, with foreign and state ownership, and rarely family ownership.

Common law system, fairly sound, slightly out of date

Ghana has a common law legal system. The Companies Code 1963 is based on UK legislation. The Securities Industry Law 1993 created the Securities and Exchange Commission (SEC). The two laws, as well as the GSE rules, are currently under review, as part of the Financial Sector Strategic Plan.

Key players include the Securities and Exchange Commission, and the Ghana Stock Exchange

Listed companies are under the supervision of SEC, as are investment advisors, broker/dealers, unit trusts, mutual funds, share transfer agents, trustees of collective investment schemes, custodial services providers, the Central Securities Depository, registrars to a public issue of securities, and underwriters. Initial registration of companies is conducted with the Registrar General's Department, a department at the Attorney General's office and the Ministry of Justice. The GSE is an SRO under the supervision of the SEC. A central securities depository was established in 2004 by the Bank of Ghana for government securities. The system is to be developed further to cover equity in 2005, following respective legislative approval. Banks are regulated by the Bank of Ghana, insurance companies by the National Insurance Commission. The State Enterprises Commission oversees state-owned enterprises and statutory corporations. The court system is generally over-burdened, slow, and may be biased. A pilot fast-track High Court, the Ghana Arbitration Centre, and a specialized Commercial Court have become operational.

Key issues

Several key features distinguish Ghana's corporate governance framework. First, the presence of multinational companies and banks introduces a high corporate governance standard as a source of emulation and learning. Second, Ghana is characterized by a relatively large set of institutional investors (who are yet to

become active in the area of corporate governance), and a small but sophisticated securities market operators industry, servicing mostly foreign investors. Retail investor awareness is non-existent. Third, bank credit to the private sector is low, at 12% of GDP, and bank assets are mostly held in government paper. This is in part because of high reserve requirements, and attractive interest rates on government paper. The low lending figures also reflect the composition of the private sector borrowers, most of whom are SMEs or informal microenterprises. The informal sector comprises 72% of the labor force and a large part of GDP. Fourth, weak institutional base and capacity limits enforcement improvement. Finally, the stock market is small, though growing in popularity for potential issuers.

Investor protection

Shareholder rights generally well-observed

Basic shareholder rights are generally well-observed in Ghana. Information is available in a timely and regular manner, but enforcement, especially on material facts disclosure, monitoring for content, RPT and ownership disclosures, is lacking. A central depository handling equity securities is expected to start operation in 2005. Private registry services are not regulated. It is impossible even for a sizeable shareholder to nominate a director against the will of the board and management.

Basic Annual General Meeting (AGM) rules in place

The AGM has exclusive power to approve with $\frac{3}{4}$ majority changes to founding documents and authorized capital, and by 50% substantial sales of assets. AGM procedures are adhered to, but approvals are pro-forma, and there is no real sense of shareholder impact for listed companies. Controlling shareholders monopolize AGMs though the board. Voting by mail exists, but is rarely used, in part due to unreliability of the postal system. The law does not provide for electronic voting.

Shareholders are treated equitably in the law

Information about share classes is available from company Regulations (bylaws), prospectus, and any changes are reported as material facts. Approval of decisions by negatively impacted classes is regulated.

Disclosure

No disclosure of ultimate beneficial ownership

Companies disclose the direct holdings of the 20 largest shareholders in their annual report, as well as any 15% owners to SEC. It is impossible to know the ultimate owners of corporations. Direct / indirect director holdings over 2% are disclosed to shareholders by law, though compliance is reportedly weak.

Harmonization needed between SEC regulations and Companies Code on mergers

Mergers can happen on exchange (per SEC regulations and the GSE Code on Takeovers and Mergers) and off exchange, per the Companies Code. The two regimes need to be harmonized. SEC further plans to clarify procedures in a manual on Mergers and Acquisitions.

Lack of related party transactions disclosure and enforcement

Related party transaction (RPT) disclosure regulations are adequate. Enforcement of RPT rules, including approval mechanisms, is virtually non-existent. Since there is no enforcement of RPTs, it is impossible to gauge the extent of infraction; however, stories of abusive RPTs abound. Related loans are allowed to senior management.

Disclosures adequate by law and timely –

Public and private companies file an audited consolidated annual report, which is also mailed to shareholders, albeit the postal system may be unreliable. The SEC

monitoring of quality of content needed

requires quarterly, and the GSE semi-annual reports. GSE distributes periodic reports, prospectuses, and other company filings at its front desk (online availability is planned in the long term). Information is also available from the Companies Registry by law, though in practice this information channel is non-functional. The company's registered office should provide some information as well. SEC efforts to monitor disclosure do not extend sufficiently over content and quality of information, though it has achieved significant improvements of disclosure compliance since the introduction of filing rules in mid-2003. Fines are adequate; however, for the listed companies, mostly banks and multinationals, fines are more of an annoyance than a real deterrent. Information access by retail investors is not functional.

Lack of enforcement on disclosure of material events

Material facts, including changes in directors, company secretary, auditors, bylaws, substantial shareholders, liquidation, changes in control or subsidiaries, and special resolutions, must be disclosed in real time to the public, but frequently are only reflected in periodic reports. There is little enforcement.

Weak MD&A and other non-financial disclosures

The annual report does not contain company objectives, stakeholder issues, or governance policies, but must reflect risk factors, RPTs, director and executive pay, and direct (not ultimate) ownership. A Management Discussion and Analysis (MD&A) is normally covered by the Chairman report. SEC enforcement is predicated on capacity and expertise. Compliance with non-financial disclosures is weak.

Company oversight and the board

Single-tier boards, captive to main owners

Ghanaian companies have single-tier boards. A third of the board is up for re-election annually for public companies. For listed companies, which are rarely family-owned, it is not common practice that the Chairman and Chief Executive is the same person. In family firms, such overlap is frequent. Most boards do not yet play a central and strategic role, and are dominated by the controlling owner. Public companies tend to hold quarterly board meetings, and private ones meet much less frequently. Shareholder nomination of directors is not assured effectively by law, and blockholders find themselves using informal pressure to attain a board seat.

No rules on board independence

There are some requirements for non-executive directors on boards, but no full independence rules. The listing rules require directors as far as possible to be non-executive. By SEC Guidelines, which are voluntary, the chairman of the audit committee is required to be non-executive. Boards are generally not independent from controlling owners, and are not effective in managing corporate governance practices or monitoring conflicts of interest.

Limited audit committee effectiveness

Listed companies must have audit committees. SEC Guidelines recommend a non-executive chairman of the committee, and financial expertise criteria for members. The committee reports to the SEC semi-annually on its activities. Audit committees are not considered very effective, and lack expertise and access to key documents.

Equitable treatment of shareholders is not assured by fiduciary duties

Duties of care and loyalty are adequate by law. In practice, there have been no lawsuits. Directors do not have to treat all shareholders equally, but may give special (but not exclusive) consideration to the shareholders they represent, by law.

No formal recognition of IoD training

The SEC Guidelines recommend director training. The Institute of Directors (IoD) has published a code of ethics for all directors, and provides certified training programs, but there is no formal recognition by the SEC of such certificates.

Wide SEC administrative powers, significant resource and expertise constraints

SEC and other supervisory authorities are resource-constrained, and find it hard to meet the increasing regulatory tasks resulting from the expansion in the financial services industry. Scarce resources and inadequate training force regulators to focus their efforts on a limited number of areas. SEC has wide administrative enforcement powers, and can provide redress upon shareholder complaint.

New fast track High Court and Commercial Court expected improve redress

Legal recourse against directors or insiders is available, though rarely used due to high costs and delays associated with court cases. The court system is overburdened, slow, and reportedly corrupt. A pilot fast track High Court, as well as a new Commercial Court are expected to provide more effective avenues for redress.

Weak defense of minority rights

Any shareholder may apply to court to cancel an AGM resolution for unfair discrimination/ prejudice, or decisions contradicting the law or company bylaws. Any shareholder can sue directors on their duty of care and diligence. Directors and officers carry civil and criminal liability for false statements. Most observers do not believe minority rights to have a real defense.

5% share capital can call an AGM

The law allows a 5% shareholder (10% for private firms) to call an AGM. Any shareholder can add items onto the agenda.

Withdrawal rights lack a "fair" price rule

Shareholders have oppression rights in case of unfair discrimination / prejudice, whereby the court may order the company or other shareholders to buy out the aggrieved shareholder. The law does not specify a "fair" price for such buy-out.

Weak GSE surveillance

The GSE market surveillance staff is scarce, and there is some ambiguity as to division of monitoring duties between SEC and GSE, that SEC is addressing.

No effective company registry functions

The Registrar General's Department does not provide effective company oversight, due to resource, technology, and training constraints. It doesn't offer effective public access to company filings, due to insufficient computerization and search capabilities. The Registrar General is responsible for the enforcement of the Companies Code, and can impose penalties on defaulting persons, but does not do so. A plan for the body's upgrading / training has been developed, and it has been partially computerized.

Accounting and auditing standards not sufficiently well-enforced

The Ghana National Accounting Standards are partly based on the pre-IFRS International Accounting Standards. UK audit standards are incorporated and applied by extension. The audit profession is regulated and licensed by the Institute of Chartered Accountants. This body investigates complaints, and can reprimand, publish the offense, or de-license, but in practice does not have sufficient enforcement and monitoring capacity. Reservations have been voiced by market participants on the quality of auditors. SEC has plans to register accountants / auditors that would be eligible to work with listed firms.

Recommendations

The following recommendations are aimed at improving the Ghanaian Corporate

Governance framework in compliance with the OECD Principles.

Overhaul the institutional framework

Improved SEC resources and training would enable it to focus on enforcement

The SEC needs strengthening, not least because it aspires to become internationally compliant with IOSCO requirements. A separate enforcement department at the SEC would serve to focus and improve SEC monitoring efforts. That would also involve an enhancement of SEC personnel, training and capacity. A special attention is required to quality of disclosed information, RPT disclosure and enforcement, insider trading enforcement, ownership disclosure enforcement (especially by directors), management of conflicts of interest among market operators, rule-making, and shareholder redress. The SEC redress functions would benefit from enhanced transparency, for example by opening the hearings of the Administrative Hearings Committee to the public. Best practice suggests strict enforcement of the “comply or explain” policy for the SEC Guidelines. The SEC could consider strengthening its recommendation for director training. In this case, a body should be licensed to provide such training.

Specialized commercial courts, and private arbitration should be promoted

A pilot fast track High Court is expected to provide relatively speedier dispute resolution, but its expertise and specialization remain to be addressed. The new specialized Commercial Court is still to demonstrate its improved functioning and would require continued training, resources, and monitoring for quality. Best practice suggests private arbitration promotion as an alternative dispute resolution mechanism.

Develop a central registry system for equities

The development of the central depository system for equities should be completed, and transferred to SEC jurisdiction, after legislative approval, with a special effort focused on migrating to a central registry system. This will eliminate delays and inconvenience of physical shares, and clear up ownership uncertainty (e.g. in case of custodian bankruptcy), among others. The creation of a clearance system for brokers would potentially speed up settlement of share trades.

Improved electronic market surveillance by GSE is suggested

GSE surveillance efforts also need resources, staff, and training. In the long term, market surveillance could become fully electronic, including a real-time link between the SEC and GSE, as well as GSE and brokers, and a consolidated electronic database of insider holdings. GSE provision of company filings, which is now manual, could be upgraded to an online information portal.

Create an effective company registry

The Registrar General’s Department would provide more effective oversight if it is adequately staffed, trained, and computerized. Per best practice, company filings are readily available to the public, and filings are enforced and monitored for content, if need be by striking non-compliant companies from the registry. That includes monitoring the duty of companies to register charges when they borrow. Documentation could be uploaded in electronic form for easy searchability. The existing plans for the Registrar General’s upgrading could serve as a basis for the above suggested reforms. Jurisdiction over public firms could be taken up for a careful discussion, in terms of whether the SEC or the Registrar General has resources to assure effective disclosure and enforcement.

SOE governance should be improved

The process of corporatization of state-owned enterprises (SOEs), which is closely linked to the Companies Code revision, is also of some urgency, as is encouraging larger SOEs to list. The State Enterprises Commission is an integral part of the process, and could take more immediate interest in the governance

framework for SOEs. In this respect, an assessment of SOE corporate governance would be of use.

Higher quality of accounting and auditing

Audit and accounting quality needs to be monitored and enforced effectively by the supervisory body. The Ghana National Accounting Standards need to be reviewed in terms of their compliance with international accounting and audit standards. Stronger enforcement is also warranted for non-licensed individuals practicing as accountants or auditors. Best practice requires that auditor independence be defined in the law, not in the Code of Professional Conduct of Accountants, as is currently the case. An Accounting and Auditing ROSC assessment would be a valuable assessment tool for Ghana.

Continue the legislative review and modernization

Financial Sector Strategic Plan and other reform initiatives to be completed

The Financial Sector Strategic Plan is well positioned to continue its efforts to overhaul the laws relating to capital markets. In addition, the Business Law Division (Ministry of Justice) should complete its reviews of the business law framework and make operational its promotional efforts of legal understanding among companies. Best practice suggests boarder public consultations on laws, to reach all stakeholders.

Companies Code to be updated

The update of the Companies Code 1963 is of particular importance. Urgent amendments include the need to harmonize it with SEC regulations, and update it in reference to electronic transfer of shares and other innovations. Another priority is the harmonization of the two codes on mergers, so that off-exchange mergers are disclosed and occur at the same price as they would on the stock exchange, thus precluding companies “arbitraging” between the two regimes.

Board representation and nomination process to be improved

Full independence rules for boards, and rules allowing smaller blockholders to be represented on the board (e.g. cumulative voting / proportional representation), are needed. The Companies Code should expressly allow minority shareholders to nominate a director. Best practice suggests that audit committees are entirely composed of independent directors.

Draft missing regulations in new areas

The related party definition typically includes large owners with less than 50%. Related loans to executive, as well as non-executive, directors are banned in most countries, given that company’s main business is not lending. Disclosure of ultimate beneficial owners is mandated per best practice, and annual reports contain company objectives, stakeholder issues, governance policies, and an MD&A section.

Some areas are in a regulatory vacuum, e.g. credit registries, bond market issues, custodians, and private share registry services. Custodians need specific operating guidelines, including protective provisions for beneficial owner in the event of custodian bankruptcy.

Increase awareness of corporate governance issues

Promote director / executive training, as well as a shareholder association

Awareness and institutional investor activism need to be developed to assure an ethical, responsible and transparent corporate environment. Executive and director training are central. The functioning corporate governance organizations could coordinate their efforts, to focus resources and achieve higher shareholder recognition. The investment community could support the creation of a shareholder association. Other initiatives include public awareness campaigns.

Summary of Observance of OECD Corporate Governance Principles: Ghana and World Average

Principle	Ghana	ROSC Average
I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK		
IA Overall corporate governance framework	75	N.a
IB Legal framework enforceable and, transparent.	50	N.a
IC Clear division of regulatory responsibilities.	50	N.a
ID Regulatory authorities have sufficient authority, integrity and resources.	25	N.a
II. THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS		
IIA Basic shareholder rights	25	69
IIB Rights to participate in fundamental decisions.	75	64
IIC Shareholders AGM rights	75	63
IID Disproportionate control disclosure	50	50
IIE Control arrangements should be allowed to function.	25	56
IIF The exercise of ownership rights should be facilitated.	25	28
IIG Shareholders should be allowed to consult with each other.	100	N.a
III. EQUITABLE TREATMENT OF SHAREHOLDERS		
IIIA All shareholders should be treated equally	50	56
IIIB Prohibit insider trading	50	56
IIIC Board/Mgrs. disclose interests	25	45
IV. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE		
IVA Legal rights of stakeholders are to be respected.	75	69
IVB Stakeholder redress	50	68
IVC Performance-enhancing mechanisms	100	68
IVD Stakeholder disclosure	50	75
IVE "Whistleblower" protection	75	N.a
IVF Creditor rights law and enforcement	50	N.a
V. DISCLOSURE AND TRANSPARENCY		
VA Disclosure standards	50	73
VB Accounting standards	50	77
VC Independent audit annually	25	66
VD External auditors should be accountable to the shareholders	50	N.a.
VE Fair & timely dissemination	75	67
VF Research conflicts of interests	25	N.a
VI. RESPONSIBILITIES OF THE BOARD		
VIA Acts with due diligence, care	50	55
VIB Treat all shareholders fairly	0	49
VIC High ethical standards	75	68
VID The board should fulfill certain key functions	75	46
VIE The board should be able to exercise objective judgment	25	41
VIF Access to information	75	68

Source: All Completed ROSCs FY02-FY04

Note: The numerical ratings correspond to: 100=Observed; 75=Largely Observed; 50=Partially Observed; 25=Materially Not Observed; 0=Not Observed.

Principle - By - Principle Review of Corporate Governance

This section assesses Ghana's compliance with each of the OECD Principles of Corporate Governance. Policy recommendations may be offered if a Principle is less than fully observed. **Observed** means that all essential criteria are met without significant deficiencies. **Largely observed** means only minor shortcomings are observed, which do not raise questions about the authorities' ability and intent to achieve full observance in the short term. **Partially observed** means that while the legal and regulatory framework complies with the Principle, practices and enforcement diverge. **Materially not observed** means that, despite progress, shortcomings are sufficient to raise doubts about the authorities' ability to achieve observance. **Not observed** means no substantive progress toward observance has been achieved.

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

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

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

Assessment: Largely Observed

Capital markets. The Ghana Stock Exchange (GSE), in existence since 1990, is quite illiquid with a market turnover ratio of less than one percent. It has a market capitalization of US\$2.1 billion (24% of GDP) for 2004, excluding AngloGold Ashanti whose market capitalization is US\$8.7 billion.¹ There is a limited bond market. The GSE has constituted a provisional list (currently with 1 company), where unlisted firms can be groomed for listing. Listing on the GSE is encouraged with a corporate income tax rebate of 3 percentage points (down from the common rate of 28%).

GSE has currently 29 listed companies. AngloGold Ashanti represents 81% of the market in 2004 after the merger of Ashanti Goldfields and AngloGold (South Africa), up from Ashanti Goldfields' share of 29% in 2003. In 2003, other sizeable issuers were SSB Bank, Ghana Commercial Bank, and Standard Chartered Bank, each representing roughly 10% of total market capitalization. New listings have sharply increased as 5 companies listed in 2004 and 7 are preparing to do so in 2005.² Listings have been spurred mainly by heightened interest by privately owned companies, as well as the government's Divestiture Program which privatizes SOEs. The GSE All Share Index has doubled between 2003-4, as Ghana was one of the best emerging market performers in the recent past.

Listed companies must maintain at least 25% free float, which has occasionally been waived at GSE discretion for very large companies. There is no official free float figure.

Institutional investors, such as the largest one, the national pension scheme SSNIT, as well as 19 banks, 5 big insurance companies, 4 mutual funds and 4 unit trusts, are somewhat passive. SSNIT has holdings in virtually all listed and at least 40 non-listed companies. Importantly, institutional shareholders cannot attain a board seat in listed companies unless invited. Institutional investors are focused on short-term profit more than corporate governance currently.

Ownership framework. The listed firms are multinationals or privatized banks, with very few listed family-controlled companies.³ The average holding of the top 4 owners of the 10 largest listed firms was 70%. The government is strongly present in listed banks and manufacturing companies, recently privatized. A substantial number of listed firms are majority controlled by a multinational. Foreign and domestic institutional investors would typically hold a minority share in listed firms, and retail investors are estimated to have a miniscule share totaling less than 5% of the market.⁴ There are restrictions on ownership by non-resident foreigners, of up to 10% individual holdings in a listed company, and not more than 74% in total, without approval. Non-listed firms are, in their vast majority, family owned. Pyramids and cross shareholdings are not frequent.⁵ Up to 15% of shares can be held in treasury, but not by a subsidiary (CC §56(d), 65).

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

¹The 2004 figures, US\$11 billion (111% of GDP), reflect the merger of Ashanti Goldfields and Anglo Gold (South Africa). Market capitalization has traditionally been on the increase, between 10%-20% in the past few years. Data from GSE Fact Books 2001-2003; Institute of Statistical Social & Economic Research, GSE December 2004 monthly statistics.

² Since 2000, one company has delisted. De-listings occur mainly because of reorganizations or mergers.

³ Out of 29 listed firms, only 2 are family owned, and they are not among the top 10.

⁴ Estimate based on Merchant Bank Registers; Stockbrokers Ltd; NTHC Ltd (Registrars); Annual Reports; Merban.

⁵ Isolated cases may exist. For instance, Unilever (a listed company) holds shares in Benso Oil Palm Plantation Ltd (another listed company) as part of its backward integration strategy, with the objective of securing access to its raw material source.

Assessment: Partially Observed

Corporate legal framework. Ghana has a common law legal system. All companies are governed by the Companies Code 1963, Act 179 (CC), based substantially on UK's Companies Act of 1960. CC, which was generally heralded as being ahead of its time in 1963, has seen no major changes since. Urgent amendments include the need to harmonize CC with Securities Markets regulations, and update it in reference to electronic transfer of shares and other modern innovations. It is being currently reviewed by the Statute Law Review Commission, with the active involvement of the Securities and Exchange Commission (SEC).

Company types. Companies can be public or private limited liability.⁶ Private companies have less than 50 members and cannot offer shares or debentures to the public. There are 116,153 registered public and private companies.⁷ There is no official data on the number of public companies, since the Registrar General's Department (RGD) does not have ready access to share transferability restrictions and ownership information, but they are less than 1% of all companies. Only public companies can be listed.

Securities law framework. Listed Companies are governed by the Securities Industry Law 1993 (PNDCL 333); the Securities Industry (Amendment) Act 2000 (Act 590) creating the SEC and regulating capital markets; and SEC Regulations 2003 (LI 1728), providing disclosure and financial rules for market operators. SEC issues rules under the securities laws, as well as statements of principle or codes of conduct. SEC may also enforce rules issued with SEC permission by another body. The SEC rule-making process is transparent.

The National Accounting Standards, the Banking Act 2004 (Act 673), the Insurance Law 1989 (PNDCL 227), and the Minerals and Mining Law also have jurisdiction over listed companies. Private pension funds do not yet exist, but the Long-Term Savings Plan Act 2005 allows a savings scheme, pending the adoption of Operational Guidelines. CC, PNDCL 333, and the GSE Rule Book are currently under review, as part of the implementation of the Financial Sector Strategic Plan. They are all in the pre-drafting stages. The Business Law Division (Ministry of Justice) reviews the business law framework and promotes legal understanding among companies.⁸

Listing rules. The following listing rules govern issuers: the GSE Listing Regulations 1990 (LI 1509); the Listing Rules for External Companies; the Rules on Take-Over & Mergers; the Rules Governing Purchase of Own Shares by Companies; the Trading & Settlement Regulations; the Securities Clearing and Settlement House Rules; and the Permission for External Residents to Deal in Securities Listed on GSE. SEC examines and approves prospectuses/offer documents before public offerings on a full disclosure, not a merit-based approach (PNDCL 333, LI 1728 part IX). Once approved by SEC, the prospectus/offer document is presented to RGD for registration. Requirements for the preparation of prospectuses/offer documents are the same for all public companies – listed and non-listed. There are 3 listing tiers on the GSE, though all companies are on the 1st official list currently (LI 1509 reg4).⁹ The GSE Listing & Compliance Department monitors and enforces listing requirements (Sub-Part B and Part VII, GSE Listing Regulations).

Codes. Several organizations are active in the area of corporate governance including the Institute of Directors (IoD), Private Enterprise Foundation (PEF), the Institute of Economic Affairs, the Ghana Centre for Democratic Development. IoD promotes director training of listed firms and SOEs, but there is no certification of training. The SEC Guidelines on Best Corporate Governance practices, based on OECD principles, is voluntary for issuers. Not many companies refer to their compliance with the SEC Guidelines in their annual reports, as required, though some companies have started complying with some requirements of the SEC Guidelines. The Ghana Manual on Corporate Governance (PEF / IoD) is not endorsed by any official institution. Both codes have weak stakeholder recognition. The Bank of Ghana (BoG) has incorporated some corporate governance rules into the Banking Act 2004, and has published the BoG Code of Conduct for Primary Dealers.

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

Assessment: Partially Observed

The supervisory authorities over listed companies are the SEC, GSE, RGD, BoG, the National Insurance Commission, and the State Enterprises Commission.

Securities regulator. SEC was formally created in 1998; its functions prior to that date were performed by a department within BoG. SEC's jurisdiction covers PNDCL 333; Act 590, GSE, investment advisors, broker/dealers, unit trusts, mutual

⁶ As well as unlimited liability company, company limited by guarantee, incorporated partnership, registered cooperative society, and statutory corporation (Incorporated Partnership Act, 1962 (Act 152), Co-operatives Societies Decree 1968 (NLCD 252)).

⁷ RGD official figures as of February 15th 2005.

⁸ The initial focus is on 9 priority laws, among which Debt Recovery, Liquidation Act, Insolvency Bill, Financial Institutions non-Banking Law, Bills and Checks Bill, High Court Civil Procedure Rules on Recovery Procedures and Enforcement Measures.

⁹ One company has been on the 2nd list 1999-2003. Companies on the 1st tier have a minimum capital of 100 million cedis (US\$10,000); issued and outstanding shares of 15 million cedis (US\$1,500); and/or issued and outstanding bonds of 200 million cedis (US\$20,000) held by at least 100 investors; and a history of profitability for the 5 years preceding the date of application.

funds, share transfer agents, trustees of collective investment schemes, custodial services providers, registrars to a public issue of securities, underwriters, including oversight of business conduct of issuers. SEC is a corporate body established by statute, under the supervision of the Ministry of Finance (MoF). It is headed by a Director General and a Deputy, and is governed by a 10-member governing body, of which 3 members are respectively appointed by BoG, RGD, and the MoF, and at least 4 members must have expertise in investments and securities, and must include a person qualified to be a Judge of the Superior Court. The SEC members are appointed by the President on recommendation by the MoF, hold office for three years, and are eligible for re-appointment. The MoF may give directions of a general or specific character regarding the exercise of the SEC functions. The SEC Annual Report is filed with the MoF for onward submission to Parliament. A list of grounds for removal is specified in PNDCL 333. The SEC mission statement includes the goal to "protect investors". SEC is also working in this framework to foster cooperation with sister organizations internationally.

Stock exchange. GSE was created in 1990. It is an SRO under the supervision of SEC. GSE is governed by a 13 Member Council with representation from Licensed Dealing Members (3), Listed Companies (2), Banks (2), Insurance Companies (2), Money Market Institutions (1) and the general public (2).

Central depository. A Central Securities Depository (CSD) was established in 2004 by BoG for government securities. The system is to be developed further in 2005 to cover corporate securities, following respective legislative approval. The draft Central Securities Depository Bill envisages that the CSD will be an SRO approved by the SEC.

Banking and other regulators. Banks are regulated by the BoG, insurance companies by the National Insurance Commission. The State Enterprises Commission oversees state-owned enterprises and statutory corporations (State Enterprises Commission Law, 1987, PNDCL 170).

Company Registrar. RGD, a department of the Attorney General's office / Ministry of Justice, oversees all company forms. Companies file with RGD their Company Regulations (Articles of Association/By-Laws), details of initial directors and external auditors, audited annual returns, including changes in directors and auditors, and other material changes. The RGD allows public access to the information, at the fee of 50,000 cedis (US\$5). RGD is responsible for the enforcement of CC, and can impose penalties on defaulting persons. RGD has not been effective in record-keeping or monitoring and enforcement, due to resource constraints (personnel and technology), among others. A plan for RGD upgrading / training has been developed, and RGD was partially computerized (including the upload of 80% of paper files). In 2004, 30% of companies filed their annual returns.

Court. The court system is generally over-burdened, slow, and ridden with allegations of corruption. A pilot fast track High Court provides relatively speedier dispute resolution, but continues to lack expertise and specialization. Plans are underway to increase the number of such courts. A specialized Commercial Court opened its doors in March 2005, and is expected to evince improved expertise and speed. Shareholder litigation takes 3 months to years, on average 1.5 years.

The Ghana Arbitration Centre handles commercial, corporate, and securities arbitration, but is not commonly used. Efforts are underway to increase awareness of the benefits of arbitration. Under the Arbitration Act 1961 (Act 38) and the Rules of the Ghana Arbitration Centre, arbitration awards are final and binding on parties to the arbitration. The Arbitration act is currently being revised, and contemplates setting up a parallel government arbitration facility which is probably unnecessary given that there is an existing Ghana Arbitration Centre which is well functioning.

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

Assessment: Materially not Observed

Authority, integrity and resources of regulators. SEC is funded from the Government budget, and fees and fines provide a tiny part of its budget. The SEC 2004 budget was 2.7 billion cedis (US\$270,000). The salary level of the 13 SEC professional employees is at least half that of the private sector, but comparable to the level of the BoG, and better than the general salary level of the public sector.

Before SEC's formal establishment in 1998, its functions were shared by BoG and GSE. In this regard, some issues of overlap still remain with the GSE, for example responsibility for approval of prospectuses and other documents. The overlap will be fully being resolved upon completion of the ongoing SEC revision of GSE rules, as well as Parliament's amendments to SEC Regulations. The SEC is also planning to create an electronic link with GSE and brokers, but plans are now delayed for budget reasons.

RGD and SEC overlap in their functions to public companies, disclosure, and enforcement. Public firms, effectively not supervised by RGD, are contemplated to be transferred under SEC jurisdiction. Jurisdiction overlap of SEC, BoG, and the National Insurance Commission are being increasingly addressed via a Joint Committee of Financial Sector Regulators Cooperation. An area of potential focus is banks dealer operations in government securities without an SEC license.

The SEC has no separate enforcement department, though there is a need for one. Enforcement functions are performed by

the legal department (professional staff of 4) and the market surveillance department (staff of 4). Enforcement is currently almost entirely focused on disclosure. SEC administrative powers have been significantly widened, and it can impose administrative and civil sanctions, i.e. suspension or revocation of licenses of market operators, administrative fines, and reprimands.¹⁰ The law does not limit the penalties that SEC can impose, and daily accumulation of some penalties depends on the length of the infraction. SEC conducts investigations, when it has reason to suspect an offence under PNDCL 333 or CC, or securities fraud, and can request books and records of issuers, summon witnesses, and require disclosure of any securities-related information. The SEC's market surveillance department is currently weak. Plans are underway for more personnel, training and capacity building. SEC cannot prosecute criminal violations, and refers cases to the Attorney General, which is under-resourced, slow, and lacks capacity and expertise in corporate and securities issues. Two SEC criminal cases are pending over the past 3 years. SEC has filed no civil cases so far.

Shareholders must report any corporate dispute to the SEC for redress before filing with the High Court (Act 590; High Court (Civil Procedure) Rules 2004 (C.I. 47) order 4 rules 3). Complaints made to the regulator are considered by the Director General. If he is unable to resolve it within 30 days, he is required by law to refer it to the Administrative Hearings Committee (AHC), a quasi-judicial body set up by law to settle disputes relating to the securities market.¹¹ AHC findings take two additional months on average, and can be appealed to the High Court.¹² The SEC makes rulings public through the national newspapers with explanations. Enforcement statistics are published in the SEC Annual report.¹³

GSE can suspend trading and investigate, and suspend or cancel listing (GSE Continuous Auction Trading Rules). No alerts were generated in 2004. The GSE Listing & Compliance Department monitors and enforces listing requirements. The 4 professional staff focuses on monitoring filing of disclosure reports. The GSE has so far used caution letters to encourage compliance with listing requirements. GSE has suspended trading once, and has never delisted a company.

SECTION II: THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS

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

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

Assessment: Materially not Observed

(1) Secure methods of ownership registration	There is no central depository handling equity securities. CSD which now only handles government securities is planned to extend its services to equity in mid-2005. Three companies offer private share register functions. Private registry services are not regulated. They are licensed by the SEC as dealers in securities (and most of the relevant rules do not apply to them) and no specific regime exists for regulating their operations. Companies must indicate to RGD where they keep their register of shares. Shares are kept in physical form, but will be dematerialized / immobilized under CSD.
(2) Convey or transfer shares	Public companies cannot have share transfer restrictions (CC §294, LI 1509). Clearing and settlement is manual but centralized. Currently, the settlement period is T+3 (business days). Since there is no central clearance system, the exchange is made against a check, which can potentially bounce (and has, in one instance where GSE hurried to reverse the transaction). Penalties to brokers for a bounced check amount to twice their commission on the deal. For big deals, brokers have taken to backing their check by their current account with a major bank. Since it takes 3 days to clear a check, in effect the system is T+6. In some cases, issuing a share certificate can take weeks, which is inconsistent with strong corporate governance in a modern securities market.
(3) Obtain relevant and material company information on a timely and regular basis	Annual audited reports and quarterly reports, as well as immediately disclosed material facts are filed with the SEC and GSE, and are available from the latter. Companies also mail annual reports to shareholders, for free, and make available other information at their registered office (Company bylaws, registers of directors, shares, shareholders, secretaries, debenture holders, and AGM minutes). In practice, annual reports are available on a timely basis, and compliance with deadlines for quarterly reports is also largely satisfactory. The wider public may not be aware of the existence of the GSE and the SEC, and information may not trickle through to shareholders, including due to postal services shortcomings. Many companies wait until the quarterly report to reflect material

¹⁰ An earlier provision of the Securities Industry Law, 1993 which gave the Minister of Finance the power to review the Commission's decision upon an application from an aggrieved person was repealed in 2000.

¹¹ It is made up of the Chairman of the SEC and 4 other SEC members. SEC's Administrative Hearings Tribunal Procedures

¹² There has so far been only one appeal against the decision of the AHC. The appeal was refused on technical grounds.

¹³ SEC Annual Reports for 2000-2002 at <http://www.secghana.org/publications>.

	facts. To improve accessibility of the investing public to material information on listed companies, GSE organizes regular public briefing sessions by listed companies. Company filings with RGD are public information, but are irregular and not monitored for content.
(4) Participate and vote in general shareholder meetings	Shareholders can participate and vote at AGMs (CC §31, 160(a)). The right of preference shareholders to attend AGMs may be suspended, but they can attend AGMs and vote (1 vote per share) in case of unpaid dividends, changes in the rights of their shares, on auditor hire / fire, and on winding up (CC §31, 49, 160).
(5) Elect and remove board members	<p>Process. Shareholders elect directors with 50% majority (CC §272). Directors are voted on individually (CC §299), unless the AGM has approved a vote by slate, which is typically the case. In practice, shareholders of public companies are not often consulted on director nomination, which is done by the board. The only legal mechanism for a shareholder to nominate a director is if the board fails to do so. Blockholders find themselves informally pressuring and negotiating a board seat. An AGM resolution with 50% can remove from office all/any of the company directors (CC §185 (1)).</p> <p>Cumulative voting/proportional representation. There are no cumulative voting / proportional representation provisions by law, but company bylaws can provide for it (CC §300 (1)). The mechanism is not typically used in public companies. In private companies, shareholder agreements typically provide for proportional representation, and smaller shareholders may rotate to elect directors on a single board seat.</p>
(6) Share in profits of the corporation	Dividends are proposed by the board and approved (but cannot be increased) by the AGM (CC §71(1) 73(1), 74, 293). There are no mandatory dividends. The deadline for payment is declared at the AGM, but the payment system allows delays, especially to foreign shareholders. Dividends cannot be paid if that will preclude the company to service its debt obligations, and cannot exceed the income surplus of the company.
Principle IIB. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:	
Assessment: Largely Observed	
(1) Amendments to statutes, or articles of incorporation or similar governing company documents	Amendments to founding documents or the authorized businesses of the company are made exclusively by the AGM with $\frac{3}{4}$ majority (CC §22).
(2) Authorization of additional shares	<p>Issuing share capital. Authorizing share capital is an exclusive power of the AGM, with $\frac{3}{4}$ of the vote. Issuing shares can be delegated to the board by 50% at the AGM. The board must issue the authorized shares within a year (CC §22, 41, 57, 202).</p> <p>Pre-emptive rights. Listed companies have pre-emptive rights by law. The AGM can waive pre-emptive rights for a maximum of 1 year at a time (CC, §202(1)). Due to limited shareholder understanding, AGMs have in fact waived patently advantageous rights.</p>
(3) Extraordinary transactions, including sales of major corporate assets	Company bylaws provide for AGM approval (50%) of transfer of controlling interest. Sales of major corporate assets. Substantial sales of assets are approved by 50% at the AGM. Substantial sales are those out of the usual course of business, and for a "significant part of the assets". Precedent suggests that "significant part of the assets" is interpreted as substantially all assets, or assets crucial for the survival of the company.
Principle IIC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:	
Assessment: Largely Observed	
(1) Sufficient and timely information on date, location, agenda, and issues to be decided at the general meeting	<p>Meeting deadline. The Annual General Meeting (AGM) is to be held once a year at intervals of not more than 15 months, and within 3 months of preparation of accounts (CC §124, 133). AGMs are convened by the company secretary, but 5% of the shareholders of a public company can request an EGM (10% for private companies).</p> <p>Meeting notice. Shareholders are notified at least 21 days prior to the AGM (CC §152).</p> <p>Information available. The meeting notice includes the agenda and location, and annual audited accounts, report of directors and auditors, and must be mailed or transmitted in</p>

	<p>person (CC §23(1), 124(1), 128, 153-5).</p> <p>Quorum rules. The AGM requires a quorum of 2 shareholders, or a single one with 50% of capital. If the quorum is not met, the AGM is automatically postponed to the same time and place the following week, without notice. The second meeting is conducted without a minimum quorum required (CC §161).</p> <p>The AGM minutes must be compiled and signed by the Chairman. They are available to shareholders have access at the company registered office or by mail upon payment of copy and mail costs, but minutes are not circulated.</p>
(2) Opportunity to ask the board questions at the general meeting	<p>Forcing items onto the agenda. Any shareholder can propose a resolution to the AGM agenda, at least 6 weeks before the AGM (it can also be served up to 10 days before the AGM provided the shareholder covers circulation costs) (CC §157-8). Items not on the agenda are not decided on (CC §157).</p> <p>Questions. Every shareholder has the right to ask questions at the AGM and obtain an answer from the board. In practice, troublesome shareholders will not be given the floor by the Chairman. In private companies, this mechanism works much better.</p>
(3) Effective shareholder participation in key governance decisions including board and key executive remuneration policy	<p>Shareholders vote by show of hands (one shareholder one vote) unless a poll is validly demanded (CC §170(1)). Votes are counted by the company secretary (CC §170(1)(3)). In practice, selected staffs act as stewards at AGMs and count votes.</p> <p>Board and key executive remuneration is proposed by the board / management and approved in total exclusively by the AGM (CC §194). In practice, the AGM agenda is phrased so that the actual amount is not read out, and AGM approval is pro-forma.</p> <p>AGM attendance tends to be higher in private companies with fewer shareholders. Retail investor attendance to public company AGMs is more in terms of a social function, and they may not understand the issues. Very little shareholder activism exists by minority shareholders, and AGM approval is taken by boards for granted. Controlling shareholders monopolize AGMs though the board, which controls the meeting. There is no evidence of game playing, but AGMs may be held outside Accra where the majority of retail investors reside, thus making it difficult for retail investors to attend. Attendance can vary from as high as 80% in high-profile companies, to as low as 50%. SEC visits AGMs of listed companies.</p>
(4) Ability to vote both in person or in absentia	<p>Proxy regulations. Proxy voting exists, and requires a power of attorney (CC §163). The law allows anyone to be appointed a proxy; typically, a proxy is a natural person.</p> <p>Postal and electronic voting. Proxy voting by mail is allowed by law, but not frequent, in part because of the reliability of the postal system. The law does not make provisions for electronic voting. In practice, shareholders of private companies participate and vote in meetings by call or video conferencing facilities, by provision in their bylaws.</p>
Principle IID: Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.	
Assessment: Partially Observed	
<p>Classes of shares. Company bylaws may provide for classes of shares with differing dividend, voting, or other rights (CC §46(1)). In practice, there are common and preference shares, the latter rare, except in private companies. Only one class may be listed on GSE. OTC admits more than one class to listing. Preference capital cannot exceed 50% of total capital. Preference shares have the same rights as ordinary shares for disclosure and AGM attendance, and can vote on reducing the capital, winding up, sanctioning a sale of the undertaking, changes in their rights, or in case of non-payment of dividend (CC §31, 49, 160). Golden shares are held by Government in strategic sectors such as mining and petroleum (currently, only one company with a golden share is listed). BoG imposes for rural banks a voting cap of “one man one vote”. Capital structure is disclosed in company bylaws (public at RGD), and any changes are immediately disclosed as material facts.</p> <p>Ownership disclosure by companies. Companies disclose the 20 largest shareholders and their holdings in the annual report. No requirement exists for disclosure of beneficial ownership, and SEC does not have access to beneficial information short of conducting an investigation. Companies must disclose to the GSE within 2 days any shareholders of 15% of voting shares (GSE Takeover and Merger Rules, rule 1). A listed company must disclose immediately to GSE, SEC, upon: material acquisitions or disposals that can affect the performance or profitability of the issuer; acquisition resulting in a company becoming a subsidiary of the listed firm, purchase / sale of any controlling interest, or material parts of assets of the listed firm or its subsidiary; substantial change in the shareholding structure of the issuer (LI1728 reg60).</p> <p>Every company keeps a register of directors' holdings, both indirect and direct, presented at the AGM, and open for inspection to any shareholder, debenture-holder, auditor, and the RGD. Indirect interest is where a director has 33% control,</p>	

or effective control, over a company (CC §215). In practice, this is not faithfully observed.

Ownership disclosure by shareholders. Owner of 15% of voting capital must disclose within 2 days to GSE. Directors notify the company of any trades above 2%, within 28 days of the trade (CC §207).

Disclosure of shareholder agreements. Shareholder agreements must be disclosed (GSE Listing Requirements). Shareholder agreements are typically used in private companies, and concern allocation of board seats including the right to nominate the CEO, CFO, and Board Chairman, pre-emptive rights, and restrictions on share transfers.

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

Assessment: Materially not Observed

(1) Transparent and fair rules and procedures governing acquisition of corporate control

Basic description of market for corporate control. In the past 2 years, there have been three mergers (via tender offer on exchange) and amalgamations (per CC, off exchange). The CC, SEC regulations, and GSE Code on Takeovers and Mergers are not harmonized. AGM approval is required in all cases. In the case of banks BoG consent is needed. No anti-trust approval exists. Compliance is monitored by SEC and GSE. The SEC reasonably has assured that transactions occur under fair conditions. Shareholders poorly understand their rights and recourse. SEC plans to clarify procedures in a Code on Mergers and Acquisition.

Tender rules/mandatory bid rules. The acquisition of 25% of voting capital triggers a mandatory tender offer, which needs to be announced publicly, both by buyer and target, within 3 months (with a 14-day lead notice by the buyer to the GSE) (GSE Takeover and Merger Rules rule 2). This also applies to a person controlling management irrespective of the percentage votes held. The offered company is not mandated to issue a board opinion on the merger, but in practice they have in all three past cases.

The offer is for 100% of the shares (but note the 25% minimum float requirement which results in taking the company private). The offer includes the teams; buyer identity; buyer holdings in target company; offer conditions; and audited confirmation of sufficient buyer resources. Violations of disclosure requirements for significant acquisitions carry an SEC penalty for each day the default subsists.

Mandatory offers must be made at the highest market price for the past 6 months. All shareholders receive the same price in takeover offers. Preferred shareholders are excluded, but note that preferred shares cannot be listed if common are listed.

While coattails, tag-along, or come-along rights are not provided by law, many private companies have such provisions in their bylaws. Shareholders can seek redress from SEC, RGD, or the court, and there has been a court case on the issue.

Delisting/going private procedures. Companies with less than 25% float are required to buy out the minority shares and de-list, or seek permission from the GSE. There is a squeeze-out provision at 90% for all public companies, with majority approval by minority shareholders by number, but the 25% float rule renders a squeeze-out mute (CC §235).

Abuse to buy-backs/treasury shares. Share repurchases are allowed, and AGM approval is required. There are no rules on buy-backs (time limit, price), but there is a restriction that at most 15% of shares can be kept in treasury.

(2) Anti-take-over devices

Poison pills and other anti-takeover devices are not addressed in the law, so they are not forbidden. Where "golden parachutes" exist, they must be disclosed to shareholders with full particulars of the proposed payment, and AGM-approved (CC §211, 212).

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

Assessment: Materially not Observed

(1) Disclosure of corporate governance and voting policies by institutional investors

General obligations to vote/disclosure of voting policy. Institutional investors are not required to vote or disclose any aspects of their voting policies and activities. However, some corporate governance provisions on institutional investors are incorporated in the law. Mutual Funds and Unit Trusts, licensed by SEC, have fiduciary duties to their interest holders. A Mutual Fund is a legal entity, and its assets are held by custodians in its own name. A unit trust is not a legal entity, and its assets are held by a trustee in the name of the clients. Banks, insurance, and fund managers are regulated with respect to fit and proper rules for directors, disclosure, and obligations towards stakeholders.

	<p>Institutional investors would regularly sit on company boards, provided they own a sizeable block. They are not very active in well-performing companies, irrespective of abuses they may uncover, but would consult and act in badly-performing firms. The public pension fund, SSNIT, is the major institutional investor, with holdings in virtually all listed companies, and has been passive. There are no private pension funds.</p> <p>Blocked shares/record date. Shares are not blocked from trading during the period when an AGM is held. The record date is used only to establish the list of shareholders.</p>
(2) Disclosure of management of material conflicts of interest by institutional investors	<p>There is no disclosure of management of material conflicts of interest by institutional investors. Conflicts of interest are disclosed by law by: employees of asset management firm to their employer; brokerage and investor advisory firms and their employees to shareholders; and institutional investor boards (as any board) to shareholders. Mutual Funds and Unit Trusts are not allowed by law to control a company (LI 1695 reg39(h)). The law does not address specifically conflicts of interest created by banks and insurance companies operating as broker/dealers, underwriters, fund managers, share registrars, custodians, and nominees. Further, broker / dealers affiliated with a bank effectively bypass borrowing restrictions binding on independent broker / dealers.</p>
<p>Principle IIG: Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.</p>	
<p>Assessment: Observed</p>	
<p>Rules on shareholder cooperation in board nomination/election. There are no rules specified in the law. An attempt to create a shareholder association was abandoned.</p> <p>Rules on communication among minority shareholders. The law does not regulate the issue.</p> <p>Proxy solicitation or other formalities required. The law does not regulate the issue.</p> <p>Rules on communication among institutional investors. The law does not regulate the issue. Sometimes, though rarely, institutional investors communicate in practice.</p>	
<p>SECTION III: THE EQUITABLE TREATMENT OF SHAREHOLDERS</p>	
<p>The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.</p>	
<p>Principle IIIA: All shareholders of the same series of a class should be treated equally.</p>	
<p>Assessment: Partially Observed</p>	
(1) Equality, fairness, and disclosure of rights within and between share classes	<p>Availability of share class information. Rights and liabilities attaching to shares are in company bylaws, at the company registered office and RGD (CC §39, 176, 333).</p> <p>Equal rights within classes. Within each class, shares carry the same rights (CC §46).</p> <p>Approval by the negatively impacted classes of changes in the voting rights. Changes in rights of common and preference shares are by 75% approval (CC §47(4)).</p>
(2) Minority protection from controlling shareholder abuse; minority redress	<p>Shareholders have several redress possibilities.</p> <p>Ability to call meeting. Shareholders can compel an AGM through RGD. 5% can call an EGM in a public company (10% in a private) and, should the board fail to convene the meeting, shareholders can do so themselves and be reimbursed by the company for any reasonable expenses incurred thereby (CC §149, 150, 152, 154, 160, 161, 271, 297).</p> <p>Withdrawal rights. In case of oppression, or unfair discrimination / prejudice, a shareholder may file with court. The court may, among other orders, compel the company or other shareholders to buy out the aggrieved shareholder (the law does not specify a "fair" price). The lawsuit may require security against court costs (CC §218).</p> <p>Ability to sue to overturn meeting decisions. A shareholder may apply to the Court for an order to cancel any AGM resolution for unfair discrimination / prejudice against one or more shareholders. In practice, this may happen more often in private companies, as public company shareholders are passive. The court will restrain the company or void an improperly passed AGM resolution the act, in case a company acted against the law or its bylaws. The lawsuit may require security against court costs (CC §217, 218).</p>

	<p>Regulatory Redress. Every shareholder has the right to file a complaint with the SEC. SEC can impose administrative fines and reprimands, conduct investigations, request documents from issuers, subpoena witnesses, but cannot prosecute criminal violations.</p> <p>The SEC has conducted 8 investigations for the last 3 years, and 18 administrative proceedings. Compliance has improved throughout 2004, and no penalties were imposed in that year. The largest fine imposed so far was in the amount of \$4000. Fines are adequate; however, for the listed companies, mostly banks and multinationals, fines are more of an annoyance than a real deterrent. All fines have been collected for 2004. In 2004, the SEC received 4 shareholder complaints. SEC has filed no civil cases, and has two outstanding criminal prosecutions with the Attorney General. The SEC makes rulings public through the national newspapers with explanations. Enforcement statistics are published in the SEC Annual report.</p> <p>The GSE Listing & Compliance Department monitors and enforces listing requirements. GSE also performs market surveillance, and reports daily to the SEC. The 4 professional staff focuses on enforcement of filing of disclosure reports. The GSE has so far used caution letters to get companies to comply with its listing requirements. GSE has suspended trading once, upon a grave offense, and has never delisted a company.</p> <p>Court redress. Shareholders may also resort to court. The court system is over-burdened, slow, and reportedly corrupt. A pilot fast track High Court provides relatively speedier dispute resolution. Plans are underway to increase the number of such courts. The Commercial Court opened its doors in March 2005, and is expected to hear commercial cases with improved expertise and delays. Private shareholder litigation can take from 3 months up to any number of years, on average a year and half.</p> <p>Ability to sue directors. In addition to the director duty of care and diligence (see VIB), and liabilities mentioned elsewhere in this report, the following liabilities are carried by directors and officers. The company, directors, promoters, and experts cited in the prospectus have civil and criminal liability for false statements in the prospectus (CC §286, 287, 291, PNDCL 333 s124, 129). The share transaction can be rescinded. Signing directors / key executives carry civil and criminal liability for false statements in periodic filings (CC §321(1)). Every officer violating the right to place items on the AGM agenda is liable to a fine (CC §159 (2)). There is no recourse for non-payment of declared dividends by law, beyond general civil recourse, though preference shares get voting rights. SEC can provide redress upon complaint. Officers failing to allow inspection of books and records are liable to a fine. Furthermore, the court may compel immediate compliance from such officers (CC §33(4)). Officers failing to enter transfer of ownership in the issuer's share registry is liable to a fine (CC §95(6)). In the course of the official winding up of a company, persons who were knowingly parties to the carrying on of business while the company was insolvent will be personally responsible, without any limitation of liability, for the debts or other liabilities of the company as the Court may direct (Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) §26).</p> <p>The legal system allows direct lawsuits by the company against directors, individual civil lawsuits by shareholders against the company or directors, derivative action by any shareholder on behalf of the company (which requires that the plaintiff offer a security against court costs). The derivative action against a director must be undertaken by the shareholder on behalf of himself as well as all other shareholders, except those who joined the defendants (CC §209, 210, 286, 287, 291, 324, PNDCL 333 §124, 129). There is no class action suit, though the derivative suit is deemed to be filed as if by all shareholders on behalf of the company, and damages are awarded to the company. Pursuit by shareholders of court redress is exceedingly rare, due to high costs and delays associated with court cases. In 2004, a shareholder resorted to the court for an injunction over a merger proposal - the case settled out of court.</p>
(3) Custodian voting by instruction from beneficial	Custodians and nominees are licensed by the SEC. ¹⁴ Shareholders (especially non-residents) hold shares through these institutions. Custodians are subject to certain reporting requirements and qualifications of directors, but no specific operating guidelines,

¹⁴ Shares are usually registered in the joint names of shareholders and these institutions. Mutual funds hold their assets through a custodian by law, in the name of the mutual fund. Unit trusts hold assets through a trustee by law, in the name of the trustee. Trustees under the law must be banks, insurance companies, or wholly-owned subsidiaries thereof. A custodian / trustee must be a bank, insurance company or wholly-owned subsidiary of either.

owners	<p>including no provisions of returning shares to the beneficial owner in the event of custodian bankruptcy. The issue will be resolved with the extension of register services by CSD, which is envisioned to hold shares in the real owner's name.</p> <p>The law does not provide any guidance on custodian voting instructions from beneficial owners. In practice, the custodial contract provides investors with information concerning their options in the use of their voting rights. Beneficial owners can choose whether to delegate voting rights to the custodian/nominee or give instructions on a case by case basis regarding how to vote the shares. Proxy materials are sent out sufficiently in advance of the meeting to allow investors to make informed decisions. Blank votes or abstaining votes are not counted. Votes of shareholders not present at the meeting are not cast in favor of management. Typically, annual reports are not forwarded by custodians to clients, especially in the case of foreign clients, who prefer to rely on custodian in-house analysis. Custodians regularly vote at AGMs.</p>
(4) Obstacles to cross border voting should be eliminated	There are no impediments to cross-border voting.
(5) Equitable treatment of all shareholders at GMs	Shareholders are treated equitably at shareholder meetings. There are no significant costs to voting, and management or controlling shareholders do not make it difficult or expensive for minority shareholders or foreign shareholders to cast their votes.

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

Assessment: Partially Observed

Basic insider trading rules. Insiders are prohibited from dealing in securities of the company or associated companies within 6 months from acquiring information that is not generally available but, if it were, might materially affect the price of those securities. Companies are also prohibited from dealing in securities at a time when their officers are precluded from dealing in those securities (Act 590 §128, GSE Listing Regulations). A sale or purchase of shares by a director on confidential information is voidable (Act 179, §214). Insiders include officers (a director, secretary, executive officer, employee receiver and/manager, liquidator trustee), and substantial shareholders, of a company or of a related company. The definition of insiders extends to persons who have obtained information directly from insiders.

Insider trading disclosure. Shareholders notify GSE of holdings of 15%, within 2 days of crossing the threshold. Every company is required to keep a register showing details of the company's shares in which each director of the company has an interest- directly or indirectly, or beneficially, including options to acquire shares. All officers of listed companies are also required to disclose their interests in shares in a register maintained for that purpose. The director holdings register is open to inspection to any director, secretary, auditor, or shareholder at the company registered office, and is brought to the AGM. A director is liable to a fine if he fails to disclose such interest within 28 days (CC §215, SEC Regulations). An interest as debenture-holder, or of less than 2% of shares, is not subject to the rules of this section (CC §207).

Criminal/civil/administrative penalties. Comprehensive insider trading legislation dates back to 1993. Enforcement is by SEC and GSE. GSE carries out (manually in real time) surveillance on the trading floor, and submits a daily trading report to SEC. Electronic surveillance is unavailable, and there is no electronic link between GSE and SEC. The SEC carried out one investigation in 2003/4, and dismissed it as unfounded. Insider trading is a criminal offense, carrying liability of a prison term not exceeding 3 years and a fine, as well as compensation to the aggrieved party for the actual loss incurred on the purchase or sale (PNDCL 333 §128 – 130, LI 1509 reg60). The insider is also liable for loss caused. There have been no penalties on insider trading so far. Insider trading is however difficult to prove under the existing law.

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

Assessment: Materially not Observed

RPT approval rules/rules for approval of board/AGM. A director needs 50% AGM approval for use of money and property of the company, with reclusion of interested parties, at most 15 months after the transaction (CC §205-6). A director needs BD approval (with reclusion) for obtaining personal interest directly or indirectly in any contract or transaction entered into by the company. Any violation of the above gives the company the option to rescind the contract in which the director is involved. The company or a shareholder can sue to enforce (CC §209(c), 210, 218).

By GNAS, parties are considered to be related if one party controls by 50%, directly or indirectly, or exercises significant influence over the other party in making financial and operating decisions. Large shareholders not falling under the above definition are not subject to RPT rules. In practice, these rules are not uniformly followed.

Companies are permitted to make loans to senior management, but not to non-executive board members and shareholders unless the ordinary business of the company includes the lending of money (CC §129, 301). For directors of banks/lending

institutions, loan value cannot exceed 1% of net assets. Loans cannot finance shares (CC §56, 129).

Conflict of interest rules and use of business opportunities. A director needs 50% AGM approval for obtaining interest directly or indirectly in a competing business, except as a share- or bond-holder. Approval is after full disclosure of all material facts, with recusal of interested parties, at most 15 months after the transaction (CC §205-6).

SECTION IV: THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

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

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

Assessment: Largely Observed

List of relevant codes for stakeholders. The Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) provides the insolvency regime. Debt collection procedures are also found in the CC. The Labor Act 2003 (Act 651) sets out the rights and obligations of employees and employers. The Environment Protection Agency Act 1994 (Act 490) sets out obligations to the environment. The level of awareness of stakeholder rights is extremely low among the majority of companies in Ghana, and higher among large companies and multinationals, as well as mining and logging companies. Voluntary codes, including SEC Guidelines, IoD Code of Ethics; DANIDA Code of Business Ethics, cover some stakeholder issues.

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

Assessment: Partially Observed

Redress mechanisms available to stakeholders. Employees may petition the Commission on Human Rights and Administrative Justice which is empowered to investigate and take remedial action in respect of complaints concerning practices and actions by both public and private enterprises. By the Labor Act 2003 a National Labor Commission will be created to service as a primary redress mechanism for employees. Creditors can seek redress either through RGD or court. Alternative Disputes Resolution is being employed, albeit rarely. Redress is also available on environment matters through the Environmental Protection Agency, and the Forestry Commission, which are government agencies.

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

Assessment: Observed

Rules on employee stock option plans. A few listed companies have in place employee share ownership schemes (ESOPs) and executive directors' share options. ESOPs must disclose: list of employees, total amount of securities (must be <10% capital), maximum for each employee, price (if any), share rights. The notice is either circulated or available for at least 14 days at the company registered office. ESOPs are approved by AGM, and disclosed in the annual report.

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

Assessment: Partially Observed

Non-owner stakeholders have limited access to company information.

Annual report discloses economic and financial prospects. Economic and financial prospects are not mandated in the annual report, but may be touched upon in the Chairman's statement in the annual report.

Annual report discloses significant facts on employees. The annual report only contains total employee costs.

Information is sufficient and reliable. The information is detailed to the extent required, and SEC assures reliability.

Information is timely and regular. The information is filed quarterly.

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

Assessment: Largely Observed

Whistleblower rules. A new Whistleblowers Bill is awaiting public legislative review before presentation to Parliament.

Principle IVF: The corporate governance framework should be complemented by an effective, efficient insolvency

framework and by effective enforcement of creditor rights.	
Assessment: Partially Observed	
<p>Effectiveness of bankruptcy, security/collateral, and debt collection/enforcement codes. Creditors can petition RGD or court to wind up the company. The law does not provide an early warning mechanism for financial distress. The Bodies Corporate (Official Liquidations) Act protects creditors from the risk of trading with insolvent companies. Dividend distributions are blocked in insolvency. CC provides for some representation of debenture-holders, whereby the latter can have a debenture-holder meeting, as well as oppose shareholder resolutions involving a reduction in unpaid liabilities. Enforcement of these protections remains a challenge due to lack of capacity of RGD and the courts. Debt enforcement is reportedly too slow – 3-4 years. By loan agreement, creditors can appoint a receiver-manager, limit dividends, and veto certain corporate decisions. There is no credit registry, but the Ghana Association of Banks is building up data up for future credit history use. A credit reporting law is being drafted as part of the Financial Sector Strategic Plan. Registration of charges at the deeds registry is required only when the charge affects immovable property. Companies must register a charge at RGD, but compliance is weak.</p>	
SECTION V: DISCLOSURE AND TRANSPARENCY	
<p>The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.</p>	
Principle VA: Disclosure should include, but not be limited to, material information on:	
Assessment: Partially Observed	
<p>(1) Financial and operating results of the company</p>	<p>Annual report. Listed companies file to SEC and GSE their consolidated annual accounts within 3 months of the financial year end, and a full audited annual report with SEC, GSE, shareholders and bondholders within 6 months of the financial year end (LI 1728 reg54). The annual report includes chairman's statement, balance sheet, income statement, cash flow statement, changes in equity, notes to the financials, audit report, material contracts involving directors' interests, directors pay and shareholdings, 20 largest shareholders, voting rights of each share class. A management discussion and analysis is normally covered by the Chairman /CEO report. The annual report must be mailed to shareholders by law, and may be published in the press.</p> <p>Semi-annual and quarterly reports, current reports. SEC requires quarterly reports filed with SEC, GSE, shareholders and bondholders within 1 month after the end of the quarter. GSE requires only half-yearly reports, within 3 months after the end of the first half yearly period in the financial year (harmonization intended shortly). The quarterly report contains a balance sheet; an income statement for the year to date; a statement of cash flow / changes in equity; and notes, including unusual items, seasonality, changes in debt and equity; dividends, material events.</p> <p>Other filings. SEC requires continuous disclosure of material information, as well as an audit committee report twice a year. The reporting burden is deemed manageable.</p> <p>Prospectus. The prospectus contains, among other information, financial and business prospects, material risks, unusual events, family ties among directors, past directorships held, business experience, director contracts, pay, conflicts of interest, borrowing powers of directors, statement by the promoters and directors of intention to trade in shares the following year, full particulars of management contracts and fees, litigation claims, if any.</p> <p>Company Bylaws. Kept at the RGD and available to the public. A company sends a copy of its bylaws to any shareholder upon request for a prescribed nominal fee. Company bylaws contain, among other information, full description of rights of share classes other than ordinary shares, the provision that preference shares have the same disclosure and AGM rights as ordinary shares, and can vote on changes in their rights, or if dividends were not paid for 6 months. Bylaws provide for pre-emptive rights, no transfer restrictions, fixed director pay, and reclusion of directors on conflicts of interest.</p> <p>Share register. Every company keeps a register of shareholders, open for inspection. A copy can be obtained upon payment of copy costs within 10 days (CC §32, 33).</p> <p>SEC monitors compliance with disclosure through on-site and off-site inspections. SEC may require additional information from issuers and auditors, and investigate on suspicion of accounting malpractice. Non-compliance is sanctioned by warning, or a penalty of 2 million cedis (US\$200) for each day the default subsists (LI1728 reg61, 62). The most</p>

	frequent infractions SEC notes is the non-submission of the quarterly and annual reports. About 10 issuers were penalized for late reporting in 2003, since the regulations were still new to companies (they were introduced in mid-2003). In 2004, SEC warnings have largely been effective, and have made the imposition of penalties unnecessary. There are some outstanding problems with disclosure quality of content, as issuers become familiar with the required disclosure provisions. According to market participants, the supervision of information disclosure needs improvement. General adherence of companies to reporting rules is considered also in need of improvement. Filing of periodic reports is timely.
(2) Company objectives	The requirement is not spelled in the law per se, but some of these matters (e.g. plans for the coming year) may be discussed in the Chairman's statement in the annual report.
(3) Major share ownership and voting rights	A list of 20 major shareholders and their holdings, by class, as well as an overview of the shareholder structure, is found in the notes to the financial statements. Ultimate shareholders are not identified. The voting rights attached to different classes of shares are disclosed in the company bylaws with a full description of share class rights.
(4) Remuneration policy for board and key executives, and information about directors	The law requires disclosure of names, dates of appointment, aggregate compensation for all directors including the CEO (including fees, salaries, expense allowances, pension contributions, and benefits in kind), pension amounts and severance compensation for past and current directors, and total amount of any compensation to directors' or past directors in respect of loss of office, in the annual report (CC §128).
(5) Related party transactions	A director using company money and property makes full disclosure of all material facts to the AGM (CC §205-6). A director obtaining personal interest directly or indirectly in any contract entered into by the company discloses at the latest on the following board meeting, and updates on the disclosure at least yearly. RPTs are disclosed in the notes to the annual financial statements. The auditor is required to disclose the related party relationship where control exists, irrespective of RPTs. The disclosure includes nature of relationship, type of transaction, if any, and details on the transaction including whether it was at market prices (GNAS, CC §205, 207). Listed companies tend to have a stricter regime in complying with RPT requirements. Anecdotal evidence suggests that RPT compliance and enforcement are lax to non-existent.
(6) Foreseeable risk factors	By GNAS, companies disclose material foreseeable risk factors in the annual report.
(7) Issues regarding employees and other stakeholders	Only the disclosure of employee costs is required in the annual report.
(8) Governance structures and policies	The SEC requires companies to disclose in their annual reports their degree of compliance with the SEC Guidelines. Compliance with such disclosure is weak.

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

Assessment: Partially Observed

Compliance with IFRS. The Ghana National Accounting Standards (GNAS) are in material conformity with IAS/IFRS, as they were partly based on IAS when drawn out.

Review/enforcement of compliance. SEC is the sole administrative body who attempts to review financials for accounting quality, but it lacks the expertise. There are proposals by the SEC to register accountants and other experts who perform capital market related functions.

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

Assessment: Materially not Observed

Compliance with ISA. There are no formal Ghana National Auditing Standards; however, UK standards are incorporated and applied by extension. In practice, compliance with UK standards is not uniform.

Who must be audited. Annual accounts of both public and private companies must be audited by independent auditors.

Auditor independence. An officer or a partner/employee of an officer of the company or of any associated company cannot

serve as an auditor. Auditor independence is not defined in the law, but is defined by the Code of Professional Conduct of Accountants, which is essentially the International Federation of Accountants Code. The SEC Guidelines recommend audit partner rotation, which some companies do. Auditors are not banned from providing other services to the company they audit. Audit fees need to be disclosed, but not those for other services the auditor may provide. There is no cooling-off period before a member of the audit engagement team may accept employment with the client.

Audit committee. Listed companies are required to have audit committee, referred to as "Audit Sub-Committees". The committee recommends appointment / remuneration of external auditors; reviews auditor evaluation of internal control and accounting; reviews and discusses the audited accounts with the auditors and can call for further information from the auditors or management (GSE Listing Regulations r. 8.(3), SEC Regulations). By SEC Guidelines, the committee also reviews compliance with material policies, laws, and the code of ethics and business practices of the company; reports to the board on all issues of significant extraordinary financial transactions; and improves the controls and operating systems of the company.

The committee is selected by the board. The law requires that it be "as far as possible composed of non-executive directors" (Listing Rules Regulation 8.4). The SEC Guidelines provide that the committee should comprise at least 3 directors, be chaired by a non-executive director, and should comprise directors with an adequate knowledge of finance, accounts, and the basic element of the laws under which the company operates. The committee files a report with the SEC twice a year on its activities. Audit committees are not considered very effective, and may lack expertise and access to key documents.

Requirements for oversight of audit. Auditors report to the board, or to the audit committee, where one exists. Auditors can apply to court for direction in work (CC §296). The audit profession is regulated by the Institute of Chartered Accountants (ICA), set up by the Chartered Accountant's Act 1963. ICA is self regulating, but not independently overseen.

Audit enforcement competent/qualified. ICA conducts qualifying examination for members of the Institute and assures continuing education for members. ICA issues the Ghana National Accounting Standards, and sets out requirements for professional codes of conduct and ethics to be observed by external auditors. The Professional Standard and Ethics Committee, composed of 9 members, investigate complaints. Disciplinary actions can include reprimand, publication of offense, de-licensing. Largely reprimands are used in practice, and only one firm has been de-licensed in the history of ICA. ICA also exposes publicly non-licensed individuals practicing as accountants or auditors. Reservations have been voiced by market participants on the quality of some ICA-licensed auditors as well.

Auditor qualifications. External auditors must be ICA-licensed members, having completed 30 months of practice in the field. There are 143 firms with ICA-licensed practitioners, 80% concentrated in Accra. In addition to the big 4, there is a second tier of 5-7 smaller reputable audit companies, which do not have a share in the multinational or listed firms market.

Statutory auditors or similar company organs. Companies have internal audit functions (GSE Listing Regulations r. 8.(3), SEC Regulations). The head of internal audit may be invited to the audit committee's meetings, but need not be. Internal auditors report to the CEO, and may communicate with the board/audit committee, but not with shareholders.

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

Assessment: Partially Observed

Auditor accountability. The AGM appoints and removes auditors, in practice pro-forma (CC §135). Auditors have access to all company books and accounts and can ask officers for information and explanations. The auditor attends and can be heard at AGMs and receives all notices and documentation. Auditors inform the board about discovered illegal activities, fraud and insider abuse, and loans to insiders. This fails to provide an adequate check, given largely captive boards.

Auditor liability. Auditors carry civil and criminal liability for false or misleading statements. They have fiduciary duties to shareholders (CC §134). There have been no lawsuits to date. Shareholders cannot request an independent audit, so their recourse is to propose the removal of the auditor, or petition the SEC for further investigation.

Auditor insurance. Professional indemnity insurance is not required by law, and not used outside of the big 4 audit firms.

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

Assessment: Largely Observed

Information is available through several channels. RGD provides access to company bylaws, GSE makes public any filings of listed firms upon request at its front desk, including annual / quarterly reports, prospectus, and material announcements. Online availability is planned in the long term. Filing with the SEC can be by email, but not on-line. Companies' registered offices provide access to shareholder and director registers, AGM minutes, company bylaws, periodic reports, and other documents. Shareholders can inspect AGM minutes book can demand copies of minutes to be sent to them for a prescribed fee (CC §178), but do not have access to BD minutes / attendance. Periodic reports and material announcements are also reflected in the press. Annual reports are also mailed to shareholders. Few firms publish them also on their websites.

Material facts. Material events are disclosed to the GSE which in turn forwards the press release to SEC, dealers, the

respective registrar of shares, key media, and key papers, immediately upon occurrence (LI 1509 §56). There is little enforcement, and some companies do not have a practice of reporting material events, instead including those in their quarterly report. Material information is defined as information that affects an investment decision and has a potential effect on the price of the company's shares (SEC Regulations reg60 (2)). Examples of material facts provided in the law are dividends, AGMs, special resolutions, changes in directors, company secretary, auditors, company bylaws, substantial shareholders; winding up, liquidation, acquisition of control over a company, or of 10% over a listed company. Companies also clarify rumors/ reports, and unusual market action, and refrain from unwarranted promotional disclosure.

Published information (papers, web). Companies may publish their quarterly (in summary) and annual financial statements in a daily newspaper. Material facts are publicized via press releases.

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

Assessment: Materially not Observed

Disclosure of conflicts of interest by analysts, brokers, rating agencies, etc. Conflicts of interest of securities analysts from investment banks, brokers, and rating agencies are not regulated. However, by CC any conflicts of interest must be disclosed. Brokerage research is generally not independent from other activities of a brokerage firm.

SECTION VI: THE RESPONSIBILITIES OF THE BOARD

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

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

Assessment: Partially Observed

Basic description of board. Ghanaian companies have single-tier boards (CC §138(a)).¹⁵ Any director can request a board meeting (CC §200(2),(3)). In practice, decisions at board meetings are taken by majority where unanimity cannot be reached. In case of equality of votes, the Chairman has a casting vote (CC §200(h)). For listed companies, it is not common practice that the Chairman and CEO is the same person, mainly because listed firms are not family owned in their large majority. In family firms, such overlap is frequent.

Size requirements and typical size. The minimum board size is two (CC §180(1)(4)). Listed company boards have a size of 9-15, with an average of 11. For non-listed public companies, this figure may be around 5-7, or as large as 10.

Nomination and election. Directors are nominated by the board and approved by the AGM. Shareholder nomination of directors is not provided for by law, effectively. Each year, public companies must have 33% of their board retire, except the CEO (they may be re-elected) (CC §181, 185, 272, 298, 300). Private firms, have no statutory term limit for directors.

Eligibility requirements. There are minimum competence standards for directors (CC §182), but no qualifications of expertise. At least one director should be physically present in Ghana (CC §182, 189).

Adequacy of duties of loyalty and care. A director must act in "good faith", "in the best interests of the company", "as a faithful, diligent, careful and ordinarily skilful director would act". A director cannot be relieved from his liability (CC §203). Civil liability for breach of director duty involves compensation for resulting loss; accounting for any profit obtained, to the company; rescission of transaction at the option of the company (CC §209). A suit for breach of director duty can be started by the company or any shareholder, or by RGD in the name of the company (CC §210). There are also sanctions for directors for company disclosures. There have been no court cases invoking director liability.

Insurance for directors. Not required by law and not used in practice.

Business judgment rule/board accountability. The law does not provide a "business judgment rule" mechanism, though legal concept of acting in best company interests accommodates acting in good faith.

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

¹⁵ The Chairman conducts votes or ballots and sign minutes on AGM and board meetings (CC s166, 167, 170, 177, 200(g)(h), 201(2)). The company secretary maintains the statutory registers (of directors, shares, shareholders, secretaries, debenture holders), minute books; convenes board and AGM meetings; submits filings with RGD; carries out functions related to share and debenture transfers; and certifies copies of documents emanating from the company (CC s33, 96, 98, 107, 190, 317).

Assessment: Not Observed	
Directors “give special, but not exclusive, consideration to the interests” of the class that appointed them.	
Principle VIC: The board should apply high ethical standards. It should take into account the interests of stakeholders.	
Assessment: Largely Observed	
The law is silent on unethical practices, short of the anti-corruption provisions in the Criminal Code. The SEC Guidelines recommend companies to have a Code of Ethics. Director duties include acting in the interest of employees.	
Principle VID: The board should fulfill certain key functions, including:	
Assessment: Largely Observed	
(1) Board oversight of general corporate strategy and major decisions	Board functionality by law and in practice. Boards are responsible for company oversight, issue capital, decide on mergers and major transactions, appoint /compensate management. In reality, major owners manage the firm, and boards are captive. Some companies clearly limit CEO powers, and there are instances of the CEO being fired. Director training, IOD. The SEC Guidelines recommend director training. The Institute of Directors (IoD) has published a code of ethics for all directors. IoD also provides certified training programs, but there is no formal recognition of such certificates.
(2) Monitoring CG practices	Boards are not required by law to monitor corporate governance practices, though audit committees need to report on their functioning to the SEC. The SEC Guidelines also recommend the adoption of best practice management practices.
(3) Hire/fire/pay of executives	The board selects, determines compensation, monitors and replaces key executives.
(4) Aligning executive and board pay with long-term company and shareholder interests	Board remuneration is approved in total by the AGM (CC §194). There are no legal guidelines as to director pay. In practice, the AGM agenda is phrased in such terms that the actual amount is not read out, and AGM approval is pro-forma. Board remuneration is not considered high enough to ensure that board members devote sufficient time to their duties. In practice, directors enjoy company perquisites. Pay levels vary from company to company depending on the respective companies’ ability to pay.
(5) Transparent board nomination / election process	Board members are nominated in practice by the controlling owner, and approval by the AGM is pro-forma. The AGM has information on directors’ CVs (also filed with RGD).
(6) Oversight of insider conflicts of interest	Conflicts of interest are to be disclosed to the board, irrespective of any transaction occurring. Captive boards do not ensure effective compliance.
(7) Oversight of accounting / financial reporting systems, including independent audit and control systems	For listed companies, the audit committee oversees accounting and independent audit (by law), and is recommended by SEC Guidelines to monitor financial reporting and control systems. Audit committees are not considered very effective, and may lack expertise and access to key documents. The CFO and CEO certify financial statements. For unlisted firms financials are entrusted to management, with board oversight.
(8) Overseeing disclosure and communications processes	Boards are not required by law to oversee the process of disclosure and communication, though in practice this is done in some listed companies.
Principle VIE: The board should be able to exercise objective independent judgment on corporate affairs.	
Assessment: Materially not Observed	
(1) Director independence	Director independence by law. There are no rules on independent directors. The listing rules require directors as far as possible to be non-executive. By SEC Guidelines, which are voluntary, the Chairman of the audit committee must be non-executive. Director independence in practice. Boards are generally not independent from controlling owners, but in listed companies arrangements are sufficient to ensure the board’s independence vis-à-vis management. Boards are captive to main owners.
(2) Clear and transparent rules on board committees	Audit committees. Public listed companies are required to maintain well-functioning audit committees and file reports of its functioning with the SEC.

	<p>Other committees. Boards are empowered to delegate any of their powers to committees (CC §200). In practice, it is customary for boards to appoint committees. The SEC Guidelines recommend the establishment of a remuneration committee.</p>
(3) Board commitment to responsibilities	<p>Restrictions on the number of board seats. The law does not restrict the number of directorships, though SEC Guidelines recommend against excessive board service.</p> <p>Board meeting requirements. The law is silent on frequency of board meetings or director attendance. In practice, public company boards hold quarterly meetings, with emergency meetings as necessary. Private company boards meet much less regularly.</p> <p>Public availability of board attendance. Board meeting attendance is not disclosed.</p>
<p>Principle VIF: In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.</p>	
<p>Assessment: Largely Observed</p>	
<p>Directors have access only to public information. Audit committees can request further information from management. Boards, but not individual members, have access to professional advice at company expense (CC §196, 197(3), 215).</p>	

Detailed Policy Recommendations

Overhauling the institutional framework

- Improve SEC capacity, in terms of personnel, training and recourses. SEC should address the enforcement of the following areas: quality of disclosed information, RPT disclosure and enforcement, insider trading enforcement, director pay disclosure, ownership disclosure enforcement (especially by directors), management of conflicts of interest among market operators, rule-making, and shareholder redress. SEC redress functions should be rendered more transparent, for example by opening the hearings of the Administrative Hearings Committee to the public.
- Continue addressing jurisdiction overlap of the SEC, Bank of Ghana, and the National Insurance Commission via the Joint Committee of Financial Sector Regulators Cooperation. Policymakers should carefully consider whether SEC or the Bank of Ghana should license government securities dealer operation of banks.
- Enhance GSE resources, staff, and training. Market surveillance needs to become fully electronic, including a real-time link between the SEC and GSE, as well as GSE and brokers, and an electronic database of insider holdings.
- Address ambiguities as to the division of monitoring duties between SEC and GSE.
- Create a GSE webpage providing access to all company filings.
- Continue training, recourse-provision, and monitoring for quality of the new Commercial Court.
- Promote arbitration as an alternative dispute resolution mechanism.
- Complete the development of the central depository system for equities, with a special focus on migration to a central registry system.
- Improve settlement time; create a central clearance and payment system with access for broker/dealers.
- Staff, train, computerize and motivate the Registrar General's Department adequately to provide effective oversight of company forms, monitoring of filings for completeness and quality of disclosure, as well as a speedy access to company filings. Policymakers should consider carefully the issue of jurisdiction over public firms, in terms of whether the SEC or RGD have resources to assure effective disclosure and enforcement.

Legislative review and modernization

- Reform Companies Code 1963, harmonize it with SEC regulations (including merger regulations), and update it in reference to electronic transfer of shares and other innovations.
- Implement the Long-Term Savings Plan Act 2005 and draft operational guidelines for private Savings Plans. Best practice places savings mechanisms investing in the stock market under SEC jurisdiction and regulation.
- Broaden public consultations on new laws, to all stakeholders.
- The State Enterprises Commission should continue corporatizing SOEs, and encouraging larger ones to list, as well as take more immediate interest in their governance framework. Conduct an SOE corporate governance assessment.
- Regulate credit registries.
- Regulate private share registry services. Private share registries should be isolated from handling listed securities, following a transition period after the Central Securities Depository extends its services to equity.
- Regulate market operators, with a particular view to resolving potential conflicts of interest among broker / dealers, asset managers, securities analysts, future rating agencies, and the banks and insurers who may own them. Best practice requires brokerage research to be independent from other activities of a brokerage firm. Create a level playing field for independent broker / dealers, and those affiliated with banks, in view of broker borrowing restrictions.
- Regulate custodians, providing specific operating guidelines, including protective provisions for beneficial owner in the event of custodian bankruptcy.
- Harmonize periodic reporting requirements of GSE with those of SEC, requiring quarterly, not semi-annual, reports.
- Specify a minimum/"fair" price for squeeze-outs, withdrawal of an oppressed shareholder, and buy-back of shares.
- Best practice suggests the abolition of any foreign ownership restrictions.
- Best practice regulates large transactions of 25% and above, as well as transactions for substantially all assets.

Raising corporate governance awareness

- Promote training of institutional investor executives and directors, as well as the creation of a shareholder association. GSE should strengthen its educational efforts to promote listing of new companies, as well as awareness of the capital markets in the general public. The SEC should consider whether it may strengthen its recommendation for director training to a requirement for listing. In this case, SEC should license bodies to provide such training.
- The SEC should clearly enforce the SEC Guideline comply or explain policy.

Creating active and independent boards

- Introduce independence or non-executive rules for directors. Best practice requires the audit committee to be 100% independent.
- Adopt rules allowing smaller blockholders to be represented on the board (e.g. cumulative voting / proportional representation).
- The Companies Code should expressly allow minority shareholders to nominate a director.
- Audit committee functions now recommended in the SEC Guidelines should be included in the law.
- Best practice suggests restricting the number of directorships by law, not by recommendation as it currently done.
- Rephrase director duty currently allowing directors to give special (but not exclusive) treatment to the class / group that elected them, and mandate directors to treat all shareholders equally.

Improving disclosure

- SEC needs to extend its efforts to assure quality of corporate periodic information, the timely filing of material announcements, RPT disclosure, properly maintained director holdings registers, and other non-financial disclosure.
- Per best practice, RPTs should be regulated not only for directors and controlling owners, but also for large non-controlling owners. Related loans should be banned to executive, as well as non-executive directors.
- Disclosure of ultimate beneficial owners should be mandated in the annual report.
- Best practice requires the law to provide for the annual report to contain company objectives, stakeholder issues, governance policies, and a Management Discussion and Analysis section.
- Provide effective monitoring of disclosure by public non-listed companies, either by SEC or by the RGD.
- Review GNAS in terms of their compliance with international accounting and audit standards.
- Improve ICA ability to monitor audit quality, prevent non-licensed individuals from practicing.
- Best practice requires that auditor independence be defined in the law, not in the Code of Professional Conduct of Accountants, as is currently the case.
- Best practice requires the description of the rights and amount of all classes of shares in the annual report.
- Best practice requires the disclosure of stakeholder issues in the annual report.

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Ghana Terms/Acronyms

AGM: Annual General Shareholders Meeting
CC: Companies Code 1963, Act 179
CSD: Central Securities Depository
EGM: Extraordinary Shareholders Meeting
GDP: Gross Domestic Product
GNAS: Ghana National Accounting Standards
GSE: Ghana Stock Exchange
ICA: Institute of Chartered Accountants (Ghana)
IFRS / IAS: International Financial Reporting Standards (before: International Accounting Standards)
ISA: International Standards on Auditing
LI 1509: Ghana Stock Exchange Listing Regulations 1990
LI 1510: Ghana Stock Exchange Membership Regulations 1990-
LI1728: Securities and Exchange Commission Regulations, 2003 (LI 1728)
PNDCL 333: Securities Industry Law 1993, amended by Securities Industry (Amendment) Act 2000 (Act 590)
RGD: Registrar General's Department
SEC: Ghana Securities and Exchange Commission
Cumulative voting: Cumulative voting allows minority shareholders to cast all their votes for one candidate. Suppose that a publicly traded company has two shareholders, one holding 80% of the votes and another with 20%. Five directors need to be elected. Without a cumulative voting rule, each shareholder must vote separately for each director. The majority shareholder will get all five seats, as s/he will always outvote the minority shareholder by 80:20. Cumulative voting would allow the minority shareholder to cast all his/her votes (five times 20%) for one board member, thereby allowing his/her chosen candidate to win that seat.
Pre-emptive rights: Pre-emptive rights give existing shareholders a chance to purchase shares of a new issue before it is offered to others. These rights protect shareholders from dilution of value and control when new shares are issued.
Proportional representation: Proportional representation gives shareholders with a certain fixed percentage of shares the right to appoint a board member.
RPT: Related party transactions. The OECD Principles of Corporate Governance hold that it is important for the market to know whether a company is being operated with due regard to the interests of all its investors. It is therefore vital for the company to fully disclose material related party transactions to the market, including whether they have occurred at arms-length and on normal market terms. Related parties can include entities that control or are under common control with the company, and significant shareholders, such as relatives and key managers.
Shareholder agreement: An agreement between shareholders on the administration of the company, shareholder agreements typically cover rights of first refusal and other restrictions on share transfers, approval of related-party transactions, and director nominations.
Squeeze-out right: The squeeze-out right (sometimes called a "freeze-out") is the right of a majority shareholder in a company to compel the minority shareholders to sell their shares to him. The sell-out right is the mirror image of the squeeze-out right: a minority shareholder may compel the majority shareholder to purchase his shares.
Withdrawal rights: Withdrawal rights (referred to in some jurisdictions as the "oppressed minority," "appraisal" or "buy-out" remedy) give shareholders the right to have the company buy their shares upon the occurrence of certain fundamental changes in the company.

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

The assessments:

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

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