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# CORPORATE GOVERNANCE IN MENA COUNTRIES: IMPROVING TRANSPARENCY AND DISCLOSURE

Nasser Saidi

The Second Middle East and North Africa Regional Corporate Governance Forum

*Corporate Governance in MENA Countries*  
*Improving Transparency and Disclosure*

THE SECOND MIDDLE EAST AND NORTH AFRICA  
REGIONAL CORPORATE GOVERNANCE FORUM

Beirut, June 3-5, 2004

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## : *Preface*

For the past few years a corporate governance movement has been sweeping through the Middle East and North Africa (MENA). Practitioners from capital markets, banks, the public and private sectors, and other civil society groups have accepted the need to address corporate governance reform as one of the crucial topics affecting the international competitiveness, the investment climate and the development of the capital markets of the Arab world. This collaboration is crucial because corporate governance ultimately depends on public-private sector cooperation to achieve the goals of creating a competitive market system and the development of a law-based democratic society.

As early as 2001, initiatives have been undertaken by various private sector groups to address corporate governance in the Arab world. In July 2003, the World Bank's Global Corporate Governance Forum (GCGF), the Center for International Private Enterprise (CIPE), and local partners in Egypt, Jordan, Lebanon, and Morocco launched a regional initiative to assess the state of corporate governance in selected MENA countries. Meetings in Beirut, Casablanca, and Amman were attended by representatives from both the private and public sector, including practitioners, auditors, and regulatory authorities. Partners in Egypt conducted a series of workshops and conferences and developed a report in conjunction with the World Bank assessing the state of corporate governance in Egypt. A regional experts meeting, the first MENA Regional Corporate Governance Forum, convened in Cairo in September 2003 to discuss regional challenges and trends in corporate governance and to field recommendations on raising awareness and implementing corporate governance in MENA. A smaller group of Arab experts represented the region in the World Bank/OECD review of the corporate governance principles in Paris in November 2003.

This publication, prepared by the Lebanese Transparency Association and the Lebanon Corporate Governance Task Force, is a summary of the proceedings, presentations and discussions made at the Second MENA Regional Corporate Governance Forum held in June 2004 in Beirut, Lebanon. The purpose of the regional forum is to bring together practitioners and explore practical ways to implement corporate governance

reform in the Arab world. The Second Forum—focusing on improving transparency and disclosure—addressed one of the major challenges to corporate governance implementation. Recognizing that country-specific strategies need to be developed, the Forum suggested a set of regional recommendations and explored international best practices for corporate governance programming in their countries.

Advancing corporate governance in the Arab world will require expansion of the current network and engagement in best practice sharing on the “nuts and bolts” of corporate governance implementation. Based on the discussions at the Forum, the question now is how to implement corporate governance in the Arab world given the state of private and public sectors. Addressing family owned enterprises, state owned enterprises, small and medium enterprises, banks and capital markets, the Second Forum has laid the groundwork for subsequent Forums to develop practical, sustainable, and results-driven initiatives to implement good corporate governance in the region.

Within this framework, it is important to note the success of the Lebanese experience in shedding the light on the issue of corporate governance and placing it amongst the priorities on the reform agenda of the private sector. This success can mainly be attributed to knowledgeable leadership and an inclusive coalition building process engaging all stakeholders. The experience of the Lebanon Corporate Governance Task Force (LCGTF), founded by the Lebanese Transparency Association (LTA), and initially chaired by Mr. Gerard Zovighian is a model of cooperation between the private sector, civil society, and the public sector.

The leadership of Dr. Nasser Saidi, who is currently heading the LCGTF, has proven to be crucial for the growth, effectiveness and legitimacy of the Task Force. Dr. Saidi’s knowledge and experience in the fields of economic growth, good governance, and corporate and financial sector development enabled him to lead the Task Force along a solid path built on knowledge and equipped with realism. His long track record as an academic, vice-governor of the Central Bank of Lebanon and Minister of Economy and Trade has secured the trust and cooperation of Lebanese stakeholders, regional and international partners. Selecting him as co-chair of the Regional Corporate Governance Working Group in the OECD-MENA investment promotion initiative and the success of the Second



MENA Regional Corporate Governance Forum are two mere examples of the importance of his contribution to the LCGTF.

The Second MENA Regional Corporate Governance Forum would not have been possible without the active support of the various organizations involved, the Lebanon Corporate Governance Task Force (LCGTF), the Lebanese Transparency Association (LTA), the Center for International Private Enterprise (CIPE), the Global Corporate Governance Forum (GCGF), the OECD and the World Bank, as well as regional and local institutions and organizations, including the Union of Arab Banks (UAB), The Arab Federation of Certified Public Accountants, the INFOPRO Center for Economic Information, the Federation of Lebanese Chambers of Commerce, Industry & Agriculture, the Rassemblement des Dirigeants et Chefs d'Entreprises Libanais (RDCL), The Association of Lebanese Industrialists (ALI), International Chamber of Commerce – Lebanon and the Lebanese American Chamber of Commerce.

Valuable cooperation and support were received from Daniel Blume (OECD) and Marie-Laurence Guy (GCGF). We wish to thank them for their interest in the region. Our thanks also go to the dedicated individuals who devoted their time and effort unsparingly to ensure the success of the Forum. The team of the LTA, Gaelle Kibranian, Layla Jaber, Fourat Al-Ashkar, Tristan Ikor, Micheal Daher, and Zeina Zein El-Abidine. Special thanks go to Gaelle Kibranian who painstakingly transcribed the lively discussions taking place in several languages, and that were the basis of the conference report finalized with the help of Zeina Zein El-Abidine.

We hope that this publication will enliven and enrich the ongoing debate, discussions and research on corporate governance and corporate sector reform in the MENA region and that it encourages the adoption and effective implementation of corporate governance principles in the economies of the region.

**Charles D. Adwan**  
Executive Director,  
*The Lebanese  
Transparency Association*

**Nick Nadal**  
Senior Program Officer,  
*The Center for International  
Private Enterprise*

October 2004

## : *Introductory Statements*

### **Marwan Hamadeh**

*Minister of Economy and Trade, Lebanon*

Five years after the establishment of the Lebanese Transparency Association (LTA), comes this Second MENA Regional Corporate Governance Forum. Participating in this Forum is a privilege especially that Mr. Mohammad Mattar, the Chairman of LTA, has long been a basic rights defender of the public, employees and stakeholders in general. It is also important to note Mr. Charles Adwan's efforts to organize a Forum of a level making it a positive precedent in our Arab region. After the Success of the first Forum, LTA engaged in building a broad coalition from the private sector—who is the main stakeholder—civil society, in addition to academics and experts leading to the establishment of the Lebanon Corporate Governance Task Force (LCGTF), chaired by Dr. Nasser Saidi, whose footsteps we always try to follow in both Ministries of Economy and Industry.

Fighting corruption, especially in our societies, requires perseverance and almost constant efforts. It also requires having an approach to this problem from now on, through strengthening transparency, accountability and good governance in the public and private sectors. This is where our work must begin.

People often limit their conception of corruption to the private sector, but this is only part of the reality. After all, we all remember the collapse of international firms such as the US' Enron and Italy's Parmalat as a result of corruption and deceptive practices that shook the economies of their respective countries. Closer to home, and on a smaller scale, can we forget the series of collapses, from Intra Bank and al-Ahli Bank to that of Bank al-Madina a few months ago? The latter became a watchword for corruption between the private and public sectors. We should also note certain stages in the history of Lebanon's national carrier, Middle East Airlines, before it was revived by Lebanon's Central Bank and company chairman Mohammed al-Hout. There is also the Casino du Liban, where the lines between private and public sector became blurred. There are many other such examples. In Lebanon's cellular telephone sector, the

state's Auditing Board has rejected tenders and operating contracts, as well as the way in which employees' services were terminated. This demonstrates the urgent and controversial nature of the topics being raised today in this regard.

Naturally, the situation in Lebanon and most Arab countries has its own special features. Most companies are small-scale enterprises and their administrations reflect their nature as "family" businesses. However, as our economy integrates with the world economy and as Lebanon joins the World Trade Organization, we will be forced to review the organization and structure of our productive institutions. The goal should be to boost competitive ability, which requires expanding and opening our firms to investments outside the framework of the family. Therefore, we must universalize the principles of transparency and define the responsibilities of boards of directors, while dealing with the issue of minority shareholders' rights.

This falls under the objectives of the LCGTF, which we hope success for and closer cooperation with, to build on this initiative towards strengthening and supporting the Lebanese private sector. The permanent legislative workshop in the Ministry of Economy aiming designing competition, consumer protection, and trademark laws, or the efforts of the Ministry Justice and the Commission of Legislative Modernization towards amending the Trade law also fall within LCGTF's objectives.

I have complete confidence that the Lebanese private sector will adjust to developments in the international economy, to remain the prime mover in the national economy and a principal player in the economy of the Arab world and the Middle East.

**Adnan Kassar\***

*President of the Federation of Chambers of Commerce, Industry and Agriculture in Lebanon*

There is an international consensus about the importance of good governance as the cornerstone of the new model of socio-economic development in the 21st century. Promoting this type of governance requires further interaction between the state, the private sector and civil society, in order to identify the correct balance that is needed for sustainable development.

Recent studies by the World Bank have demonstrated that good governance serves as one of the most important basic engines for economic growth, development and prosperity. Likewise, improving the climate of overall governance in any country, through strengthening systems of accountability and transparency and the rule of law, is a decisive factor in implementing projects, creating new job opportunities, and boosting trade, investment flows, and international capital.

The basic result is that good governance in the economy and good corporate governance for firms are among the most important motors for health and strong growth in national economies and local companies.

Good corporate governance is necessary and vital for their future operations. Recent financial studies have shown that investors are ready to pay more for shares in firms that have an advanced culture and sound practices in the field of good corporate governance.

In addition, investors are willing to put their capital in certain companies—these firms are the ones that are better able to manage available resources and use better risk management techniques, while their boards of directors and higher executive bodies practice effective and strong supervision and management.

Thus, good corporate governance today constitutes the most important element in guaranteeing the healthy development and growth of companies,

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\*Mr. Kassar has, since, been appointed Minister of Economy and Trade in Lebanon

protecting them from the repercussions of any local or international crisis, attracting foreign investment, improving general performance, boosting local and international confidence in them, and consolidating their successful interaction with liberalization and globalization.

We have always been determined to introduce criteria of good governance when it comes to the economy or institutions, due to the strategic importance of this issue.

Good governance was a fundamental part of the working strategy of the International Chamber of Commerce, which I headed from 1999-2000, and even before and after my term as president. During the official visits I made to a number of countries, where I met with presidents, prime ministers and private sector representatives, we would always emphasize the importance of cementing the bases and foundations of good governance in the public and private sectors.

In Lebanon, through our relations with the state, we have always been keen to incorporate the foundations of good governance in our national economy. We have advocated and followed up the drive to improve the general investment climate, improve economic policies, carry out financial and economic reforms, and set up a public sector in which the values of transparency, accountability, justice and responsibility all prevail.

In the Lebanese private sector, our achievements in anchoring the bases of good governance in our companies make us optimistic about the continual evolution of this sector and its special ability to adjust successfully to local, regional and international developments, while always participating in the growth and development of our national economy.

To cement the foundations of good governance in the public and private sectors of the Arab world, we first of all need to continue economic reforms that are target-oriented and effective, as part of a clear and precise vision, strategy and work plan.

Reform is a subjective process and must be measured based on the needs and domestic conditions in each country. Our varied experiences in this regard have taught us that there is no one model for reform that suits

everyone, no matter how practically and intellectually diverse the model. For this reform process to lead to the desired end and achieve the required objectives, we must take these decisions ourselves and carry them out with objectivity, commitment and transparency.

## *The Second MENA Regional Corporate Governance Forum*

HOSTED BY

Lebanon Corporate Governance Task Force (LCGTF)  
Lebanese Transparency Association (LTA)

SUPPORTED BY

Global Corporate Governance Forum (GCGF)  
Middle East Partnership Initiative (MEPI)  
Center for International Private Enterprise (CIPE)  
Organisation for Economic Co-operation and Development (OECD)

### ***EXECUTIVE SUMMARY***

The values of corporate governance—transparency, accountability, and responsibility—offer the key for the modernization of the countries of the Middle East and North Africa.

The private sector business community can play a leading role in economic, political, and social reforms in the region. In fact, reforms led by the private sector provide the greatest promise for meeting the challenges caused by the region's tepid economic growth and surging youth demographic.

Sound corporate governance practices will attract new, much needed investment to the Middle East and North Africa because they improve management of firms and reduce risk. National institutions, laws, regulations, and practices based on international norms and standards would enable the countries of the region to modernize their corporate sectors, enabling them to attract technology and foreign investment and become internationally competitive. Furthermore, political and sovereign risk would be reduced and economic performance and outcomes would be de-linked from ruling political regimes and a dependence on oil and gas resources.

Perhaps more importantly, the process of designing and implementing the basics of corporate governance—transparency and regular reporting,

independent auditing, removal of conflicts of interest, ethics, protection of minority shareholders' rights—provides a foundation for meaningful reform in the economic sector and elsewhere in society.

### **CONDITIONS IN THE MIDDLE EAST AND NORTH AFRICA**

The history of the Middle East and North Africa has produced societies associated with a distinct set of economic, political, social, and cultural institutions and practices which shape the region's development but which, importantly, do not inherently conflict with the goals of modernization.

The dominance of state-owned enterprises (SOEs), the proliferation of family-owned firms, and the plurality of small- and medium-sized enterprises distinguish the business environment of the Middle East and North Africa from that of the Western, industrialized world which has historically set the standards for corporate governance. These characteristics are not incompatible with the practice of good corporate governance, but they are problematic for standards as currently written.

International guidelines must reflect the realities of doing business in the Middle East, North Africa, and other emerging economies if they are to gain acceptance and be implemented effectively. The on-going process to update the Organisation for Economic Co-operation and Development's twelve principles of corporate governance is one promising step, both for facilitating global adherence to best practices and for helping to build a culture which respects and rewards accountability and transparency, but all reform efforts must originate from local constituencies within the region if they are to truly take root and prosper.

### **REFORMS MUST COME FROM INSIDE EACH COUNTRY**

To facilitate the adoption of, compliance with, and effective enforcement of high standards of corporate governance, national-level task forces are needed to develop corporate governance codes specific to each country. These should, of course, be based on internationally acceptable standards for transparency but embrace local realities.

The process of developing a national code of corporate governance must involve grassroots efforts and must be supported through specialized training programs; the establishment of an Institute of Directors for the



region is needed to train corporate directors on their responsibilities, and the higher education system needs a more robust business curriculum.

The process must also involve the media to expose the underlying problems for which sound corporate governance practices are part of the solution.

### **REFORMS MUST BE COMPREHENSIVE AND INCLUSIVE**

The private sector must take the lead in this effort, but the initiative must involve all stakeholders. Governments must be involved because they are the ultimate policy-makers and enforcers and because of the role of state-owned enterprises. Families with large commercial operations must be involved. Representatives of the small business community, banks and financial institutions, civil society groups, international organizations, chambers of commerce, professional associations, and business schools all have roles to play.

Similarly, codes of corporate governance cannot ignore large sections of the formal economy. Laws must consider and cover state-owned enterprises, privatized companies, and family-owned firms whether or not their stock is publicly listed on stock exchanges, the traditional gateway for corporate governance.

### **REGIONAL COOPERATION WILL REINFORCE PROGRESS**

The commonality of the problems faced by the private business community of the Middle East and North Africa—corruption, lack of investment, lack of reliable information, protections afforded to noncompetitive SOEs, etc.—points to the utility of regional cooperation to share lessons learned and best practices. Annual regional forums, such as the one generating this report, must become regular practice. Existing regional organizations, such as the Gulf Cooperation Council, the Union of Arab Banks, the Arab Society of Certified Accountants, and the Union of Arab Stock Exchanges should support these efforts.

### **FOREIGN EXPERIENCES AND INTERNATIONAL ORGANIZATIONS CAN PROVIDE GUIDANCE**

The countries of the Middle East and North Africa can learn from the relevant experience of other emerging market economies. Communication with leaders of successful (and unsuccessful) reform efforts, such as the privatiza-

tion efforts in Central and Eastern Europe and general reforms in South Africa, Brazil, Chile, and Kenya, must be established.

The expertise of international organizations such as the OECD and the World Bank and market-oriented non-governmental organizations such as the Center for International Private Enterprise can assist in the development of national codes, but the work must be done by local stakeholders.

### **THE VOICE OF THE REGION NEEDS TO BE HEARD**

Representatives of the private sector and governments from the participating countries of the region should engage in the international dialogue through active participation in international meetings, conferences, forums, and working groups on the development of international business standards. Participation implies a more representative and democratic process in the setting of standards and development of principles. It also ensures that the viewpoint of the emerging markets is heard on economic issues affecting their development prospects.

### **BANKING AND FINANCIAL SERVICES REPRESENT CRITICAL SECTORS**

The banking and the financial services sectors play an especially pivotal role in the implementation and enforcement of corporate governance principles in the Middle East and North Africa because they, not capital markets, provide the primary means of business financing. First, banks must improve their own governance, transparency, and adherence to the twelve international standards for financial institution stability. Then they must transmit those practices to their clients by using corporate governance tools to better assess risk factors in loan and investment decisions.

Compliance with international standards for accounting and auditing must take place. Measures against corruption and money laundering are desperately needed. Better bankruptcy laws are needed across the region not just to protect creditors, but also to encourage entrepreneurship. And the development of capital markets should be a high priority.

### **GOOD POLICIES AND INSTITUTIONS PROVIDE THE RIGHT INCENTIVES**

No efforts to improve transparency and accountability in the business communities of the Middle East and North Africa will succeed until they

are supported by better policies and stronger institutions which reward participation and facilitate entrepreneurial behavior.

Strengthening the banking and financial services sector is critically important, but reforms must continue. In particular, high tax rates and complicated tax systems act as a disincentive to the full disclosure in corporate reporting. Investment, from both domestic and international sources, should be encouraged.

To improve the functioning of the corporate sector, general improvements in the courts, the legal system, and the regulatory regime must be made, and private institutions such as centralized credit reporting agencies and local credit rating agencies must be put in place.

***Recommendations for the MENA Regional Corporate Governance Agenda:***

<1> ***Effective implementation of CG principles and the development of disclosure régimes require action at the national and regional levels, in line with best international standards and practice.*** Annual forums should take place on a revolving basis among the MENA countries. The Annual Forum would be the occasion to discuss national, regional and international CG developments. The host country would feature a National CG Survey, presenting the local status and developments of CG. The forum should represent a mixture between the government, the private sector and civil society, national and regional organisations, and clearly present its identity and functions.

<2> It is important that the recommendations for CG and corporate reform be home-grown to facilitate and ensure adoption, compliance and enforcement. This should be the result of the work undertaken by a ***National CG Task Force, to be established in each participating country.***

<3> It is recommended that a ***MENA Regional Corporate Governance Forum (RCGF)*** be established and enhanced, with a full-time manager, staff to work on CG surveys, and involving more regulatory and policy making institutions along with international organizations. The RCGF should produce quality work in accord with international best

practices to elicit cooperation and attract resource support. The work of the RCGF can be further strengthened through its association with the OECD MENA Investment Initiative whose Steering Group has established a working group to join with and support the efforts of the MENA Regional Corporate Governance Forum and existing national Corporate Governance Task Forces by:

- Linking the corporate governance reform agenda to the investment climate agenda
- Increasing participation from OECD countries from other emerging economies and international institutions to further exchange experience and support regional participants in their development of recommendations and implementation of corporate governance reform, taking into account the revised OECD Principles of Corporate Governance.

<4> ***Regional networking and cooperation*** on developing and implementing CG principles and best practice require awareness raising, continuing consultation and dissemination of information. The Annual Forum and work of the RCGF should be supported by the establishment of Regional CG Subcommittees that would focus on specific topics and technical matters, which include, among others, accounting and auditing, laws and regulations, regulatory aspects, the role of the media, civil society, and the judiciary. These subcommittees would report on their meetings to the Annual Forum.

<5> It is important to have a ***CG survey for all the countries of the region***, to see where countries stand, and publish such surveys in collaboration with regional and international institutions, such as the OECD, WB and GCGF, CIPE, and others. The CG Surveys would, where feasible, follow a similar format and standard 'template' of information and disclosure as has been undertaken for the OECD countries and some emerging market countries.

<6> ***Existing country participation should be widened***; international institutions and stakeholders should support and encourage active representation of the Gulf Cooperation Council and other MENA countries. The RCGF should cooperate and coordinate with regional organizations, including the Arab Monetary Fund, the Union of Arab Banks, the Arab Society of Certified Accountants, and the Union of Arab Stock Exchanges.

<7> The *elaboration and implementation of CG programs require wide participation and cooperation of stakeholders* including the support of NGOs, chambers of commerce, the media, business associations, and—more importantly—support from elected representatives, members of Parliament and official government support from interested ministries. It is important to have collaboration between the public sector and the private sector in order to produce a workable CG program. It is for the people from each country of the region that have formed coalitions and task forces to implement CG and corporate reform and make it work. This requires a very strong commitment from all parties, but this process could open up support from the international community and ensure the group's pro-activity in addressing CG issues.

<8> *The voice of the region needs to be heard*, thus it would be important to have representatives from the participating countries of the region invited to international events, meetings, and committees dealing with CG and other business-related principles. The region should take part in the process of elaborating and developing principles and their implementation. Participation implies a more representative and democratic process in the setting of standards and development of principles. It also implies that the viewpoint of the emerging markets is heard on economic issues affecting their development prospects, helping implementation in the participating countries.

<9> The countries of the MENA region should seek *to apply the 12 Key Standards for Sound Financial Systems* and monitor their progress in the implementation of the standards. The 12 key standards provide an overall framework covering macroeconomic standards, markets and infrastructure, and the financial system. In particular, the MENA countries and RCGF should focus on the components of market and infrastructure elements accommodating and complementing CG, namely, accounting, auditing, and the problems of money laundering and insolvency.

<10> The countries of the MENA region should strengthen their respective accounting and auditing professions and professional bodies and *ensure wide adoption of International Accounting and Auditing Standards* as the basis for disclosure and dissemination of information.

<11> The countries of the MENA region should ***adapt and adopt CG principles, codes and standards***, such as the OECD Principles for listed companies, and the Cadbury Report and similar Reports for application to its family-owned and small- and medium-sized enterprises. Priorities should include several areas such as listed companies, SMEs, FOEs, and banks. The most straightforward path to this adaptation is to work with listed companies, because a clear model for this exists.

<12> ***The sequencing of CG principles implementation*** is important. The CG of the banking and financial sector should be given priority due to the linkages to the other sectors.

<13> ***The banking and the financial sectors can play a key role in the implementation and enforcement of CG principles*** in the region. One strategy is through enforcement in banks and financial institutions; and second is through enforcement on the clients and partners of the banking and financial sectors. In particular, the region should address cooperation within the banking sector, in order to enforce and implement CG principles in four main areas: the CG framework, the role of stakeholders, disclosure and transparency, and the responsibilities of the board.

<14> ***Governance is for both the public and private sectors***. No distinction should be made between national and corporate governance especially as the MENA region is striving to integrate with the world economy, and seeking to break barriers to competition and free markets. The challenge to overcome is the protection provided to SOEs from both internal and external competition. The private sector can activate the implementation of some reforms, and encourage the public sector in implementing these reforms as well. What will be required is a CG mise à niveau of public and private enterprises.

<15> ***The development of capital markets should be a policy priority for the MENA countries***, both for their sustainable economic development and financing and as a means of monitoring and enforcing sound CG principles. The role of stock markets is important to follow up the implementation and enforcement of listing rules, and CG compliance by listed companies. The development of a second tier market can be important in creating incentives for SMEs to upgrade their disclosure standards and CG.

<16> The tax system and its related regulations and practices have a direct impact and influence on transparency, disclosure and dissemination of information, as well as on the quality and accuracy of the underlying data and its reporting. In particular, high tax rates and complicated tax systems act as a disincentive to the full disclosure and transparency of corporate reporting. The *design and application of CG principles and frameworks must be examined in conjunction with the issue of taxation and tax rates and systems.*

<17> *The MENA countries can learn from the experience of other emerging market economies.* In this context, it might be instructive to consider the experiences of Brazil, Kenya, South Africa, Chile and other Latin American countries, as well as some Asian countries. The RCGF should seek to develop lessons from other emerging markets relevant to the MENA economics.

<18> *The MENA countries should take an increasing interest and focus on the relationship between (foreign) investment and CG.* Empirical evidence suggests that countries that adopt CG tend to attract more foreign and domestic investors, generate more stable equity returns, attract higher participation rates (by corporations and households) in the financial markets, leading to higher, sustainable economic growth. Institutional reforms and the adoption of standards will attract investment.

<19> The participants discussed the suggestion of having an *independent body to monitor CG compliance.* This remains an open issue. There are two ways to deal with the question. The first is through *self-regulatory organizations*, whereby CG principles are applied through professional associations having an independent body to monitor compliance. It can also become mandatory, through the imposition of laws and regulations. However, it is clear that the enforcement of mandatory CG principles should be done through the judiciary, highlighting the importance of and central role of an honest and independent judiciary.

<20> *The media has an important role to play in promoting change and corporate sector reform.* However, the media faces transparency and disclosure barriers as it has limited access to information. Having the media on board is a must for the work on CG. The media should be educated concern-

ing the technical aspects of CG principles and their application. International institutions such as the World Bank, OECD, and CIPE, working in partnership with regional professional organizations, can play this role. It is important to develop training procedures, particularly the training of trainers, which is an essential activity, involving the education and the upgrading of public awareness. The role of the media is central in the region's work on CG: journalists and economic reporters should also be trained at the regional level, with information and documents on CG developed in Arabic.

<21> **Implementing and complying with CG is a matter of institution-building.** Home-grown institutions, laws, regulations and practices based on international norms and standards will enable the countries of the MENA region to modernize their corporate sectors, enabling them to attract technology and foreign investment and become internationally competitive, reducing political and sovereign risk and de-linking economic performance and outcomes from ruling political regimes and dependence on oil and gas resources. Functions should be spread among different institutions: the capacity and role of institutions might be limited in terms of their ability to change laws, regulations, listing requirements, and establish transparency and disclosure practices. At this point, governmental intervention is required. With this proviso, and in the context of institution building, a number of proposals warrant serious examination:

- Establish an *Institute of Directors for the MENA region* that would provide information and play an important role in terms of training, raising awareness and education for CEOs, directors and board members.
- Encourage and support the establishment of *corporate governance education programs* at universities, business schools, academic institutes and colleges, with specialized courses provided on ethics and CG.
- Encourage the establishment of *"Companies' Houses"* in the various countries of the region to act as a corporate registrar and provide and disseminate financial reports and information on board and management actions.
- Establish *Centralized Credit Reporting Organizations* in the countries of the region, providing information on bank- and non-bank (including supplier)- provided credit to companies and individuals.
- Encourage the set up of local *Credit Rating Agencies* which would provide risk assessments and credit ratings for the companies and gov-



ernments of the area, leading to an improvement in the availability and dissemination of information, and assist the banking systems and corporate sector in their process of complying with Basel II standards.

- Establish a **MENA CG Gateway** that would promote and disseminate information relating to all the dimensions of CG in the countries of the region as well as regional initiatives.

<22> Given the fact that the corporate sector of the MENA countries is mainly comprised of SMEs, it is important to: (a) **Reduce the cost of compliance with CG principles** by providing training, toolkits and other means of support; (b) **Develop positive incentives** for compliance with best practices for disclosure and corporate governance by providing public recognition and establishing a reward system for corporations practicing good corporate governance. For example, the above-mentioned CG Gateway could provide a network and could list and provide links to corporations that have a verifiable record of CG compliance. In effect a network of "CG Leaders and Champions" would be created and motivated.

<23> The **implementation of CG principles for state-owned enterprises is an important component of overall economic reform**, and increasing macroeconomic efficiency. Current OECD work to develop guidelines for corporate governance of state-owned assets can support such efforts. Good corporate governance is also an important objective for SOEs in the context of privatization programs being undertaken by MENA countries.

<24> The RCGF can be the forum for the initiation of regional CG **partnership programs with international organizations** with a concern for CG, including the ICC, the OECD, CIPE, and the World Bank Group. These institutions have an important role to play in providing support and resources to assist the countries of the region in developing and applying good CG principles, leading to increased economic and financial integration of the MENA region with the rest of the world, and improved economic prospects and performance.

## 1: *Introduction*

The Middle East and North Africa (MENA) countries, similar to many emerging market economies, face wide gaps on corporate governance compared to their industrialized counterparts. The MENA economic and industrial organizations are characterized by the fact that the majority of businesses and corporations in the region are family-owned enterprises (FOEs), or small- and medium-sized enterprises (SMEs). An additional characteristic and issue is the extensive presence of state-owned enterprises (SOEs) that dominate production, consumption and labour markets in many economies, and result in the “dualistic” aspect of the region’s economic landscape. With an aim to provide Arab perspectives on the Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance, the Global Corporate Governance Forum (GCGF), Center for International Private Enterprise (CIPE), and local partners in Morocco, Egypt, Lebanon, and Jordan, organized a series of national corporate governance practitioner meetings to assess the state of corporate governance in these countries and develop a set of regional recommendations to present to the OECD as it reviewed the Principles of Corporate Governance in November 2003. The first MENA Forum on Corporate Governance was held in Cairo on September 7, 2003, and advanced a series of recommendations to the OECD on the Principles. The second MENA Regional Corporate Governance Forum, held on June 3-5, 2004, in Beirut, aimed to address practical implementations of corporate governance in the Arab world with a focus on improving transparency and disclosure.

This report provides a summary of conclusions and recommendations that emerged from the second MENA Regional Corporate Governance Forum and was compiled by the local host, the Lebanese Corporate Governance Task Force headed by Dr. Nasser Saidi. Individual chapters draw from the presentations of experts who participated in and made presentations at the meeting.

Information and its dissemination, transparency and disclosure, are integral components of good governance in the corporate and public sectors. Information plays an increasingly important role in modern economies given the increased openness of most economies and the global integration of markets for goods, services, and assets. In a globalized world,

increasing emphasis is put on transparency, on the disclosure and comprehensiveness of information. In the absence of disclosure and transparent policies, neither foreign nor domestic investors will be attracted to invest. Countries must now compete by offering investors and consumers better governance, sound policies, and increased transparency. The MENA countries must give policy priority to CG implementation in order to develop their financial markets and attract foreign investment, while providing confidence to domestic investors.

One important characteristic of transparency and disclosure is the public good aspect of information. Once information has become publicly available, it becomes a public good. This is why information should be a matter of concern to public officials and governments. They must set public disclosure standards and ensure that companies—whether private or public—apply recognized accounting standards and accordingly disclose information and reports. Indeed, market efficiency and market information are intrinsically connected. Better quality information available to the market improves resource allocation and the economic efficiency of workers, consumers, and producers. Transparency and the disclosure of financial and “material” information in financial markets are essential, because they ensure that capital and financial resources get directed to their most productive uses. Clearly, the availability and dissemination of quality, timely information about companies depends on accounting practices, standards, and their applications, as well as on good corporate governance. In their absence, capital might get misdirected and those financial resources will not get put to their best uses.

Transparency should apply both at the private corporate level as well as to public governance of state-owned enterprises and state-owned agencies. By transparency, we mean a flow of timely, verifiable, reliable, economic, social, and political information about policies and outcomes. This requires a public policy framework to establish what particular information is “material” or relevant to market and political processes, and to ensure that quality information is made accessible to the entire public rather than a privileged few.

The Beirut MENA forum discussed the major features of an effective, functioning “disclosure regime”: Implementation of widely tested international accounting standards and reporting; the requirements, agencies

and institutions required for monitoring and overseeing disclosure; the role of regulatory bodies and the judiciary in enforcing disclosure, along with effective participation of the media. However, disclosure regimes must also be viewed in the context of the industrial organizational structure and institutions ruling MENA economies: they have to be adapted to deal with SMEs, FOEs and SOEs.

Hence, CG, transparency, and disclosure regimes are part of a wider strategy dealing with corporate reform and encompassing the private sector as well as SOEs. Public-private cooperation and partnerships are required for good corporate governance and effective disclosure regimes.

It is also clear that CG and corporate sector reform should be home-grown, in order to be implemented and be sustainable. This implies that the countries of the MENA region work at the national and regional level in view of the economic and financial benefits of harmonization of CG principles and the disclosure regime, while adapting and complying with international principles and standards. Hence, bridging the “CG gap” in the MENA countries requires concerted action at the national and regional levels with international support and cooperation.

## 2: *Corporate Governance in Lebanon: Priorities, Survey, Task Force and Action Plan*

*Summary of day-long discussions on Lebanese corporate governance with Mr. Marwan Hamadeh, Lebanese Minister of Economy and Trade; Mr. Adnan Kassar, Federation of Chambers of Commerce, Industry and Agriculture, Lebanon; Mr. Mohammad Mattar, Chairman, Lebanese Transparency Association; Mr. Sami Atallah, Columbia University; Dr. Nasser Saidi, Mr. Gerard Zovighian, Ms. Chadia Meouchi, Ms. Nada Abou Samra, and Ms. Zeina Zein el-Abidine, Lebanon Corporate Governance Task Force; Dr. John Sullivan, Center for International Private Enterprise; Mr. Ramzi El-Hafez, InfoPro Center for Economic Information; Dr. Assem Safieddine, AUB, School of Business; Mr. Camille Sifri, PricewaterhouseCoopers, Lebanon; Mr. Armand Phares, Lebanese Businessmen Association (RDCL); Dr. Josianne Fahed Sreih, Institute of Family and Entrepreneurial Business, LAU; Mr. Daniel Blume, Organisation for Economic Co-operation and Development (OECD); Ms. Carla Saadeh, International Chamber of Commerce, Lebanon; Dr. Jihad Azour, UNDP Project Director, Ministry of Finance, Lebanon; Mr. Fady Abboud, Association of Lebanese Industrialists; Mr. Armand Phares, Lebanese Businessmen Association; Mr. Fady Saab, American Lebanese Chamber of Commerce; and Dr. Omar Razzaz, World Bank Country Manager.*

Instituting corporate and public governance in Lebanon is a national priority. The participation of both the Lebanese Minister of Economy and Trade and the Chairman of Chambers of Commerce, Industry and Agriculture in Lebanon, along with civil society organizations is an important reflection of the consensus and the strategic partnership between the public and private sector. The involvement of official representatives, members of associations, academics and private sector players in the national committees and task forces at the stage of development of CG codes and principles is a key factor in raising awareness concerning CG principles and their subsequent implementation.

Lebanon is in the process of integrating its economy into the global economy, through the European Union (EU) Association Agreement, entering into the World Trade Organization (WTO), and participating

in the Greater Arab Free Trade Area. Increased international integration along with post-conflict reconstruction requires a re-structuring of the economy and extensive reforms, including corporate reform, in order to improve productivity, growth, and competitiveness. The development of private enterprise and the opening of family-owned enterprises to outside capital call for promoting the principles of transparency and disclosure, clarifying the responsibilities of the board, in addition to the issue of the rights of minority investors and improving the performance of the Lebanese judiciary. In this context, the Lebanon-EU Association Agreement sets a framework and benchmark for the modernization and improvement of rules, regulations, laws, and institutions in Lebanon. The Lebanese corporate sector must invest in a "mise a niveau" in order to compete in EU markets and institute corporate partnerships and joint ventures with EU firms that would lead to substantial efficiency gains in economic organization and activity. Lebanon would clearly benefit from implementing CG principles, imposing higher standards in terms of transparency and disclosure and harmonizing its laws and regulations with those of the EU. Doing so would reduce domestic foot-dragging and eliminate excuses for not reforming the economic, financial, commercial, and legal systems. Similarly, in the process of negotiating entry into the World Trade Organization, overall governance can benefit from streamlining procedures and 'red tape' and introducing and/or modernizing some 17 different law and regulatory regimes.

CG principles and their effective implementation are essential tools for combating corruption and waste in Lebanon and corporate mal-governance that have taken their toll over the years in scandals related to Mebco, Al-Mahrek, Al Ahli Bank, and lately BLC and Al Madina Bank, in addition to public sector and related state-owned enterprises such as Middle East Airlines (MEA) and the Casino. Instituting corporate and public governance principles at the national level helps fight these vices, leading to improved economic efficiency and economic growth. Given the size of the public sector in the economy, concerted efforts from the private sector are required if Lebanon is to offset current deficiencies in economic policy formulation and institutional framework. Structural reforms are necessary to face the challenges of increased international integration and globalization.

Thus, the implementation of good corporate and public governance principles, accompanied by economic policy reforms, particularly in privatization, trade, and investment policies, would reduce the cost of doing business, increase economic efficiency, and help eliminate the barriers and obstacles for diversified export growth and foreign direct investment.

Advocating and implementing good governance helps address Lebanon's socio-economic problems. CG and public governance are pillars for the efficient functioning of modern economies. Good governance guarantees higher levels of efficiency within public and private organizations, while efficiently managing the employment of available resources. Effective implementation leads to adequate transparency and disclosure and consequently to accountability.

The challenge is that of translating the international CG principles which constitute broad guidelines into the national context, meshing them into the local institutional and legal framework, while modernizing and amending the latter to create the enabling infrastructure for effective corporate governance. For corporate reform to be successfully implemented and bear fruit it has to stem from a national, country specific decision that is implemented with objectivity, commitment, and transparency.

### **SURVEY-QUESTIONNAIRE ON CORPORATE GOVERNANCE IN LEBANON**

Lebanon has yet to undertake a full corporate governance survey and assessment. A CG survey will be conducted within the scope of the Action Plan of the Lebanon CG Task Force (see text box below).

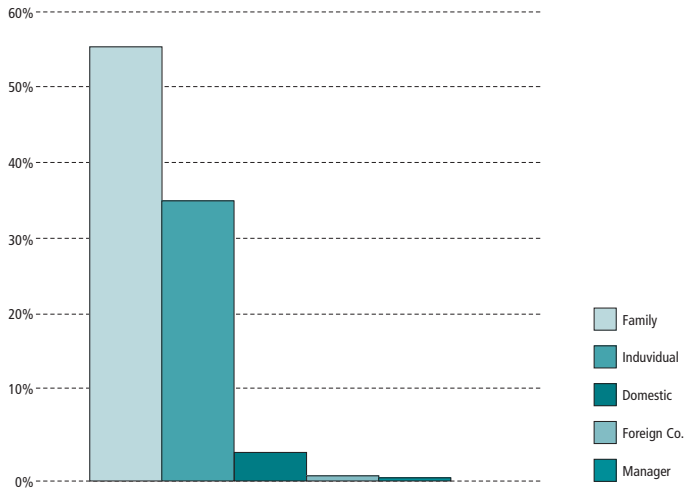
However, in recognition of the need to reform national governance and public institutions, along with reforming corporate governance and to address the strategic relationship between them, The Lebanese Transparency Association launched a survey-questionnaire to assess the quality of governance in Lebanon.

#### **Characteristics of the Corporate Sector and Corporate Governance implications:**

Out of an initial list of 1,265 companies located in the Greater Beirut area—which accounts for some two thirds (2/3) of economic activity in Lebanon—a validated sample of 298 companies and their CEOs was compiled. The survey-questionnaire was conducted over the period November 2003 through May 2004.

Based on the sample, Lebanon’s corporate sector is characterized by the following features (by main shareholder, date of establishment, nature of economic activity, legal form of business):

FIGURE 1: Form of Businesses

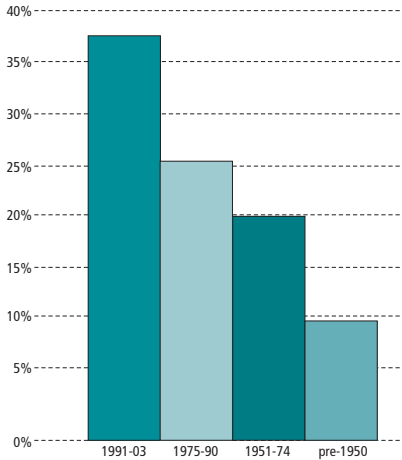


- Family-owned Enterprises (FOEs) (58 percent) and Small and Medium Enterprises (SMEs) (37 percent) respectively of the sample<sup>1</sup> constitute the backbone of the economy. These dominant forms of business have limited institutional capacity to implement and apply modern CG principles. Yet, FOEs and entrepreneurs can be the main catalysts for the development and well functioning of the financial markets. Financial markets can cater to SMEs’ capital requirements for expansion, provide an alternative, and reduce their dependency on the banking sector. Compliance with CG principles can benefit the owners and managers of SOEs and FOEs and increase transparency and disclosure by (a) allowing access to capital and financial markets; (b) help them survive in an increasingly competitive environment through mergers, acquisitions, partnerships, and risk reduction through asset diversification; (c) provide an exit policy and ensure a smooth inter-generational transfer of wealth and divestment of family assets.

1. This is consistent with the Industrial Survey undertaken by the Ministry of Industry in 2000.



FIGURE 2: Business Establishment Date



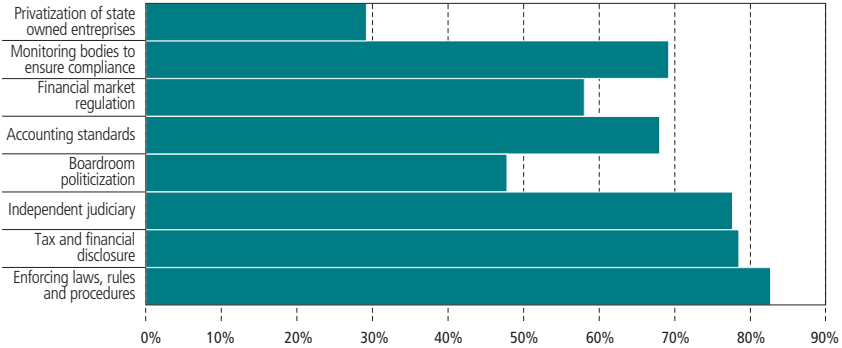
- The sample reveals that more than 78 percent of surveyed companies were either sole proprietorships or partnerships. However, such legal forms of company organization hinder the process of corporate governance implementation. The separation between ownership and management becomes problematic and whenever it happens managers are seldom independent. Good corporate governance not only creates a more attractive investment climate, it fosters the private sector as the engine of economic development.
- Only 11 percent of the surveyed companies were established prior to 1950. There is a low survival rate. Thus, unless FOEs and SMEs adopt and implement good CG principles, it is unlikely that the majority of these businesses will survive the transition and be passed to future generations.
- The financial sector in Lebanon—as in many MENA countries—is dominated by the banking sector; the stock market and financial markets play a limited role in financing the corporate sector.
- Of the sample, only 18.7 percent of the companies had a formal written anticorruption policy or code of conduct.
- Some 89.6.1 percent of companies had an external auditor. 66.7 percent of the auditors were companies, and 89.9 percent were local auditors. Significantly, 62.2 percent of auditors also provided non-audit related serv-

ices, namely advisory and consulting. They also tended to be long-lived: 72.7 of companies had not changed auditors in the previous seven years. In the same vein, only 29.2 percent of auditors had issued a critical or qualified report on accounts in the previous seven years. However, 84.3 percent of companies agreed that they had regular independent audits.

- On matters relating to the Board and responsibilities, 51.2 percent of the companies did not have a statutory rule preventing board members and managers from participating in decision-making, where conflicts of interest may arise. On the matter of holding regular shareholder meetings, 73.6 percent agreed; similarly 81.0 percent stated that companies publicized their shareholder meetings in advance, as required by statutory and legal obligations.
- On the other hand, and related to disclosure and transparency, 76.9 percent agreed that shareholders were “furnished with sufficient information and timely information concerning the date, and agenda of general meetings”; and a similar percentage (70.4 percent) agreed that “shareholders are sufficiently informed on decisions concerning fundamental issues like amendments of statutes or articles of incorporation, etc.” Similarly, 71.1 percent agreed that “shareholders obtain information on the company upon request and without delay.” Despite this, some 51.2 percent disagreed with the statement that “companies publicly publish available annual reports.”
- There is consensus among companies (93 percent) on the importance of “stressing accounting standards in the process of CG reform in Lebanon.” The same large majority, 93 percent stressed having an “independent judiciary in the process of CG reform in Lebanon,” while 96 percent agreed on the importance of “stressing tax and financial disclosure in the process of CG reform in Lebanon.”
- 81.2 percent of companies stressed the importance of financial market regulation in the process of CG reform.
- Privatization of SOEs was considered important in the process of CG reform, (57.8 percent of respondents), but less so than the politicization of boardrooms, at 80.5 percent.
- Regulatory reform, in the form of stressing the importance of “monitoring bodies to ensure compliance in the process of CG reform” was considered important by 93 percent of the respondents, as was the importance of enforcing laws, rules, and procedures: 98 percent!
- As to the role of the media, a small majority, 51.6 percent, agreed that the media “does a good job of reporting on corruption” in gen-

eral, but only 26.6 percent agreed that they did a good job reporting on corruption inside companies.

FIGURE 3: CG Reform Priorities by topic



### ASSESSMENT OF SURVEY-QUESTIONNAIRE ON CORPORATE GOVERNANCE

The survey studied 298 CEOs of firms from the following sectors: trade, non-financial services, industry, construction, and banking. However, the sample is not representative of all CG stakeholders: representative from State-owned SOEs and other stakeholders, did not take part in the survey. The findings of the survey are based on the opinion and answers of CEOs, executive directors and chairpersons, who would certainly tend to be protective of their own interests.

On the other hand, the survey-questionnaire constitutes a qualitative assessment of the level of governance in Lebanon. It examines management practices benchmarked against OECD principles. The main conclusions were reached by making comparisons with the World Bank survey on Eastern European and former Soviet Union Countries.

- The results of the survey confirmed that the current judicial system requires reform. Moreover, the legal system in Lebanon lacks efficiency and consistency in enforcement. Compared to other countries, Lebanese managers are the least trusting that the legal system will uphold their contracts! The consistency and predictability in the interpretation of the laws and procedures falls behind the level attained by

the Eastern European and former Soviet states. Additionally, the survey pointed out that 10 percent of senior management's time is spent dealing with government regulations. The consequences of complex regulations often translate into serious impediments to the level of the private sector productivity and the cost of doing business, with a negative impact on investment and job creation.

- The media faces serious challenges in reporting corruption or bad governance within companies. The survey confirms that education and raising awareness are essential for implementing CG. Awareness raising programs can be undertaken by universities, the media, and other means. The message concerning the importance of CG principles must be brought to the general public.
- Macroeconomic governance comprising economic uncertainty, macroeconomic instability, anticompetitive practices, corruption, as well as taxation, constitute a major impediment to the institution of good governance in Lebanon and consequently to economic growth and development.
- There is wide acceptance of the need to adopt international accounting standards, but their implementation is not uniform, except in the banking sector. Rules and regulations must be amended to have IAS applied and made uniform across all companies and sectors. It is important in order to have a unified market, to attract investors.
- Corporate Governance cannot be separated from Public Governance. The issues of corruption and bribery should be related to CG.
- There is a need for an independent body to monitor CG compliance. This body could either be a self-regulatory organization, whereby CG principles are applied through professional associations having an independent body to monitor compliance. A notable example is the "Code of Business Ethics," recently issued by the « Rassemblement de Dirigeants et Chefs d'Entreprises Libanais » (RDCL). The code is a voluntarily instrument that aims to promote business ethics, professional integrity, transparency in conduct and transactions, and respect for contracts and commitments.

The results of the survey are clear: CEOs desire institutional change and reform and the application of laws by an independent judiciary; they favor tax and financial disclosure, and the application of IAS. They favor regulatory reform and the creation of monitoring bodies to ensure compliance with CG principles.

## BOX 1: Companies House

## COMPANIES HOUSE: UK

The main function of Companies House is to act as a register of companies and in particular to:

- Incorporate and dissolve limited companies;
- Examine and store company information delivered under the Companies Act and related legislation
- Register information about their continuing operations
- Make this information available to the public.

In particular, Companies House provides information on Company Formation and Registration (including company names and business names); Administration and Management (directors and secretaries guide, annual returns, accounts and accounting, auditors, company resolutions, capital and shareholders, company charges and mortgages, dormant companies); Limited Liability Partnerships (formation and names, administration and management, closing activities); the Winding up of companies (liquidation, insolvency, striking-off, dissolution, and restoration); as well as information on laws, regulations, and legislation pertaining to companies.

Providing such information on companies is an important tool in ensuring effective, competitive markets.

### History

While a large number of countries (e.g. Germany, Sweden, France) have established companies houses in different forms, the original model institution was set up in the United Kingdom, which has enjoyed a system of company registration since 1844. Today, company registration matters are dealt with in law, by the Companies Act 1985 and the updating legislation contained in the Companies Act 1989.

All limited companies in the United Kingdom are registered at Companies House, an Executive Agency of the Department of Trade and Industry. There are more than 1.8 million limited companies registered in Great Britain, and more than 300,000 new companies are incorporated each year.

SOURCE: Companies House [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

## **INTERNATIONAL AUDITING STANDARDS IN LEBANON**

Applying international standards for corporate reporting are essential for the development of the country and its integration in the international scene and for it to regain its status as a regional financial center, by:

- Increasing the availability and reducing the cost of capital through globally competitive capital markets;
- Providing a common basis of measurement of economic performance;
- Reducing companies' cost of compliance with different accounting rules;
- Raising all national standards of accounting to "world class";
- Encouraging a global investment culture; and
- Facilitating the provision of low cost capital to developing nations.

The International Accounting Standards (IAS) were adopted in 1996 by the Ministry of Finance as the national standards to be followed by most entities—including public interest entities—in the preparation of financial statements. However, this places a burden on SMEs. While listed companies, banks and financial institutions largely comply with IAS and the International Standards on Auditing (ISA), compliance gaps appear at the level of small- and medium-sized and family-owned enterprises, which find that complying with IAS constitutes a substantial burden. The Lebanese private sector recognizes International Accounting and Auditing Standards (IAS and ISA and International Financial Reporting Standards [IFRS]); however, no legal requirement or formal mechanism exists to monitor compliance. Furthermore, no supervisory body has been established to monitor practices and secure consistency.

## BOX 2: Accounting and Auditing in Lebanon

## ACCOUNTING and AUDITING IN LEBANON

A number of laws, decrees and ministerial orders govern Lebanese private sector accounting and auditing:

- Code of Commerce
- Ministerial Order (1996) requires conformity with IAS for most companies
- Higher Council of Accounting and Auditing (established by Minister of Finance)
- All listed companies are required to prepare a legal entity and consolidated financial statement under IAS
- Banking Law requires all banks to follow accounting and auditing requirements and reporting set by the Banking Control Commission
- The accounting and auditing regulatory framework for insurance companies is not as advanced as that of the banking sector
- The Act of Regularization of the Certified Public Accountant's Practice (1994) provides the regulatory framework for the accountancy profession.

The audit profession in Lebanon is led by the Lebanese Association for Certified Public Accountants (LACPA), the only recognized professional body, a member of The International Federation of Accountants. In practice it has given impetus to the profession but has yet to develop the authority and capability required to monitor the implementation of standards.

The overall statutory framework is well defined: there is a Code of Commerce, and a Higher Council of Accounting and Auditing that oversees and discusses policy issues, while banking laws and regulations introduce a sense of guidance. (See text box).

Despite the wide recognition of both the International Standards on Auditing and International Financial Reporting Standards, there is no formal adoption of ISA in Lebanon, except for the banking and financial industry, and the listed companies on the Beirut Stock Exchange. Audit opinions in general make reference to conformity with ISA. Degrees of implementation of ISA and IFRS are discretionary and vary depending on the accounting and auditing professional. There are still significant gaps between accounting and auditing practices in Lebanon and ISA and IFRS.

The recently completed Report on the Observance of Standards and Codes states that the compliance gaps “stem primarily from shortcomings in professional education and training in Lebanon. When the LACPA was established in 1994, all applicants, who sought license to practice, were certified without examination. More importantly, no enforcement mechanism exists to ensure IAS compliance, except in the banking sector<sup>2</sup>.” It calls for, among other measures, “developing practical implementation guidelines; strengthening enforcement mechanisms; upgrading accounting curricula and increasing training arrangements and opportunities for practicing auditors; and establishing a system to perform quality control reviews of audit practices.”

There is a need for enforcing regulations and for monitoring compliance with IAS and ISA. Regulation needs to address common principles in the following areas: (1) Audit Committees; (2) Accountability for corporate governance and internal control; (3) Audit standards and regulation; (4) Market regulation.

### **Recommendations**

Review legislation in the areas of accounting, auditing, corporate reporting and accounting certification to ensure compliance with global trends and International Federation of Accountants policy pronouncements.

Enforce publication and filing of timely financial information by public interest entities.

Create a taskforce to monitor the country's compliance with international standards in corporate reporting.

Enforce stricter standards in terms of licensing and continuing education of public accountants and auditors.

Educate regulators in the areas of ISA and IFRS.

### **CG IN THE BANKING AND FINANCIAL SECTOR**

There are thirteen companies listed on the Beirut Stock Exchange—including some major banks—however, they do not account for more

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2. See ROSC in accounting, World Bank Group, May 2004.



than 8 percent of the GDP, so the standard external governance mechanism for the introduction of and compliance with Corporate Governance principles are not generally operative. There is no complete regulatory framework for the operation of Capital Markets in Lebanon—the current Stock Exchange Commission is appointed by the Ministry of Finance and works under its authority—that would establish an independent capital market authority to define and deal with issues such as insider trading, stock price manipulation, abuse of position, but also transparency and disclosure and the protection of minority shareholders. Major reforms will be required to upgrade the Beirut Stock Exchange and its regulatory authority to apply CG principles on listed companies, monitor compliance, ensure transparency and disclosure and censure non-compliant companies, potentially leading to de-listing and other civil or criminal proceedings.

Progress has been achieved in the corporate governance of Lebanon’s banking sector as a result of the application of international standards: the Basel I capital adequacy and the implementation by the Banking Control Commission and the Banque du Liban (Central Bank of Lebanon) of the Bank for International Settlements Core Principles for Effective Banking Supervision (Basel Committee Publications No. 30) as well as related prudential and regulatory measures (see Enhancing Bank Transparency, Basel Committee Publications No. 41), and Framework for Internal Control Systems in Banking Organizations (Basel Committee Publications No. 40). Further, to ensure market integrity, Lebanon has introduced Anti-Money-Laundering and Terrorist Financing legislation, issued regulations to implement the law, and instituted a Special Investigation Committee for monitoring and effective implementation.

Banks are heavily regulated through principles of the BIS standards and Basel I (and the forthcoming Basel II) capital adequacy standards. However, government regulatory structures are often ineffective in controlling or limiting the family dominance of banks. In Lebanon, most of the banks are owned by a few families. This is not an exclusively Lebanese phenomenon, it is an international phenomenon. More than 70 percent of banks worldwide have at least one shareholder who controls more than 10 percent of the voting rights. Regulation can enhance CG; over the past few years the Banque du Liban has issued a number of regulations in line with the Basel core principles of banking supervision requiring the creation of independent audit units reporting to the Board, improving infor-

mation symmetry. Any regulation that helps regulate the information asymmetry problem helps in protecting the minority shareholders, which is a key issue in Lebanon.

Despite progress in the banking sector, internal CG mechanisms based on clear responsibilities of the board to monitor and direct management and to make sure that the incentives are aligned and any distortion is mitigated, the maintenance of a transparent corporate structure, board independence and the concept of having independent, non-executive board members, are non-operative in Lebanon. Having more than 51 percent of the board members independent is almost unheard of. In the absence of well-functioning internal CG mechanisms, the banking sector has to play the role of the external markets, the role of the aligning incentives in relation to the corporate non-listed sector as well as to SMEs and FOEs.

As in most developing countries, Lebanon faces a problem of legal enforcement and accountability. Companies and securities laws have to be updated and modernized. In addition, enforcement of existing laws has to be strengthened. A survey in a Wall Street Journal issue of 2003 reveals that for foreign investment, contract enforcement, accountability, and predictability of the judicial system are probably the most important risks in doing business in Lebanon. These are in spite of the provisions of Article 70 of the Code of Commerce that allow shareholders to sue directors for mismanagement. However, because judicial, extra-judicial and associated costs are high, it is very rare to witness this phenomenon. Similarly, Lebanon has laws prohibiting corruption. Giving bribes or receiving bribes is subject to potential penalty of up to three years in prison. However these laws are not being enforced.

### **INSTITUTION BUILDING: THE LEBANESE CORPORATE GOVERNANCE TASK FORCE**

As a country emerging from conflict, Lebanon faces the challenges that virtually all developing, transition and emerging-market economies now face: how to create institutions and respect their rules. There is a need to move from discretionary-management and relationship-based policy making and governance to institutions- and rules-based policy making and governance in both public and private entities.

The Lebanese Transparency Association (LTA) has established a Lebanon Corporate Governance Task Force (LCGTF). Its objectives are to raise aware-

ness on CG issues, work with all stakeholders in the private and public sectors for the adoptions and effective implementation of CG principles among all businesses, private and state owned enterprises, and professionals. The Lebanon Corporate Governance Task Force (LCGTF) is an example of the private-public cooperation and strategic partnership on the issue of CG principles and practice development and implementation. LCGTF have developed an action plan with welldefined goals. The LCGTF focuses on important building blocks that insure institutional and market infrastructure, namely the OECD Principles of Corporate Governance and the supporting pillars of the implementation of International Accounting Standards and International Standards on Auditing.

The LCGTF has established four committees, each one having its own set of deliverables. (See Annex for LCGTF Action Plan and deliverables).

<1> Accounting and Auditing Committee has as its principal function the assessment of the status and practice of public and corporate governance principles in Lebanon, as established through accounting and auditing standards. The committee will also provide recommendations to achieve higher reporting standards based on the World Bank Templates and the ROSC accounting and auditing initiative, to help institute improved auditing and accounting standards.

<2> The Legal and Regulatory Committee aims at contributing to the drafting of corporate governance principles in Lebanon. Its responsibilities include comparative country analysis of CG principles and business codes, drafting, promoting, and lobbying for legal and regulatory amendments, and enactments and/or developments that will encourage the promotion of effective corporate governance.

<3> Communication and Media Committee has two major roles in the process of establishing corporate governance in Lebanon. Its first function will be to assist in the preparation of all relevant documents. Its second function is to work with the media and ensure that these documents are reaching the targeted stakeholders and audiences raising awareness about corporate governance. It will plan and assist in undertaking CG principles workshops and training.

<4> The Funding and Membership Committee will seek sources of funding for the LCGTF programs and activities and recruit new members. It aims at promoting and implementing corporate governance principles among potential members—including Chambers of Commerce, business associations, companies and firms, as well as members of the academia, and experts.

The LCGTF National Action Plan includes:

1. Undertake a Survey of corporate governance in Lebanon.
2. Set up a National CG Gateway to raise awareness, promote CG and act as a knowledge resource for CG.
3. Develop set of core principles for the corporate governance of large exchange-listed companies; based on the OECD, CG Principles will be developed for Family-ownedFOEs, SMEs and SOEs.
4. The LCGTF will propose and seek amendments to the Commercial Code and other legislation relating to the core CG principles:
  - a. Strengthen protection of minority and foreign shareholders
  - b. Identify the responsibilities of the Board of Directors and individual directors
  - c. Accounting and auditing
  - d. Transparency, disclosure and corporate reporting
  - e. Regulatory environment
5. Contribute to financial sector development:
  - a. Introduce a comprehensive Capital Markets Law
  - b. Introduce a Modern Securities Law
6. Build market structure:
  - a. Introduce a Competition (anti-trust) Law
  - b. Modernize and reform insolvency and bankruptcy law
  - c. Right to know and right to tell: prepare and work for the enactment of a “Freedom of Information Act” and a “Data Privacy Act”.

## BOX 3: Credit Rating Agencies

## CREDIT RATING AGENCIES (CRA)

CRA's constitute an external source of credit information. These agencies are commercial organizations that assess the ability of an entity or a securities issue to meet its financial commitments such as interest, preferred dividends, or repayment of principal, on a timely basis. Ratings can apply to a variety of entities and issues, including but not limited to sovereigns, governments, structured financings, and corporations; debt, preferred/preference stock, bank loans, and counterparties; as well as the financial strength of insurance companies and financial guarantors. Credit ratings are used by investors as indications of the likelihood of repayment in accordance with the terms on which they invested.

Credit reporting agencies are efficient tools to prevent market failure: as reliable sources, they transmit relevant information, preventing profitable opportunities from being left unfunded.

CRA's derive their economic value by transforming collected credit information into ratings, through qualitative and quantitative assessment processes.

The findings reached on an obligee are either made publicly available or provided in return of a fee, typically a "subscription fee", of the order of tens of dollars. Credit Ratings Agencies finance their operations by charging the obligee who "commissions" a rating.

These agencies are reputed of being unbiased, and are well known to avoid instances of conflict of interest. A long track record of successful ratings in different markets is yet another valuable asset to a CRA's long term viability.

CRA's have become increasingly popular in recent years. In 1999, the estimated number of agencies was around 130 worldwide. Anecdotal evidence suggests that the total number of agencies is likely to increase, most noticeably in less developed markets. Among the most reputable CRA's are: Moody's Investors Service, Standard and Poor's, Dun and Bradstreet, Duff and Phelps Credit Rating Co. and Fitch IBCA (merged), Japan Credit Rating Agency, Ltd (JCR), and Capital Intelligence.

7. Develop a Public Credit Registry to centralize reporting on the sources and uses of credit<sup>3</sup>.
8. Set up a national “Companies House” to complement and expand the commercial registry.
9. Encourage the set-up of Local Rating Agencies<sup>4</sup> to ease compliance with Basel II banking standards.
10. Lobby and seek the adoption and implementation of the 12 key Standards for Sound Financial Systems, developed by the Financial Stability Institute<sup>5</sup>.
11. Develop incentives and rewards for information disclosure and good CG:
  - a. Set up web links and national networks of CG complying companies.
  - b. Work with the OECD-World Bank, Center for International Private Enterprise( CIPE), Global Corporate Governance Forum (GCGF) and with regional and international organizations to set up National CG Gateways that would also provide an international network for CG complying companies.

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3. See Box 4

4. See Box 3

5. See Annex

### *3: Corporate Governance in MENA: Issues for the Agenda*

The purpose of the First Forum was to highlight trends and practices in CG, whereas the Second Forum concentrated on disclosure and transparency, as well as implementation. In Cairo a regional process was launched and started with four core countries—Egypt, Jordan, Lebanon and Morocco—representing the bulk of the work on CG. This second meeting aimed to institutionalize the process, which is central for the region and included a larger number of country participants, including states from the Gulf and Tunisia. The institutionalization process was reinforced by the participation of regional bodies, including the Union of Arab Banks, the Arab Union for Stock Exchanges, and the Arab Federation of Certified Accountants.

The building of a framework should pave the way for means to deal with issues related to CG. The core principle of transparency and disclosure was considered (See Box Insert on Transparency and Disclosure), and discussed in light of the regional characteristics. Thus the Second Meeting stressed dealing with CG in the banking sectors, capital markets, and SMEs, listed, and non-listed companies.

The importance of CG is as a value creation process in society that creates a better life for the citizens. Since SMEs are the bulk of the business field, it is where the hopes for the future reside in the MENA countries. Public opinion should be made aware that CG is a part of corporate reform, as a structure through which all citizens will benefit. It is the role of the private sector to change the image, thus the expectations, of the interaction between the private and the public sectors. Work on the regional basis should focus on the idea that change must and can happen. It is the role and responsibility of the private sector to implement reforms. Good governance should be viewed as a tool and investment for the MENA countries as they seek to raise economic growth rates, improve the welfare and prosperity of their citizens and improve the social and economic prospects of future generations.

Public and private governance go hand in hand. The government provides the private sector with the rules of the game implying limited liability in undertaking private enterprise; in exchange for the rule of law and

institutional framework, the private sector has to conduct itself along certain lines designed to create value and wealth. The government has an obligation as well: it should guarantee the concretization of expectations of the private sector, that the rules of the game are obeyed. It is important for both parties to respect and demand their parts of the deal. Between the social side of CG and the private side of it, there are different approaches. The government appears as a mediator in the wealth creation process of capitalism. The private sector needs to operate efficiently.

### **KEY ISSUES FOR THE REGIONAL AGENDA**

- It is widely agreed that there is a Corporate Governance gap in the region, with available indicators suggesting that the companies and countries of the region stand far behind in terms of the implementation of principles and standards vis à vis the benchmark of the OECD CG Principles and practice in industrialized countries. The corporate sector in the MENA countries has to initiate a "mise à niveau" process for implementing CG. However a CG action plan and corporate sector reform programs require information and detailed assessment in order to prioritize actions and formulate remedial government policy responses to the private sector. Table 1 shows that only six countries in the region (Algeria, Jordan, Kuwait, Morocco, Tunisia and the UAE) have completed and published ROSC Reports. Some countries (including Egypt and Lebanon) have undertaken and completed reports on a number of topics (e.g. payment systems, data dissemination, and banking supervision in the case of Lebanon) but have not published the reports or made them widely available. Unfortunately, the lack of wide availability and dissemination of the reports reduces their usefulness in leading to change in policies, reform and modernization.

Similarly, only four countries (Algeria, Kuwait, Tunisia, and UAE) have undertaken and published a Financial Sector Assessment Program, which the International Monetary Fund (IMF) and the World Bank undertake with countries to assess the strengths and weaknesses of a country's financial system, including observance and compliance with relevant financial sector standards and codes. With respect to CG, only two countries (Egypt and Morocco) have finalized and published a CG survey, though Lebanon, Jordan and Tunisia are committed to undertaking and publishing surveys.



- The corporate and industrial organization structure of the regional economic environment consists of SMEs and FOEs while State-owned SOEs are dominant in public utilities, industry, transport and banking and finance in a large number of countries in the MENA Region. This important characteristic needs to be addressed in designing an appropriate body of CG principles and disclosure regime. The prevalence of SMEs and FOEs is not unique to the MENA region: many countries within the OECD, and listed companies on international Stock Exchanges, consist of large, family-owned and/or -controlled businesses.

TABLE 1: MENA ROSC Reports

TOPIC	COUNTRY	DATE OF PUBLICATION
ROSC Report on Banking Supervision	Algeria Kuwait Morocco Tunisia United Arab Emirates	May 17, 20 & June 23, 2001 May 24, 2004 July 17, 2003 June 17, 2002, Jan. 29, 2001 & Sept. 30, 1999 January 27, 2003
ROSC Report on Monetary and Financial Policy Transparency	Algeria Morocco Tunisia United Arab Emirates	May 17, 2004 July 17, 2003 June 17, 2002, Jan. 29, 2001 & Sept. 30, 1999 January 27, 2003
ROSC Report on Data Dissemination	Jordan Morocco Tunisia	February 10, 2004 & October 16, 2002 April 4, 2003 Jan. 29, 2001 & Sept. 30, 1999
ROSC Report on Anti-Money Laundering and Combating the Financing of Terrorism	Kuwait	May 24, 2004
ROSC Report on Accounting and Auditing	Morocco Egypt Lebanon	July 25, 2002 August 15, 2002 May 7, 2003
ROSC Report on Securities Regulation	Kuwait Morocco Tunisia	May 24, 2004 July 17, 2003 June 17, 2002, Jan. 29, 2001 & Sept. 30, 1999

TOPIC	COUNTRY	DATE OF PUBLICATION
ROSC Report on Insurance Supervision	Morocco	July 17, 2003
	Tunisia	June 17, 2002
ROSC Report on Payments Systems	Morocco	July 17, 2003
	Tunisia	June 17, 2002
	United Arab Emirates	January 27, 2003
ROSC Report on Fiscal Transparency	Tunisia	Jan. 21, 2001 & Sept.30, 1999
Corporate Governance Survey	Egypt	2001 & 2003
	Morocco	2003
Financial Sector Assessment Program	Algeria	May 17, 2004
	Kuwait	May 24, 2004
	Tunisia	June 17, 2002
	Egypt	2001 (not published)
	United Arab Emirates	January 27, 2003

- State-owned enterprises, SOEs, dominate the economic scene in many of the countries of the MENA region. The framework for CG in the region must, as a result, focus on the governance of SOEs. In most of the countries of the region, and despite the privatization programs initiated in the 1990s, SOEs represent more than 40 percent of local production. In most cases, public utilities and all basic infrastructural services—which are critical for the functioning of economies and their efficiency, competitiveness, and productivity growth—such as the telecommunication sector, transport, energy, and water, are state-owned.
- Privatization and increased private sector participation in providing infrastructure requires the prior implementation of CG at the level of SOEs. Indeed the systematic introduction and compliance with the basic principles of CG will prepare SOEs for privatization and result in more successful privatization programs.
- Given the prevalence of SOEs and FOEs and the limited extent of listed companies, imposing and implementing CG principles is a challenging and costly task. In this regard, incentives should include dis-

closure regimes designed to minimize implementation costs. The objectives at the national and regional levels, with the help of national, regional, and international organizations, should consist in making CG technology toolkits available and at the disposal of business associations, chambers of commerce, and companies, in order to reduce as much as possible the costs of compliance, standardize norms, and enhance the possibilities of training. Clearly, codes, principles, standards and their explanatory material, as toolkits should be made available in Arabic to maximize dissemination and wide adoption and awareness. Introducing and changing laws and regulations, judicial reform, creating awareness and changing expectations will not be enough. Positive incentive creating mechanisms are needed, to show that implementing CG creates value, and increases profitability. Good CG should be seen to be growth-enhancing rather than an additional reporting and compliance burden, with more regulatory bureaucracy and related costs.

### **BUILDING BLOCKS FOR A REGIONAL CG ACTION PLAN**

<1> Regional dialogue should be developed: Working Groups and Task Forces should be created, with specialization by tasks, and with resources available for harmonization and integration work at the regional level.

<2> More countries and regional institutions should join the process. In particular, apart from the countries of North Africa, the Gulf Cooperation Council countries should be involved as soon as possible in the process as they are seeking to diversify their economies, setting a framework for corporate reform, and undertaking privatization of state-owned assets.

<3> The CG process should be "home-grown", with national, internal reforms championed. The CG process should be driven by cooperation between the private and public sectors, a partnership for CG and corporate sector reform. This requires broad-based political support. CG should be seen as a positive objective that would be to the advantage of the economy and to society.

<4> International organizations such as the OECD, WB, GCGF, CIPE, and others should provide support, technical assistance, and cooperation.

<5> The implementation of CG at the level of the banks' clients also facilitates the process of risk assessment, of estimating the value at risk in their loan and investment portfolios, a major requirement in the implementation of the Basel II principles. Hence, the banking sector is a prime candidate for the implementation of CG both in the banks themselves, but also at the level of the corporate clients of the banks.

#### BOX 4: Centralized Credit Reporting Systems

##### CENTRALIZED CREDIT REPORTING SYSTEMS

One of the most important institutional elements supporting a well-functioning credit market are credit or consumer reporting firms and other types of public and private credit information registries which provide rapid access to accurate and reliable standardized information on potential borrowers, be they individuals or firms.

By credit reporting system we mean a broader institutional framework in the economy, including the following elements:

- public credit registry, if one exists
- private credit registries, including chambers of commerce, banking associations, and credit reporting bureaus
- the legal framework for credit reporting
- the legal framework for privacy, as it relates to this activity
- the regulatory framework for credit reporting
- the characteristics of other pertinent borrower data available in the economy
- the use of credit data in the economy, by financial intermediaries and others
- the cultural context for credit reporting

The development of a strong credit reporting system in a country requires appropriate public policies as well as both tailored public sector and private sector initiatives.

SOURCE: [http://econ.worldbank.org/programs/credit\\_reporting/](http://econ.worldbank.org/programs/credit_reporting/)

Central banks and bank supervisors can provide an important mechanism for the implementation of CG and ensuring transparency and disclosure in financial statements and other material information, by issuing regulations and directives to: (a) request the implementation of CG principles at the banks and other entities they regulate and supervise, and (b) by requesting that the corporate clients of the banks comply with CG as part of the process of credit rating and risk assessment. Bank supervisors along with the banks' auditors—both internal and external—would be responsible for ensuring compliance with CG principles in the banking sector. Importantly, the proposed mechanism would also help in addressing the issue and challenge of implementing CG in the SME and FOE sector.

<6> It is important to start with basics and undertake CG surveys for each country in the region stands, to establish an 'état des lieux' in terms of the relevant legal infrastructure (company and commercial, capital market and securities laws and other), the regulatory structure, capital markets development, adoption of recognized accounting and auditing standards and other. The 12 Key Standards for Sound Financial Systems developed by the Financial Stability Forum provides a reference framework and benchmark for a regional action plan. (See Annex)

<7> Institution-building is an important part of the CG process. An enabling and supportive legal and judicial framework has to be established for CG in the MENA countries. Consideration should be given to the establishment of a national "Institute of Directors", and eventually a regional institute for regional harmonization and integration of CG frameworks; Companies Houses<sup>6</sup> acting as reliable sources of publicly available information about corporations; the development of capital markets with the objective of facilitating the transition of SMEs and FOEs to listed companies. Countries such as Egypt, Jordan and Morocco have—through capital market reforms—been instrumental in improving the investment climate through increased transparency and better disclosure.

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6. See Box 1 on Companies Houses.

<8> The availability of corporate credit and financial information can be enhanced through the establishment of Central Credit Reporting<sup>7</sup> organizations, thereby increasing transparency and disclosure. Local centralized credit reporting agencies can collect, organize, and analyze valuable, material information in an efficient manner, making it available for wide dissemination.

<9> Credit Rating Agencies<sup>8</sup> have an important role to play in improving transparency and disclosure. Credit rating agencies should aim to be objective, in order to have greater utility, power, and impact on the capital market. The establishment of credit rating agencies can be important for capital market development by providing credit benchmarks for the local market and increasing transparency and disclosure for listed and non-listed companies. However, credit rating agencies may get it wrong, and the economics of local credit rating agencies seem very expensive. What is important is improving access to capital and to more varied sources of capital. The more sources of capital is available, the greater the liquidity, the more will the cost of capital decrease. A transition period is needed as well as a group that would gather the data and make it public. But the real utility is that it makes capital available.

<10> There is a need to establish an incentive-compatible CG system leading to voluntary compliance and the development of self-regulatory organizations. This is more challenging than a system based on laws and legal/judicial enforcement, but may be better adapted to the corporate structure based on SMEs and FOEs of the MENA region. The design of the optimal disclosure regime for the MENA countries requires research and consultation.

<11> Reward systems can be established through networking and the use of modern technologies. National CG gateways should be launched highlighting companies with good CG standards; these could be linked to the networks of international organizations such as the OECD and the World Bank, to reward good CG countries and companies. International and national awards could usefully be established to reward companies applying good CG principles, to the extent that the market does not reward good CG companies, or for unlisted companies.

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7. See Box 1 on Companies Houses.

8. See Box 1 on Companies Houses.

## BOX 5: Disclosure and Transparency

## CHAPTER V OF THE OECD PRINCIPLES OF CORPORATE GOVERNANCE:

## Disclosure and Transparency:

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

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

1. The financial and operating results of the company
2. Company objectives
3. Major share ownership and voting rights
4. Remuneration policy for members of the board and key executives, and information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board
5. Related party transactions
6. Foreseeable risk factors
7. Issues regarding employees and other stakeholders
8. Governance structures and policies, in particular, the content of any corporate governance code or policy and the process by which it is implemented

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

C. 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.

D. 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.

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

F. 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.

## 4: *Corporate Governance: International and Regional Trends*

*Summary of panel discussion by Mr. Daniel Blume, OECD; John D. Sullivan, CIPE; Mr. Maged Shawky, Egyptian Institute of Directors; and chaired by Mr. Abdul Hamid Ibrahim, Egyptian Capital Market Authority*

Recent corporate scandals and collapses, issues of executive compensation and legitimacy of the markets, resulting financial crises and breaches to financial market integrity, as well as expanded knowledge about the virtues of CG has enhanced interest in improving and updating the OECD CG principles in several fields such as transparency and disclosure, shareholders rights, implementation, and enforcement. The request by OECD ministers in 2002 to push forward the revision of the Principles put the emphasis on the implementation of sound corporate and financial governance, “which entails an appropriate mix of incentives, a balance between regulations and self regulation, backed by effective enforcement.”

Further, the existence of substantial cross-country differences in corporate ownership and control bodies, not having a unique set of principles that apply to all cases of CG, justify establishing broad-based principles than can be adapted to specific regional and local conditions.

The Financial Stability Forum called for the OECD review of the principles to take into account recent experience, suggesting that the Principles should be strengthened, while having them remain general, in order to provide more substantial guidance, and provide more examples regarding applicability, implementation, and enforcement in different economic and legal contexts. The review process included a consultation meeting with non-OECD countries in Paris in November 2003, and also involved a series of consultations with the private sector, trade unions, and surveys conducted by the OECD with member and non-member countries. It was also based on public consultations posted on the web, in order to ensure the transparency of the process.

To the five already existing chapters, a new first chapter was added, dealing with the framework for implementation and enforcement. The



revised OECD Principles<sup>9</sup> are now distributed among six chapters: (See Box on Principle 5 relating to transparency and disclosure).

1. Ensuring the basis for an effective Corporate Governance Framework
2. The rights of shareholders and key ownership functions
3. The equitable treatment of shareholders
4. The role of stakeholders in CG
5. Disclosure and transparency
6. The responsibilities of the board

Sound governance involves a number of major issues. These include: controlling executive and director remuneration, the abuse by related company groups acting together in order to shift funds for the benefit of certain shareholders at the cost of others, self-dealing and abuse by insiders, and the overall need to improve financial market integrity, improve enforcement, and better exercise of ownership. These issues are cross-cutting, being included in the six different chapters.

It is of central importance to have a CG framework that would guarantee reporting and disclosure of all material matters, such as financial status and developments, management and ownership of companies, and financial performance. Reporting should be done on at least an annual basis, as the information revealed could influence the economic opportunities and choice set of decision makers and stakeholders. The information should be available simultaneously to all involved shareholders and stakeholders.

A clear framework for disclosure and transparency is essential for sound CG for several reasons. First of all, having a transparent disclosure regime facilitates the monitoring of companies and helps shareholders exercise their ownership rights. Disclosure and transparency can be used as a powerful tool to influence companies and protect investors. They are a basis for attracting capital, and raise the degree of confidence in financial markets, and protect market integrity by fostering ethical behavior. Finally, availability of information

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9. Organisation for Economic Co-Operation and Development, (2004).

“OECD Principles of Corporate Governance.” Paris, France.

[www.oecd.org/dataoecd/32/18/31557724.pdf](http://www.oecd.org/dataoecd/32/18/31557724.pdf)

facilitates the good functioning of markets, decreases the cost of capital, and results in a more efficient resource allocation. The revised principles indicate the type of ‘material’ information to be disclosed. They consist of:

1. The financial and operating results of the company
2. The company’s objectives
3. The major share ownership and voting rights
4. The remuneration policy for board members and key executives, as well as information about board members, including their qualifications, the selection process, other company directorships, and whether they are regarded as independent by the board
5. Related party transactions
6. Foreseeable risk factors
7. Issues related to employees and other stakeholders
8. Governance structures and policies in particular, the content of any corporate governance code or policy and the process by which it is implemented

A number of potential disclosure implementation issues relate to the fact that information on financial status, as well as accounting and auditing should be disclosed in accord with international standards. Independent auditors should prepare annual audits to disseminate financial information. The external auditors should be held accountable to the shareholders and board members of the company and not be subject to the authority of executive management. Additionally, equal access to information should be provided, be timely, and cost-efficient. The last issue concerns the process of establishing CG, which should be done in parallel with an effective approach that addresses and promotes provisions for analysis, and includes the advice of analysts, brokers, and rating agencies. Finally, the OECD Principles of Corporate Governance are complemented and supported by related guidance on disclosure, such as the International Organization of Securities Commissions principles<sup>10</sup>, the OECD Guidelines for Multinational Enterprises, and the OECD Template on Options for Obtaining Beneficial Ownership and Control Information<sup>11</sup>.

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10. <http://www.iosco.org/library/pubdocs/pdf/IOSCPD167.pdf>

11. “Options for obtaining beneficial ownership and control information: a template prepared by the Steering Group on Corporate Governance”, OECD (September 2002) <http://www.oecd.org/dataoecd/50/40/1961539.pdf>

The OECD ministers met in May 2004 and issued a statement to encourage the active use and implementation of the Principles, as well as the establishment of dialogue among governments. Having the same ambitions, the World Bank and the IMF has issued the ROSC financial reports as a part of the process of reviewing CG performance in developing countries. (See Table 1 for a listing of ROSC reports available for the MENA region) Moreover, the OECD will develop a process to promote progress made by OECD countries, with plans to look more closely also at state-owned and non-listed companies. Finally, roundtables on CG will be continued in other regions, in collaboration with other international organizations in the aim of pursuing progress. For the MENA region, a roundtable-type process would be a way to build upon the work of CIPE and GCGF that has already occurred, with the aim of further strengthening and broadening regional dialogue. The OECD will contribute to this process of regional policy dialogue and consensus building in support of further development and implementation of recommendations at the regional level.

### **EMERGING MARKETS CORPORATE GOVERNANCE TRENDS**

A recent McKinsey Global Investor Opinion survey of June 2002 concludes that transparency and good governance are important drivers for investors, a “well governed company does make a difference” in different regions and countries.

Emerging market countries face alternative models of corporate governance applied in different regions of the world. In answer to the principal-agent problem, the OECD principles are based on a division between the roles of ownership and control for listed companies, including Family-ownedFOEs. Cadbury Report (The Financial Aspects of Corporate Governance; from a committee set up by the U.K.-based Financial Reporting Council, London Stock Exchange, and accountancy profession) and the Sarbanes-Oxley Act provide guidelines and principles to answer CG issues and increase the focus on disclosure for unlisted companies. The basic model, as applied in the United States, is based on the enforcement of rules, and while of great importance, the costs appear to be higher than the benefits. The Sarbanes-Oxley Act is a political reaction; it helps by providing a checklist, and by energizing the legal profession to sue companies. However, it is very costly to apply, especially for small companies A more efficient model, as applied in the U.K. approach, is based on compliance with principles. Though the U.S. model functions through a good set of regulators, it is

more advisable for emerging market countries to follow the U.K. CG model. These models and the results of experience show that the fundamentals for well-functioning institutions comprise the following:

1. Transparency and disclosure of financial information
2. Laws and regulations dealing with conflicts of interest
3. Bankruptcy procedures
4. Enforcement of property rights
5. Contract enforcement laws
6. Anti-corruption and bribery laws

Good CG results from a set of internal factors and part of a company's management and financial structure, while the external ones include the stakeholders, the principles and standards, and market forces. The operation of the above-noted external or environmental fundamentals is usually taken for granted by analysts and practitioners. The general idea is that if the internal factors are well directed, the external environment factors will automatically follow. However, reality is somewhat different.

What underlies the international drive behind reform of the CG environment? The first impulses came from the Asian financial crisis and the currency collapse and privatization issues in Russia, of the late 1990s. These were pivotal events for academics and specialized writers. Another shock came from the Corporate Governance failures in the United States and Continental Europe that woke up the world through their impact on the U.S. and global financial and capital markets. Consider the statement by Mr. Chatu Mongkol Sonakul, the former Governor of the Bank of Thailand: "The Asian financial crisis showed that even strong economies lacking transparent control, responsible corporate boards, and shareholder rights can collapse quite quickly as investors' confidence erodes. "The nature of financial markets implies that once the "capital" of confidence erodes, it is very difficult to establish it again. Thus trust appears as a major issue. In the United States and Continental Europe, it was central to rebuild trust, and thus regain confidence in the integrity of the market system and its governance. In the United States, the major event was the Enron scandal early this decade, and an effort had to be directed in the Post-Enron period in order to elaborate and revise CG legislation in the United States. A general desire to regain trust through disclosure is apparent; it underlies the Sarbanes-Oxley Act that

encourages corporate disclosure, the New York Stock Exchange's issuing of a new set of rules dealing with the independence of Directors, and finally the NASDAQ's addressing the question of the responsibility of directors.

For the emerging markets, the issue is quite different; it consists of building and developing trust as a first step – that is the major challenge. Typically, the weaknesses faced by emerging markets and areas where trust can be damaged or lost in case of CG failures, include:

1. Abuse of minority shareholder rights through market asset tunneling, as happened in Russia and some Asian Countries
2. Asset stripping
3. Weak legal institutions
4. Problems with security exchanges such as in the Philippines, Poland, and Russia
5. Insider trading and self-dealing
6. Corruption—the most important issue

To ensure the good functioning of a CG structure, developing countries need institutional reforms. The CG structures rely on a set of institutions that control the application of principles by firms, as well as the responsibilities of shareholders and stakeholders. CG is thus a focal point that forces institutional changes in the absence of political will. In Russia, some of the Asian and MENA countries, for instance, political will hasn't been strong enough to overcome the need for reforms. However, some examples of successful CG projects do exist in emerging market countries. For example, the Russian Institute of Directors, the New Egyptian Institute of Directors, and the Romanian CG Code—which was a huge step for the Romanian private sector; these led the security regulators and other bodies to follow the lead.

There are successful initiatives in Asia: the Association of Development Financing Institutions in Asia and the Pacific (ADFIAP), including development banks and sources of finance. The Middle East Regional CG Roundtables and the Colombian Chamber of Commerce's programs for CG are examples of important steps forward. The authorities in Palestine have recently taken important steps in the area of corporate governance. In 2004, the Palestinian Legislative Council passed the Securities Law and

the Capital Market Law. Moreover, 65 percent of companies in Palestine have disclosed their financial information, an important step forward. Further, there has been a transformation in public awareness, while lobbying and support from international organizations have facilitated economic and financial reforms.

### **EMERGING MARKETS STRATEGIES FOR CG REFORM**

More generally, emerging markets should consider implementing strategies for CG reform including:

1. Initial Assessment and Advocacy, which consists in the assessment of CG failures, and the rating of countries according to standards and codes; adapt the OECD principles but tailor them to each country-home-grown, concentrating on the private sector.
2. Outreach and institutional development, with a focus on the improvement of regulatory and enforcement mechanisms.
3. Capacity and institutional development, with an emphasis on the training of managers and directors. The Russian Institute of Directors is an excellent illustration. The emerging markets in the MENA region should encourage the establishment of institutes of directors, and create a CG rating system that would support investors, using the CGGF toolkit.
4. Consolidation: as it gives more importance to shareholders' rights and establishes rating agencies. Egypt's experience and initiative is a good illustration on the issue of consolidation.

Emerging markets can and should benefit from good CG. It lowers the costs of capital, increases investment and thus stability in the economy and society. It helps in creating competitive modern and healthy companies. It is, as well, a means to combat corruption and bribery. CG brings about productive competition, and helps avoid banking collapses. Finally, good corporate governance can be a key to wider economic change and reform.

### **AN INSTITUTE OF DIRECTORS: THE EGYPTIAN CASE**

Implementing CG requires supporting institutions that lead to a change in business leaders' culture and go beyond the imposition of regulations.

The establishment of the Egyptian Institute of Directors came in response to a number of impulses. Recommendations from the World

Bank and the International Monetary Fund, in the Report on Observance of Standards and Codes for the establishment of the Institute, were followed by a decree issued by the Egyptian Ministry of Foreign Trade. A two-board structure was proposed and established including a board of trustees and an executive board. The central objective of the institute is to train and educate company board members for better implementation of CG practices, as well as to raise awareness concerning the CG principles. The work of the Egyptian Institute of Directors mainly consists in developing a curriculum for training the directors in Arabic, as well as issuing a Corporate Governance Code. The Institute will be supported by regional collaboration the World Bank.

The Institute of Directors targets a major segment of the boards of directors of the more than 800 companies listed on the Egyptian Stock Exchange. In the long run, the Institute of Directors aims to extend the scope of its work to include listed as well as non-listed companies. Specific groups targeted include block shareholders Family-owned and FOEs. As in most of the region, ownership and control are not separated, and most of the participants have established partnerships with foreign companies.

The Institute of Directors aims to promote a new CG culture through legislation, with the aim of moving from the domination of FOEs, and converging towards a “market governance system”. Clearly this will take time and depend on the overall economic and social environment, not only on the enactment of laws and regulations.

The curriculum of the Institute of Directors will focus on four main areas:

1. Responsibilities of the board
2. Finance and accounting for non-finance specialists
3. Law for non-lawyers
4. Means of implementation of corporate governance codes

The Institute intends to issue a Code of Corporate Governance, in consultation with specialists, and based on an agreement with the Egyptian Capital Market Institute, and the Stock Exchange, in order to guarantee a wider commitment. The code will feature an adaptation of CG practices to local culture, environment, and traditions. It will promote the legal sep-

eration of ownership and control; stress the question of implementation and the presence of independent directors on the boards of companies.

### **INDEPENDENCE OF DIRECTORS**

The OECD Principles do not provide a definition of what an independent director is, but rather call upon boards to include “a sufficient number of non-executive board members capable of exercising independent judgment” who can be assigned to tasks where there is a potential for conflict of interest. This provides some flexibility to take into account the context, including board structures, ownership patterns and practices within different countries. In the U.S. example, there is the Sarbanes-Oxley Act guided by general principles. In the general framework, it is important to consider who decides; CG is a decision-making process. In case of conflicts of interests, it is important to have independent members on the board who take central decisions, with the emphasis on having an independent judgment, for example, in relation to the audit committee. Independent board members are important because they strengthen confidence in the company, and in turn, this encourages investment.



## 5: *Transparency and Disclosure—Setting the Context*

*Summary of panel discussion including Mr. John Bohn, GlobalNet Venture Partners/CIPE; Dr. Ziad Bahaa El Din, Bahaa El Din Law Office, Egypt; Dr. Karim Rbeiz, American University of Beirut; chaired by Mr. Joseph Rizk, Arab Federation of Certified Public Accountants*

### THE CENTRAL ROLE OF DISCLOSURE IN CORPORATE GOVERNANCE

A strong and fair regulatory system should first be launched so that transparency and disclosure can play their role in attracting more capital to the region. It is important because it establishes confidence in the dissemination of accurate information, and thus attracts investment. Capital markets require economic agents, shareholders, and the public to be knowledgeable about risks. If a company does not provide the kind of transparency and disclosure required, it will not attract investment. For example, corruption in the Philippines, with failures of the regulatory system in insisting on disclosure, has led to structural economic decline and capital flight. On the other hand, the greater the extent of disclosure and transparency, the greater the level of confidence in the operation of markets, and the greater is the access to financing, whether from domestic or external foreign sources.

Moreover, good corporate governance has both public and private sector dimensions, which are complementary but should be dealt with separately. Good CG for corporations is designed to deal with the effectiveness of the company in fulfilling its duties, make money for shareholders, provide new products, innovate, and grow. Good CG for the public sector is to establish the “rules of the game,” the disclosure regime and enforcement to prevent disasters such as the Enron crisis. The problem at the heart of the Enron scandal resulted from the fact that the governance process, by which the board functions, was not adequate. It was the failure in the diligence and activism of the corporate directors that led to the crisis.

Disclosure is important, but is difficult to apply, especially in the case of FOfEs and SMEs. Disclosure is the key not only to attracting capital, but also attracting new executives, new technologies, new alliances and marketing partnerships. This is what the countries of the region should keep in mind, establishing effective disclosure regimes is thus central for the

MENA countries. The creation of new wealth is additionally a question that requires emphasis. In today's globalized world, it is important for new ideas and generations of entrepreneurs to have access to capital, and not only through banks. Thus the development of capital markets allows new sources of liquidity notably risk and venture capital, that permit new ventures to take shape, and create wealth within the markets.

The private sector needs to be passionate about CG and corporate reform. It is not an overstatement to say that future generations depend on the implementation of good Corporate Governance both because it will lead to higher profitability and shareholder value through increased productivity growth, but also because it will ensure a more effective transfer of wealth across generations. Change will come one way or another, and those who capture the movement and understand that complying with sound corporate governance principles in the private sector in order to generate wealth, are those who will benefit.

### **DISCLOSURE AND TRANSPARENCY: LEGAL ISSUES**

It is now widely recognized that corporate governance is important, with the disclosure regime being a central aspect: 'material' information disclosure must be timely, accurate, and adequate. Clearly, disclosure is based on the application of recognized accounting and auditing standards in the MENA region, and requires auditors to be independent.

Focusing on the legal framework, three elements appear important with respect to disclosure. First there is the question of civil code versus common law traditions. The majority of the legal regimes in Arab countries follow the civil code, based on the French legal system. Research over the past few years has revealed that 'legal origins' and resulting institutions generate differences in economic outcomes and performance. In particular, the presence of the civil code legal system may be an impediment to reform and economic innovation. Moreover, criminal, civil or administrative sanctions control the legal framework. Finally, the judiciary has an important role to play in enforcing disclosure and transparency regimes in the MENA region.

Disclosure revolves around three key questions:

1. What to disclose and what is material information?
2. Who benefits from disclosure? shareholders, the public?
3. What are the consequences of non-disclosure?

Clearly, the information to be disclosed must be accurate, timely, and sufficient. Well-designed disclosure systems can provide timely and accurate information. However, it is more difficult to reveal sufficient, “material” information, especially under the civil law system. Additionally, consensus should be fixed around the materiality and relevance of the information; the language of materiality should be translated from common law into civil law. Special concern should be dedicated to the way courts would interpret the materiality of information, and the quality of disclosure<sup>12</sup>.

A related issue concerns the beneficiaries of greater disclosure. The laws and regulations do not reflect the potentially conflicting interests of the various beneficiaries: the shareholders where nominal ownership can differ from the beneficial ownership of securities, different stakeholders that receive economic benefits (such as workers, government or suppliers), and finally the public, whose interests are diffuse. Different disclosure systems must take into account the nature of the beneficiary.

The final issue concerns the consequences of non-disclosure and the provisions of the legal system on the matter. Sanctions can differ from criminal, to civil, to administrative law in different jurisdictions. A criminal interpretation could be narrowly interpreted, tending to benefit the criminal perpetrator. Civil sanctions could consist in the annulment or uncertainty with respect to the protection of minority shareholder rights. As for administrative sanctions there may be vagueness and uncertainty in imposing sanctions. CG codes should be developed comprising both compulsory disclosure based on best international practice, as well as guidelines for voluntary disclosure.

Implementing the principles of disclosure and transparency in the MENA region faces two major hurdles. First, governments and policy makers tend to be obsessed with and consider that legislation is the only solution. There is as well an excessive reliance on “fast track” solutions: enacting laws and regulations that are imported, copies of “best practice” without the requisite adaptation to local conditions and institutions, including the

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12. See discussion of ‘materiality’ in the OECD commentary on the principle of transparency and disclosure (Annex).

necessary monitoring and regulatory agencies and organizations. Implementing CG and corporate reform has to be more comprehensive. Moreover, it is important to train the judiciary and provide it with resources. Investment is required to develop regulatory quality. There is also the problem of defining the jurisdiction of an economic court in the case of Egypt and many of the MENA countries, resulting in tension and factionalism among the judiciary. This requires deep reforms leading to the unification of the legal system, as it is very difficult to 'carve out' parts of the law, a very important matter. Finally, much more attention should be dedicated to the training and raising awareness of the legal profession when it comes to the issues underlying corporate governance, disclosure and transparency.

### **TRANSPARENCY, DISCLOSURE AND CORPORATE EARNINGS**

The 'management' and manipulation of earnings is a new phenomenon that has become more prominent in recent years. In the aftermath of the Enron meltdown, companies around the world have tried to manage their earnings, restating them. Companies engage in the management of earnings because of the benefits it entails. Executive compensation is one of the main reasons, along with "short-termism" in the operation of the capital markets and the attempt to minimize taxation and tax burdens. Executives are rewarded for their financial performance. The higher the reported earnings, the higher the executive compensation— both direct compensation as well as through the higher value of options – thus leading to the misstatement or over-reporting and estimation of accounting earnings. Cases of management of earnings around the world have been numerous, including Enron and WorldCom in the United States, Vivendi in France, and Parmalat in Italy.

The key players in the field of earnings management include the accounting and auditing professions, organized exchanges and capital market authorities, governmental agencies, boards of directors, internal auditors and the legal profession. More recently and largely in response to the various scandals, institutional investors have become activist shareholders, seeking remedies to the management of earnings problem.

Addressing the issue of the management and manipulation of earnings has become more complicated, because the benchmark accounting standards

and rules have been evolving. Accounting standards have been undergoing transformation as a result of technological and financial innovations (such as options derivatives and securitization), which have facilitated global financial transactions. In addition, accounting standards differ between countries for historical and cultural reasons, reflecting the idiosyncrasies of each country. Thus standards in Germany and Netherlands differ from standards in the United States and the United Kingdom. In the Netherlands and Germany, accounting standards stress information disclosure to the long-term stakeholders, whereas in the United States and United Kingdom, even short-term investors have the right to access to information. Similar differences exist between the MENA countries, and are typically associated with differences in legal traditions and origins.

Similarly, differences exist between the Federal Accounting Standards Boards (FASB) and International Accounting Standards Boards (IASB). FASB is a rules-based approach that tends to be more prescriptive. As for IASB, it has put forward international accounting standards that are based on principles. They are different in terms of style, structure, and process, and can either be adopted on a singular basis or in parallel with the other set of standards.

The MENA countries face two trends in the evolution and implementation of accounting standards. The first trend consists of adopting a single accounting standard, which would be based on cooperation among legislative bodies and governments around the world. The second method opens space for competition between authoritative bodies, the FASB and the IASB.

It was noted that 2005 would be a critical year because most countries would have to apply IASB. More than one hundred countries already apply these standards (or FASB), based on Anglo-Saxon standards. In the future there might be uniformity on the question of accounting standards.

## **CONCLUDING COMMENTS**

The second MENA Forum has initiated discussion and consultation concerning the disclosure and transparency regime to be implemented in the countries of the MENA region. The discussion highlighted the need for a cross-country survey of accounting and auditing standards adhered to and

applied relating to disclosure and transparency. Similarly, the regional agenda should be cognizant of the differences in legal origins and traditions and their impact on existing disclosure and transparency requires. To address the issue requires a multi-faceted approach involving factors internal to companies (involving the role of the management, independence of the boards, creation of independent audit committees) as well as the external or public environment factors relating to the adoption of recognized, international accounting and auditing standards, the legal and regulatory framework and the role of the judiciary, as well as the necessity of providing training and raising awareness at the level of decision-makers. There are no fast-track solutions, in particular, given the civil code tradition that is prevalent in most of the countries of the region and that may hinder the speed and extent of corporate sector reform.

## 6: *Monitoring and Overseeing Disclosure*

*Summary of panel discussion including Dr. Hazem Yasin, Egyptian Capital Market Authority; Imad Shehab, Union of Arab Banks; chaired by Dr. Fouad Shaker, Union of Arab Banks*

With hindsight, there is now consensus among analysts that a contributing factor behind the Asian financial crisis was the lack of CG within the banking system and the corporate sector. This experience highlighted the importance of good corporate governance within the financial and banking sectors, not only for the financial sector itself, but also because of transmission and contagion effects to the non-financial sector and economic activity and performance. Comparing the situation in Asia with the one in the MENA countries, it is clear that many similarities exist. Governance issues should take precedence in policy makers' agenda over macroeconomic policy issues.

Given any disclosure regime based on an accounting standard and reporting system, performance will depend on effective oversight and monitoring and responsible overseeing institutions. For listed companies, organized stock exchanges and capital market authorities are responsible for compliance with disclosure standards and their implementation. However, listed companies, particularly in the MENA countries, comprise a small fraction of the total number of companies, many of whom are in the informal sector and are not officially registered. Thus, the issue of implementing CG monitoring and overseeing disclosure becomes problematic for non-listed companies. Can the banking sector play a role in monitoring and overseeing disclosure in other sectors? Can it play a disciplinary role? Skeptics would say "physician heal thyself." requesting good governance of the banking sector as a prior, through the introduction of a Code of Banking Ethics and the effective implementation of the Basel I and II banking guidelines<sup>13</sup>. Indeed the experience of the banking and financial crises in the 1990s and early 2000s suggests that the record of banks as disciplinarians of the private sector is not good. In particular, it is important to examine and reform the relationship between govern-

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13. See Bank for International Settlements. "Basel II, Revised International Capital Framework." <http://www.bis.org/publ/bcbsca.htm>

ments and banks, whether they are owned or regulated. The Asian crisis is a prime example of bad loans induced and encouraged by governments, whether to SOEs or to “crony capitalists” in the private corporate sector. Similarly, the lessons of experience suggest caution in relying on banks to set an example of good governance, as disciplinarians of the system, due to extensive conflicts of interest and moral hazard issues<sup>14</sup>.

An important lesson and policy guideline then is that the implementation of a corporate governance and reform strategy should be sequenced to start with the banking and financial sector, to be followed by other economic sectors.

### **TRANSPARENCY, DISCLOSURE AND THE ROLE OF BOARD OF DIRECTORS: THE CASE OF THE EGYPTIAN STOCK EXCHANGE**

In terms of transparency and disclosure the OECD principles deal with the financial and operations results, the company’s objectives, the voting rights of the ownership, board members and executives’ remuneration, risk factors, material information issues, governance structures, preparation of information emphasizing on audit and disclosure, the annual audit, and finally information dissemination. As for the responsibilities of the Board, they include the following important issues:

1. Acting on an informed basis, in the interest of the company’s shareholders
2. Treating each class of shareholders in a fair manner
3. Legal and regulatory compliance
4. Establish policies for corporate strategy, risk prevention, budgets
5. Selection, monitoring and replacement of key management
6. Key executive and board remuneration
7. Monitoring conflicts of management
8. Guaranteeing integrity of accounting and financial reporting systems
9. Monitoring the application of governance
10. Supervising disclosure and communication
11. Assignment of tasks to non-executive board members
12. Access to accurate, relevant, timely information

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14. See the paper by Ross Levine, “The Corporate Governance of Banks: A Concise Discussion of Corrupts and Evidence,” World Bank Discussion paper No.3. , GCGF, July 2003.



Financial reports should consist of periodic and annual financial statements, and an independent auditors report. An annual board of directors report should be submitted to the Regulator and the Stock Exchange after the approval by the board, and submitted again to the General Assembly. Moreover, there should be an auditor's review report presented to the Regulator and the Stock Exchange. Quarterly financial statements should also be issued. All of these financial statements should be prepared in concordance with approved accounting and auditing standards. Indeed, in Egypt, the regulators request listed companies to implement international accounting and auditing standards; and in order to facilitate implementation, an Arabic version of principles was issued.

For non-financial information, a company should notify the Stock Exchange of any major, material changes that occur: modifications in the by-laws, changes by the auditors, by the chairman of the board or senior managers, and changes in the contact information and other material information. In addition, the Stock Exchange has the right to require any information it deems necessary. The Stock Exchange should be knowledgeable about the internal policies of a company, and of its securities transactions intentions. In particular, the companies should disclose any information pertaining to merger and acquisition negotiations in progress.

A listed company should also have an audit committee. The committee should include at least three experienced members that are non-executive board members and issue each month a report that it should submit to the board of directors that includes proposals and recommendations. The role of the audit committee is to examine the company's control procedures, review the accounting policies and internal audit functions, and examine the periodic administrative information. The audit committee would also evaluate the procedures of annual reports and the budgets. Moreover, it would guarantee the accurate application of procedures in terms of maintaining the company's assets, and recommend the designation of an external auditor. Finally, an additional role would consist in the approval of the non-audit services. It is important for the audit committee to make sure that the company's management abides by the auditor's and capital market authority's recommendations.

## **CORPORATE GOVERNANCE AND THE BANKING SYSTEM<sup>15</sup>**

“The world strives to achieve economic and social progress; yet, the record of development has not been fully satisfactory: sound macroeconomic fundamentals are no longer enough to prevent crises, the world needs a better system, better governance. Banks may be an important part of the corporate governance framework, even when their role is limited to debt supply, if their own corporate governance is good.”

Good governance is complemented by accountability and transparency that play a role in the monitoring process. It is a tool, as well, to avoid corruption by setting ethical guidelines. All parties involved in corporate action are protected: the shareholders, employees, clients and the public. It is an important tool to fight corruption and avoid financial instabilities. In cases of failures of good CG practices, financial systems can face collapse. The Asian Bank crisis illustrates the dangers and systemic risks that arise when banks are subject to political influence, and where management is weak and lacks accountability and responsibility. Such crisis and scandals are numerous across the globe, and a lot can be drawn out of these experiences in order to avoid new occurrences.

As for the status of CG in the countries of the MENA region, the Union of Arab Banks has conducted research on public listed companies in both the financial and non-financial sectors in five Arab countries: Jordan, Lebanon, Kuwait, Saudi Arabia, and the UAE. The main conclusion of the research<sup>16</sup> is:

1. There is a high concentration in corporate ownership undermining the principles of good CG.
2. Substantial family corporate holdings compose the bulk of ownership and control of companies
3. Banks and the financial companies compose more than 50 percent of the listed companies in the Gulf countries, confirming the importance of CG in the banking sector.
4. Boards of directors are dominated by controlling shareholders, while friends and relatives constitute the board of directors in many instances.
5. There is rarely any separation between ownership and manage-

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15. For a discussion of the issues and evidence on CG in the banking sector, see R. Levine (2003) and Caporta et al

16. See Union of Arab Banks report (2003)

ment, with shareholders usually dominating the decision-making process of a corporation. It is rare to find independent directors among the members of the board, where in most companies the chairman of the board is also the CEO.

6. Corporate governance is not a priority in most companies, which lack transparency and disclosure, resulting in nepotism and corruption.

The research is consistent with other evidence on the presence of a CG gap in the Arab countries<sup>17</sup>.

The Basel principles issued in 1999 as a supplement to the OECD principles set out the key elements of CG for the banking sector. It also encourages strengthening CG practice under various structures, and to assist supervisors in the aim of promoting the practice of CG by the banking sector of each country. It functions through a wide range of mechanisms, such as establishing corporate strategy, monitoring conflict of interest, and setting CG principles and standards.

It is useful to recall the Basel guidelines:

- Guideline 1:** Strategic objectives and corporate values should be established.
- Guideline 2:** Clear lines of responsibility and accountability should be set and enforced.
- Guideline 3:** Board members should be qualified, understand clearly their role and not be subject to undue influence from management or outside concerns.
- Guideline 4:** There should be appropriate oversight by senior management
- Guideline 5:** The work conducted by internal and external auditors should be effectively utilized.
- Guideline 6:** Compensation approaches should be consistent with the bank's ethical values, objectives, strategy, and control environment.
- Guideline 7:** Corporate governance should be conducted in a transparent manner.

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17. See the World Bank report on governance in the MENA region, (2003).

The responsibility of monitoring and overseeing falls to bank supervisors that should expect banks to include checks and balances in the structures of their organizations, as well as guarantee that the senior management and boards of supervised banks have the possibility to fully achieve their duties and are held accountable for lapses. The supervisors should set methods for monitoring CG. These methods include on-site examinations, off-site surveillance, meetings with bank management, supervision of auditors' work, and periodic reporting.

Bank CG should be based on ethical behavior, as embodied in a Code of Banking Ethics. The code consists of a series of rules dealing with ethical and sound conduct, setting a framework for the relationship between banking institutions and their clients. The objectives of the Code of Banking Ethics include the establishment of standards for good banking practice, raise the level of transparency and openness, strengthen the level of trust, activate healthy competition, guarantee that the rights of clients, shareholders, and institutions are honored, and finally ensure that the staff behave in an ethical way, free from self-interest considerations. The 13 principles of the Code of Banking Ethics are:

1. Integrity and fairness
2. Confidentiality
3. Professionalism
4. Compliance with directives
5. Monitoring procedures
6. Sound implementation
7. Transparency of transactions
8. Good customer service
9. Promotion of banking services (advertising)
10. Transactions giving rights to suspicion
11. Collecting and keeping information on customers
12. Handling customer complaints
13. Inter-bank relations and rotations with other parties

### **CONCLUDING COMMENT**

Good CG in the MENA banking system can pave the way for CG in other sectors of the economy. Through these ways, banks enhance their level of CG and influence corporations to follow the lead, influencing by example and good management practice.

For the emerging markets of the MENA countries, CG has the potential

to be an instrument for corporate reform. In particular, good CG: (1) is a source of health for the development of corporations; (2) is an anti-corruption tool; (3) requires sound internal and external environments; (4) has as a major pillar, disclosure; (5) helps promote transparency and the International Accounting Standards; (6) emphasizes that banks have a key role in promoting better governance and (7) involves the interrelation of transparency, disclosure, and BASEL II.

## *7: Enforcing Disclosure: Role of Authorities and the Media*

Summary of panel discussion including Mr. Bassam Asfour, Jordan Securities Commission; Dr. Obaid al-Motairy, King Saud University; Mr. Stephen Davis, Davis Global Advisors; chaired by Dr. Nasser Saidi, Lebanese Corporate Governance Task Force

Enforcing disclosure, similar to the issue of monitoring and overseeing CG, raises several issues. Should enforcement take the form of guidelines and incentives or of principles and rules leading to sanctions as a means of enforcement? Should enforcement be the result of laws and regulations relating to disclosure and transparency or should enforcement be the subject of the market mechanism and lead to self-regulatory organizations? What is the role of the media in the process of enforcement? Does the failure of the market and of regulators warrant the intervention of the media? Are the cases of corporate mal-governanc<sup>c</sup> that have led to a crisis of confidence in the financial and capital markets an aberration in the otherwise efficient operation of markets and dissemination of information to market participants and regulators? Is there an optimal design for the enforcement of disclosure and transparency? These and other issues enriched the discussion on market regulation and enforcement of disclosure and the role of the media in Jordan and Saudi Arabia.

### **REFORM, GUIDELINES AND SANCTIONS: JORDAN'S EXPERIENCE**

Before 1998, financial sector development had been limited in Jordan, while legal reforms did not materialize<sup>18</sup>. The legislative bodies in Jordan could enact laws and regulations, but did not possess the capability to take the adequate steps toward enforcement against the violators, other than referring them to courts. Securities issuers were not familiar with the concepts of transparency and disclosure; nor were they familiar with the principles of CG. However, following the enactment of the 1997 legislation that established the Jordan Securities Commission (JSC), the Amman

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18. International Monetary Fund, "Jordan: Report on the Observance of Standards and Codes—Data Module—Update." IMF Country Report No. 04/32. (February 2004)  
<http://www.imf.org/external/pubs/ft/scr/2004/cr0432.pdf>

Stock Exchange, and the Securities Depository Centre, it was realized that enforcement powers were needed. International influence played an important part in promoting the importance of having rules that would regulate the markets. The JSC had to lobby hard in order to create public awareness. It engaged in the process of launching workshops and giving lectures to issuers and market intermediaries to make them knowledgeable concerning the laws, regulations, and listing and disclosure requirements.

In order to be able to enforce the established regulations, the Jordanian market had to wait until the end of 2002. In 2003, JSC moves towards effective enforcement resulted in the application by legislative bodies of administrative procedures against violators. This was possible due to the political will in Jordan and the support of political leaders for the independence of the JSC and the immunity of its members, allowing them to take the steps to encourage the effective enforcement of laws. Similarly, political support for the JSC was important in its efforts to ensure fair and efficient markets, and in its ability to create a transparent market mechanism leading to the pricing of securities according to supply and demand, as well as providing unbiased access to information. The activities of the JSC were important in guaranteeing the integrity of markets – markets that are transparent, with disclosure of information to all participants.

The JSC bases its work on the findings in companies' annual reports, pushing for additional disclosure. Disclosure rules include relevant material information, as well as insiders' holdings and trades. The board of directors and managers should agree concerning the accuracy of disclosed information. Annual reports submitted must also be agreed upon and signed by these bodies. The legislation on disclosure also engages the responsibility of the auditor for any information that lacks accuracy and is nonetheless published. The audit committee is expected to play the role of supervisor over the board and management. Moreover, the Commission requests any investor to disclose his holdings at the Securities Depository Centre. Thus, information disclosure appears as a must in the decision making process and the enforcement of disclosure.

To illustrate the enforcement process, it is noteworthy that during 2003, the JSC took the following decisions toward non-compliant companies:

1. 17 of the 190 companies registered with the JSC were deemed not to be transparent enough, and were requested to disclose further information.
2. 16 out of 34 firms were penalized due to inaccuracies in their published annual financial reports.
3. 5 firms were fined for failure to disclose material information.
4. 18 firms were penalized for not having presented a preliminary report.
5. 24 firms were reproached because they did not establish an annual report, and 26 for not presenting a semi-annual report.

Importantly, each violation of regulations by firms was made public, along with the inflicted sanctions so that all market participants are aware of the enforcement of disclosure rules and that compliance is necessary. The process achieves a high level of transparency and has resulted in higher compliance rates in 2004. Similarly, the JSC cooperates with the Amman Stock Exchange to ensure the compliance of companies by listing requirements.

Deterrence is an important part of the process with the JSC pursuing a public policy of zero tolerance for violators. Issuers are aware that signs of disorderly trading practices entail a possible suspension of trading, which should not be regarded as a penalty, but as a way to restore orderly market conditions.

The role of the media in disseminating accurate information is central to the disclosure process. However, the Commission does not require disclosure of information related to proprietary trade secrets, internal undisclosed documents, or results of incomplete negotiations that are confidential. While the media should help in spreading the message, they should be trained and educated in order to understand the benefits of the disclosure and transparency principles, and be convinced of the need to acquaint the public with these matters. They should be aware of the details of the legislation, and not base their reports uniquely on press releases. They should be knowledgeable of the issues to raise and be able to formulate the right questions. There is an effort in Jordan to convince the media to whistleblow and publish the names of violators; the effort urges that it would be very valuable for the public but would not expose the media to prosecution.



Jordan's example of publicizing negative lists of non-disclosing firms, is relevant for other countries with an active and open press and media, including Lebanon.

Enforcing disclosure requires having the shareholders and the public at large on board. The public must be informed of the benefits of enforcing disclosure and transparency, as well as the negative impact of corruption and fraud, with the regulator protecting the public's rights. More generally, "regulators are the protectors of the public interest." They must practice all of the above and "must be seen to be doing so."

### **TRANSPARENCY AND DISCLOSURE IN SAUDI ARABIA**

In the 1990s Saudi Arabia sought to restructure its economy through programs of liberalization and privatization, and diversification away from oil dependence. A framework of modernization and reform is widening the scope for private sector participation in economic activity. The Saudi authorities prepared and issued a Capital Markets Law, which was concretized in 2003, through the creation of the Supreme Economic Council, and the Saudi Arabian General Investment Authority. These reforms should help galvanize the Saudi Capital Market, already the largest in the region.

Disclosure in Saudi Arabia is governed by the Companies Law issued in 1965 which highlights the importance of the auditing and the accounting reports. In the 1980s the Ministry of Commerce established local accounting and auditing standards, which became effective in 1990, and were followed by the establishment of the Saudi Organization for Certified Public Accountants (SOCPA) in 1992. Listed companies are expected to report annually and quarterly about their financial statements and to set up audit committees.

The monitoring and enforcement of reporting and the disclosure standards has been problematic due to the absence of a securities regulator primarily responsible for monitoring and overseeing disclosure. Three bodies, the Ministry of Commerce, the SOCPA, and the Saudi Arabian Monetary Agency (SAMA) are involved in this process. The Ministry of Commerce reviews the annual reports, financial statements, and documents of listed companies. It has the authority by law to impose sanctions on non-conforming companies, and thus deter inaccurate financial

reporting. SOCPA's role is to regulate the reporting and disclosure standards. SAMA's authority extends to trading and daily transactions on the stock exchange.

A study on disclosure practices in Saudi Arabia confirms that the majority of companies comply with mandatory reporting requirements. Disclosure in the country is rarely done on a voluntary basis. Reforms will need to be introduced to implement and monitor compliance with accounting and auditing standards and avoid the regulatory loopholes created by the presence of several authorities.

Saudi Arabia, along with Japan, Iceland, and a number of other countries has not yet taken the decision to harmonize its accounting standards with those of the IFRS and International Accounting Standards. Capital markets reform necessitates the establishment of a Saudi Securities and Exchange Commission that would be responsible for monitoring and overseeing the disclosure regime. However, the major challenge remains the fact that there is no consensus concerning the corporate governance model to be established in Saudi Arabia.

### **CORPORATE GOVERNANCE AND THE ROLE OF THE MEDIA**

The role of the media in CG is new. Some ten years ago, there were only three references on the Internet relating to CG; five years ago the number increased to 45; today, there are over 195 references to corporate governance in worldwide media as represented on the Internet. Recent corporate scandals and debacles have made journalists more aware, but they still do not attribute sufficient importance to CG issues. There are three contributing factors: (1) lack of training with journalists: they are understandably not trained to be able to interpret financial statements; (2) lack of available information available to the media – missing information and data impede the work of the media; and (3) the existence of conflicts of interest as media networks are often controlled by interests that do not benefit, and may suffer initially from efforts to expose CG failures or mal-governance.

A window opened up for an alternative media, the Internet, which then expanded to fill the gap. The Internet permits the independent exposure of CG failures and scandals around the world. The Internet also divulges information that regular media cannot or would not. Alternative media

can play an important role as regulators of market integrity. Other types of alternative media now address the question of corporate governance: magazines, specialized journals, and other publications. For instance, TIME Magazine dedicates a section in each Monday's issue to management problems. Other groups such as CIPE and the GCGF have established newsletters dealing with worldwide CG issues.

A series of steps should be taken to encourage the media to get more involved in CG issues and contribute to the process of raising awareness. The World Bank has a training program for journalists in economics and other financial matters, and CIPE and the GCGF are considering training programs for the press and media on issues of CG. Reporting on the subject could be encouraged by the establishment of prizes for accomplishment by media, such as the Pulitzer Prize. Training of journalists is also crucial for raising financial literacy standards. It would be useful to have cross-country training around the world. Moreover, sources of information should be diversified, while companies should have incentives to make relevant information available to the media, and regulations about disclosure should be developed. If information is available, journalists can help track problems pertaining to companies. Most likely, the whole Parmalat scandal in Italy would not have taken place had information been properly disclosed. It is clear that the media can play a major role in contributing to the integrity of the marketplace and contribute to transparency and disclosure.

## **CONCLUSIONS AND RECOMMENDATIONS**

Implementation and enforcement of a disclosure regime implies that there are rules and standards that are clearly understood by all parties, companies, accountants, auditors, regulators, and the judiciary. Moreover, these laws and regulations should facilitate monitoring and compliance, and allow a basis for intervention in order to avoid crises. Countries must also be cognizant that disclosure is also a function of the tax regime, with high tax rates and complicated tax systems leading to less disclosure and discouraging the listing of companies.

It is important to go further and consider the involvement of the judiciary in the enforcement of disclosure. Sanctions and punishment, including publicizing companies' non-compliance, are effective deterrents. In many cases

administrative enforcement exists but the costs of non-compliance and resulting punishment is small compared to the rewards. The judicial system must become more aware of the importance of CG and disclosure.

Additionally, the independence of the media is linked to public and corporate governance. The media should therefore champion its own independence by playing a role to help in the establishment of CG.

Enforcing disclosure for listed companies is in the hands of regulators who are responsible and decide on the standards of accounting and auditing, monitoring and enforcement. They ensure compliance with listing requirements and the disclosure regime. Capital market authorities and stock exchange commissions should benefit from strong political support—as has happened in Jordan—and retain independence and benefit from immunity in order to carry on their important task of disclosure enforcement.

Regional cooperation should seek to harmonize the multitude of national disclosure regimes and adopt common international accounting standards in order to reduce the risk of “regulatory arbitrage,” in that companies would seek to list in the least regulated and supervised markets, to the detriment of enforcing stricter disclosure standards. A comparative survey should be undertaken of disclosure standards and regulations and their enforcement for the countries of the MENA region. The information would complement the material available in available country ROSCs. Disclosure regime harmonization and common accounting and auditing standards will encourage foreign investment flows to the region, as well as increased capital flows between the countries of the region, thereby helping to foster increased economic integration and its benefits.

## 8: *Disclosure for Small-and Medium-Sized and Family-Owned Enterprises*

*Summary of panel discussion including Mr. Salaheddin Benjelloun, Conseil d'Administration de la Caisse Inerprofessionnelle Marocaine de Retraite (CIMR); Mr. Antoine Wakim, SNA Assurances; and chaired by Mr. Charles Adwan, Lebanese Transparency Association*

SMEs and FOEs constitute over 85 percent of the corporate universe in the MENA countries. As such, any discussion of disclosure regimes would be incomplete if it does not take account of the characteristics, specificity, and economic incentives of SMEs and FOEs to apply CG principles. In particular, given that SMEs and FOEs are unlikely to be listed on organized stock exchanges, the implementation of a CG regime becomes more complex and poses a new set of issues given the absence of a regulator and clear monitoring and enforcement mechanisms. However, some stock exchanges in the MENA region (Jordan, Lebanon and Morocco) have created two-tier markets in order to encourage the listing of SMEs, but the experience is too recent to warrant deriving conclusions. Further, it is not simply a matter of numbers or of size, as FOEs are frequently large firms and can be dominant in their domestic economies.

### **MOROCCO DISCLOSURE AND SMES**

Given the economic importance of SMEs in Morocco, considerable attention has focused on their performance and governance. Official figures show that SMEs constitute the bulk of the Moroccan enterprises market, with a 99 percent presence in terms of numbers. There are over 600,000 SMEs in Morocco, among which only 200,000 are linked to the formal sector: the informal sector is dominant. As for national taxes, 92 percent are collected from the SMEs, while they represent some 72 percent of the Moroccan Social Security Fund.

However, despite their numbers, SMEs contribute a relatively small share of value-added, representing less than 20 percent of GDP. SMEs face financial constraints from limited access to capital and to credit from the banking sector. SMEs also face legal, administrative, and regulatory obstacles that increase their cost of doing business. The description of

SMEs is very complex, and related legislation tends to be outdated and unrelated to the characteristics of SMEs. On the legal and bureaucratic levels, procedures lack transparency. Finally, SMEs are facing the brunt of international competition resulting from the opening up of the Moroccan economy to international trade and the forces of globalization, not least those resulting from the Association Agreement with the EU.

A number of initiatives have been taken by Morocco to implement CG, with laws enacted and codes and principles adopted in the last two years. In 2000, an investment charter was launched stating that a shareholder in an SME should not possess more than 25 percent of shares. These tools help in promoting Corporate Governance<sup>19</sup>. In parallel, there is increased awareness relating to the concept of ethics and corruption. There is a commission dealing with ethics and good governance, working Task Forces and Working Groups. Financial market reforms have had a visible impact, and the Casa Blanca Stock Exchange is facilitating the entrance of SMEs into the market.

How do the socio-economic characteristics of SMEs impact the development of Corporate Governance? For large enterprises, external and internal governance mechanisms are imposed on managers. The external mechanisms are those of the financial market, the legal and regulatory framework with the objective of protecting shareholders, and protecting the transaction between enterprises and their working environment: banks, suppliers, clients, and workers. The internal mechanisms include the control mechanism of the administrative board, as well as of supervisory and audit bodies.

The principal-agent problem is not a major issue for SMEs as there is no separation between the rights and duties of shareholders and managers in SMEs. Moreover, the capital market does not play a regulatory part in the framework, while the owners of SMEs dominate, limiting the role of the board. However, in some cases, SMEs decide to open up to outside capital, resorting to the market and the Stock Exchange. Other SMEs entrust management to individuals that are not family members.

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19. See table 1 for the ROSC reports completed by Morocco.

Ensuring transparency and disclosure and the respect of minority shareholders' rights are challenges to SMEs. Family culture, the lack of transparency in the functioning and management of a small- or medium-sized enterprise, the symbolic function of the administrative board, as well as the lack of communication all contribute to opaqueness.

The Stock Exchange plays an important role in the endorsement of corporate governance in accord with international standards. The Casablanca Stock Exchange includes a central market, a development market, and a growth market. In this context, the disclosure of information policy is clear. Information needs to be disclosed before a company is listed. After the listing process is completed, information must be disclosed on a recurrent basis, through official reports.

#### **CORPORATE GOVERNANCE: THE CASE OF SNA, A LEBANESE INSURANCE COMPANY**

The Société Nationale des Assurances (SNA) aims to pursue policies of transparency and good governance. SNA was established in 1963 in Lebanon, and during the war it expanded its scope to Morocco, Tunis, Jordan and the Gulf, and is now present in Egypt and Saudi Arabia. Previously, SNA was a family-owned enterprise. However, the financial services and product range of the insurance business is very close to that of banking sector, and a family business could not carry the burden and compete without having to abide by new rules, develop technically, and reform.

SNA developed, and includes many shareholders, including foreign companies; with few exceptions, all of SNA's personnel are shareholders. Thus, communication and transparency have become necessary minimum requirements to abide by for this enterprise. Disclosure and communication among stakeholders is directed toward the four main players. First, clients' interests, in terms of respecting their rights and issuing clear contracts. As for shareholders, they request today complete, clear, and audited financial information. There is also the employees: there are meetings on a regular basis and communication about plans and data to be shared. Finally, communication should also be established with the public. There is a commitment toward the community. In order to communicate SNA's attitude toward its community, several social projects have been established across Lebanon. SNA does not engage in direct advertisement, instead it communicates through its civic involvement.

SNA also has a mechanism collectively implemented for the last five years, in order to summarize the philosophy of the company. They have established a “pyramid,” reflecting the commitment and objectives of the company. The first stage consists of providing financial services at the best price for clients. An additional facet is dedicated to generating returns, with growth, to the shareholders. Finally, it proposes to have a genuine commitment to the social environment and culture. There is a two-sided commitment developed between employees and management, with 70 percent of employees aware of the financial status of the company, the strategies, the objectives, the essence of the business. The top 12 managers know the strategy of the next two to three years. Transparency and disclosure within and outside the firm have yielded good results: communicating knowledge creates independence and strength within a company.

The company has also established its internal code of ethics: the three “C”s. First is moral and professional Consciousness. Second is the Courage to tell the truth. Finally there should be Cohesion within the company so that the interest of the company is primary, above all other interests. The three “C”s are fundamental, and part of the personnel code of conduct, of which everyone is aware.

## **CONCLUSIONS AND RECOMMENDATIONS**

Developing a disclosure régime applicable to the SMEs and FOEs of the MENA region is a major challenge, requiring concerted efforts at the level of government—such as through legislation encouraging their entry into the formal sector and listing in the second tier of stock exchanges—and the private sector working through business associations and civil society to increase awareness of the benefits of adopting CG principles.

These benefits include improved credit standing and easier access to credit and at better terms given increased transparency and disclosure, higher profitability, and improved relations between shareholders of the SME or the FOE.

However, there is also the concern that those SMEs and FOEs that do not adopt disclosure and transparency standards compatible with good CG principles will be left out, creating a disclosure vs. non-disclosure sector, with the latter not effectively participating in the modern, market economy; this creates a new form of “economic dualism.”



9: Annex

*Second Middle East  
and North Africa  
Regional Corporate  
Governance Forum*

“Improving Transparency  
and Disclosure”

Crowne Plaza Hotel  
Beirut, June 3-5, 2004



Global Corporate  
Governance Forum



THE WORLD BANK GROUP



Middle East  
Partnership  
Initiative



LEBANON  
CORPORATE  
GOVERNANCE  
TASK FORCE



**AGENDA**

HOSTED BY:

The Lebanese Transparency Association

IN COOPERATION WITH:

The Lebanon Corporate Governance  
Task Force

SUPPORTED BY:

Global Corporate Governance Forum,  
World Bank Group, Center for  
International Private Enterprise,  
Organization of Economic Cooperation  
and Development (OECD), Union of Arab  
Banks, Arab Federation of Certified Public  
Accountants, Lebanese Transparency  
Association, National Endowment for  
Democracy, Middle East Partnership  
Initiative, and InfoPro Center for  
Economic Information

## June 3, 2004: Corporate Governance: A Focus on Lebanon\*

8:30-9:00am Registration

9:00-10:30am Session 1: Streamlining Efforts for Corporate Governance in Lebanon

- Introduction to the conference

**Mr. Mohammad Mattar**, Chairman, Lebanese Transparency Association

- Keynote Speech

**Mr. Marwan Hamadeh**, Minister of Economy and Trade, Lebanon

- The Role of Chambers in Promoting Corporate Governance

**Mr. Adnan Kassar**, Chairman, Federation of Chambers of Commerce, Industry and Agriculture in Lebanon

- Proposed Action Plan for Corporate Governance in Lebanon

**Mr. Gerard Zovighian**, Lebanon Corporate Governance Task Force (LCGTF)

10:30-11:00am Coffee Break

11:00am-12:30pm Session 2: A Survey of the Corporate Sector in Lebanon

Chair: **Dr. John Sullivan**, Executive Director, Center for International Private Enterprise

- Survey results and analysis

**Mr. Sami Atallah**, Columbia University

- Corporate governance from economic and financial perspectives (based on survey)

**Dr. Nasser Saidi**, Chairman, Lebanon Corporate Governance Task Force (LCGTF)

Paper presented by **Ms. Zeina Zein el-Abidine**, Financial Analyst, member LCGTF

- Corporate governance from a legal perspective (based on survey)

**Ms. Chadia Meouchi and Ms. Nada Abou Samra**, Board members, LTA

- Discussant: **Mr. Ramzi El-Hafez**, Director, InfoPro Center for Economic Information

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\*Translation will be available throughout the conference.

12:30-2:30pm Luncheon  
2:30-4:00pm Session 3: Priorities for Corporate Governance in Lebanon

Chair: **Mr. Daniel Blume**, Principal Administrator Corporate Affairs division, Organization for Economic Cooperation and Development (OECD)

- Corporate Governance in the Banking Sector in Lebanon  
**Dr. Assem Safieddine**, Associate Professor, AUB, School of Business
- International Auditing Standards in Lebanon  
**Mr. Camille Sifri**, Country Senior Partner, PriceWaterCoopers, Lebanon
- Corporate Governance in Small and Medium Enterprises (SMEs)  
**Mr. Armand Phares**, Chairman, Lebanese Businessmen Association (RDCL)
- Corporate Governance in Family Owned Enterprises (FOEs)  
**Dr. Josianne Fahed Sreih**, Director, Institute of Family and Entrepreneurial Business, LAU

Discussants:

**Ms. Carla Saadeh**, Secretary General, International Chamber of Commerce, Lebanon

**Dr. Jihad Azour**, UNDP Project Director, Ministry of Finance, Lebanon

4:00-5:00pm Session 4: Concluding Session, Roundtable Discussion:  
The Implementation of Corporate Governance  
in Lebanon

Chair: **Dr. Omar Razzaz**, Country Manager, World Bank, Lebanon

Panelists: **Mr. Fady Abboud**, Association of Lebanese Industrialists,

**Mr. Armand Phares**, Lebanese Businessmen Association,

**Mr. Fady Saab**, American Lebanese Chamber of Commerce

7:30 – 9:30pm Cocktail Reception  
Crowne Plaza Hotel

## June 4, 2004: Regional Forum on Corporate Governance

9:00-9:45am      Opening and Welcome Remarks

*Mr. John Bohn, Chairman, Center for International Private Enterprise*  
*Ms. Marie-Laurence Guy, Projects Officer, Global Corporate Governance Forum*

*Dr. Nasser Saidi, Chairman, LCGTF*

9:45-11:00am      Session 1: International and Regional Trends

Chair: *Mr. Abdul Hamid Ibrahim, Capital Market Authority, Egypt*

- The revised OECD Principles of Corporate Governance  
*Mr. Daniel Blume, Principal Administrator Corporate Affairs division, Organization for Economic Cooperation and Development (OECD)*
- Corporate Governance Trends in Emerging Markets  
*Dr. John Sullivan, Executive Director, Center for International Private Enterprise*
- Regional Trends and the Development of Egyptian Institute of Directors  
*Mr. Maged Shawky, Executive Director, Egyptian Institute of Directors*

11:00-11:30am      Coffee Break

11:30am-1:00pm      Session 2: Transparency and Disclosure—  
Setting the Context

Chair: *Mr. Joseph Rizk, Arab Federation of Certified Public Accountants*

- Why is Disclosure Important for Attracting Investors?  
*Mr. John Bohn, GlobalNet Venture Partners*
- Impediments and Deterrents to Disclosure in the MENA Context  
*Dr. Ziad Bahaa Eldin, Bahaa Eldin Law Office, Egypt*
- Corporate Governance, Management of Earnings, and Transparency in Disclosure  
*Dr. Karim Rbeiz, Assistant Professor, AUB, School of Business*

1:00-2:30pm Luncheon  
2:30-4:00pm Session 3: Monitoring and Overseeing Disclosure

Chair: *Dr. Fouad Shaker, Secretary General, Union of Arab Banks*

- The Role of the Board from the Perspective of the Regulator  
*Dr. Hazem Yasin, Board Member, Egypt Capital Market Authority*
- The Role of Banks in Promoting Sound Corporate Governance in Arab Enterprises  
*Mr. Imad Shehab, Director of Research, Union of Arab Banks*

4:00-4:15pm Coffee Break  
4:15-5:45pm Session 4: Enforcing Disclosure

Chair: *Dr. Nasser Saidi, Lebanese Private Sector Task Force*

- From Guidance to Sanctions: the Role of Market Regulators  
*Mr. Bassam Asfour, Commissioner, Jordan Securities Commission*
- Listing Rules: the Role of Stock Exchanges  
*Dr. Obaid Al-Motairy, Professor, King Saud University, Kingdom of Saudi Arabia*
- Public Awareness: The Role of the Media  
*Mr. Stephen Davis, Davis Global Advisors (video link)*

8:30 pm Dinner  
Azrak Restaurant, Byblos Citadel

## June 5, 2004: Regional Forum on Corporate Governance (continued)

9:30-11:00am      Session 5: Disclosure for SME's and Family Owned Firms

Chair: *Mr. Charles Adwan, Executive Director, Lebanese Transparency Association*

- Family owned Firms and their specificities in the region  
*Mr. Salaheddin Benjelloun, Conseil d'Administration de la Caisse Interprofessionnelle Marocaine de Retraite (CIMR)*
- Building Transparency and Ethics in SMEs, an Example from Region  
*Mr. Antoine Wakim, Chairman/CEO, SNA Assurances (Group AGF, Allianz)*

11:00-11:30am      Coffee Break

11:30am-1:00pm      Session 6: Discussion on Next Steps

Chair: *Marie-Laurence Guy, Projects Officer, GCGF*

- Summary of discussions,  
Forum Recommendations on Improving Transparency and Disclosure in the Region  
*Dr. Nasser Saidi, Chairman, LCGTF*
- Next Meeting Venue

1:00-2:30pm      Luncheon

## LCGTF ACTION PLAN

### STATEMENT OF OBJECTIVES

The LCGTF members meet regularly in order to identify structural and functional changes in the Lebanese private sector. The Task Force aims at assessing the current status and practice of public and corporate governance principles in Lebanon to provide recommendations on how to implement higher business standards and better governance practices at the financial Market's level (Publicly listed companies), the private level (SMEs, FOEs) and the public level (SOEs). The whole process takes place in a context of democracy, transparency, and good communication.

### ACTION PLAN

#### Focusing on governance, public and corporate

##### I. Addressing corporate governance principles

**1. Principles I & II:** The rights of Shareholders and the equitable treatment of shareholders The Task Force aims to maximize the rights and equitable treatment of shareholders through a legal and regulatory framework by creating enforcement mechanisms to rectify violations.

**2. Principle III:** The role of stakeholders in corporate governance The Task Force aims to engage various stakeholders, such as company employees, trade unions, creditors, suppliers, consumers and the public-at-large, when instituting corporate governance.

**3. Principle IV:** Disclosure and transparency The Task Force aims to produce guidelines for disclosure and transparency. Companies should periodically disclose financial and non-financial information. Transparency should be promoted in compliance with International Accounting Standards. A legal and regulatory framework should be set up in order to monitor the collaboration of listed companies. Finally, auditing standards should be enforced, based on International Standards on Auditing.

**4. Principle V:** The responsibilities of the board The Task Force believes it is necessary to highlight the responsibilities of the board of directors. It is important that a majority of board members be independent from

management. Additionally, committees should be established by the board. It is also essential to stress the necessity of having transparent actions among board members, by public disclosure of all material information and developing an investor relations program that would fully inform shareholders of corporate activities.

II. Self-assessment mechanisms on the status and practice of related principles should be carried out.

**Bringing about change...**

i. **Joining efforts** In order to move forward and solidify action, the Task Force believes in the importance of building a consensus for policy, regulatory, and institutional reform at the local level by involving as many players as possible.

ii. Assistance in adopting and implementing principles through:

1. **Changing the culture and crafting of corporate governance strategies** This would entail several initiatives on a national scale. First, amendments should be made to the commercial code. Minority and foreign shareholder protection should be enhanced and the responsibilities of the board of directors and individual directors be identified. Accounting and auditing as well as transparency of ownership and control principles should be introduced. Finally, the whole process should take place in a regulatory environment where the banking sector's role is redefined.

2. **Amending laws and reforming institutions** These changes would introduce modern securities law, innovate and reform insolvency and bankruptcy law and would incite a comprehensive capital markets law.

3. **Enforcing the right to know and the right to tell** In this context, it would be useful to pass a Freedom of Information Law and a Data Privacy Law. The Task Force has convened to set up an interactive website. The idea of creating incentives is central for the work on corporate governance in Lebanon.

4. **Building the necessary human capital.** Introducing corporate governance in university curricula as well as knowledge sharing, continuing



professional education and development, and entering partnerships would be initial steps in raising awareness. Upgrading procedures to license accountants and auditors in public practices and redefining the role and structure of the Higher Council of Accounting and Auditing are also a part of the action plan aiming to reach the public.

5. Ensuring sustainability and development. Developing the capacity of the corporate environment to monitor and enforce adopted principles is important. To achieve this objective, a self regulatory organization would be created. The Task Force deems it necessary to establish a central credit organization to report on sources and uses of credit (market-based, bank, non-bank, and supplier credit), as well as a Companies House, as a way to complement and expand the commercial register by centralizing financial reporting and disclosure of corporate actions. Moreover, it would be useful to have the Task Force represented in regional and global roundtables. Finally, in order to ensure sustainability and development, the Task Force believes in the importance of assessing and breaking down the implementation costs.

## **Deliverables**

### **a – The Accounting and Auditing Committee**

The policy recommendations presented in this section are based on the findings of the review of accounting and auditing practices and include valuable inputs received from various stakeholders interviewed by World Bank staff during the due diligence exercise. The deliverables would consist of:

- 1) Amending or creating laws dealing with accounting, auditing, corporate financial reporting, and the accountancy profession in Lebanon. The Code of Commerce, the respective ministerial orders, and other relevant laws should be fine-tuned and other appropriate actions taken to ensure that IAS and ISA requirements apply to the Reporting and Accountancy Profession Act;
- 2) Enforcing the publication and filing of the legal entity, and consolidating financial statements;
- 3) Redefining the role of the Higher Council of Accounting and Auditing;
- 4) Structuring into the Higher Council on Accounting and Auditing three committees: the Accounting and Auditing Standards Committee, the Financial Reporting Monitoring Committee, and the Auditors' Practice Review Committee;

- 5) Upgrading the procedure of licensing accountants and auditors in public practice;
- 6) Ensuring effective continuing professional education and development of the accountants and auditors in public practice;
- 7) Strengthening the capacity of the LACPA by twinning arrangements for a professional accountancy body;
- 8) Taking steps for improving curriculum and teaching in accounting programs of universities and colleges; and
- 9) Providing meaningful theoretical and practical training in International Accounting Standards to the staff of the proposed Financial Reporting Monitoring Committee, the Banking Control Commission, and other regulators so they can enforce accounting standards as recommended.

#### **b – The Legal and Regulatory Committee**

The committee has developed short-term goals, consisting of:

- 1) Suggesting amendments to laws, particularly the Code of Commerce:
  - Strengthening minority and foreign shareholders' rights;
  - Identifying responsibilities of the board of directors and of individual directors, and providing for their accountability;
  - Providing for mandatory application of IAS and ISA;
  - Providing additional provisions for transparency and control; and
  - Developing Lebanese bankruptcy and procedural laws.

The Legal and Regulatory committee has also established medium-term objectives that are as follows:

- 1) Lobbying for the legal amendments suggested above, under the short-term goals, and lobbying for the amendments of the CG Principles
- 2) Drafting and lobbying for the adoption of other laws including: A Freedom of Information Act, Data Privacy Law, Capital Markets Law, and a modernized Securities Law
- 3) Creating a CG research arm for the legal and regulatory committee whose role will be to undertake detailed research and reports on particular legal aspects of CG.

#### **c – The Information, Communication and Media Committee**

The immediate objective of the committee is to formalize the mission statement of the Task Force and reach out with its message to the widest possible

audience leading to a broad application of corporate governance principles on a national scale. To that aim, comprehensive information tools and user manuals will be developed addressing the full spectrum of stakeholders composed of members of the public sector, the business community, professional associations, student bodies, and the population at large.

These goals are to be achieved through the following:

- 1) A complete set of identity tools, including a logo, letterhead and other branding requirements; a user-friendly website; and accessibility facilitation systems
- 2) A multilingual information kit with simplified presentation to be circulated through targeted awareness meetings and selective lectures; a full-fledged press campaign; and an extensive direct mailing operation, electronically and by traditional methods
- 3) A tailor-made adhesion package for each of the stakeholders to adopt as a sign of commitment to the principles of proper corporate governance and their successful implementation
- 4) A detailed user manual to facilitate compliance by SOEs, SMEs, fFOEs, publicly-traded corporations, and others
- 5) A series of training seminars serving as an application guide with the required technical assistance directed at each of the governmental, business, professional, and academic levels.
- 6) A case study of a successful occurrence in Lebanon, for instance examining the full application of corporate governance principles by multinational corporations

The committee would conduct seminars with lawyers, accountants, contractors, service professionals and industrialists, as well as maintain the LCGTF website. The committee will also ensure that all of its materials are distributed in Arabic, English, and French in order to reach a wider audience.

#### **d – The Membership and Funding Committee**

This committee's first responsibility is to prepare for the regional conference on corporate governance that would be held in Beirut on June 3, 4, and 5. The conference presented the action plan prepared by the Task Force for discussion on national and regional levels. In addition, the committee will be launching a website, presenting the Task Force to the public and making literature and resources on corporate governance available. Meanwhile, the

Lebanese Transparency Association (LTA) has developed a special webpage ([www.transparency-lebanon.org/CGAgenda.htm](http://www.transparency-lebanon.org/CGAgenda.htm)) for corporate governance featuring basic information on the issue in addition to the June conference agenda and the presentations delivered in it. The success of the conference generated high interest in joining the Task Force, which highlighted the need to structure it in a way to keep its efficiency. As a first step, new members will be admitted to the committees depending on their interests and expertise.

## *OECD Corporate Governance Principles 2004 edition*

### **OECD ANNOTATIONS AND COMMENTS ON DISCLOSURE AND TRANSPARENCY**

*The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.*

In most OECD countries a large amount of information, both mandatory and voluntary, is compiled on publicly traded and large unlisted enterprises, and subsequently disseminated to a broad range of users. Public disclosure is typically required, at a minimum, on an annual basis though some countries require periodic disclosure on a semi-annual or quarterly basis, or even more frequently in the case of material developments affecting the company. Companies often make voluntary disclosure that goes beyond minimum disclosure requirements in response to market demand. A strong disclosure regime that promotes real transparency is a pivotal feature of market-based monitoring of companies and is central to shareholders' ability to exercise their ownership rights on an informed basis. Experience in countries with large and active equity markets shows that disclosure can also be a powerful tool for influencing the behaviour of companies and for protecting investors. A strong disclosure regime can help to attract capital and maintain confidence in the capital markets. By contrast, weak disclosure and non-transparent practices can contribute to unethical behaviour and to a loss of market integrity at great cost, not just to the company and its shareholders but also to the economy as a whole. Shareholders and potential investors require access to regular, reliable and comparable information in sufficient detail for them to assess the stewardship of management, and make informed decisions about the valuation, ownership and voting of shares. Insufficient or unclear information may hamper the ability of the markets to function, increase the cost of capital and result in a poor allocation of resources. Disclosure also helps improve public understanding of the structure and activities of enterprises, corporate policies and performance with respect to environmental and ethical standards, and companies' relationships with the communities in which they operate. The OECD Guidelines for Multinational Enterprises are relevant in this context. Disclosure requirements are not expected to place unreasonable administrative or cost burdens on enterprises. Nor are companies expected to disclose information that may endanger their competitive position unless disclosure is necessary to

fully inform the investment decision and to avoid misleading the investor. In order to determine what information should be disclosed at a minimum, many countries apply the concept of materiality. Material information can be defined as information whose omission or misstatement could influence the economic decisions taken by users of information. The Principles support timely disclosure of all material developments that arise between regular reports. They also support simultaneous reporting of information to all shareholders in order to ensure their equitable treatment. In maintaining close relations with investors and market participants, companies must be careful not to violate this fundamental principle of equitable treatment.

**A. DISCLOSURE SHOULD INCLUDE, BUT NOT BE LIMITED TO, MATERIAL INFORMATION ON:**

**1. The financial and operating results of the company.**

Audited financial statements showing the financial performance and the financial situation of the company (most typically including the balance sheet, the profit and loss statement, the cash flow statement and notes to the financial statements) are the most widely used source of information on companies. In their current form, the two principal goals of financial statements are to enable appropriate monitoring to take place and to provide the basis to value securities. Management's discussion and analysis of operations is typically included in annual reports. This discussion is most useful when read in conjunction with the accompanying financial statements. Investors are particularly interested in information that may shed light on the future performance of the enterprise. Arguably, failures of governance can often be linked to the failure to disclose the "whole picture," particularly where off-balance sheet items are used to provide guarantees or similar commitments between related companies. It is therefore important that transactions relating to an entire group of companies be disclosed in line with high quality internationally recognised standards and include information about contingent liabilities and off-balance sheet transactions, as well as special purpose entities.

**2. Company objectives.**

In addition to their commercial objectives, companies are encouraged to disclose policies relating to business ethics, the environment and other public policy commitments. Such information may be important for investors and other users of information to better evaluate the relationship

between companies and the communities in which they operate and the steps that companies have taken to implement their objectives.

### **3. Major share ownership and voting rights.**

One of the basic rights of investors is to be informed about the ownership structure of the enterprise and their rights vis-à-vis the rights of other owners. The right to such information should also extend to information about the structure of a group of companies and intra-group relations. Such disclosures should make transparent the objectives, nature and structure of the group. Countries often require disclosure of ownership data once certain thresholds of ownership are passed. Such disclosure might include data on major shareholders and others that, directly or indirectly, control or may control the company through special voting rights, shareholder agreements, the ownership of controlling or large blocks of shares, significant cross shareholding relationships and cross guarantees. Particularly for enforcement purposes, and to identify potential conflicts of interest, related party transactions and insider trading, information about record ownership may have to be complemented with information about beneficial ownership. In cases where major shareholdings are held through intermediary structures or arrangements, information about the beneficial owners should therefore be obtainable at least by regulatory and enforcement agencies and/or through the judicial process. The OECD template Options for Obtaining Beneficial Ownership and Control Information can serve as a useful self-assessment tool for countries that wish to ensure necessary access to information about beneficial ownership.

### **4. Remuneration policy for members of the board and key executives, and information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.**

Investors require information on individual board members and key executives in order to evaluate their experience and qualifications and assess any potential conflicts of interest that might affect their judgement. For board members, the information should include their qualifications, share ownership in the company, membership of other boards and whether they are considered by the board to be an independent member. It is important to disclose membership of other boards not only because it is an indication of experience and possible time pressures facing a member

of the board, but also because it may reveal potential conflicts of interest and makes transparent the degree to which there are inter-locking boards. A number of national principles, and in some cases laws, lay down specific duties for board members who can be regarded as independent and in some instances recommend that a majority of the board should be independent. In many countries, it is incumbent on the board to set out the reasons why a member of the board can be considered independent. It is then up to the shareholders, and ultimately the market, to determine if those reasons are justified. Several countries have concluded that companies should disclose the selection process and especially whether it was open to a broad field of candidates. Such information should be provided in advance of any decision by the general shareholder's meeting or on a continuing basis if the situation has changed materially. Information about board and executive remuneration is also of concern to shareholders. Of particular interest is the link between remuneration and company performance. Companies are generally expected to disclose information on the remuneration of board members and key executives so that investors can assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to company performance. Disclosure on an individual basis (including termination and retirement provisions) is increasingly regarded as good practice and is now mandated in several countries. In these cases, some jurisdictions call for remuneration of a certain number of the highest paid executives to be disclosed, while in others it is confined to specified positions.

### **5. Related party transactions.**

It is important for the market to know whether the company is being run with due regard to the interests of all its investors. To this end, it is essential for the company to fully disclose material related party transactions to the market, either individually, or on a grouped basis, including whether they have been executed at arms-length and on normal market terms. In a number of jurisdictions this is indeed already a legal requirement. Related parties can include entities that control or are under common control with the company, significant shareholders including members of their families and key management personnel. Transactions involving the major shareholders (or their close family, relations etc.), either directly or indirectly, are potentially the most difficult type of transactions. In some jurisdictions, shareholders above a limit as low as 5 per cent shareholding are obliged to report transactions. Disclosure requirements



include the nature of the relationship where control exists and the nature and amount of transactions with related parties, grouped as appropriate. Given the inherent opaqueness of many transactions, the obligation may need to be placed on the beneficiary to inform the board about the transaction, which in turn should make a disclosure to the market. This should not absolve the firm from maintaining its own monitoring, which is an important task for the board.

#### **6. Foreseeable risk factors.**

Users of financial information and market participants need information on reasonably foreseeable material risks that may include: risks that are specific to the industry or the geographical areas in which the company operates; dependence on commodities; financial market risks including interest rate or currency risk; risk related to derivatives and off-balance sheet transactions; and risks related to environmental liabilities. The Principles do not envision the disclosure of information in greater detail than is necessary to fully inform investors of the material and foreseeable risks of the enterprise. Disclosure of risk is most effective when it is tailored to the particular industry in question. Disclosure about the system for monitoring and managing risk is increasingly regarded as good practice.

#### **7. Issues regarding employees and other stakeholders.**

Companies are encouraged, and in some countries even obliged, to provide information on key issues relevant to employees and other stakeholders that may materially affect the performance of the company. Disclosure may include management/employee relations, and relations with other stakeholders such as creditors, suppliers, and local communities. Some countries require extensive disclosure of information on human resources. Human resource policies, such as programmes for human resource development and training, retention rates of employees and employee share ownership plans, can communicate important information on the competitive strengths of companies to market participants.

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

Companies should report their corporate governance practices, and in a number of countries such disclosure is now mandated as part of the regular reporting. In several countries, companies must implement corporate

governance principles set, or endorsed, by the listing authority with mandatory reporting on a "comply or explain" basis. Disclosure of the governance structures and policies of the company, in particular the division of authority between shareholders, management and board members is important for the assessment of a company's governance. As a matter of transparency, procedures for shareholders meetings should ensure that votes are properly counted and recorded, and that a timely announcement of the outcome is made.

**B. INFORMATION SHOULD BE PREPARED AND DISCLOSED IN ACCORDANCE WITH HIGH QUALITY STANDARDS OF ACCOUNTING AND FINANCIAL AND NON-FINANCIAL DISCLOSURE.**

The application of high quality standards is expected to significantly improve the ability of investors to monitor the company by providing increased reliability and comparability of reporting, and improved insight into company performance. The quality of information substantially depends on the standards under which it is compiled and disclosed. The Principles support the development of high quality internationally recognized standards, which can serve to improve transparency and the comparability of financial statements and other financial reporting between countries. Such standards should be developed through open, independent, and public processes involving the private sector and other interested parties such as professional associations and independent experts. High quality domestic standards can be achieved by making them consistent with one of the internationally recognized accounting standards. In many countries, listed companies are required to use these standards.

**C. 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.**

In addition to certifying that the financial statements represent fairly the financial position of a company, the audit statement should also include an opinion on the way in which financial statements have been prepared and presented. This should contribute to an improved control environment in the company.

Many countries have introduced measures to improve the independence of auditors and to tighten their accountability to shareholders. A number of countries are tightening audit oversight through an independent entity. Indeed, the Principles of Auditor Oversight issued by IOSCO in 2002 states that effective auditor oversight generally includes, inter alia, mechanisms: "...to provide that a body, acting in the public interest, provides oversight over the quality and implementation, and ethical standards used in the jurisdiction, as well as audit quality control environments"; and "...to require auditors to be subject to the discipline of an auditor oversight body that is independent of the audit profession, or, if a professional body acts as the oversight body, is overseen by an independent body." It is desirable for such an auditor oversight body to operate in the public interest, and have an appropriate membership, an adequate charter of responsibilities and powers, and adequate funding that is not under the control of the auditing profession, to carry out those responsibilities. It is increasingly common for external auditors to be recommended by an independent audit committee of the board or an equivalent body and to be appointed either by that committee/body or by shareholders directly. Moreover, the IOSCO Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence states that, "standards of auditor independence should establish a framework of principles, supported by a combination of prohibitions, restrictions, other policies and procedures and disclosures, that addresses at least the following threats to independence: self-interest, self-review, advocacy, familiarity and intimidation."

The audit committee or an equivalent body is often specified as providing oversight of the internal audit activities and should also be charged with overseeing the overall relationship with the external auditor including the nature of non-audit services provided by the auditor to the company. Provision of non-audit services by the external auditor to a company can significantly impair their independence and might involve them auditing their own work. To deal with the skewed incentives which may arise, a number of countries now call for disclosure of payments to external auditors for non-audit services. Examples of other provisions to underpin auditor independence include, a total ban or severe limitation on the nature of non-audit work which can be undertaken by an auditor for their audit client, mandatory rotation of auditors (either partners or in some cases the audit partnership), a

temporary ban on the employment of an ex-auditor by the audited company and prohibiting auditors or their dependents from having a financial stake or management role in the companies they audit. Some countries take a more direct regulatory approach and limit the percentage of non-audit income that the auditor can receive from a particular client or limit the total percentage of auditor income that can come from one client. An issue which has arisen in some jurisdictions concerns the pressing need to ensure the competence of the audit profession. In many cases there is a registration process for individuals to confirm their qualifications. This needs, however, to be supported by ongoing training and monitoring of work experience to ensure an appropriate level of professional competence.

**D. 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.**

The practice that external auditors are recommended by an independent audit committee of the board or an equivalent body and that external auditors are appointed either by that committee/body or by the shareholders' meeting directly can be regarded as good practice since it clarifies that the external auditor should be accountable to the shareholders. It also underlines that the external auditor owes a duty of due professional care to the company rather than any individual or group of corporate managers that they may interact with for the purpose of their work.

**E. CHANNELS FOR DISSEMINATING INFORMATION SHOULD PROVIDE FOR EQUAL, TIMELY AND COST-EFFICIENT ACCESS TO RELEVANT INFORMATION BY USERS.**

Channels for the dissemination of information can be as important as the content of the information itself. While the disclosure of information is often provided for by legislation, filing and access to information can be cumbersome and costly. Filing of statutory reports has been greatly enhanced in some countries by electronic filing and data retrieval systems. Some countries are now moving to the next stage by integrating different sources of company information, including shareholder filings. The Internet and other information technologies also provide the opportunity for improving information dissemination.

A number of countries have introduced provisions for ongoing disclosure (often prescribed by law or by listing rules) which includes periodic

disclosure and continuous or current disclosure which must be provided on an ad hoc basis. With respect to continuous/current disclosure, good practice is to call for “immediate” disclosure of material developments, whether this means “as soon as possible” or is defined as a prescribed maximum number of specified days. The IOSCO Principles for Ongoing Disclosure and Material Development Reporting by Listed Entities set forth common principles of ongoing disclosure and material development reporting for listed companies.

**F. 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.**

In addition to demanding independent and competent auditors, and to facilitate timely dissemination of information, a number of countries have taken steps to ensure the integrity of those professions and activities that serve as conduits of analysis and advice to the market. These intermediaries, if they are operating free from conflicts and with integrity, can play an important role in providing incentives for company boards to follow good corporate governance practices. Concerns have arisen, however, in response to evidence that conflicts of interest often arise and may affect judgment. This could be the case when the provider of advice is also seeking to provide other services to the company in question, or where the provider has a direct material interest in the company or its competitors. The concern identifies a highly relevant dimension of the disclosure and transparency process that targets the professional standards of stock market research analysts, rating agencies, investment banks, etc. Experience in other areas indicates that the preferred solution is to demand full disclosure of conflicts of interest and how the entity is choosing to manage them. Particularly important will be disclosure about how the entity is structuring the incentives of its employees in order to eliminate the potential conflict of interest. Such disclosure allows investors to judge the risks involved and the likely bias in the advice and information. IOSCO has developed statements of principles relating to analysts and rating agencies (*IOSCO Statement of Principles for Addressing Sell-side Securities Analyst Conflicts of Interest*; *IOSCO Statement of Principles Regarding the Activities of Credit Rating Agencies*).

## 12 Key Standards for Sound Financial Systems

The 12 standard areas highlighted here have been designated by the FSF as key for sound financial systems and deserving of priority implementation depending on country circumstances. While the key standards vary in terms of their degree of international endorsement, they are broadly accepted as representing minimum requirements for good practice. Some of the key standards are relevant for more than one policy area, e.g. sections of the Code of Good Practices on Transparency in Monetary and Financial Policies have relevance for aspects of payment and settlement as well as financial regulation and supervision.

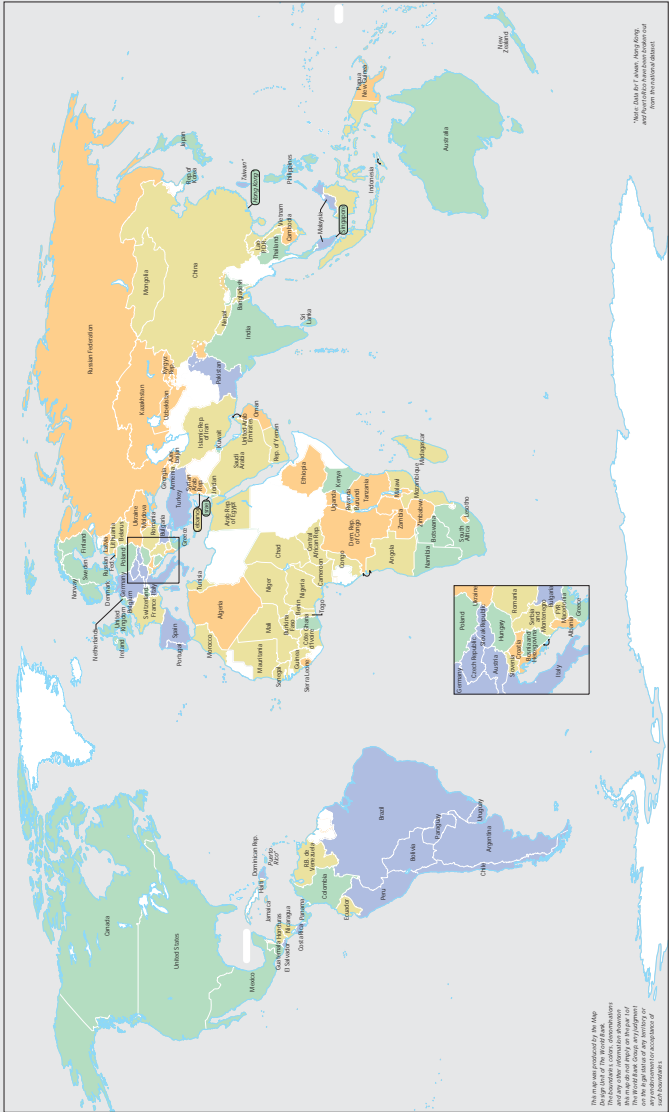
AREA	STANDARD	ISSUING BODY
<b>MACROECONOMIC POLICY AND DATA TRANSPARENCY</b>		
Monetary and financial policy transparency	Code of Good Practices on Transparency in Monetary and Financial Policies	IMF
Fiscal policy transparency	Code of Good Practices in Fiscal Transparency	IMF
Data dissemination	Special Data Dissemination Standard/ General Data Dissemination System <sup>1</sup>	IMF
<b>INSTITUTIONAL AND MARKET INFRASTRUCTURE</b>		
Insolvency	<sup>2</sup>	World Bank
Corporate governance	Principles of Corporate Governance	OECD
Accounting	International Accounting Standards (IAS) <sup>3</sup>	IASB <sup>4</sup>
Auditing	International Standards on Auditing (ISA)	IFAC <sup>4</sup>
Payment and settlement	Core Principles for Systemically Important Payment Systems Recommendations for Securities Settlement Systems	CPSS CPSS/IOSCO
Market integrity	The Forty Recommendations of the Financial Action Task Force/ 8 Special Recommendations Against Terrorist Financing	FATF

AREA	STANDARD	ISSUING BODY
<b>FINANCIAL REGULATION AND SUPERVISION</b>		
Banking supervision	Core Principles for Effective Banking Supervision	BCBS
Securities regulation	Objectives and Principles of Securities Regulation	IOSCO
Insurance supervision	Insurance Core Principles	IAIS

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1. Economies with access to international capital markets are encouraged to subscribe to the more stringent SDDS and all other economies are encouraged to adopt the GDDS.
  2. The World Bank is co-ordinating a broad-based effort to develop a set of principles and guidelines on insolvency regimes. The United Nations Commission on International Trade Law (UNCITRAL), which adopted the Model Law on Cross-Border Insolvency in 1997, will help facilitate implementation.
  3. Relevant IAS are currently being reviewed by the IAIS and IOSCO.
  4. The International Accounting Standards Board (IASB) and the International Federation of Accountants (IFAC) are distinct from other standard-setting bodies in that they are private sector bodies.

PRESENCE OF CREDIT REGISTRIES

- BOTH PRIVATE BUREAU AND PUBLIC CREDIT REGISTR Y EXIST
- ONLY A PUBLIC CREDIT REGISTRY EXISTS
- ONLY A PRIVATE CREDIT BUREAU EXISTS
- NO PRIVATE BUREAU OR PUBLIC CREDIT REGISTR Y EXISTS
- NOT IN THE DOING BUSINESS SAMPLE



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SEPTEMBER 2003

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*List of the participating Organizations at the Second MENA Regional Corporate Governance Forum<sup>20</sup>*

American Lebanese Chamber of Commerce (ALCC)

Arab Federation of Certified Public Accountant

Center for International Private Enterprise (CIPE)

Federation of Chambers of Commerce, Industry and Agriculture

Global Corporate Governance Forum (GCGF)

International Chamber of Commerce (ICC)

INFOPRO

Lebanese Transparency Association (LTA)

Lebanon Corporate Governance Task Force (LCGTF)

Middle East Partnership Initiative

National Endowment for democracy

Organization for Economic Coordination and Development (OECD)

Union of Arab Banks

World Bank Group

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20. The organizations are listed in alphabetical order.

## *List of the Lebanese speakers at the second MENA Regional corporate governance Forum*

**Fady E. Abboud** is the President of the Association of Lebanese Industrialists, and a member of the American Lebanese Chamber of Commerce. He is also the Chairman of General Packing Industries since 1982, as well as the Director of Tuula Fashion House in London and General Machines and Metal Processing Co. (GEMCO). He additionally is a member of the Lebanon Corporate Governance Task Force.

**Ms. Nada Abu Samra** is an attorney at law in the courts of New York, and Lebanon. Additionally, Ms. Abu Samra is a Board member at the Lebanese Transparency Association, and a member of the Lebanon Corporate Governance Task Force.

**Mr. Sami Atallah** is an Economics consultant. He is currently finishing his Masters in Research Methodology at University of Columbia, New York. Mr. Atallah also is a member of the Lebanese Transparency Association.

**Mr. Ramzi el Hafez** is the Publisher of Lebanon Opportunities.

**Mr. Adnan Kassar** is the President of the Federation of Lebanese Chambers of Commerce, Industry, and Agriculture. In addition, Mr. Kassar is the chairman, CEO and major shareholder of Fransabank SAL.

**Ms. Chadia el Meouchi** is an attorney at law in the courts of New York, and is a practicing counsel in Beirut. Additionally, Ms. El Meouchi is a Board member at the Lebanese Transparency Association, and a member of the Lebanon Corporate Governance Task Force.

**Dr. Armand Pharès** is the President of the Lebanese Businessmen Association, RDCL. Dr. Pharès is also the Chairman and Managing Director of Droguerie R. Pharaon and Fils SAL / Droguerie Mercury SAL, and of UNICORN SAL. Dr. Pharès He additionally is a member of the Lebanon Corporate Governance Task Force.

**Dr. Karim Rbeiz** was a professor at Lafayette College for five (5) years in Pennsylvania, United States. He also worked for four (4) years at Ford Motor Company in Michigan as a Finance Manager. He currently is an assistant professor at the Business school of AUB. He additionally is a member of the Lebanon Corporate Governance Task Force.

**Mr. Fadi Saab** is an active member in several associations among which we can cite the American-Lebanese Chamber of Commerce (Chairman of the Business Ethics Committee), the Lebanese Businessman Association (Chairman of the Globalization Committee), the Association of Lebanese Industrialists, the Lebanese Economic Forum. Mr. Saab is also the Chairman and President of Trans Mediterranean Airways. He additionally is a member of the Lebanon Corporate Governance Task Force.

**Ms. Carla Saadeh** is since June 2003, the General Secretary of the International Chamber of Commerce in Lebanon. She also is a shareholder in MERSACO, a leading company of pharmaceutical products as well as the director and board member of Scholl a foot care and foot wear Company.

**Dr. Assem Saffieddine** is an associate professor at the Business School of the American University of Beirut. He also is the President of the CFA society, and the region Director for the Global Association for Risk Professionals (GARP).

**Dr. Nasser el Saidi** is the former Lebanese Minister of Economy and Trade, Minister of Industry, and the former First Vice Governor of Lebanon's Central Bank. He is the chairman of the Lebanon Corporate Governance Task Force, and a member of the Lebanese Transparency Association.

**Mr. Imad Shehab** is the Director of Research at the Union of Arab Banks.

**Mr. Camille Sifri** is the Country Senior Partner of PriceWaterhouseCoopers in Lebanon.

**Dr. Josiane Fahed Sreih** is the Director of the Institute of Family and Entrepreneurial Business, a research centre holding a data bank on family Businesses in Lebanon and the region. Dr. Sreih also is a full time assistant professor at the Lebanese American University teaching topics in Management.

**Mr. Antoine Wakim** is the Chairman of the Board and the Chief Executive Officer at SNA Assurances.

**Mr. Gérard Zovighian** currently occupies the post of Managing Partner at BDO International in Lebanon, the 5th largest auditing firm worldwide, and is a member of the Higher National Accounting Council. Mr. Zovighian is also the vice-chairman of the Board of the Lebanese Transparency Association, and the former chairman of the Lebanon Corporate Governance Task Force.

## *List of the International Speakers at the Second MENA Regional Corporate Governance Forum.*

**Dr. John Sullivan**, Executive Director of the Center for International Private Enterprise (CIPE), an affiliate of the U.S. Chamber of Commerce, since its founding. Dr. Sullivan is the author of a number of articles and publications on the transition to democracy in Central and Eastern Europe, corporate governance, and market-oriented democratic development.

**Mr. Daniel Blume**, Principal administrator within the Organisation for Economic Co-operation and Development's corporate affairs division responsible for co-ordination of work with non-member countries. He oversees work on the Latin American Corporate Governance Roundtable as well as work on new initiatives in other regions.

**Mr. John Bohn**, Chairman of the Center for International Private Enterprise, and of GlobalNet Ventures.

**Ms. Marie-Laurence Guy**, Project officer at the Global Corporate Governance Forum where she is working on disseminating corporate governance best practice and implementing corporate governance reform efforts. Ms. Guy previously worked at the Organisation for Economic Co-operation and Development (OECD) and the the French Ministry of Finance, Economy and Industry.

**Mr. Maged Shawky**, Executive Director of the Egyptian Institute of Directors

**Mr. Joseph Rizk**, Representative of the Arab Federation of Certified Public Accountants

**Dr. Ziad Bahaa Eldin**, Representative of the Bahaa Eldin Law Office in Egypt

**Dr. Fouad Shaker**, Secretary General of the Union of Arab Banks

**Dr. Hazem Yasin**, Board Member at the Egyptian Capital Market Authority

**Mr. Imad Shehab**, Director of Research at the Union of Arab Banks

**Mr. Bassam Asfour**, Commissioner at the Jordan Securities Commission

**Dr. Obaid Al-Motairy**, Chairman of the accounting department at King Saud University, Qasseem, Saudi Arabia. His research interest includes corporate governance in Saudi Arabia, the influence of the WTO on the accountancy profession, and the impact of electronic commerce on the auditing profession. His department is hosting a conference on corporate governance in Saudi Arabia in mid-October.

**Mr. Stephen Davis**, Davis Global Advisors

**Mr. Salaheddin Benjelloun**, Director of Finance and Board member of the Caisse Interprofessionnelle Marocaine de Retraite (CIMR)

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