

**INTERNATIONAL
COMPARISON OF
CORPORATE GOVERNANCE
GUIDELINES AND
CODES OF BEST PRACTICE
DEVELOPED MARKETS**

Corporate Governance Defined

Corporate Governance refers to that blend of law, regulation, and appropriate voluntary private-sector practices which enables the corporation to attract financial and human capital, perform efficiently, and thereby perpetuate itself by generating long-term economic value for its shareholders, while respecting the interests of stakeholders and society as a whole.

The principal characteristics of effective corporate governance are: transparency (disclosure of relevant financial and operational information and internal processes of management oversight and control); protection and enforceability of the rights and prerogatives of all shareholders; and, directors capable of independently approving the corporation's strategy and major business plans and decisions, and of independently hiring management, monitoring management's performance and integrity, and replacing management when necessary.

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Holly J. Gregory

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* This COMPARISON relies on the General Motors Board of Directors Corporate Governance Guidelines on Significant Corporate Governance Issues as its “vertical axis” for Topic Headings 1 through 22. The remaining lettered Topic Headings A through K cover additional issues that were not addressed by the GM Guidelines.

INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE IN DEVELOPED MARKETS

Holly J. Gregory¹
2001 Edition

General Motors Board Guidelines ²	OECD Principles / Millstein Report (International) ³	Bosch Report (Australia) ⁴	Merged Code Recommendations (Belgium) ⁵	Federation of Belgian Companies Recommendations (Belgium) ⁶
OVERVIEW				
<p><i>The General Motors’ Board Guidelines, developed by the GM Board in 1994 (and regularly updated), are widely viewed as a seminal expression of a board’s voluntary efforts to improve its own governance. The GM Guidelines have been widely discussed and emulated, and their influence has extended well beyond the U.S.A.</i></p>	<p><i>In April 1998, the Business Sector Advisory Group on Corporate Governance, chaired by Ira M. Millstein, issued a report to the Organization for Economic Cooperation and Development (“OECD”) titled “Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets” (the “Millstein Report” – see Appendix II). The Millstein Report addresses the elements and framework conditions for corporate governance from a private sector viewpoint that focuses on access to capital. Subsequently, the OECD built upon this work through the Ad Hoc Task Force’s “Principles of Corporate Governance” (April 1999) (hereinafter the “OECD Principles”), and ratified by OECD Ministers in May 1999.</i></p> <p><i>OECD Principles address: I. Rights of Shareholders; II. Equitable Treatment of Shareholders; III. Role of Stakeholders; IV. Disclosure and Transparency; and V. Responsibilities of the Board. They are intended to serve as non-binding reference points for local governments and private sectors to adapt and build upon. The Principles are grounded on two propositions underpinning the Millstein Report: 1) no one country or existing system can serve as the model that dictates reform worldwide; and 2) access to capital is the primary driver for the integration of core corporate governance practices in the international arena.</i></p>	<p><i>The Bosch Report, first published in 1991, is the product of a Working Group representing a broad spectrum of organizations from the corporate sector. It sets out voluntary guidelines intended to assist companies and their boards in adopting the corporate governance practices best suited to their particular circumstances.</i></p> <p><i>Companies listed on the Australian Stock Exchange (“ASX”) are required to include a statement of their corporate governance practices in their annual report under ASX Listing Rule 4.10.3. (No set of practices is prescribed; Appendix 4A of the listing sets forth an “indicative” list of matters that the statement should cover.) A guidance note, published in 1998 by the ASX, recommends that listed companies refer to the Bosch Report as well as the report titled “Corporate Governance: A Guide for Investment Managers and Corporations” (1997) published by the Investment & Financial Services Association (“IFSA”), formerly the Australian Investment Managers’ Association (“AIMA”), in preparing their disclosure statement concerning corporate governance practices.⁷</i></p>	<p><i>In December 1998, the Brussels Stock Exchange (now Euronext/Brussels) and the Banking & Finance Commission jointly issued “Corporate Governance for Belgian Listed Companies.” This document, which was guided by experience gained in other countries as well as by feedback from the draft Cardon Report issued in March 1998, incorporates the Cardon Report in final form as Part I, and adds the Banking & Finance Commission Recommendations as Part II. Part I provides the main body of corporate governance recommendations; Part II provides certain additional recommendations on disclosure. This combined document has been called by some Belgium’s “Merged Code.”</i></p> <p><i>The Merged Code has a dual objective: to provide listed companies with a framework in which they can consider their corporate governance, and to enhance the competitiveness of Belgian companies from the viewpoint of the international investor community.</i></p> <p><i>The Euronext/Brussels market authority has made the “comply or explain” recommendation of this Code part of its listing rules. Even so, the Code is expressly intended to be subject to re-evaluation at regular intervals.</i></p>	<p><i>In June 1997, the Management Committee of the Federation of Belgian Companies (“VBO/FEB”) formed a company managers’ group for the purpose of studying the principal aspects of governing and administering companies and making recommendations. In January 1998, the VBO/FEB ratified the group’s report, entitled “Corporate Governance – Recommendations from the Federation of Belgium Companies.”</i></p> <p><i>The Recommendations are based on the internationally recognized UK Cadbury Report as well as proposals from the Brussels Stock Exchange and the Belgian Banking & Finance Commission. They are intended primarily for large publicly-listed companies, although other companies may find them useful as well. Each Belgian company is expected to further adapt the Recommendations to its unique situation.</i></p> <p><i>The Recommendations take a non-coercive approach. The VBO/FEB believes that corporate governance lends itself more to self-regulation than to compulsory government regulation. However, listed companies are urged to indicate in their Annual Reports whether, or to what extent, they have put these Recommendations into practice.</i></p>

¹ Holly J. Gregory, a partner in the law firm of Weil, Gotshal & Manges LLP, practices in the Firm’s corporate governance group, which is led by Ira M. Millstein. Frederick W. Philippi, a senior paralegal, assisted in this comparative analysis. See also Holly J. Gregory, INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE IN DEVELOPING AND EMERGING MARKETS (1998 and regularly revised); INTERNATIONAL COMPARISON – INVESTOR VIEWPOINTS (1997 and regularly revised); INTERNATIONAL COMPARISON – ASIA (2001); COMPARISON – EUROPEAN UNION MEMBER STATES & OECD (2000); COMPARISON – EUROPEAN UNION-BASED INVESTOR VIEWPOINTS & EASD (2000); and COMPARISON – UNITED STATES (1997 and regularly revised). Many of these COMPARISONS will soon be available online at <www.corpgov.com>.

² General Motors Board of Directors, GM Board of Directors Corporate Governance Guidelines on Significant Corporate Governance Issues (January 1994; revised August 1995, June 1997, March 1999 and June 2000).

³ Organization for Economic Cooperation and Development (“OECD”), Principles of Corporate Governance (April 1999); Business Sector Advisory Group on Corporate Governance, Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets (the Millstein Report) (April 1998) (see APPENDIX II).

⁴ Working Group representing Australian Institute of Company Directors, Australian Society of Certified Practising Accountants, Business Council of Australia, Law Council of Australia, The Institute of Chartered Accountants in Australia & The Securities Institute of Australia, Corporate Practices and Conduct (Bosch Report) (3d ed. 1995).

⁵ Brussels Stock Exchange/Banking & Finance Commission, Corporate Governance for Belgian Listed Companies (the Merged Code) (December 1998).

⁶ Federation of Belgian Companies (VBO/FEB), Corporate Governance – Recommendations (January 1998).

⁷ The IFSA Report (as revised in 1999) is reflected in the INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE – INVESTOR VIEWPOINTS.

Dey Report (Canada) ⁸	Viénot Reports I & II (France) ⁹	Berlin Initiative Group Code (Germany) ¹⁰	Mertzanis Report (Greece) ¹¹	Preda Report (Italy) ¹²
OVERVIEW				
<p><i>The Toronto Stock Exchange Guidelines recommend but do not mandate governance policies for companies listed on the Toronto Stock Exchange.</i></p> <p><i>The Guidelines were promulgated in 1994 by the Toronto Stock Exchange Committee on Corporate Governance which was comprised of investors, CEOs, academics, and other individuals active in the corporate sector.</i></p> <p><i>The Committee's Final Report was presented to the Toronto Stock Exchange with the recommendation that listing companies be required to disclose their system of corporate governance with reference to the Report.</i></p> <p><i>Both the Toronto and Montreal Stock Exchanges have since adopted such a disclosure requirement. See Toronto Stock Exchange Bylaw No. 6.</i></p> <p><i>The listing requirement on which the proposals in the Final Report are based will apply only to companies incorporated in Canada or a province of Canada (and listed on a stock exchange which accepts the proposals) rather than to all companies wherever incorporated.</i></p>	<p><i>In July 1995, the Conseil National du Patronat Français ("CNPF") and the Association Française des Entreprises Privées ("AFEP") released a report titled "The Boards of Directors of Listed Companies in France" ("Viénot I"). It examined corporate governance issues affecting the membership, power, and operation of the boards of directors of French listed companies, with an eye towards how well the current legislative framework addressed these issues.</i></p> <p><i>In July 1999, the CNPF and AFEP released "The Report of the Committee on Corporate Governance" ("Viénot II"). This report addresses various matters that were either not addressed in the earlier report or were addressed in a more limited fashion, e.g., separation of the offices of Chairman and CEO, the definition of an independent director, and disclosure regarding executive compensation.</i></p> <p><i>Relevant texts from both reports are quoted below, with source information indicating either the 1995 report ("Viénot I at [page]") or the 1999 report ("Viénot II at [page]").</i></p>	<p><i>The Berlin Initiative Group's "German Code of Corporate Governance" (June 2000) is somewhat unique insofar as it has been drafted from a managerial perspective.</i></p> <p><i>The Management Board forms the clear leadership center of the public corporation. (Commentary on Thesis 5)</i></p> <p><i>This code views the role of the Supervisory Board as counterbalancing the Management Board, and reaffirms the German custom of as many as half of the seats on the Supervisory Board being held by employees or their representatives in accordance with a governance practice known as "co-determination."</i></p> <p><i>Although this code attaches a particular significance to shareholders' interests, it views management's role as ultimately holding in balance the interests of all stakeholders, including shareholders.</i></p> <p><i>The code is of a non-legal nature, susceptible to flexibility and adaptation. It is directed primarily towards large, quoted public stock corporations, but may also apply in principle to private companies.</i></p>	<p><i>The Committee on Corporate Governance in Greece, established by the Capital Market Commission, consists of representatives of government, private industry, the Athens Stock Exchange, the European Commission, institutional investors, banking, law, auditing and academia. It issued "Principles on Corporate Governance in Greece: Recommendations for Its Competitive Transformation" in October 1999. The Committee, which took into account the OECD's "Principles of Corporate Governance," considers transformation of the national corporate governance framework to be a sine qua non for enhancing competitiveness:</i></p> <p><i>The achievement of competitiveness makes necessary that corporations, especially those whose shares are listed on the Athens Stock Exchange, move toward . . . efficient restructuring of the entire range of relations among shareholders, managers and other stakeholders, at a faster pace and more closely allied to internationally prevailing corporate governance rules and procedures.</i></p> <p><i>(Introduction)</i></p> <p><i>The Committee's Principles and Recommendations have the status of a "White Paper" that may serve as the basis for a government-initiated reform of the corporate legal system.</i></p>	<p><i>The Committee for the Corporate Governance of Listed Companies consists of high-level representatives of the Borsa Italiana (Italian Stock Exchange), major corporations, institutional investors and other experts. It issued its "Report and Code of Conduct" (hereinafter "the Report" and "the Code") in October 1999.</i></p> <p><i>The Committee's aim was to align the Code with international practice while being mindful of specifically Italian corporate features such as corporate structure that includes both a board of directors and a board of auditors, and the fact that most Italian companies do not have a broad shareholder base. The Code provides for flexible governance structures, precise definitions of responsibilities, and a transparent corporate governance environment. It is voluntary in character, but the Committee urges the Borsa Italiana to make a provision for companies to report on whether, and to what extent, they are implementing the provisions of the Code.</i></p> <p><i>Italy's political authorities are expected to have a role to play by respecting and fostering the self-regulatory efforts expressed in the Code.</i></p>

⁸ Toronto Stock Exchange Committee on Corporate Governance in Canada, "Where Were The Directors?" Guidelines For Improved Corporate Governance in Canada (Dey Report) (December 1994).

⁹ Conseil National du Patronat Français ("CNPF") & Association Française des Entreprises Privées ("AFEP"), The Boards of Directors of Listed Companies in France ("Viénot I") (July 10, 1995); Report of the Committee on Corporate Governance ("Viénot II") (July 1999).

¹⁰ Berliner Initiativkreis (Berlin Initiative Group), German Code of Corporate Governance (June 6, 2000).

¹¹ Committee on Corporate Governance in Greece (under the coordination of the Capital Market Commission), Principles on Corporate Governance in Greece: Recommendations for Its Competitive Transformation (October 1999).

¹² Comitato per la Corporate Governance delle Società Quotate (Committee for the Corporate Governance of Listed Companies), Report & Code of Conduct (Preda Report) (October 1999).

Corporate Governance Forum Principles (Japan) ¹³	Peters Code (The Netherlands) ¹⁴	Securities Markets Comm'n Recommendations (Portugal) ¹⁵	Olivencia Report (Spain) ¹⁶	Swedish Academy Report (Sweden) ¹⁷
OVERVIEW				
<p><i>The 1998 “Final Report on Corporate Governance Principles” was prepared by the Corporate Governance Committee of the Corporate Governance Forum of Japan, a committee comprised of corporate executives, institutional investors, and academics.</i></p> <p><i>The Report suggests two tiers of principles for governance reform: “Step A Principles” “should be adopted immediately (or as soon as possible following necessary legal reform)”;</i> “Step B Principles” are more extensive, and would require “legal reforms on a grand scale.”</p> <p><i>Ultimately, the Committee intends to develop the Principles into a “Code of Best Practice” as explained in the letter from the Chairperson (pp. 33-34):</i></p> <p><i>Our aim is to establish an independent system of outside directors in Japan, and by establishing a market for independent directors to promote the transferability of corporate executives between companies. Also we will endeavour to have these Principles adopted as part of the requirements for Initial Public Offerings.</i></p>	<p><i>The Committee on Corporate Governance was established by the Association of Securities Issuing Companies and the Amsterdam Stock Exchange Association for the purpose of initiating debate and producing recommendations on Corporate Governance. This process resulted in the issuance of a final report entitled “Recommendations on Corporate Governance in the Netherlands – Recommendations for Sound Management, Effective Supervision and Accountability” (June 1997). In the Netherlands, as in Germany, a two-tier board system prevails, and the Code reflects this fact.</i></p> <p><i>The Code is not linked to any listing requirement, and it does not contain statutory remedies or sanctions. Compliance with the Code and disclosure regarding compliance with it are both voluntary.</i></p>	<p><i>The Portuguese Comissão do Mercado de Valores Mobiliários (Securities Markets Commission) issued “Recommendations on the Governance of Listed Companies” in November 1999. Developed in response to the OECD “Principles of Corporate Governance,” these Recommendations cover 5 main topics:</i></p> <ol style="list-style-type: none"> <i>I. Disclosure;</i> <i>II. Shareholder Voting and Representation Rights;</i> <i>III. Institutional Investors;</i> <i>IV. Internal Company Regulations; and</i> <i>V. Structure and Role of the Board of Directors.</i> <p><i>The Recommendations are followed by Commentary. Adapted to Portugal’s legal and market context, the Recommendations are intended to initiate critical reflection on corporate governance. They are subject to revision and amendment.</i></p> <p><i>The Recommendations are not mandatory. However, listed companies and institutional investors are urged to disclose in their annual reports the extent to which they comply with them. (Cf. Introduction)</i></p>	<p><i>The Spanish Cabinet created the Special Committee for the Study of a Code of Governance for Boards of Directors of Listed Companies in June 1997 to (among other things) establish a voluntary Ethical Code of Governance. (Cf. I.1)</i></p> <p><i>The Committee issued its report, “The Governance of Spanish Companies,” in February 1998. It consists of:</i></p> <ul style="list-style-type: none"> <i>▪ Introduction (Part I)</i> <i>▪ Report on the Boards of Directors (Part II, hereinafter “the Report”) and</i> <i>▪ Code of Best Practice (23 Recommendations) (Part III, hereinafter “the Code”).</i> <p><i>The report addresses itself primarily to listed companies that are owned by a large number of smaller shareholders. However, it may also apply to other companies seeking to raise capital and companies that are owned by a single shareholder or small group of large shareholders.</i></p>	<p><i>Promulgated by the Swedish Academy of Directors, the “Introduction to a Swedish Code of ‘Good Boardroom Practice’” (1994) is intended to promote the development of good boardroom practice in the Swedish business community.</i></p> <p><i>Compliance with the Code is strictly voluntary and no disclosure regarding the degree of compliance is required.</i></p>

¹³ Corporate Governance Forum of Japan, Corporate Governance Principles — A Japanese View (Final Report) (May 26, 1998).

¹⁴ Committee on Corporate Governance, Corporate Governance in the Netherlands — Forty Recommendations (Peters Code) (June 25, 1997).

¹⁵ Comissão do Mercado de Valores Mobiliários (“CMVM”) (Securities Markets Commission), Recommendations on the Governance of Listed Companies (November 1999).

¹⁶ Comisión Especial para el Estudio de un Código Ético de los Consejos de Administración de las Sociedades, El gobierno de las sociedades cotizadas (Olivencia Report) (February 1998). English translation by Instituto Universitario Euroforum Escorial, The Governance of Spanish Companies (February 1998).

¹⁷ The Swedish Academy of Directors, Western Region, Introduction to a Swedish Code of ‘Good Boardroom Practice’ (Swedish Academy) (March 1994).

Cadbury Report (United Kingdom) ¹⁸	Hampel Report (United Kingdom) ¹⁹	The Combined Code / Turnbull Report (United Kingdom) ²⁰	1996 NACD Report (USA) ²¹	1997 BRT Report (USA) ²²
OVERVIEW				
<p><i>The Cadbury Report, sometimes referred to as the “Magna Carta of Corporate Governance,” is one of the earliest and most influential documents of its kind. It was produced by the Committee on the Financial Aspects of Corporate Governance, chaired by Sir Adrian Cadbury.</i></p> <p><i>The Cadbury Report consists of a formal Code (hereinafter “the Code”) and of extensive comments and recommendations (hereinafter “the Report”).</i></p> <p><i>The Cadbury Report was eventually followed by the Greenbury Commission Report (on director and executive remuneration), the Hampel Commission Report, and The Combined Code of the Committee on Corporate Governance of the London Stock Exchange.</i></p>	<p><i>The Hampel Report, a follow-up to the Cadbury Report, was created by the Committee on Corporate Governance, a group sponsored by the London Stock Exchange (“LSE”), the Confederation of British Industry, the Institute of Directors, the Consultative Committee of Accountancy Bodies, the National Association of Pension Funds and the Association of British Insurers.</i></p> <p><i>The Hampel Report, issued in January 1998, notes:</i></p> <p style="padding-left: 20px;">We intend to produce a set of principles and code of good corporate governance practice which will embrace Cadbury and Greenbury and our own work. We shall pass this to the London Stock Exchange. We suggest that the London Stock Exchange should consult on this document, together with any proposed changes in the Listing Rules.</p> <p>(Summary 7.3)</p> <p><i>The Report draws a distinction between its more general Principles of corporate governance (hereinafter “Principles”) and its more detailed guidelines (hereinafter “Guidelines”).</i></p>	<p><i>“The Combined Code: Principles of Good Governance and Code of Best Practice,” issued by the London Stock Exchange Committee on Corporate Governance, has been appended to the London Stock Exchange Listing Rules. It builds on the Cadbury, Greenbury and Hampel Reports, while making certain changes. It is structured as follows:</i></p> <ul style="list-style-type: none"> ▪ <i>Preamble</i> ▪ <i>Principles of Good Governance (“Code Principles”)</i> <ul style="list-style-type: none"> <i>Section 1: Companies</i> <i>Section 2: Institutional Shareholders</i> ▪ <i>Code of Best Practice (“Code Provisions”)</i> <ul style="list-style-type: none"> <i>Section 1: Companies</i> <i>Section 2: Institutional Shareholders.</i> <p><i>The Combined Code requires that each listed company disclose in its annual report how it has applied the Code Principles, and whether it has complied with the Code Provisions. (Cf. The Listing Rules, 12.43A(a) and (b).)</i></p> <p><i>See also Institute of Chartered Accountants in England and Wales, “Internal Control: Guidance for Directors on the Combined Code” (“Turnbull Report”) (1999) (discussing the accountability of company directors and management); Law Commission and Scottish Law Commission, “Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties” (1999) (recommending changes to Company Law).</i></p>	<p><i>The 1996 “Report of the National Association of Corporate Directors (“NACD”) Commission on Director Professionalism,” chaired by Ira M. Millstein, discusses governance practices designed to promote a culture of “professionalism” for boards and board members. The NACD Report is intended to be forward-looking and aspirational. It recognizes that board practices are evolving and believes that they will continue to evolve in the direction it suggests. Adoption of any of the Report’s recommendations is purely voluntary.</i></p> <p style="padding-left: 20px;">The Report grants the premise that each corporation has its unique history and perspectives, and its own future to plan. Fixed, rigid rules of board governance are not, therefore, in order. The Report suggests that qualified directors collectively make their own rules for the governance of their respective boards, and it strongly urges that they do so after thoughtful and rigorous deliberation.</p> <p style="padding-left: 20px;">In no sense is this a “one-size-fits-all” approach; rather, it is a sophisticated “do-it-yourself” process for board members seeking a culture of boardroom professionalism.</p> <p>(Introduction by Ira M. Millstein at 2)</p>	<p><i>The Business Roundtable (“BRT”) released a revised “Statement on Corporate Governance” in September 1997. It parallels the “one size does not fit all” approach and many of the suggestions on corporate governance contained in the NACD report.</i></p> <p><i>The BRT Statement encourages the examination of governance issues within organizations; compliance with the recommendations contained in the report is purely voluntary.</i></p>

¹⁸ Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Report) (December 1, 1992).

¹⁹ Committee on Corporate Governance – Final Report (Hampel Report) (January 1998).

²⁰ London Stock Exchange Committee on Corporate Governance, The Combined Code: Principles of Good Governance and Code of Best Practice (June 1998); Institute of Chartered Accountants in England and Wales, Internal Control: Guidance for Directors on the Combined Code (Turnbull Report) (September 1999); Law Commission & The Scottish Law Commission, Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties (September 1999).

²¹ National Association of Corporate Directors (“NACD”), Report of the NACD Commission on Director Professionalism (Nov. 1996).

²² The Business Roundtable (“BRT”), Statement on Corporate Governance (September 1997).

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
1. The Mission of the Board of Directors²³				
<p>The General Motors Board of Directors represents the owners' interest in perpetuating a successful business, including optimizing long term financial returns. The Board is responsible for determining that the Corporation is managed in such a way to ensure this result. This is an active, not a passive, responsibility. The Board has the responsibility to ensure that in good times, as well as difficult ones, management is capably executing its responsibilities. The Board's responsibility is to regularly monitor the effectiveness of management policies and decisions including the execution of its strategies.</p> <p>In addition to fulfilling its obligations for increased stockholder value, the Board has responsibility to GM's customers, employees, suppliers and to the communities where it operates – all of whom are essential to a successful business. All of these responsibilities, however, are founded upon the successful perpetuation of the business.</p> <p>(Introduction)</p>	<p>The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.</p> <p>A. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.</p> <p>B. Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.</p> <p>C. The board should ensure compliance with applicable law and take into account the interests of stakeholders.</p> <p>(OECD Principle V)</p> <p>Together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands. . . . [It also] implement[s] systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labor, environmental, equal opportunity, health and safety laws. In addition, boards are expected to take due regard of, and deal fairly with, other stakeholder interests including those of employees, creditors, customers, suppliers and local communities. Observance of environmental and social standards is relevant in this context. (OECD Principle V Annotation at 40)</p> <p>See Millstein Report, Perspective 21 ([C]orporations should disclose the extent to which they pursue projects and policies that diverge from the primary corporate objective of generating long-term economic profit so as to enhance shareholder value in the long term.).</p>	<p>Directors should use their best efforts to ensure that the company is properly managed and constantly improved so as to protect and enhance shareholder wealth in perpetuity, and to meet the company's obligations to all parties with which the company interacts – its stakeholders. The essence of any system of good corporate governance is to allow the board and management the freedom to drive their company forward but to exercise that freedom within a framework of effective accountability. (p. 7)</p>	<p>It is the duty of the board of directors to manage the company's affairs exclusively in the interests of the company and all its shareholders, within the framework of the laws, regulations and conventions under which the company operates. . . . The board of directors is responsible for all strategic decisions, for ensuring that the necessary resources are available to achieve the objectives, for appointing and supervising the executive management and, lastly, for reporting to the shareholders on the performance of its duties. (Part I: A.2)</p> <p>In addition to its function of taking the necessary action at strategic level and implementing strategy, the responsibility of the board of directors chiefly relates to the quality of the information it provides to shareholders. (Part I: A.7)</p> <p>The board of directors is the highest authority within the company. In addition to its decision-making duties, the board must exercise full and effective control over the company. To that end, it must meet regularly and must be capable of monitoring the executive management. (Part I: B.1.1)</p> <p>Without prejudice to its statutory duties, the board of directors is responsible for defining the strategic objectives and establishing general policy on the basis of proposals submitted by the executive management, appointing the executive management and approving the structures designed to facilitate the achievement of these objectives. It is also the board of directors' task to supervise the implementation of policy and the control of the company and to report to the shareholders. (Part I: B.1.2)</p>	<p>The Board of Directors, which is a collegiate body, must . . . exercise effective control over the company and the activities of its Executive Directors. (1.1)</p> <p>A number of decisions must belong to the exclusive competence of the Board of Directors, so that the administration and control of the company remain clearly in the hands of that Board. (1.4)</p> <p>Apart from its legal powers and powers provided for by the Articles, and apart from the powers of the General Meeting, the Board of Directors decides on what is covered by its powers.</p> <p>It is the task of the Board of Directors, on a proposal from the Executive Directors, to determine the strategic objectives of the company and the general policy plan, to appoint the management and to develop structures which will make it possible to achieve these objectives, to supervise the execution of the policy plan and the control of the company, and to give the necessary information to the partners.</p> <p>The Board of Directors also defines the procedures which have to be followed for transactions which are binding on the company, and it defines the cases when the signature of directors is required. It also defines the procedures which have to be followed if decisions have to be taken between two meetings of the Board of directors. (Note to 1.4)</p> <p>The Board of Directors must ensure that an efficient system of internal control is established. (4.5)</p>

²³ See also American Bar Association, Committee on Corporate Laws, Section of Business Law, *Corporate Director's Guidebook* (2d ed. 1994) ("ABA Guidebook") at 5 ("Stated broadly, the principal responsibility of a corporate director is to promote the best interests of the corporation and its shareholder's business and affairs.").

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
1. The Mission of the Board of Directors				
<p>The board of directors of every corporation should explicitly assume responsibility for the stewardship of the corporation and, as part of the overall stewardship responsibility, should assume responsibility for the following matters:</p> <ol style="list-style-type: none"> i. adoption of a strategic planning process; ii. the identification of the principal risks of the corporation’s business and ensuring the implementation of appropriate systems to manage these risks; iii. succession planning, including appointing, training and monitoring senior management; iv. a communications policy for the corporation; and v. the integrity of the corporation’s internal control and management information systems. <p>(Guideline 1)</p> <p>We define the principle objective of directing and managing the business and affairs of the corporation as enhancing shareholder value. (Guideline 2.2(2))</p>	<p>[W]hatever a board’s membership and procedures may be, its members collectively represent all shareholders and it must at all times put the company’s interest first. (Viénot I at 2)</p> <p>[T]he board of directors . . . determines the company’s strategy, appoints the corporate officers charged with implementing that strategy, supervises management, and ensures that proper information is made available to shareholders and markets concerning the company’s financial position and performance, as well as any major transactions to which it is a party. (Viénot I at 2)</p> <p>[I]n continental Europe, and particularly in France, [the emphasis in the area of duties of the board of directors] tends to be on the company’s interest. . . .</p> <p>The interest of the company may be understood as the overriding claim of the company considered as a separate economic agent, pursuing its own objectives which are distinct from those of shareholders, employees, creditors including the internal revenue authorities, suppliers and customers. It nonetheless represents the common interest of all these persons, which is for the company to remain in business and prosper. The Committee thus believes that directors should at all times be concerned solely to promote the interests of the company.</p> <p>The Committee thus believes that directors should at all times be concerned solely to promote the interests of the company. (Viénot I at 5)</p> <p>The Committee believes that while it is the Chairman’s role to draw up and propose a strategy, this must be adopted by the board. By virtue of the same principle, it must consider and decide on all strategically important decisions. (Viénot I at 8)</p>	<p><u>Management Board</u></p> <p>The Management Board . . . forms the company’s clear locus of decision-making. (The Code, I.6)</p> <p>The Management Board leads the public corporation. (The Code, III.1.1)</p> <p>Decisions of fundamental importance for the company (basic decisions) are the responsibility of the Management Board as a whole. (The Code, III.3.4)</p> <p>See the Code, I.2 (The target of company management is the sustained increase in the value of the company.).</p> <p>See also the Code, III (Governance Standards for the Management Board).</p> <p>See also Thesis 5 (The Management Board stands at the center of the . . . guidelines.).</p> <p><u>Supervisory Board</u></p> <p>The Supervisory Board plays an important role . . . with its selection and supervision of the Management Board. It does not, however, have any managerial function. (Thesis 6)</p> <p>The Supervisory Board serves as supervisory authority which controls and advises the Management Board in the sense of “checks and balances.” In this, it is not on an equal footing next to, or even above, the Management Board. The Supervisory Board serves rather as a counterweight to the Management Board which can and should limit, but normally neither counterbalances nor outweighs, the influence of the organ of management on the destiny of the company.” (Commentary on Thesis 6; see the Code, I.6)</p> <p>See the Code, I.7 ([A] supporting significance attaches to the standards for supervision.)</p>	<p>The corporate governance framework should ensure the strategic leadership of the corporation, the efficient monitoring of management by the Board of Directors and the accountability of the Board to the corporation and its shareholders. (Principle 5)</p> <p>The Board of Directors is the authority that governs the corporation. Its duties involve decision-making and the responsibility for exercising full and efficient monitoring of all activities of the corporation. (Recommendation 5.1)</p> <p>In the case where the decisions of the Board of Directors may affect the different classes of shares in a different manner, the Board of Directors should treat all shareholders without discrimination. (Recommendation 5.2)</p> <p>See Introduction (The Board has the responsibility to deal with the corporation’s affairs exclusively in the interests of the corporation and its shareholders within the existing regulatory framework. The Board has the main responsibility for ensuring the establishment of efficient governance rules and must be accountable to the general shareholders meetings for its activities and performance. The Board has the main responsibility for setting the corporation’s long-term goals and making all strategic decisions, making available all required sources for the achievement of strategic goals as well as the appointment and supervision of management.).</p>	<p>Listed companies are governed by a board of directors. . . . The Committee believes that the primary responsibility of the board of directors of a listed company is to set the company’s strategic objectives and to ensure they are achieved. (Commentary on the Code, 1.1)</p> <p>The creation of value for the generality of shareholders is the primary objective that the directors of listed companies seek to achieve. (Commentary on the Code, 1.4; the Report, 4)</p> <p>See Commentary on the Code, 5 ([T]he board of directors is required by law to inform the board of auditors.).</p> <p>See also the Report, 5.1 ([T]he fundamental feature [of the Code] is the central position of the board of directors, charged with providing strategic and organizational guidance and verifying the existence of the controls needed to monitor companies’ performance.).</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
1. The Mission of the Board of Directors				
<p>In the Japanese corporate system, the corporate governance function by definition rests with the board of directors, who are elected to represent the shareholders. The directors are entitled to govern the company, and to supervise and monitor the company's managers in order to promote effective management and ensure accountability to the shareholders. The board of directors therefore is the primary overseer of the company, monitoring management to ensure that it continually endeavors to maximize long-term corporate value for the shareholders, and is always accountable for its actions to all stakeholders, in particular the shareholders. (Ch. 1.3)</p> <p>[G]overnance by the board of directors also comprehends elements of social responsibility: through their duty of supervising management's actions, directors contribute to the transparency of the market. (Ch. 1.4)</p> <p>The Principles . . . present a Japanese model of corporate governance. They place special emphasis on the obligation of directors to represent the long-term interests of shareholders as well as simultaneously to promote the benefits of all concerned stakeholders. (Ch. 1.7)</p> <p>The function of the board of directors should be rejuvenated to cope with the increasingly complex and rapidly changing global market, through its metamorphosis into an honest and rigorous advisory body for management, which might otherwise be tempted to be complacent. (Ch. 2.6)</p>	<p><u>Supervisory Board</u></p> <p>In accordance with the law, the Supervisory Board, in performing its duties, is bound by the interests of the company and the enterprise connected therewith. It is responsible for the supervision of management policy and the general course of affairs in the company. Under the full 'structure regime,' the Supervisory Board is responsible for appointments to the Board of Directors. (Recommendation 2.1)</p> <p><u>Management Board</u></p> <p>The Board of Directors is responsible for the management of the company, which implies, <i>inter alia</i>, that the Board is responsible for realizing the company's objectives, the strategy and policy and the ensuing development of results. (Recommendation 4.1)</p> <p>The Board of Directors should report in writing to the Supervisory Board on the company's objectives, strategy and the associated risks of a financial nature. (Recommendation 4.2)</p> <p>There are no conceivable circumstances which can justify any relaxation of the principle that the management should be fully accountable to the providers of risk capital. (Recommendation 5.1)</p>	<p>[T]he board exercise[s] effective control in its guidance of the company, reserving decisions on important matters. To pursue this objective, it should . . . ensure the supervision of the management of the company. (Commentary on Recommendation 14)</p>	<p>The Board of Directors should take charge of the general function of supervision as its core mission, directly carrying out – not delegating – the responsibilities it entails and drawing up a formal schedule of matters specifically reserved for its knowledge. (The Code, Recommendation 1)</p> <p>[T]he Committee considers that the general function of supervision is the most genuine function of the Boards of Directors of listed companies. Within this function, the Committee separates three basic responsibilities: guiding the company's policies and strategies, controlling management, and liaising [sic] with shareholders. (The Report, II.1.1)</p> <p>[The Committee] recommend[s] establishing, as an ultimate corporate goal and consequently as a criterion that must rule the performance of the Board of Directors, the maximization of corporate value or, to use an expression that has taken root in the market, the creation of shareholder value. (The Report, II.1.3)</p>	<p>The Board of Directors is responsible for the organization of the company and for the administration of the affairs of the company. (General Corporation Act) (p. 4)</p> <p>The Board of Directors carries the total responsibility for the company. It is important that each of the board members is clear about her/his responsibility and the importance of acting in the interest of the company. . . . [T]he Board of Directors shall initiate changes and evaluate different options. The boardroom work shall be practical and aimed at developing the company. (p. 5)</p> <p>The Board of Directors should lift their attention above the everyday rush and focus their interest on the world around the company and interpret signals, question and discuss strategies and the business concept both on a short-term, but above all on a long-term, basis. (p. 5)</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
1. The Mission of the Board of Directors				
<p>The board should . . . retain full and effective control over the company and monitor the executive management. (The Code, 1.1)</p> <p>[T]he effectiveness with which boards discharge their responsibilities determines Britain's competitive position. They must be free to drive their companies forward, but exercise that freedom within a framework of effective accountability. This is the essence of any system of good corporate governance. (The Report, 1.1)</p>	<p>Every listed company should be headed by an effective board which should lead and control the company. (Principle A.I)</p> <p>The single overriding objective shared by all listed companies, whatever their size or type of business, is the preservation and the greatest practicable enhancement over time of their shareholders' investment. All boards have this responsibility and their policies, structure, composition and governing processes should reflect this. (Guideline 1.16)</p> <p>The prime responsibility of the board of directors is to determine the broad strategy of the company and to ensure its implementation. To do this successfully requires high-quality leadership. It also requires that the directors have sufficient freedom of action to exercise their leadership. The board can only fulfil its responsibilities if it meets regularly and reasonably often. (Guideline 3.11)</p>	<p>Every listed company should be headed by an effective board which should lead and control the company. (The Code, Principle A.1)</p>	<p>The objective of the corporation (and therefore of its management and board of directors) is to conduct its business activities so as to enhance corporate profit and shareholder gain. In pursuing this corporate objective, the board's role is to assume accountability for the success of the enterprise by taking responsibility for the management, in both failure and success. This means selecting a successful corporate management team, overseeing corporate strategy and performance, and acting as a resource for management in matters of planning and policy. (p. 1)</p>	<p>[T]he principal objective of a business enterprise is to generate economic returns to its owners. (p. 1)</p> <p>[T]he paramount duty of management and of boards of directors is to the corporation's stockholders; the interests of other stakeholders are relevant as a derivative of the duty to stockholders. (p. 3)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
1a. The Role of Stakeholders				
<p>In addition to fulfilling its obligations for increased stockholder value, the Board has responsibility to GM’s customers, employees, suppliers and to the communities where it operates – all of whom are essential to a successful business. All of these responsibilities, however, are founded upon the successful perpetuation of the business. (Introduction)</p>	<p>The corporate governance framework should recognize the rights of stakeholders as established by law and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.</p> <p>A. The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected.</p> <p>B. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.</p> <p>C. The corporate governance framework should permit performance-enhancing mechanisms for stakeholder participation.</p> <p>D. Where stakeholders participate in the corporate governance process, they should have access to relevant information.</p> <p>(OECD Principle III)</p> <p>The board should . . . take into account the interests of stakeholders. (OECD Principle V.D)</p> <p>Boards are expected to take due regard of, and deal fairly with . . . stakeholder interests including those of employees, creditors, customers, suppliers and local communities. (OECD Principle V Annotation at 40)</p> <p>See Millstein Report, 1.2.16 (Corporate success is linked to the ability to align the interests of directors, managers and employees with the interests of shareholders. . . . [C]orporate actions must be compatible with societal objectives. . . . Attending to legitimate social concerns should, in the long run, benefit all parties, including investors.)</p> <p>See also Millstein Report, Perspective 18 (re: law-abiding corporations); Perspective 19 (re: individual welfare); and Perspective 20 (re: income and opportunity divergence).</p>	<p>Directors should use their best efforts to . . . meet the company’s obligations to all parties with which the company interacts – its stakeholders. (p. 7)</p> <p>[T]he board’s functions include . . . ensuring that the company has in place a policy that enables it to communicate effectively with its shareholders, other stakeholders and the public generally. (pp. 8-9)</p> <p><i>Elements providing guidance to a company developing its own code of conduct include:</i></p> <ul style="list-style-type: none"> ▪ A section on relations with customers and consumers. . . . ▪ A section on relations with suppliers. . . . ▪ A section on employment practices. . . . ▪ A section on responsibilities to the community. <p>(pp. 40-41)</p> <p>All employees have some responsibility for internal control as part of their accountability for achieving objectives. They, collectively, should have the necessary knowledge, skills, information and authority to establish, operate and monitor the system of internal control. This will require an understanding of the company, its objectives, the industries and markets in which it operates, and the risks it faces. (Turnbull Report, 19)</p>	<p>Transparency is the basis on which trust between the company and its stakeholders is built, notwithstanding the constraints imposed on the company by its competitive environment. Transparency is conducive to the company’s effectiveness, because it allows the board of directors to act promptly when necessary. (Part I: A.7)</p>	<p><i>Not covered.</i></p>

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
1a. The Role of Stakeholders				
<p>A system of corporate governance recognizes the role of other stakeholders. We have already identified the responsibility of the board to manage the corporation to enhance value for shareholders – in contrast to managing in order to address the interests of stakeholders, including employees, the community, suppliers, creditors and customers. Notwithstanding the primary responsibility of the board, the longer-term interests of shareholders will not be well-served if the interests of other stakeholders are not addressed. Creating shareholder wealth in a market economy will usually be in the best interests of stakeholders generally. (Guideline 2.2(4))</p> <p>Having said that directors have no corporate law duty to act in the best interests of any particular stakeholder group, it is obvious that a board cannot make a decision without understanding the implications of its decision for this broader group of stakeholders. In making decisions to enhance shareholder value, the board must take into account the interests of other stakeholders. In today’s environment it is difficult for a corporation to prosper if it is not “on side” with all of its stakeholders. (Guideline 4.17)</p>	<p>French law provides for the attendance of works council (<i>comité d’entreprise</i>) representatives at board meetings, where they have a consultative vote, and allows for full board membership of representatives of employees (by ministerial order of 1986) or of employee shareholders (under legislation dated 1994). (Viénot I at 12)</p> <p><i>See Viénot I at 5</i> (The interest of the company may be understood as . . . distinct from those of shareholders, employees, creditors, . . . suppliers and customers. It nonetheless represents the common interest of all of these persons, which is for the company to remain in business and prosper.).</p>	<p>Company management must sensibly balance the interests of the various stakeholders of the company. (Thesis 8)</p> <p>Among those with an interest in the public corporation are principally the owners (stockholders), but also employees, customers, loan creditors and suppliers, as well as the public at large. . . . (Commentary on Thesis 8)</p> <p>[D]istinctive of the constitution of German companies is . . . inclusion of employees by means of various forms of participation (co-determination). (The Code, I.4)</p> <p>Representatives of employees on the Supervisory Board contribute towards balanced discussion. (The Code, II.4.4)</p> <p>The Management Board should be aware of social responsibility to a reasonable extent. (The Code, III.1.4)</p> <p>The Supervisory Board should . . . be aware of social responsibility to a reasonable extent. (The Code, IV.1.4)</p> <p>Employees . . . are institutionally anchored in corporate governance as a result of co-determination. (The Code, V.2.1)</p> <p>Co-determination at plant level, according to the Labor-Management Relations Act, is carried out in individual company plants. . . . Employees elect a works council in every plant with at least five employees. (The Code, V.2.2)</p> <p>Co-determination at enterprise level takes place on the Supervisory Board. (The Code, V.2.3)</p> <p><i>See generally</i> the Code, V.2 (Employee Co-determination).</p>	<p>The corporate governance framework should recognize the rights of stakeholders in the corporation, as established by law, and encourage active participation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises. (Principle 3)</p> <p>The corporate governance framework should ensure that the rights of stakeholders that are protected by law are respected. (Recommendation 3.1)</p> <p>Where law protects stakeholder interests, stakeholders should have the opportunity to seek effective redress for violation of their rights. (Recommendation 3.2)</p> <p>The corporate governance framework should encourage the role of stakeholders in the corporation in a manner that enhances the performance of the corporation and the market. There should be provision for the disclosure of information which is relevant to the interests of stakeholders. (Recommendation 3.3)</p> <p>Where stakeholders participate in the corporate governance processes, they should have access to relevant information. (Recommendation 3.4)</p> <p><i>See Recommendation 1.7</i> (The solution of problems and the settlement of differences among the corporation’s agents is encouraged to be done by consensus, taking into account the long-term interests of the corporation.).</p>	<p>The Committee has identified the maximization of shareholder value as the primary objective of good Corporate Governance, considering that, in the longer term, the pursuit of this goal can give rise to a virtuous circle in terms of efficiency and company integrity, with beneficial effects for other stakeholders – such as customers, creditors, consumers, suppliers, employees, local communities and the environment – whose interests are already protected in the Italian legal system. (The Report, 4)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
1a. The Role of Stakeholders				
<p>The board of directors has the important responsibility of coordinating the various interests of all the other stakeholders, while substantively representing the immediate interests of the shareholders. Therefore, the directors should undertake wider disclosure of company information, including policy statements as well as environment-related reports, for the benefit of all stakeholders who may have divergent interests. (Principle 4A)</p> <p>The publicly-owned corporation . . . is actually a system of cooperative relationships between various stakeholders, including shareholders, management, employees, consumers, clients and creditors. (Ch. 1.2)</p> <p>[M]anagement is to strive to maximize shareholders' profit while simultaneously ensuring the appropriate profit level for other stakeholders. As long as the market mechanism is properly functioning, the shareholders' interest in maximizing profits is justified.</p> <p>In reality, however, the market mechanism does not function perfectly. . . . This is why management oversight of the allocation of profit among stakeholders is indispensable. (Ch. 1.4)</p> <p>Without stable cooperation between employees and management, shareholders' value will never be maximized. To achieve smoother and more effective cooperation, Japanese companies have introduced devices [to] share profits with employees. . . . The goal of these systems is to reconcile the dual aims of maximizing shareholders' profit and maximizing the profit allocation for all stakeholders. (Ch. 1.6)</p>	<p>[Companies] must seek a good balance between the interests of the providers of risk capital (investors) and the other stakeholders. In the long-term, this should not mean a conflict of interests. (Recommendation 1.1)</p> <p>The company is accountable to its various stakeholders. (Recommendation 1.1)</p> <p>Supervisory Board members [should ensure] . . . a division of duties and responsibilities and powers effecting the satisfactory balance of influence of all the stakeholders. The basic principle here is that members of the Board of Directors and Supervisory Board members should – also in public – be accountable for their conduct. (Recommendation 1.2)</p> <p>An employee stock option plan serves to strengthen involvement in the company over the long-term (at least 3 years). The employee stock option is a form of remuneration which should be related to the degree of success of the efforts made by the person concerned to enhance the market value of the company. This should be reflected in the conditions on which the stock options are granted. (Recommendation 4.6)</p>	<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
1a. The Role of Stakeholders				
<p><i>Not covered directly, but see</i> The Report, 2.7 (Although the reports of the directors are addressed to the shareholders, they are important to a wider audience, not least to employees whose interests boards have a statutory duty to take into account.).</p> <p><i>See also</i> The Report, 3.2 (Openness on the part of companies, within the limits set by their competitive position, is the basis for the confidence which needs to exist between business and all those who have a stake in its success.).</p> <p><i>See also</i> The Report, 4.29 (It is important that all employees should know what standards of conduct are expected of them. We regard it as good practice for boards of directors to draw up codes of ethics or statements of business practice and to publish them both internally and externally.).</p> <p>See also The Report, 4.50 (What shareholders (and others) need from the report and accounts is a coherent narrative, supported by the figures, of the company's performance and prospects. We recommend that boards should pay particular attention to their duty to present a balanced and understandable assessment of their company's position.).</p>	<p>Good governance ensures that constituencies (stakeholders) with a relevant interest in the company's business are fairly taken into account (Guideline 1.3)</p> <p>[T]he directors' relationship with shareholders is different in kind from their relationship with other stakeholder interests. The shareholders elect the directors. . . . [D]irectors as a board are responsible <u>for relations with</u> stakeholders, but they are accountable <u>to</u> the shareholders. This is not simply a technical point. From a practical point of view, to redefine directors' responsibilities in terms of stakeholders would mean identifying all the various stakeholder groups and deciding the nature and extent of the directors' responsibility to each. The result would be that the directors were not effectively accountable to anyone since there would be no clear yardstick for judging their performance. This is a recipe neither for good governance nor for corporate success. (Guideline 1.17)</p> <p>This does not mean, of course, that directors must run the company exclusively in the short-term interests of today's shareholders. . . . [T]he directors' duty is to shareholders both present and future. The shareholders, many of whose holdings remain largely stable over time, are interested in a company's sustained prosperity. As regards stakeholders, different types of company will have different relationships, and directors can meet their legal duties to shareholders, and can pursue the objective of long-term shareholder value successfully, only by developing and sustaining these stakeholder relationships. We believe that shareholders recognize that it is in their interests for companies to do this and – increasingly – to have regard to the broader public acceptability of their conduct. (Guideline 1.18)</p>	<p><i>Not covered.</i></p>	<p>[T]he board should clearly define its role, considering both its legal responsibilities to shareholders and the needs of other constituencies, provided shareholders are not disadvantaged. (Summary and Conclusion, 1)</p>	<p>[T]o manage the corporation in the long-term interests of the stockholders, management and the board of directors must take into account the interests of the corporation's other stakeholders. Indeed, a number of states have enacted statutes that specifically authorize directors to take into account the interests of constituencies other than stockholders, and a very limited number of state statutes actually require consideration of the interests of other constituencies.</p> <p>In the Business Roundtable's view, the paramount duty of management and of boards of directors is to the corporation's stockholders; the interests of other stakeholders are relevant as a derivative of the duty to stockholders. The notion that the board must somehow balance the interests of stockholders against the interests of other stakeholders fundamentally misconstrues the role of directors. It is, moreover, an unworkable notion because it would leave the board with no criterion for resolving conflicts between interests of stockholders and of other stakeholders or among different groups of stakeholders. (pp. 3-4)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
2. Board Membership Criteria²⁴				
<p>The Committee on Director Affairs is responsible for reviewing with the Board, on an annual basis, the appropriate skills and characteristics required of Board members in the context of the current make-up of the Board. This assessment should include issues of judgment, diversity, age, skills such as understanding of manufacturing technologies, international background, etc. – all in the context of an assessment of the perceived needs of the Board at that point in time. (Guideline 1)</p>	<p><i>Not covered directly, but see OECD Principle I Annotation at 25 (Shareholders’ rights to influence the corporation center on certain fundamental issues, such as . . . influencing the composition of the board.).</i></p>	<p><i>Not covered.</i></p>	<p><i>Not covered directly, but see Part I: B.1.1 ([The board of directors] must meet regularly and must be capable of monitoring the executive management.).</i></p>	<p><i>Not covered directly, but see Topic Heading 3, below.</i></p>

²⁴ See also National Association of Corporate Directors, Report of the NACD Blue Ribbon Commission on Performance Evaluation of Chief Executive Officers, Board and Directors (1994) (“1994 NACD Report”) at 7-8 (Directors “should be chosen on the basis of . . . talent, expertise, and accomplishment. Diversity of race, gender, age, and nationality . . . may also be taken into account . . . Diversity should not, however, be confused with constituency representation . . . Also, each director should be a shareholder of the corporation.”); 1990 Business Roundtable Statement at 9, 11-12 (Directors should be “highly experienced in business, investments, large organizations or public affairs, [and] willing and able to commit the time and effort needed to be an effective director. . . .”); ABA Guidebook at 15, 39 (“[T]he focus should be on the personal qualities and business experience of the individual directors, and the overall mix of experience, independence, and diversity of backgrounds likely to make the board of directors, as a body, most effective in monitoring the performance of the corporation. . . . The principal qualities . . . include strength of character, an inquiring and independent mind, practical wisdom and mature judgment.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
2. Board Membership Criteria				
<p><i>Not covered.</i></p>	<p><i>Not covered directly, but see Viénot I at 14 ([T]he existence of cross-shareholdings may be viewed as a transitional phenomenon in French capitalism, and one whose elimination as quickly as possible would appear highly desirable. . . . The Committee thus believes that when a board is considering how best to structure its membership, it should take care to avoid including an excessive number of such reciprocal directorships.)</i></p> <p><i>See also Viénot II at 24 (When a director's appointment or the extension of his or her term of office is referred to the meeting of shareholders, the annual report and notice calling the shareholders should include, in addition to the statutory statements, a biographical notice outlining his or her résumé.)</i></p> <p><i>See also Topic Heading 3, below.</i></p>	<p><u><i>Management Board</i></u></p> <p><i>Not covered directly, but see the Code, II.1.1 ([A] balanced multiplicity of qualifications and the ability of the individual Management Board members to work together as a team has to be ensured.)</i></p> <p><i>See also the Code, II.1.2 (Making certain of an optimal qualification of Management Board members belongs to [the Supervisory Board's] tasks.)</i></p> <p><u><i>Supervisory Board</i></u></p> <p><i>In its proposals to the annual general meeting for the election of new members as well as re-appointments to office, the Supervisory Board allows itself to be guided by the consideration that, as to suitability of the persons appointed, the decisive factor is ability. In order to ensure the necessary quality in proposals for appointment, the Supervisory Board discusses and makes decisions based on transparent criteria for the assessment of the candidates who come up for election. (The Code, IV.4.1)</i></p> <p><i>In particular, the Supervisory Board makes certain with its proposals as to appointments that the representatives of the stockholders possess those various qualifications which are required for competent control of the Management Board according to the realities of the company. (The Code, IV.4.2)</i></p>	<p><i>Not covered.</i></p>	<p>[E]ach company should determine the . . . experience and personal traits of its non-executive directors in relation to its size, the complexity and specific nature of its sector of activity, and the total membership of the board. (Commentary on the Code, 2.2)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
2. Board Membership Criteria				
<p><i>Not covered directly, but the Report does note that the optimal characteristics that should be possessed by the Japanese company's <u>shacho</u> (president)²⁵ in his/her style of corporate governance are as follows:</i></p> <p>[A]n effective shacho is hard working, spirited, reliable, level-headed, a good decision-maker, with excellent communication skills and has a comprehensive grasp of where the company is headed in the future. All these qualities, however, are insufficient unless he or she is a person of responsibility, firmly determined to maximize long-term corporate value for the benefit of shareholders. Modern corporations are on-going concerns. . . . The legitimacy of the shacho derives from, and is recognized only by his or her sense of dedication and responsibility to the shareholders and their representatives, the board of directors, through the pursuit of the maximization of corporate value. (Ch. 1.5)</p> <p><i>See also</i> Ch. 2.8 (Independent external directors . . . are more likely to be genuinely neutral agents of shareholders and so able to govern the company more effectively.).</p>	<p>The Supervisory Board of each company should draw up a desired profile of itself in consultation with the Board of Directors. The Supervisory Board should evaluate this profile periodically and draw conclusions regarding its own composition, size, duties and procedures. New developments, for example technological and financial innovations, are also of importance. . . . The profile should reflect, <i>inter alia</i>, the nature of activities, the degree of internalization, the size of the company should be taken into account. (Recommendation 2.2)</p> <p>No more than one former member of the Company's Board of Directors should serve on the Supervisory Board. (Recommendation 2.5)</p> <p>The Committee advocates that the number of Supervisory Board memberships which one person can hold in (listed) companies should be limited so as to guarantee a proper performance of duties. (Recommendation 2.10)</p> <p>The basic principle is that the Board of Directors and the Supervisory Board should have the confidence of the shareholders' meeting. The Committee therefore recommends that this be borne in mind when appointing board members. Board of Directors and Supervisory Boards cannot perform satisfactorily in the long run without that confidence. (Recommendation 5.3)</p>	<p><i>Not covered.</i></p>	<p>[T]here is no single independent director profile. Therefore, it is not advisable to select them exclusively from among the significant executives of other companies, although this provenance might especially qualify them in directing the strategy and efficiently performing the supervision function. It is also convenient to incorporate individuals from other professional extractions. (The Report, II.5.2)</p> <p>The Nomination Committee's mission is to . . . define and review the criteria to be followed in determining the composition of the Board of Directors and the selection of candidates. (The Report, II.5.1)</p> <p>The ownership structure of the companies making up our stock market features . . . a noticeable capital concentration and hence a strong presence of significant shareholders (shareholders able to influence, either individually or collectively, the control of the company). Recognition of this fact has led us to encourage the participation of these shareholders on the Board of Directors ("proprietary directors"). (The Report, II.8.6)</p>	<p>The composition of the Board of Directors depends on the size of the company, its organization, type and direction.</p> <ul style="list-style-type: none"> ▪ In small, family owned businesses the external board members can be business colleagues, or local and competent business people and/or board members with special skills. . . . ▪ In growing, medium-sized companies, the Board must be supplemented with an experienced generalist. A specialist may also be needed. ▪ In a subsidiary, the external board member should be a local, skilled business woman/man. ▪ In a parent company, board members should be skilled and able to contribute to the development of the company and to support management. <p>(p. 5)</p>

²⁵ The *shacho* is the top management executive (Corporate Governance Principles—A Japanese View (Final Report), Ch. 1-5), *i.e.*, he or she is the CEO and often chairman of the board of directors in Japanese companies.

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
2. Board Membership Criteria				
<p><i>Not covered directly, but see</i> The Report, 4.15 (Given the importance of their distinctive contribution, non-executive directors should be selected with the same impartiality and care as senior executives. We recommend that their appointment should be a matter for the board as a whole and that there should be a formal selection process, which will reinforce the independence of non-executive directors and make it evident that they have been appointed on merit and not through any form of patronage. We regard it as good practice for a nomination committee to carry out the selection process and to make proposals to the board.)</p>	<p>Executive directors share with their non-executive colleagues overall responsibility for the leadership and control of the company. . . . Boards should only appoint as directors executives whom they judge to be able to contribute [by showing leadership, speaking for the area for which he/she directly responsible, and exercising independent judgement]. Board appointment should not be regarded simply as a reward for good performance in an executive role. (Guideline 3.6)</p> <p>Non-executive directors are normally appointed to the board primarily for their contribution to the development of the company's strategy. . . . [T]he non-executive directors should command the respect of the executives and should be able to work with them in a cohesive team to further the company's interests. (Guideline 3.8)</p> <p>Most non-executive directors are executives or former executives of other companies. This experience qualifies them both in constructive policy making and in the monitoring role. Non-executive directors from other backgrounds are often appointed for their technical knowledge, their knowledge of overseas markets or their political contacts. . . . We do not favour diversity for its own sake, to give a politically correct appearance to the list of board members or to represent stakeholders. But we believe, given the diversity of business and size of listed companies, that there are people from other fields who can make a real contribution on the board. (Guideline 3.15)</p>	<p><i>Not covered directly, but see</i> the Code, Provision A.6.2 (The names of directors submitted for election or reelection should be accompanied by sufficient biographical details to enable shareholders to take an informed decision on their election.)</p> <p><i>See also</i> the Code, Provision A.3.1 (The board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in the board's decisions.)</p>	<p>[I]ndividual directors should possess all of the following personal characteristics:</p> <ul style="list-style-type: none"> ▪ Integrity and Accountability . . . ▪ Informed Judgment . . . ▪ Financial Literacy . . . ▪ Mature Confidence . . . [and] ▪ High Performance Standards <p>[T]he board as a whole should possess all of the following core competencies, with each candidate contributing knowledge, experience, and skills in at least one domain:</p> <ul style="list-style-type: none"> ▪ Accounting and Finance . . . ▪ Business Judgment . . . ▪ Management . . . ▪ Crisis Response . . . ▪ Industry Knowledge . . . ▪ International Markets . . . ▪ Leadership . . . [and] ▪ Strategy/Vision. <p>(pp. 7-9)</p> <p>[C]andidates should be prepared to own a significant equity position in the company. (p. 13)</p> <p>Boards should seriously consider . . . the distinctive skills, perspectives, and experiences that candidates diverse in gender, ethnic background, geographic origin and professional experience . . . can bring to the boardroom. (p. 14)</p> <p>Board[s] should consider guidelines that limit the number of positions on other boards, subject to individual exceptions – for example, for CEOs and senior executives, one or two; for others fully employed, three or four; and for all others, five or six. (p. 22; <i>see</i> p. 12)</p>	<p>[The board] should encompass individuals with diverse talents, backgrounds, and perspectives who can work effectively together . . . while preserving their ability to differ with each other on particular issues. . . . Men and women from different geographical areas and of different ages, races and ethnic backgrounds can contribute different, useful perspectives. (p. 7)</p> <p>Effective boards are composed of individuals who are highly experienced in their respective fields of endeavor and whose knowledge, background and judgment will be useful to the corporation. Directors must have the ability and willingness to learn the corporation's business and to express their personal views. (p. 8)</p> <p>Each person serving as a director must devote the time and attention necessary to fulfill the obligations of a director. . . . [S]ervice on too many boards can interfere with an individual's . . . ability to perform his or her responsibilities. . . . Because time demands from board to board and capacities of individual directors will vary, [the BRT] does not endorse a specific limitation on the number of directorships an individual may hold. (p. 8)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
3. Selecting, Inviting and Orienting New Directors²⁶				
<p>The Board itself should be responsible, in fact as well as procedure, for selecting its own members and in recommending them for election by the stockholders. The Board delegates the screening process involved to the Committee on Director Affairs with the direct input from the Chairman of the Board and the Chief Executive Officer. The Board and the Company have a complete orientation process for new Directors that includes background material, meetings with senior management and visits to Company facilities. (Guideline 2)</p> <p>The invitation to join the Board should be extended by the Board itself via the Chairman of the Board and Chief Executive Officer of the Company, together with an independent director, when appropriate. (Guideline 3)</p>	<p>Basic shareholder rights include the right to . . . elect members of the board. (OECD Principle I.A)</p> <p>Shareholders' rights to influence the corporation center on certain fundamental issues, such as the election of board members, or other means of influencing the composition of the board. (OECD Principle I Annotation at 25)</p> <p>The board should fulfill certain key functions, including . . . ensuring a formal and transparent board nomination process. (OECD Principle V.D.3)</p> <p>In order to improve board practices and the performance of its members, some companies have found it useful to engage in training and voluntary self-evaluation that meets the needs of the individual company. This might include that board members acquire appropriate skills upon appointment, and thereafter remain abreast of relevant new laws, regulations, and changing commercial risks. (OECD Principle V.E.2 Annotation at 42)</p>	<p>The Working Group also believes that it is good practice for companies to establish a system of orientation and training for directors and it may be considered appropriate for it to be discussed with incoming board members. An alternative may be to give each incoming director a directors' source book which could include, <i>inter alia</i>, copies of the articles of association, extracts from relevant policies, the executive summary of the corporate plan and other appropriate information. (Guideline 3)</p>	<p>[T]he General Meeting of Shareholders is responsible for appointing the members of the board of directors. (Part I: A.2)</p> <p>Non-executive directors should be selected through a formal procedure, and both this procedure and proposals for the nomination of non-executive directors should be a matter for the board as a whole.</p> <p>The Belgian Commission on Corporate Governance regards it as good practice for a nomination committee, where such exists, to carry out the selection process and to make recommendations to the board for the nomination of both executive and non-executive directors, singling out the non-executive directors. (Part I: B.2.4)</p>	<p>Non-executive directors are appointed by the General Meeting on a proposal from the Board of Directors. (2.3)</p> <p>According to Belgian law, the General Meeting appoints all directors, whether they are executive or not.</p> <p>For non-executive directors, however, this appointment must take place on a proposal from the Board of Directors. . . . The appointments committee should make proposals to the Board of Directors. (Note to 2.3)</p>

²⁶ See also 1994 NACD Report at 10 (“The Nominating Committee should evaluate the profile of the board and discuss it with the CEO and the rest of the board, forming a consensus on the number of additional directors to be added at the time and the ideal set of job skills. The Nominating Committee, with input from the entire board, should make a list of candidates. The CEO should have input into the process, as well. Once a list of candidates has been established, the members of the Nominating Committee, the Chairman and CEO should meet with each candidate to evaluate his or her suitability. The Nominating Committee can recommend a candidate to the board, or the board as a whole can select, based on the Nominating Committee’s advice.”); 1990 Business Roundtable Statement at 9, 13 (“The directors are in the best position to recommend the slate of nominees for board membership which is presented to the shareholders for election at the annual meeting. Nominating committees should develop their own process for dealing with shareholders suggestions of nominees to the board. . . . In addition, the nominating committee is responsible for recommending a slate of nominees to the board.”); ABA Guidebook at 38 (“The Nominating Committee Chair should have prominent involvement in the recruiting process in order to reinforce the perception as well as the reality that the invitee’s selection is being made by the Committee and the board, and not by the CEO.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
3. Selecting, Inviting and Orienting New Directors				
<p>The board of directors of every corporation should appoint a committee of directors composed exclusively of outside, i.e., non-management, directors, a majority of whom are unrelated directors, with the responsibility for proposing to the full board new nominees to the board and for assessing directors on an ongoing basis. (Guideline 4)</p> <p>Every corporation, as an integral element of the process for appointing new directors, should provide an orientation and education program for new recruits to the board. (Guideline 6)</p>	<p>The Committee recommends that boards should set up special committees to select board members and corporate officers. (Viénot I at 14-15)</p> <p>Selection committee Made up of 3 to 5 members, including the chairman and at least 1 independent director, this committee would be charged with proposing candidates after due examination of all relevant factors. (Viénot I at 15)</p> <p>In order to give full weight to the process for appointment of Directors by the shareholders, it is essential for the latter to have all the information relevant to their decision. The annual report should therefore specify systematically the dates of the beginning and expiry of each Director's term of office, and therefore the staggering of terms, together with the following information: age, main position held, directorships in French or foreign listed corporations other than group affiliates, and, if applicable, membership on a Board committee. When the meeting of shareholders is required to act upon the appointment or extension of a Director's term, both the annual report and the notice calling the meeting should present the candidate for appointment through a biographical notice outlining his or her résumé, without prejudice to the existing statutory rules. (Viénot II at 14)</p>	<p><u>Management Board</u></p> <p>The Supervisory Board decides on the selection of the members of the Management Board. . . . The decision of the Supervisory Board is prepared by the personnel committee or a search committee. (The Code, II.1.2)</p> <p>As soon as a vacancy in the Management Board becomes evident, the Management Board members, in conjunction with the personnel committee of the Supervisory Board, should present concrete appointment proposals. . . . Notwithstanding such possible suggestions . . . , the Supervisory Board remains master of the appointment procedure. (The Code, II.1.7)</p> <p><i>See generally</i> the Code, II.1 (Composition of the Management Board).</p> <p><u>Supervisory Board</u></p> <p>[The annual meeting of shareholders] elects the members of the Supervisory Board insofar as they may be appointed by the stockholders – depending on the co-determination situation. (The Code, I.5)</p> <p>[E]mployees elect either one-third or one-half of the members of the Supervisory Board, depending on the size of the corporation. They thus participate in all responsibilities of this organ. The one-third equal footing co-determination applies according to Labor-Management Relations Act 1952 to all corporations with at least 500 but fewer than 2,000 employees, and parity co-determination according to the Co-determination Act 1976 in companies with a workforce exceeding 2,000. (The Code, V.2.3)</p>	<p>Shareholders should have the right to . . . the approval of the appointment and/or dismissal of the members of the Board of Directors. (Recommendation 1.2.5)</p>	<p>Proposals for appointments to the position of director, accompanied by detailed information on the personal traits and professional qualifications of the candidates, shall be deposited at the company's registered office at least 10 days before the date fixed for the shareholders' meeting or at the time the election lists, if provided for, are deposited. (The Code, 7.1; <i>see</i> the Report, 4.5.1)</p> <p>In general, proposals for the election of directors are put forward by the majority or controlling shareholders, who obviously make a preliminary selection of the candidates.</p> <p>In the case of companies with a broad shareholder base, instead, candidates are also put forward, sometimes by means of election lists provided for in the by-laws, by minority or non-controlling shareholders. (Commentary on the Code, 7)</p> <p><u>Board of Auditors</u></p> <p>Proposals to be submitted to the shareholders' meeting for appointments to the position of auditor, accompanied by detailed information on the personal traits and professional qualifications of the candidates, shall be deposited at the company's registered office at least 10 days before the date fixed for the shareholders' meeting or at the time the related lists are deposited. (The Code, 13.1)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
3. Selecting, Inviting and Orienting New Directors				
<p>[A] committee should be established within the board, with responsibilities for the appointment of directors. (Principle 9B)</p> <p>Independent directors should be carefully selected so as to ensure that the board is well balanced, and reflects the different values of society at large. (Comment on Principle 8B)</p> <p>The introduction of a majority of independent non-executive directors to the board will increase its effectiveness, in particular as it will enable the creation of an audit committee within the board of directors. However, companies whose situation is such that the conventional dual board system, comprising separate boards of directors and auditors, will ensure equally effective risk management may maintain this structure as long as this is accompanied by a full explanation of its rationale. (Comment on Principles 11A and 13B)</p> <p>Currently, a sufficient supply of independent external directors does not exist in Japan. This limited market for independent directors as well as corporate auditors may be an Achilles' heel. But, in the medium-term, the uniquely Japanese system of cross-shareholding might begin to unravel, which will necessitate a system of governance more reliant on independent and external directors, in turn leading to the creation of a market for such individuals. (Chs. 2.7)</p>	<p>Under the full "structure regime" the Supervisory Board is responsible for appointments to the Board of Directors. In companies not subject to the full "structure regime," nominations for such appointments will be the duty of the Supervisory Board. (Recommendation 2.1)</p> <p>It is important that Supervisory Board members are selected from a wide circle. One means of helping to achieve this would be via a further internationalization of the composition of the Supervisory Board. (Recommendation 2.10)</p> <p>Preparation of the selection criteria and nomination procedures for Supervisory Board members, executive directors and higher management posts [may be conducted by a selection and nomination committee]. (Recommendation 3.2)</p>	<p><i>Not covered.</i></p>	<p>The Board's intervention in the selection and re-election of its members should adjust to a formal and transparent procedure and should issue from a reasonable proposal made by the Nomination Committee. (The Code, Recommendation 11)</p> <p>The Nomination Committee's mission is to watch over the integrity of the process of appointing directors; to this end, it seems wise to entrust it with the following functions:</p> <ul style="list-style-type: none"> (a) define and review the criteria to be followed in determining the composition of the Board of Directors and the selection of candidates; (b) submit appointment proposals to the Board of Directors, so that it can either appoint them directly (co-optation) or relay those proposals to the General Shareholders' Meeting; (c) propose which directors should be in each Committee. <p>(The Report, II.5.1)</p> <p>[C]ompanies receiving this report should have an induction programme for new directors to top the appointment process. The purpose of this program would be to provide them with advice on their legal duties, inform them about corporate governance rules and provide a briefing on the company's features, situation and environment. (The Report, II.5.3)</p>	<p>The Board is nominated and appointed by the owners at the Annual General Meeting. Several larger companies have appointed Nomination, Remuneration and Auditing Committees to propose directors. (pp. 2, 7)</p> <p>Before starting the search after a suitable board member the present position of the company must be mapped The owner/management must formulate and describe where the company should be 3-5 years from now. Thus by positioning the company in the future it is possible to derive the skill/competence and experience that the company and its Board of Directors are in need of to take the company to this future position. . . . When the profile and the skill/competence requirements of the board member has been established [selection] start[s] by analyzing [one's] own network and business contacts. (p. 16)</p> <p>[Board members should] make sure that they receive an adequate briefing on the company, of divisional heads, of subsidiary heads and of the Managing Director and set aside 2-5 days for the learning period. (p. 21)</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
3. Selecting, Inviting and Orienting New Directors				
<p>Non-executive directors should be selected through a formal process and both this process and their appointment should be a matter for the board as a whole. (The Code, 2.4)</p> <p>We recommend that [a non-executive director's] appointment should be a matter for the board as a whole and that there should be a formal selection process, which will reinforce the independence of non-executive directors and make it evident that they have been appointed on merit and not through any form of patronage. (The Code, 2.4; The Report, 4.15)</p> <p>One approach to making board appointments, which makes clear how these appointments are made and assists boards in making them, is through the setting up of a nomination committee, with the responsibility of proposing to the board, in the first instance, any new appointments, whether of executive or of non-executive directors. A nomination committee should have a majority of non-executive directors on it and be chaired either by the chairman or a non-executive director. (The Report, 4.30)</p> <p><i>See Topic Heading 2, above.</i></p>	<p>There should be a formal and transparent procedure for the appointment of new directors to the board. (Principle A.V)</p> <p>All directors should be required to submit themselves for re-election at regular intervals and at least every three years. (Principle A.VI)</p> <p>[O]n the first occasion that an individual is appointed to the board of a listed company, he or she should receive induction into the responsibilities of a director. It is the board's responsibility to ensure that this help is available. It is equally important that directors should receive further training from time to time, particularly on relevant new laws and regulations and changing commercial risks. (Guideline 3.5)</p> <p>Appointment to the board should be a transparent process. Decisions should be taken, in reality as well as in form, by the whole board. We support the Cadbury committee's endorsement of the nomination committee (report, 4.30); indeed, we believe that the use of such a committee should be accepted as best practice, with the proviso that smaller boards may prefer to fulfil the function themselves. (Guideline 3.19)</p> <p>In general, we see appointment of directors to represent outside interests as incompatible with board cohesion, but there may be exceptional cases where it is appropriate for a major creditor or a major shareholder to nominate a director. (Guideline 3.20)</p>	<p>There should be a formal and transparent procedure for the appointment of new directors to the board. (The Code, Principle A.5)</p> <p>Every director should receive appropriate training on the first occasion that he or she is appointed to the board of a listed company, and subsequently as necessary. (The Code, Provision A.1.6)</p> <p>Unless the board is small, a nomination committee should be established to make recommendations to the board on all new board appointments. (The Code, Provision A.5.1)</p> <p>The names of directors submitted for election or reelection should be accompanied by sufficient biographical details to enable shareholders to take an informed decision on their election. (The Code, Provision A.6.2)</p>	<p>Boards should establish a wholly independent . . . "nominating" . . . "organizational" [or] . . . "governance" . . . committee that is responsible for . . . nominating directors for board membership. . . . (p. 3)</p> <p>Creating an independent and inclusive process for nominating . . . directors . . . will ensure board accountability to shareholders and reinforce perceptions of fairness and trust between and among management and board members. (p. 4)</p> <p>Boards should involve all directors in all stages of the CEO and board member selection process. (p. 4)</p> <p>Boards should institute as a matter of course an independent director succession plan and selection process, through a committee or overseen by a designated director or directors. (p. 5)</p> <p>In selecting members, the board must assure itself of their commitment to . . . learn the business of the company and the board . . . [and] importantly, devote the necessary time and effort. (p. 22)</p> <p><i>See generally</i> Ch. 3, pp. 7-14.</p>	<p>It is the board's responsibility to nominate directors. (p. 7)</p> <p>Each nominating/governance committee should develop its own process for considering stockholder suggestions for board nominees. (p. 9)</p> <p>The nominating/governance committee is typically responsible for . . . reviewing possible candidates for board membership . . . and recommending a slate of nominees. The board should have the benefit of the CEO's involvement in the selection process, but the responsibility for selection of board nominees remains that of the board. (p. 16)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
4. Separation of Chairman and CEO²⁷				
<p>The Board should be free to make this choice any way that seems best for the Company at a given point in time.</p> <p>Therefore, the Board does not have a policy, one way or the other, on whether or not the role of the Chief Executive and Chairman should be separate or combined and, if it is to be separate, whether the Chairman should be selected from the non-employee Directors or be an employee. (Guideline 4)</p>	<p>The Chairman as the head of the board can play a central role in ensuring the effective governance of the enterprise and is responsible for the board's effective function. The Chairman may in some countries be supported by the company secretary. In unitary board systems, the separation of the roles of the Chief Executive and Chairman is often proposed as a method of ensuring an appropriate balance of power, increasing accountability and increasing the capacity of the board for independent decision making. (OECD Principle V.E Annotation at 42)</p>	<p>The Belgian Commission on Corporate Governance recommends that there should be a clear division of responsibilities at the head of a company to ensure a sound balance of power and authority. (Part I: B.1.3)</p>	<p>The Belgian Commission on Corporate governance recommends that there should be a clear division of responsibilities at the head of a company to ensure a sound balance of power and authority. (Part I: B.1.3)</p>	<p><i>Not covered directly, but see Topic Heading 5, below.</i></p>

²⁷ See also [ABA Guidebook](#), at 16-17 (suggesting ways to strengthen the role of independent directors, including having an “independent director serve as chair of the board, thus separating the roles of chair and CEO”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
4. Separation of Chairman and CEO				
<p>Every board of directors should have in place appropriate structures and procedures to ensure that the board can function independently of management. An appropriate structure would be to</p> <ul style="list-style-type: none"> i. appoint a chair of the board who is not a member of management with responsibility to ensure the board discharges its responsibilities or ii. adopt alternate means such as assigning this responsibility to a committee of the board or to a director, sometimes referred to as the “lead director.” <p>(Guideline 12)</p>	<p>The French position seems unique in that no other country offers the option between a unitary system (Board of Directors) and a dual system (Supervisory Board and Board of Management) in all corporations, including listed corporations. While it is a fact that, overall, the latter system is selected by only 2% or 3% of corporations, it is noteworthy, however, that 20% of the corporations in the CAC 40 index apply it, so that among the leading listed corporations the proportion of those separating the offices is the same as in the USA. (Viénot II at 5)</p> <p>The Committee considers that introduction into French law of great flexibility in the unitary system with a Board of Directors is particularly desirable, and that the Boards of corporations should be allowed an open choice between combination or separation of the offices of Chairman and Chief Executive Officer.</p> <p>At present, the law imposes a uniform requirement [on unitary boards] of a combination of duties in the hands of a Chairman and Chief Executive Officer, allowing no derogation, the only other option being a change to the structure with a Supervisory Board and Board of Management. . . .</p> <p>A change in the law would allow achievement of the desired flexibility since, in the system using a Board of Directors, it would make the option between combination and separation of duties the general rule. (Viénot II at 6)</p> <p><i>See generally Viénot II at 6-9 (separation of roles as a legal option).</i></p>	<p><i>Not covered directly, however, in Germany’s two-tier board system, the Chairman of the Supervisory Board is normally appointed from among those Supervisory Board members who represent the shareholders. (See the Code, V.2.6)</i></p>	<p>The separation of duties and responsibilities in the highest levels of the corporation’s governance should be encouraged with the purpose of achieving a balance between authority, functions and their control. The effectiveness of the chairman of the Board of Directors in monitoring the operation of the Board is obviously weakened when that person exercises simultaneously the duties of the Chief Executive Officer (CEO) of the corporation. (Recommendation 5.5)</p>	<p>The Committee has found that it is not uncommon in Italy for management powers to be delegated to the chairman, either alone or together with other managing directors. Accordingly, it does not recommend the separation of the two roles as a matter of principle. It does, however, recommend that listed companies should make the division of tasks and responsibilities among the various positions absolutely clear and disclose adequate information in this respect. (The Report, 5.2)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
4. Separation of Chairman and CEO				
<p>The chairperson of the board of directors as the person ultimately responsible for the governance structure, and the <i>shacho</i> as the officer ultimately responsible for business execution, should ideally not be the same person. When the combination of these two functions is unavoidable, an explanation should be offered to the shareholders. (Principle 10B)</p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>	<p>[C]onsidering that holding both [Chairman and CEO] positions is the most widespread practice in Spain and in surrounding countries, the Committee recognizes that at present it is not proper to offer a general guideline. Nevertheless, the concern of maintaining optimal conditions for the proper fulfillment of the general function of supervision leads us to recommend that some cautionary measures be adopted whenever one individual is to hold the two positions. It is a question of creating counterweights allowing the Board of Directors to operate independently from the management team and to keep its power to control it. (The Report, II.3.2)</p>	<p><i>Not covered directly, but see the Code, 11.2 (recommending an “agenda committee” when the roles of chairman and CEO are combined).</i></p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
4. Separation of Chairman and CEO				
<p>There should be clearly accepted division of responsibilities at the head of a company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision. Where the chairman is also the chief executive, it is essential that there should be a strong and independent element on the board, with a recognized senior member. (The Code, 1.2)</p> <p>Given the importance and particular nature of the chairman's role, it should in principle be separate from that of the chief executive. (The Report, 4.9)</p>	<p>There are two key tasks at the top of every public company – the running of the board and the executive responsibility for the running of the company's business. A decision to combine these roles in one individual should be publicly explained. (Principle A.II)</p> <p>Cadbury recommended that the roles of chairman and chief executive officer should in principle be separate; if they were combined in one person, that represented a considerable concentration of power. We agree with Cadbury's recommendation and reasoning, and we also note that in the largest companies these may be two full-time jobs. But a number of companies have combined the two roles successfully, either permanently or for a time. Our view is that, other things being equal, the roles of chairman and chief executive officer are better kept separate, in reality as well as in name. Where the roles are combined, the onus should be on the board to explain and justify the fact. (Guideline 3.17)</p>	<p>There are two key tasks at the top of every public company – the running of the board and the executive responsibility for the running of the company's business. There should be a clear division of responsibilities at the head of the company which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision. (The Code, Principle A.2)</p> <p>A decision to combine the posts of chairman and chief executive officer in one person should be publicly justified. (The Code, Provision A.2.1)</p>	<p>The purpose of creating [a non-executive chairman or board leader] is not to add another layer of power but instead to ensure organization of, and accountability for, the thoughtful execution of certain critical independent director functions. The board should ensure that someone is charged with:</p> <ul style="list-style-type: none"> ▪ organizing the board's evaluation of the CEO and providing continuous ongoing feedback; ▪ chairing executive sessions of the board; ▪ setting the agenda with the CEO; and ▪ leading the board in anticipating and responding to crises. <p>Boards should consider formally designating a non-executive chairman or other independent board leader. If they do not make such a designation, they should designate, regardless of title, independent members to lead the board in its most critical functions. (p. 4)</p>	<p>Each corporation should be free to make its own determination of what leadership structure serves it best, given its present and anticipated circumstances. The [BRT] believes that most corporations will continue to choose, and be well served by, unifying the positions of chairman and CEO. Such a structure provides a single leader with a single vision for the company and most [BRT] members believe it results in a more effective organization. (p. 13)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
5. Lead Director²⁸				
<p>The Chairman of the Committee on Director Affairs will be an independent Director responsible for chairing the regular sessions of the independent Directors and communicating the Board's annual evaluation of the chairman and the CEO to those individuals. The chairman of the Committee, together with the members of that Committee, will develop the agendas for those regular sessions and periodically review the Board's governance procedures (guidelines). (Guideline 5)</p>	<p><i>Not covered directly, but see Topic Heading 4, above.</i></p>	<p>Where the roles of the Chairman and CEO are combined, the appointment of an independent non-executive director as Deputy Chairman should be considered. (Guideline 1.2)</p>	<p>Where the chairman is also the chief executive, it is essential that there should be strong and independent persons on the board whose authority is acknowledged. (Part I: B.1.3)</p>	<p>The division of responsibilities between the Board of Directors and the Executive Directors must be clearly defined. If the chairmanship of these governing bodies is entrusted to the same person, it is necessary to ensure that there are one or more prominent individuals on the Board of Directors who can form a counter-balance to the influence of the chairman. This is because it is necessary to ensure that no one can exercise discretionary powers without control. (1.2)</p>

²⁸ See also 1994 NACD Report at 4 (discussing board appointment of a lead director for the CEO evaluation process); ABA Guidebook at 17 (suggesting ways to strengthen the role of independent directors, including having “the independent directors designate one of the members to act as a lead director, if the CEO serves as chair”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
5. Lead Director				
<p>Every board of directors should have in place appropriate structures and procedures to ensure that the board can function independently of management. An appropriate structure would be to:</p> <ul style="list-style-type: none"> i. appoint a chair of the board who is not a member of management with responsibility to ensure the board discharges its responsibilities; or ii. adopt alternate means such as assigning this responsibility to a committee of the board or to a director, sometimes referred to as the “lead director.” <p>(Guideline 12)</p>	<p><i>Not covered directly, but see Topic Heading 4, above.</i></p>	<p><i>Not covered directly, but see Topic Heading 4, above.</i></p>	<p><i>Not covered directly, but see Topic Heading 4, above.</i></p>	<p><i>Not covered.</i></p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
5. Lead Director				
<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>	<p>[T]he concern of maintaining optimal conditions for the proper fulfillment of the general function of supervision leads us to recommend that some cautionary measures be adopted whenever one individual is to hold the two positions [of CEO and Chairman]. It is a question of creating counterweights allowing the Board of Directors to operate independently from the management team and to keep its power to control it. Said measures can be issued in many ways, although the most effective one could be to appoint, among the independent Directors, a Vice-President with co-ordination functions. This individual could be empowered to call the Board meeting, put down new points on the agenda, submit information to directors, and voice their concerns. (The Report, II.3.2)</p> <p><i>See</i> the Code, Recommendation 5 (In the event that the Board of Directors chooses to adjoin the position of Chairman and CEO in the same individual, the necessary cautionary measures should be taken to reduce the risks arising from concentrating power in the hands of one individual.).</p> <p><i>See also</i> the Code, Recommendation 6 (The Secretary of the Board should be granted more prominence, reinforcing his/her independence and stability and emphasizing his/her function of watching over the material and formal lawfulness of Board proceedings.).</p>	<i>Not covered.</i>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
5. Lead Director				
<p>Where the chairman is also the chief executive, it is essential that there should be a strong and independent element on the board, with a recognized senior member. (The Code, 1.2)</p> <p>If the chairman is also the chief executive, board members should look to a senior non-executive director, who might be the deputy chairman, as the person to whom they should address any concerns about the combined office of chairman/chief executive and its consequences for the effectiveness of the board. A number of companies have recognized that role and some have done so formally in their Articles. (The Report, 4.5)</p> <p>See The Report, 4.9 (Where the chairman is also the chief executive, it is essential that there should be a strong and independent element on the board.).</p>	<p>Cadbury also recommended that where the roles of chairman and chief executive officer were combined, there should be a strong and independent element on the board, with a recognized senior member (Code, 1.2). But even where the roles of chairman and chief executive officer are separated, we see a need for vigorously independent non-executive directors. There can, in particular, be occasions when there is a need to convey concerns to the board other than through the chairman or chief executive officer. To cover this eventuality, we recommend that a senior independent non-executive director – <i>e.g.</i>, a deputy chairman or the chairman of the remuneration committee – should have been identified in the annual report. We do not envisage that this individual would for this purpose need special responsibilities or an independent leadership role, nor do we think that to identify him or her should be divisive. (Guideline 3.18)</p>	<p>Whether the posts [of chairman and chief executive officer] are held by different people or by the same person, there should be a strong and independent non-executive element on the board, with a recognized senior member other than the chairman to whom concerns can be conveyed. The chairman, chief executive officer and senior independent director should be identified in the annual report. (The Code, Provision A.2.1)</p>	<p><i>See Topic Heading 4, above.</i></p>	<p>Where [the CEO and Chairman] positions are unified, the [BRT] . . . believes that it is desirable for directors to have an understanding as to how non-executive leadership of the board would be provided, whether on an ongoing basis or on a transitional basis if and when the need arose. In some boards, the presence of one strong figure might provide the natural leader. In other circumstances, there could be an understanding that leadership would fall to the committee chairman responsible for the subject matter that gave rise to the need. In still others, it could be the responsibility of the committee chairs to recommend whether non-executive leadership is required, and if so, in what form. Whether the board's understanding of the process would be codified as a formal board action should be a matter for individual boards to determine. (p. 13)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
6. Board Size²⁹				
The Board in recent years has averaged fifteen members. It is the sense of the Board that this size is about right. However, the Board would be willing to go to a somewhat larger size in order to accommodate the availability of an outstanding candidate(s). (Guideline 6)	<i>Not covered.</i>	A function of the Board is the determination of the appropriate size and composition of the Board. (Guideline 2)	The Commission takes the view that, in most cases, the board of directors should not consist of more than twelve members. The board of directors should decide on the number of directors necessary to govern the company in the best possible manner, taking into account all relevant data. Therefore, the board must consist of enough members to allow a fruitful discussion; too high a number of directors will not enhance the exchange of ideas. (Part I: B.1.8)	<i>Not covered.</i>

²⁹ See also 1994 NACD Report at 7 (“Ideally, a board should be small enough to permit thorough discussion of important issues, with enough ‘air time’ for each view presented, yet large enough to bring a sufficient variety of views and talents to the table.”); 1990 Business Roundtable Statement at 11 (“Many authorities believe small, cohesive boards work more effectively than large boards. From experience it would appear that the optimum number of non-management board members for a large U.S. corporation ranges between 8 and 15. The average size of the board of directors of large publicly-traded U.S. corporations (Fortune 500) is estimated to be 13.”); ABA Guidebook at 17-18 (“Each corporation should determine the best board size to accommodate key objectives, including sufficient independent directors to perform the functions normally assigned to the oversight committees and . . . effective functioning in terms of discussing and decision making. . . . Other factors that might influence board size are the special needs of certain types of corporations to maintain a strong community presence, to establish or maintain relationships with customers or other constituencies, and to respond to other factors that may be idiosyncratic to the corporation or industry in which it operates. In accommodating these other needs, the board size should not be expanded to such an extent as to interfere with its effective functioning.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
6. Board Size				
<p>Every board of directors should examine its size and, with a view to determining the impact of the number upon effectiveness, undertake where appropriate, a program to reduce the number of directors to a number which facilitates more effective decision-making. (Guideline 7)</p>	<p><i>Not covered directly, but see Viénot I at 10 ([T]he number of [board] members should not be increased to a point where it would be difficult for each to contribute to discussion.).</i></p>	<p><u>Management Board</u> Normally, [the Management Board] has at least three and at most nine members. (The Code, III.3.1)</p> <p><u>Supervisory Board</u> The Supervisory Board has – insofar as it is permissible – six or nine members. If the number required by law is higher, the Supervisory Board should ordinarily not exceed the minimum size stipulated by statute. (The Code, IV.3.2)</p>	<p>For reasons of flexibility in the decision-making process, it is recommended that the maximum number of Board members be no higher than thirteen. (Recommendation 5.11)</p> <p>The Board of Directors should recommend to the general shareholder meeting the number of Board members required for the corporation’s efficient and flexible governance in the best possible way and having available all relevant information. Therefore, the Board of Directors should consist of a sufficient number of members in order to secure conditions of efficient interaction and exchange of ideas. (Footnote 8 to Recommendation 5.11)</p>	<p>[E]ach company should determine the number . . . of its non-executive directors in relation to its size, the complexity and specific nature of its sector of activity, and the total membership of the board. (Commentary on the Code, 2.2)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
6. Board Size				
The number of directors should be appropriate to guarantee effective discussion at board-level, and enhance articulate and timely corporate decision-making. (Principle 6A)	As regards the desired size and composition of the Supervisory Board the nature and the size of the company should be taken into account. (Recommendation 2.2)	[E]ach board should balance the number of members with due efficiency, taking into consideration that an excessive number of members may hamper the desired cohesion and contribution of each member in discussion and decision-making. (Commentary on Recommendation 14)	The Board of Directors should adjust its size to achieve a most efficient and participative operation. In principle, the appropriate size could range from five to fifteen members. (The Code, Recommendation 4)	The composition of the Board of Directors depends on the size of the company, its organization, type and direction. (p. 5) The Board of Directors shall consist of at least three members. If the share capital of the company is less than one million SEK one member is sufficient if she/he has a deputy board member. (p. 7)

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
6. Board Size				
<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered</i>	Boards should determine the appropriate board size, and periodically assess overall board composition to ensure the most appropriate and effective board membership mix. (p. 5)	Boards of directors of most large publicly owned corporations typically range in size from eight to sixteen individuals. Optimal board size will vary from corporation to corporation and industry to industry. In general, the experience of many [BRT] members suggests that smaller boards are often more cohesive and work more effectively than larger boards. (p. 10)

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
7. Mix of Inside and Outside Directors³⁰				
<p>The Board believes that as a matter of policy, there should be a majority of independent Directors on the GM Board (as defined in By-law 2.12). The Board believes that management should encourage senior managers to understand that Board membership is not necessary or a prerequisite to any higher management position in the Company. Managers other than the Chairman and Chief Executive Officer and the Vice Chairman currently attend Board meetings on a regular basis even though they are not members of the Board.</p> <p>On matters of corporate governance, the Board assumes decisions will be made by the independent Directors. (Guideline 7)</p>	<p>The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders. (OECD Principle V)</p> <p>The board should be able to exercise objective judgement on corporate affairs independent, in particular, from management. (OECD Principle V.E)</p> <p>Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination and executive and board remuneration. (OECD Principle V.E.1)</p> <p>Policy makers and regulators should encourage some degree of independence in the composition of corporate boards. Stock exchange listing requirements that address a minimal threshold for board independence . . . have proved useful, while not unduly restrictive or burdensome. However, . . . corporate governance – including board structure and practice – is not a “one-size-fits-all” proposition, and should be left, largely, to individual participants. (Millstein Report, Perspective 15)</p>	<p>The Working Group considers that the boards of listed public companies should include a majority of non-executive directors who have an appropriate mix of skills and experience and whose abilities are appropriate to the needs of the company. (Guideline 1.1)</p>	<p>The board should consist of a majority of non-executive directors of sufficient calibre for their views to carry significant weight in the board’s decisions. (Part I: B.1.4; cf. B.2.2)</p> <p>A number of non-executive directors should be independent of the executive management and of the dominant shareholders, and free from any business or other relationship with the company which could interfere with their independent judgement. (Part I: B.2.2)</p> <p>See Part I: B.1.5 (The board should operate on the principal of collective responsibility, with no one category of directors exerting greater influence than any other.)</p>	<p>The Board of Directors must include non-executive directors, <i>i.e.</i>, directors who do not exercise any leading role in the company. They must be sufficiently capable, influential and numerous to assert their point of view and make it count in decisions taken by the Board of directors. (1.3)</p> <p>The non-executive directors must be sufficiently numerous in comparison with the executive directors. Some of the non-executive directors may represent the dominant shareholders of the company.</p> <p>Certain non-executive directors must be independent of the dominant shareholders and also of the management. They are called “independent directors.” (2.2)</p>

³⁰ See also 1990 Business Roundtable Statement at 11 (“Boards of directors of large publicly-held public corporations should be composed predominantly of independent directors who do not hold management responsibilities within the corporation. In addition, a number of board functions should be reserved for non-management directors only, such as membership on the audit, compensation/personnel, and nominating committees, selection and evaluation of the CEO, and board evaluation and selection.”); ABA Guidebook at 16 (“To encourage an environment likely to nurture independence in fact and to communicate the appearance of independence, at least a majority of members of the boards of publicly held corporations should be independent of management.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
7. Mix of Inside and Outside Directors				
<p>The board of directors of every corporation should be constituted with a majority of individuals who qualify as unrelated directors. (Guideline 2)</p> <p>If the corporation has a significant shareholder, in addition to a majority of unrelated directors, the board should include a number of directors who do not have interest in or relationships with either the corporation or the significant shareholder and which fairly reflects the investment in the corporation by shareholders other than the significant shareholder. A significant shareholder is a shareholder with the ability to exercise a majority of the votes for the election of the board of directors. (Guideline 2)</p>	<p>French law already imposes strict limits on the board membership of management, setting a ceiling on the number of <i>directeurs généraux</i> (executive directors) and on the number of directors who may at the same time be employees of the company.* (Viénot I at 2)</p> <p>* Article L93 of the <i>Code des Sociétés</i> (code of company law) limits the number of directors holding a contract of employment with the company to a third of board members, and article L115 limits the number of <i>directeurs généraux</i> to five. (Footnote, Viénot I at 2)</p> <p>The appropriate balance between independent directors, shareholder directors and executive directors varies from one company to another, although in general the last should in any case not be too numerous. The Committee thus concludes that the boards of all listed companies should have at least two independent members, although it is up to each board to determine the most appropriate balance in its membership. (Viénot I at 11-12)</p> <p>The Committee confirms that the presence of genuinely-independent Directors in sufficient numbers on Boards of Directors and Board committees is an essential factor in guaranteeing that the interests of all the shareholders will be taken into account in the corporation's decisions. (Viénot II at 15)</p> <p>See Viénot I at 12 (Some have suggested that board members should include representatives of certain interest groups, but the Committee believes that a move in this direction would not be desirable. . . . [T]he presence of independent directors should suffice to ensure that all legitimate interests are taken into account.).</p>	<p>With the exception of special regulations which apply to the coal, iron and steel industries, the employees elect either a third or a half of the members of the Supervisory Board, depending on the size of the corporation. . . . The one-third equal footing co-determination applies according to Labor-Management Relations Act 1952 to all corporations with at least 500 but fewer than 2,000 employees, and parity co-determination according to the Co-determination Act 1976 in companies with a workforce exceeding 2,000. (The Code, V.2.3)</p>	<p>It is considered a good practice to have the majority of the members of the Board of Directors consisting of non-executive members so that independent judgment is ensured. (Recommendation 5.6)</p> <p>The number of independent Board members should be sufficient for their views to carry adequate weight in the decision-making process. (Footnote 9 to Recommendation 6.2)</p>	<p>The board of directors shall be made up of executive directors (<i>i.e.</i>, the managing directors, including the chairman where he or she has delegated powers, and those directors who perform management functions within the company) and non-executive directors. The number and standing of the non-executive directors shall be such that their views can carry significant weight in taking board decisions. (The Code, 2.1; <i>see</i> Commentary on the Code, 3 <i>and</i> the Report, 5.1)</p> <p>In Italy, non-executive directors normally outnumber executive directors. The Committee recommends that, in practice, each company should determine the number, experience and personal traits of its non-executive directors in relation to its size, the complexity and specific nature of its sector of activity, and the total membership of the board. (Commentary on the Code, 2.2)</p> <p><i>See</i> Commentary on the Code, 3 <i>and</i> the Report, 5.1 ([T]he Committee believes that the presence on the board of directors of members who can be considered “independent” is the best way to guarantee the composition of the interests of all the shareholders, majority and minority alike.).</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
7. Mix of Inside and Outside Directors				
<p>The board of directors should include independent, non-executive directors who have no direct interests in the company. (Principle 5A)</p> <p>Suitable outside persons should be included as non-executive members of the board of directors. For companies where this may be difficult to carry out immediately, we recommend the appointment of a “management advisory committee” composed of some outside persons as a transitional measure. In this case the rights and responsibilities of the advisory committee should be clearly defined. (Comment on Principle 5A)</p> <p>The functions of the board of directors and any management board should be separated so that corporate decision-making and business execution are clearly distinguished. (Principle 7A)</p> <p>The board of directors should consist of both executive directors and independent, non-executive directors. Independent, non-executive directors should comprise a majority on the board. (Principle 8B)</p>	<p>The Supervisory Board should be composed in such a way that its members operate independently and critically in relation to each other and the Board of Directors. (Recommendation 2.3)</p> <p>Supervisory Board members who have been appointed on the basis of a nomination should perform their duties without a mandate from those who nominated them and independently of the subsidiary interests associated with the company. (Recommendation 2.6)</p>	<p>The board should be composed of a number of members who provide effective guidance for the management of the company to its managers. (Recommendation 14)</p> <p>See Commentary on Recommendation 14 ([T]he efficiency of board meetings depends significantly on the diversity of opinions and the vitality of the deliberation process.).</p>	<p>The Board of Directors should incorporate a reasonable number of independent directors who have a good reputation in their profession and are detached from the management team and from the significant shareholders. (The Code, Recommendation 2)</p> <p>Outside directors (proprietary and independent directors) should widely outnumber executive directors on the Board of Directors, and the proportion between proprietary and independent directors should be established bearing in mind the relationship between share capital made up by significant packages and the rest. (The Code, Recommendation 3)</p> <p>Among outside directors we must distinguish, on the one hand, the above-mentioned independent directors and, on the other hand, those who could be called proprietary directors. The former, as has already been stated, are those called to the Board of Directors because of their high professional qualifications, regardless of whether they are shareholders. The latter are those who are members of the Board because they are shareholders or represent important packages of shareholdings. . . . [T]he composition of the group of outside directors should be subject to certain regulations that ensure a due balance between independent and proprietary directors.)* (The Report, II.2.2)</p> <p><i>* Independent outside directors are viewed as representing the interests of a large number of smaller shareholders (“free-floating capital”), while the proprietary outside directors are viewed as linked to the controlling shareholder or controlling group (“steady capital”). (See Footnote, the Report, II.2.2)</i></p>	<p>External board members, adding competence to the company, are understood as being very positive. (Foreword, p. 2)</p> <p>In the small family-owned business where the owner also is Managing Director, the Board of Directors should consist of at least one or possibly two external board members apart from the Managing Director.</p> <p>In the growing, medium-sized company . . . three, maybe four, external board members apart from the Managing Director/owner may be considered.</p> <p>The Board of Directors of subsidiaries should consist of the Managing Director of the subsidiary, a member of the Group Management, a board member from the Group Board of Directors, a ‘sponsor’ in case the Managing Director is young and ‘green’ plus one or two specialists, preferably from the owners circle. One of these can very well be the Managing Director from one of the sister subsidiaries.</p> <p>In the Board of Directors of the parent company, the ‘heaviest’ owners should be represented, [plus] three to four board members, who by way of their skills can contribute to the development of the company and to support the Managing Director. (p. 5)</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
7. Mix of Inside and Outside Directors				
<p>The board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in the board’s decisions. (The Code, 1.3)</p> <p>Non-executive directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct. (The Code, 2.1)</p> <p>Every public company should be headed by an effective board which can both lead and control the business. . . . [T]his means a board made up of a combination of executive directors, with their intimate knowledge of the business, and of outside, non-executive directors, who can bring a broader view of the company’s activities, under a chairman who accepts the duties and responsibilities which the post entails. (The Report, 4.1)</p>	<p>The board should include a balance of executive directors and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board’s decision taking. (Principle A.III)</p> <p>[I]t is important that there should be a sufficient number of non-executive directors, a majority of them independent and seen to be independent; and that these individuals should be able both to work co-operatively with their executive colleagues and to demonstrate objectivity and robust independence of judgment when necessary. (Guideline 2.5)</p> <p>Non-executive directors have an important part to play in corporate governance. We believe that it is difficult for them to be effective if they make up less than one-third of the board. (Guideline 3.14)</p>	<p>The board should include a balance of executive and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board’s decision-taking. (The Code, Principle A.3)</p> <p>The board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in the board’s decisions. Non-executive directors should comprise not less than one-third of the board. (The Code, Provision A.3.1)</p> <p>The majority of non-executive directors should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement. Non-executive directors considered by the board to be independent in this sense should be identified in the annual report. (The Code, Provision A.3.2)</p>	<p>Boards should require that independent directors fill the substantial majority of board seats. (p. 9)</p> <p>Boards should ensure that any director candidate under consideration, with the exception of their own CEO or senior managers, is independent. (p. 10)</p> <p>[T]o ensure board independence:</p> <ul style="list-style-type: none"> ▪ Boards should define and disclose to shareholders a definition of “independent director.” ▪ Boards should require that director candidates disclose all existing business relationships between them or their employer and the board’s company. ▪ Boards should then evaluate the extent to which, if any, a candidate’s other activities may impinge on his or her independence as a board member, and determine when relationships are such that a candidate can no longer be considered independent. <p>(p. 10)</p>	<p>It is important for the board of a large, publicly owned corporation to have a substantial degree of independence from management. Accordingly, a substantial majority of the directors of such a corporation should be outside (non-management) directors. (p. 10)</p> <p>Inside directors will ordinarily include the [CEO] and may also include other officers whose positions or potential for succession make it appropriate, in the judgment of the board, for them to sit on the board. (p. 12)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
8. Definition of “Independence”³¹				
<p>GM’s By-law 2.12, defining independent Directors, was approved by the Board in January 1991. The Board believes there is no current relationship between any independent Director and GM that would be construed in any way to compromise any Board member being designated independent. Compliance with the By-law is reviewed annually by the Committee on Director Affairs. (Guideline 8)</p> <p><i>By-law 2.12(c) provides:</i></p> <p>For purposes of this by-law, the term “Independent Director” shall mean a director who:</p> <ul style="list-style-type: none"> i. is not and has not been employed by the corporation or its subsidiaries in an executive capacity within the five years immediately prior to the annual meeting at which the nominees of the board of directors will be voted upon; ii. is not (and is not affiliated with a company or a firm that is) a significant advisor or consultant to the corporation or its subsidiaries; iii. is not affiliated with a significant customer or supplier of the corporation or its subsidiaries; iv. does not have significant personal services contract(s) with the corporation or its subsidiaries; v. is not affiliated with a tax-exempt entity that received significant contributions from the corporation or its subsidiaries; and vi. is not a spouse, parent, sibling or child of any person described by (i) through (v). 	<p>The board should be able to exercise objective judgement on corporate affairs independent, in particular, from management. (OECD Principle V.E)</p> <p>The variety of board structures and practices in different countries will require different approaches to the issue of independent board members. Board independence usually requires that a sufficient number of board members not be employed by the company and not be closely related to the company or its management through significant economic, family or other ties. This does not prevent shareholders from being board members. (OECD Principle V.E Annotation at 41)</p> <p>Whether in a single-tier or two-tier board system, individual corporations should ensure that an effective number of board of director members – or in certain nations, board of auditor members – are persons who are capable of exercising judgement, independent of management views. Generally, this will require that such board members are persons who are not employed by the company. (Millstein Report, Perspective 24)</p> <p><i>See</i> Millstein Report, 1.4.34 (For the board to play [its] role in a meaningful way, it needs to be capable of acting independently of management. This requires board members (or in some nations, board of auditor members) capable of exercising business judgement independently of management – whether in a single-tier or two-tier board.).</p>	<p>The majority of non-executive directors should preferably be independent, not only of management but of any other external influence that could detract from their ability to act in the interests of the company as a whole. Independence is more likely to be assured when the director:</p> <ul style="list-style-type: none"> i. is not a substantial shareholder of the company, ii. has not been employed in any executive capacity by the company within the last few years, iii. is not retained as a professional adviser by the company (either personally or through their firm), iv. is not a significant supplier to or customer of the company, and v. has no significant contractual relationship with the company other than as a director. <p>(Guideline 1.1)</p>	<p>Non-executive directors are directors who do not perform a management function within the company or its subsidiaries. (Part I: B.1.4)</p> <p>[A] director may be considered independent if:</p> <ul style="list-style-type: none"> ▪ he/she is not a member of the executive management or of the board of associated companies (subsidiaries etc.) . . . ; ▪ he/she has no family ties with any of the executive directors which might interfere with the exercise of his/her independent judgment; ▪ he/she is not a member of the executive management or board of directors of one of the dominant shareholders and has . . . no business, financial or other relationship with the latter; ▪ he/she is not a supplier of goods or services of a nature which might interfere with the exercise of his/her independent judgement, nor is he/she a member of the firm of which the company’s adviser or consultant is part; ▪ he/she has no other relationship with the company which . . . might interfere with the exercise of his/her judgment. . . . <p>(Part I: B.2.2)</p> <p><i>See</i> Part I: B.1.9 ([A]ll directors, including those related to the dominant shareholders, are to exercise their duty in an independent manner, in the sole interest of the company.).</p> <p><i>See also</i> Part I: B.2.2 (It is for the board to decide whether an independent director satisfies the definition of independence.).</p>	<p>[D]irectors [who are] independent of the dominant shareholders and also of the management . . . are called “independent directors.” (2.2)</p> <p><i>See</i> 1.2 (The division of responsibilities between the Board of Directors and the Executive Directors must be clearly defined. . . . This is because it is necessary to ensure that no one can exercise discretionary powers without control.).</p> <p><i>See also</i> 1.3 (The Board of Directors must include non-executive directors, i.e., directors who do not exercise any leading role in the company.).</p> <p><i>See also</i> 2.1 (The non-executive directors must be able to make an independent judgment on the company’s strategy, performance and resources.).</p> <p><i>See also</i> Note to 2.2 (It is desirable that non-executive directors should not take part in plans in relation to the granting of share options and should not receive pensions by virtue of their mandate. The reason for this is to ensure their independence.).</p>

³¹ *See also* 1994 NACD Report at 34 (“A director will be considered independent if he or she: (1) has never been an employee of the corporation or any of its subsidiaries; (2) is not a relative of any employee of the company; (3) provides no services to the company; (4) is not employed by any firm providing major services to the company; or (5) receives no compensation from the company, other than director fees.”); 1990 Business Roundtable Statement at 12 (“In order to underscore their independence, non-management directors should not be dependent financially on the companies on whose boards they serve.”); ABA Guidebook at 16 (“As a general rule a director will be viewed as independent only if he or she is a non-management director free of any material business or professional relationship with the corporation or its management.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
8. Definition of “Independence”				
<p>An unrelated director is a director who is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially interfere with the director’s ability to act with a view to the best interests of the corporation, other than interests and relationships arising from shareholding. (Guideline 2)</p> <p>The application of the definition of “unrelated director” to the circumstances of each individual director should be the responsibility of the board which will be required to disclose on an annual basis whether the board has a majority of unrelated directors or, in the case of a corporation with a significant shareholder, whether the board is constituted with the appropriate number of directors which are not related to either the corporation or the significant shareholder. The board will also be required to disclose on an annual basis the analysis of the application of the principles supporting the conclusion. (Guideline 3)</p>	<p>The notion of independent director is opposed not only to that of executive directors, it is also opposed to that of any director with any sort of special interest in the company, whether as a shareholder, a supplier or a customer. (Viénot I at 11).</p> <p>An independent Director is to be understood not only as a “non-executive Director,” <i>i.e.</i>, one not performing management duties in the corporation or its group, but also one devoid of particular bonds of interest (significant shareholder, employee, other) with them. For the sake of simplicity, an independent Director can be defined as follows: “A Director is independent of the corporation’s management when he or she has no relationship of any kind whatsoever with the corporation or its group that is such as to jeopardize exercise of his or her free judgment.” (Viénot II at 15)</p> <p><i>See</i> Viénot I at 10 (Debate concerning board membership has concerned in particular the representation of interest groups and expertise, reflecting public doubts as to the independence and impartiality of current members.</p> <p>Having examined such criticism and related suggestions, the Committee can only affirm its attachment to the traditional principles of French law and practice. However it is made up, and whoever its members may be, the board of directors collectively represents all company shareholders, and is not the sum of conflicting interests. It must carry out its duties in the interests of the company.).</p>	<p><i>Not covered directly, but see</i> the Code, IV.4 (Personnel appointments to the Supervisory Board from the side of the stockholders).</p> <p><i>See also</i> Topic Heading 7, Mix of Inside and Outside Directors, <i>above</i>, and Topic Heading I, Shareholder Meetings, <i>below</i>.</p>	<p>Certain non-executive members of the Board should be independent from executive members and the majority shareholders in the corporation, and have no business relation with the corporation. (Recommendation 6.2)</p> <p>Director independence requires that:</p> <ul style="list-style-type: none"> ▪ s/he is not a member of executive management or of a Board of Directors of a corporation directly or indirectly connected with the corporation. . . . ▪ s/he is not related to other executive members of the Board. ▪ s/he is not simultaneously a member of the group forming the majority of shareholders of the corporation [nor] involved in any transactions with the group. ▪ s/he has no other relationship with the corporation which, by its nature, may affect his/her independent judgment. (Recommendation 6.3) <p><i>See</i> Recommendation 5.12 (All members of the Board of Directors should exercise their duties in an independent manner.).</p> <p><i>See also</i> Recommendation 6.1 (Non-executive members of the Board should form independent judgments especially with respect to the corporation’s strategy, performance, asset management and the appointment of management.).</p> <p><i>See also</i> Footnote 4 to Recommendation 5.1 (<i>inadequacy of current legislation as regards director independence</i>).</p> <p><i>See also</i> Footnote 9 to Recommendation 6.2 (<i>the board is the ultimate arbiter of director independence</i>).</p>	<p>Directors are independent who:</p> <ol style="list-style-type: none"> a) do not entertain business relationships with the company, its subsidiaries, the executive directors or the shareholder or group of shareholders who control the company of a significance able to influence their autonomous judgment; b) do not own, directly or indirectly, a quantity of shares such that they may control the company, nor participate in shareholders’ agreements to control the company. <p>(The Code, 3; <i>see</i> the Code, 1.3; the Report, 5.1)</p> <p>Directors shall act and decide autonomously . . . and pursue the objective of creating value for the shareholders.</p> <p>The decisions of each director are autonomous to the extent that they are taken in the light of his or her unbiased assessment of the facts in the interest of the generality of shareholders. Accordingly, even when operational choices have already been assessed by the controlling shareholders . . . , each director is required to cast his or her vote autonomously, making choices that can reasonably be expected to maximize shareholder value. (The Code, 1.3, Commentary on the Code, 1.3)</p> <p><u><i>Board of Auditors</i></u></p> <p>The members of the board of auditors shall act autonomously with respect to shareholders, including those that elected them. (The Code, 13.2)</p> <p>[M]embers of the board of auditors proposed or elected by the majority or the minority [of shareholders] are not their “representatives” [nor are they] authorized to communicate information [to them]. (Commentary on the Code, 13)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
8. Definition of “Independence”				
<p>Independent [directors are] non-executive directors who have no direct interests in the company. (Principle 5A)</p> <p>Independence means being independent of any other stakeholders than shareholders. (Comment on Principle 5A)</p>	<p>The influence that a person’s former membership of the Board of Directors may have on that individual’s functioning on the Supervisory Board as well as on the functioning of the Supervisory Board and of the Board of Directors should be considered. (Recommendation 2.5)</p> <p>This applies especially in cases where a former chairman of the Board of Directors is the intended chairman of the Supervisory Board. (Recommendation 2.5)</p> <p>Supervisory Board members should not commit to certain subsidiary interests while neglecting other associated interests.</p> <p>Neither hierarchic subordination within an interest group, cross bonds nor any other relations with persons under their supervision should prevent members of the Supervisory Board from performing their duties independently. (Recommendation 2.11)</p>	<p><i>Not covered directly, but see Recommendation 15 (The inclusion on the board of one or more members who are independent in relation to the dominant shareholders is encouraged, so as to maximize the pursuit of corporate interests.).</i></p> <p><i>See also Commentary on Recommendation 15 (Independent [board] members should exercise a significant influence on collective decision-making and should contribute to the development of the company strategy, thereby favoring the interests of the company.).</i></p>	<p>[T]he name [“independent director”] applies to those directors who are neither linked to the management team nor to the core of shareholder groups that control and exert a great influence upon management. (The Report, II.2.1)</p> <p>[T]he first thing to be checked [regarding nominees to the Board of Directors] is the candidate’s independence with respect to the management team, examining whether he/she has any significant bond – whether it be a family, professional, business or any other connection – with anyone in management positions. . . .</p> <p>[W]ould-be directors [must also be] independent from the influence that controlling shareholder groups may exert on the management team. (The Report, II.5.2)</p>	<p><i>Not covered.</i></p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
8. Definition of “Independence”				
<p>Non-executive directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct. (The Code, 2.1)</p> <p>The majority [of non-executive directors] should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement, apart from their fees and shareholding. Their fees should reflect the time which they commit to the company. (The Code, 2.2)</p> <p>We recommend that the majority of non-executives on a board should be independent of the company. This means that apart from their directors’ fees and shareholdings, they should be independent of management and free from any business or other relationship which could materially interfere with exercise of their independent judgement. It is for the board to decide in particular cases whether this definition is met. Information about the relevant interests of directors should be disclosed in the Directors’ Report. (The Report, 4.12)</p>	<p>The Cadbury committee recommended that a majority of non-executive directors should be independent, and defined this as ‘independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement.’ (Cadbury Report 4.12) We agree with this definition, and after careful consideration we do not consider that it is practicable to lay down more precise criteria for independence. We agree with Cadbury that it should be for the board to take a view on whether an individual director is independent in the above sense. . . . We recognize, however, that non-executive directors who are not in this sense ‘independent’ may nonetheless make a useful contribution to the board. (Guideline 3.9)</p>	<p>The majority of non-executive directors should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement. Non-executive directors considered by the board to be independent in this sense should be identified in the annual report. (The Code, Provision A.3.2)</p>	<p>Relationships that may compromise a director’s independence include, but are not limited to: reciprocal directorships (or “director interlocks”); an existing significant consulting or employment relationship; an existing substantial commercial relationship between the director’s organization and the board’s company; or new business relationships that develop through board membership. (p. 10)</p> <p><i>At Appendix C, the NACD Report includes a variety of definitions of independence, including a definition adopted by the NACD in an earlier report:</i></p> <p>A director will be considered independent if he or she:</p> <ul style="list-style-type: none"> ▪ has never been an employee of the corporation or any of its subsidiaries; ▪ is not a relative of any employee of the company; ▪ provides no services to the company; ▪ is not employed by any firm providing major services to the company; ▪ receives no compensation from the company, other than director fees. <p>(Report of the NACD Blue Ribbon Commission on Performance Evaluation of Chief Executive Officers, Boards, and Directors, Appendix G (1994))</p>	<p>The degree of independence of an outside director may be affected by many factors, including the personal stature of the director and any business relationship of the director with the corporation or any business or personal relationship of the director with management. Directors, or firms in which they have an interest, are sometimes engaged to provide legal, consulting, accounting or other services to the corporation, or a director may have an interest in a customer, supplier or business partner of the corporation, or may at an earlier point in his or her career have been an employee or officer of the company. Depending on their significance to the director and to the corporation, such relationships may affect a director’s actual or perceived independence. The [BRT] believes that, where such relationships exist, boards should be mindful of them and make a judgment about a director’s independence based on his or her individual circumstances rather than through the mechanical application of rigid criteria. This would involve consideration of whether the relationships are sufficiently significant as to interfere with the director’s exercise of independent judgment. (pp. 10-11)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
9. Commitment / Changes in Job Responsibility³²				
<p>Former Chairman/Chief Executive Officer’s Board Membership. The Board believes this is a matter to be decided in each individual instance. It is assumed that when the Chairman or Chief Executive Officer resigns from that position, he/she should submit his/her resignation from the Board at the same time. Whether the individual continues to serve on the Board is a matter for discussion at that time with the new Chief Executive Officer and the Board. A former Chairman or Chief Executive Officer serving on the Board will not be considered an independent Director for purposes of voting on matters of corporate governance. (Guideline 9)</p> <p>It is the sense of the Board that individual Directors who change the responsibility they held when they were elected to the Board should submit a letter of resignation to the Board.</p> <p>It is not the sense of the Board that in every instance the Directors who retire or change from the position they held when they came on the Board should necessarily leave the Board. There should, however, be an opportunity for the Board, via the Committee on Director Affairs, to review the continued appropriateness of Board membership under these circumstances. Independent Directors are encouraged to limit the number of other boards on which they serve, taking into account potential board attendance, participation and effectiveness on these boards. Independent Directors should also advise the Chairman of the Board and the Chairman of the Committee on Director Affairs in advance of accepting an invitation to serve on another board. (Guideline 10)</p>	<p>Board members should devote sufficient time to their responsibilities. (OECD Principle V.E.2)</p> <p>It is widely held that service on too many boards can interfere with the performance of board members. Companies may wish to consider whether excessive board service interferes with board performance. Some countries have limited the number of board positions that can be held. Specific limitations may be less important than ensuring that members of the board enjoy legitimacy and confidence in the eyes of shareholders. (OECD Principle V.E.2 Annotation at 42)</p>	<p><i>Not covered.</i></p>	<p><i>Not covered directly, but see Part II: B.1 (Information [to be disclosed] on the composition of the board of directors [includes] age limit, if any, for serving on the board.).</i></p>	<p><i>Not covered.</i></p>

³² See also [ABA Guidebook](#) at 39 (“Some companies expect a director to offer to resign if the director’s principal occupation changes.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
9. Commitment / Changes in Job Responsibility				
<p><i>Not covered.</i></p>	<p>[B]oards should consider . . . how many directors with seats on other boards it is prepared to accept. (Viénot I at 10)</p> <p>[T]he existence of cross-shareholdings may be viewed as a transitional phenomenon in French capitalism, and one whose elimination as quickly as possible would appear highly desirable.</p> <p>Cross-shareholdings frequently, but not inevitably, result in reciprocal board membership, with one company holding a seat on the board of another company, which in turn has a seat on the board of the first company. This situation naturally raises some questions on the market.</p> <p>The Committee thus believes that when a board is considering how best to structure its membership, it should take care to avoid including an excessive number of such reciprocal directorships. (Viénot I at 14)</p> <p>Directors must devote the necessary time and attention to their duties. If they are chairman or <i>directeur général</i> (executive director) of a company, they should in principle not accept more than 5 directorships with French or foreign listed companies outside their group. (Viénot I at 20)</p> <p>Directors must be assiduous and attend all meetings of the board and any of its advisory committees of which they are members. (Viénot I at 21)</p> <p><i>See Viénot II at 14</i> ([T]he Committee considers it essential to issue a reminder of the rule laid down by the 1995 report: a Director holding an executive position in a listed corporation should restrict the number of directorships held in French or foreign listed corporations not affiliated to the group, and in any event abstain from holding more than five.).</p>	<p><u>Management Board</u></p> <p>Participation by members of the Management Board in other companies must be revealed to the chairman of the Supervisory Board and has to be examined for any possible conflicts of interest. (The Code, II.5.3)</p> <p>The Chairman of the Supervisory Board must approve acceptance of a seat on the Supervisory Board of another company, as well as engaging in significant ancillary activities. (The Code, III.5.4)</p> <p><u>Supervisory Board</u></p> <p>Members of the Supervisory Board may not exercise any mandates in other undertakings which are competitors of the company. Further, they must not sit on the Management Board of a company or be employed by it where a Management Board member of the company belongs to its Supervisory Board. The move to the Supervisory Board of the company by retiring Management Board members is normally restricted to one member. (The Code, IV.4.4)</p>	<p>The Board of Directors should operate on the basis of collective responsibility, and no class of members should be any different with respect to authority or responsibility. (Recommendation 5.7)</p> <p>The members of the Board of Directors should devote adequate time to their duties. (Recommendation 5.14)</p>	<p>Directors shall accept their appointment to the board when they deem they can devote the necessary time to the diligent performance of their duties. (The Code, 1.3)</p> <p>The reference to the time to be devoted to the diligent performance of the duties of directors confirms the principle that all directors are individually required to make an appropriate commitment to the position, so that companies can benefit from their expertise. Each director is therefore responsible for assessing in advance his or her ability to play the role diligently and effectively. (Commentary on the Code, 1.3)</p> <p>The Committee did not deem it desirable to lay down quantitative guidelines in terms of number of directorships [held simultaneously by a director]. (The Report, 5.1)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
9. Commitment / Changes in Job Responsibility				
<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>	[T]he general duty of loyalty by which directors are bound obliges them to resign whenever their presence on the Board might jeopardize the interests of the company or when the reasons behind his/her appointment disappear (for instance, when a proprietary director sells his/her share in the company or an independent director joins the management team). (The Report, II.5.5)	<i>Not covered.</i>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
9. Commitment / Changes in Job Responsibility				
<i>Not covered.</i>	[O]nce a director has been elected to serve, he owes it to the shareholders to complete his term, or to give an explanation if he is unable to do so. There are many reasons for a director's resignation which need not concern shareholders – health, family commitments, increased work commitments elsewhere; in these cases, the privacy of the individual should be respected. (Guideline 3.23)	<p>Remuneration committees should consider what compensation commitments (including pension contributions) their directors' contracts of service, if any, would entail in the event of early termination. They should in particular consider the advantages of providing explicitly in the initial contract for such compensation commitments except in the case of removal for misconduct. (The Code, Provision B.1.9)</p> <p>Where the initial contract does not explicitly provide for compensation commitments, remuneration committees should, within legal constraints, tailor their approach in individual early termination cases to the wide variety of circumstances. The broad aim should be to avoid rewarding poor performance while dealing fairly with cases where departure is not due to poor performance and to take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss. (The Code, Provision B.1.10)</p>	<p>Boards should consider whether a change in an individual's professional responsibilities directly or indirectly impacts that person's ability to fulfill his or her directorship obligations.</p> <p>Boards should require that the CEO and other inside directors submit a resignation as a matter of course upon retirement, resignation, or other significant change in their professional roles and responsibilities.</p> <p>Boards should require that all directors submit a resignation as a matter of course upon retirement, a change in employer, or other significant change in their professional roles and responsibilities.</p> <p>If the board determines that a director continues to make a contribution to the organization, the Commission supports the continued membership of that director on the board. (p. 13)</p>	<p>It is now common practice to establish rules for the retirement or resignation of directors. These may, for example, include a mandatory retirement age for directors or a requirement that a director submit his or her resignation at such time as the director no longer occupies the position he or she held at the time of election, unless the change in position is as a result of normal retirement. Even in the absence of such provisions, a board should plan for its own continuity and succession – for the retirement of directors and the designation of new board members. Because the composition and circumstance of boards will vary, so too will the retirement policies of different corporations. (p. 14)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
10. Election Term / Term Limits / Mandatory Retirement³³				
<p>The Board does not believe it should establish term limits. While term limits could help insure that there are fresh ideas and viewpoints available to the Board, they hold the disadvantage of losing the contribution of Directors who have been able to develop, over a period of time, increasing insight into the company and its operations and, therefore, provide an increasing contribution to the Board as a whole.</p> <p>As an alternative to term limits, the Committee on Director Affairs, in conjunction with the Chief Executive Officer, will formally review each Director's continuation on the Board every five years. This will also allow each Director the opportunity to conveniently confirm his/her desire to continue as a member of the Board. (Guideline 11)</p> <p>It is the sense of the Board that the current retirement age of 70 is appropriate. (Guideline 12)</p>	<p><i>Not covered.</i></p>	<p>All directors should be sent a formal letter of appointment which sets out the term of their appointment (probably three years but renewable). The Working Group does not believe that it is necessary for any formal limit to be placed on the period of time a director is able to serve. (Guideline 3)</p> <p>All directors should be sent a formal letter of appointment which sets out, if appropriate, the board's policy on the age of retirement. (Guideline 3)</p>	<p>In accordance with the law on commercial companies, directors must be appointed for specified terms, which must not exceed six years, and reappointment is not automatic. (Part I: B.2.3)</p> <p>Information on the composition of the board of directors [that should be disclosed includes] dates on which the mandates of the directors expire. (Part II: B.1)</p>	<p>The mandate of the directors is for a limited period and is not automatically extended. (1.6)</p> <p>The law stipulates, on the one hand, that the duration of the directors' mandate must not exceed six years and, on the other hand, that they may be re-elected, unless stipulated to the contrary in the Articles of Association.</p> <p>The obligations, the duration of the mandate and the means of remuneration of directors must be announced at the time of their appointment. (Note to 1.6)</p>

³³ See also [ABA Guidebook](#) at 39 ("Some publicly held corporations impose term limits on directors and many have a mandatory retirement age.").

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
10. Election Term / Term Limits / Mandatory Retirement				
<p><i>The Report states that a guideline to the effect that each director hold office for a period of not more than a specified number of years is artificial and unnecessary. We believe that the nominating committee, which will be assessing the performance of the board, can propose changes to the board composition which can result in the injection of a fresh approach to board decisions where appropriate.</i></p> <p>(§ 5.47, p. 32)</p>	<p>Under French law, the duration of Directors' terms of office is set by the by-laws, but may not exceed six years. While it is possible, therefore, for the by-laws to provide for a term of office of less than six years, this seems in practice to remain the most common.</p> <p>Determination of the duration of a Director's term of office must combine two different requirements: to allow the shareholders to rule upon appointment of their agents on the Board of Directors with sufficient frequency, and to take account of the need for reasonable continuity in a corporation's administration. In this respect, a term of four years seems most appropriate.</p> <p>Combining these two objectives also leads to favoring a staggering of terms of office so as to avoid replacement of all the Directors together and to organize regular replacement of the Board, for instance by classes of approximately equal numbers of Directors. (Viénot II at 14)</p> <p>The Committee considers that without affecting the duration of current terms of office, the duration of the Directors' term of office, set by the by-laws, should not exceed a maximum of 4 years, in order to enable to shareholders to rule upon their appointment with sufficient frequency.</p> <p>The terms of office should be staggered so as to avoid renewal as a whole and to make the replacement of Directors smoother. (Viénot II at 23)</p>	<p><u>Management Board</u></p> <p>[T]he initial appointment [of Management Board members] should at first normally be limited in duration to three years at most. An appropriate statutory regulation is to be recommended in order to ease the practical application of this limitation. (The Code, II.1.9)</p> <p><u>Supervisory Board</u></p> <p>Members of the Supervisory Board should be in a position in the long run, both in terms of time and personal health, to fulfil with proper diligence the requirements made by supervisory tasks. They should normally not exhaust the legally permissible maximum number of their Supervisory Board mandates, and not exceed the retirement age of 70 years. (The Code, IV.4.5)</p>	<p>It is good practice that the non-executive members of the Board are not elected for many terms. (Recommendation 6.4)</p>	<p>The Committee did not deem it desirable to lay down quantitative guidelines in terms of . . . the duration of appointments. (The Report, 5.1)</p> <p>[There is a] legal requirement for appointments to the board of directors not to last more than three years. (The Report, 5.4.1)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
10. Election Term / Term Limits / Mandatory Retirement				
<p><i>Not covered.</i></p>	<p>Members of the Supervisory Board in companies not subject to the “structure regime” should be appointed for a certain period of time. (Recommendation 2.7)</p> <p>The Supervisory Board should draw up a <i>rota</i> for resignation to prevent an unnecessarily high number of re-appointments having to be discussed at once. A four-year term of office could serve as a basis. (Recommendation 2.7)</p>	<p><i>Not covered.</i></p>	<p>An age limit must be set for the performance of director duties, which could be between 65 and 70 years for executive directors and the Chairman of the Board, and a more flexible bracket for the rest of the directors. (The Code, Recommendation 13)</p> <p>The re-election of executive and proprietary directors should have no restrictions other than those arising from the evaluation and lasting confidence of support groups. (The Report, II.5.4)</p> <p>[T]here are proposals to restrict the possibility of re-election [of independent directors] to just one term. Nevertheless, this Committee does not consider that such a dramatic recommendation is appropriate. The scarce empirical data available show that the possible costs associated with less independence do not justify renouncing the benefits of accumulated experience. Moreover, the presence of a time limit for directors may reduce the incentives for them to dedicate efforts to their Board-related tasks and, in general terms, to be involved in and committed to the company’s future. (The Report, II.5.4)</p> <p>[T]he establishment of an age limit for the performance of director functions must be considered. Our criterion here is that some measures must be passed in order to make it easier to replace the eldest Board members, though granting companies some leeway so that they may take advantage of the wide experience of certain directors. (The Report, II.5.5)</p>	<p>The Board of Directors normally is appointed at the Annual General Meeting for a term up to the next regular AGM has been held. The AGM can however appoint the Board of Directors for a term up to four (4) years. (p. 7)</p> <p>External board members should not be on the Board of Directors more than 5 years as a maximum. (p. 12)</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
10. Election Term / Term Limits / Mandatory Retirement				
<p>Non-executive directors should be appointed for specified terms and reappointment should not be automatic. (The Code, 2.3)</p> <p>[Executive] directors' service contracts should not exceed three years without shareholders' approval. (The Code, 3.1)</p> <p>Companies have to be able to bring about changes in the composition of their boards to maintain their vitality. Non-executive directors may lose something of their independent edge if they remain on a board too long. Furthermore, the make-up of a board needs to change in line with new challenges. We recommend, therefore, that non-executive directors should be appointed for specified terms. Their Letter of Appointment should set out their duties, term of office, remuneration and its review. Reappointment should not be automatic, but a conscious decision by the board and the director concerned. (The Report, 4.16)</p>	<p>All directors should be required to submit themselves for re-election at regular intervals and at least every three years. (Principle A.VI; <i>see</i> Guideline 3.21)</p> <p>[A retirement requirement based on age and length of service] assumes that the effectiveness and objectivity of the director will decline with increasing age and length of service. There is a risk that this could happen, and boards, and the individuals themselves, should be vigilant against it. But a reasonably long period on the board can give directors a deeper understanding of the company's business and enable them to make a more effective contribution. Individuals' capacities, and their enthusiasm for the task, vary widely, and a recommendation would be inappropriate. (Guideline 3.22)</p> <p>[I]t has been suggested to us that shareholders are entitled to know if a resignation results from a policy disagreement or a personality clash. This may be helpful in appropriate cases; there are likely to be rumours, and open disclosure may be in shareholders' interests. (Guideline 3.23)</p>	<p>All directors should be required to submit themselves for re-election at regular intervals and at least every three years. (The Code, Principle A.6)</p> <p>Non-executive directors should be appointed for specified terms subject to reelection and to Companies Act provisions relating to the removal of a director, and reappointment should not be automatic. (The Code, Provision A.6.1)</p> <p>All directors should be subject to election by shareholders at the first opportunity after their appointment, and to re-election thereafter at intervals of no more than three years. (The Code, Provision A.6.2)</p> <p>There is a strong case for setting notice or contract periods at, or reducing them to, one year or less. Boards should set this as an objective; but they should recognize that it may not be possible to achieve it immediately. (The Code, Provision B.1.7)</p> <p>If it is necessary to offer longer notice or contract periods to new directors recruited from outside, such periods should reduce after the initial period. (The Code, Provision B.1.8)</p>	<p>[B]oards should recognize that when certain predetermined criteria are met – for example, 10 to 15 years of service or a specified retirement age – it may be desirable to promote director turnover to obtain the fresh ideas and critical thinking that a new director can bring to the board. However – for the sake of continuity – some directors' tenures should survive that of the CEO.</p> <p>Unless boards have a process to evaluate the performance of individual directors, they should establish tenure conditions under which, as a matter of course, directors should submit a resignation for consideration or offer to withdraw from consideration for renomination. (p. 13)</p>	<p>The [BRT] recognizes that certain corporations may have histories or circumstances that make term limits desirable for them. However, [the BRT] generally does not favor the establishment of term limits for directors. Such limits often cause the loss of directors who have gained valuable knowledge concerning the company and its operations and whose tenure over time has given them an important perspective on long-term strategies and initiatives of the corporation. (p. 14)</p> <p>It is now common practice to establish rules for the retirement or resignation of directors. These may, for example, include a mandatory retirement age for directors or a requirement that a director submit his or her resignation at such time as the director no longer occupies the position he or she held at the time of election, unless the change in position is as a result of normal retirement. Even in the absence of such provisions, a board should plan for its own continuity and succession – for the retirement of directors and the designation of new board members. Because the composition and circumstance of boards will vary, so too will the retirement policies of different corporations. (p. 14)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
11. Board Compensation Review³⁴				
<p>It is appropriate for the staff of the Company to report once a year to the Committee on Director Affairs the status of GM Board compensation in relation to other large U.S. companies. As part of a Director's total compensation and to create a direct linkage with corporate performance, the Board believes that a meaningful portion of a Director's compensation should be provided and held in common stock units.</p> <p>Changes in Board compensation, if any, should come at the suggestion of the Committee on Director Affairs, but with full discussion and concurrence by the Board. (Guideline 13)</p> <p>The full Board (independent Directors) should make this evaluation [of the Chairman of the Board] annually The evaluation will be used by the Executive Compensation Committee in the course of its deliberations when considering the compensation of the Chairman. (Guideline 26)</p>	<p>The board should fulfil certain key functions, including [reviewing] board remuneration. (OECD Principle V.D.3)</p>	<p>The Working Group considers that as a matter of principle, the level and form of remuneration should not be determined by the recipient(s) but should be approved by independent persons acting in the interests of the shareholders. The remuneration of non-executive directors, including all benefits such as options, rights and pensions, should be fully disclosed to shareholders and approved by them. The level of remuneration should reasonably reflect the responsibilities and risks of being an effective director. (Guideline 5)</p>	<p>The remuneration received by non-executive directors should reflect the amount of time which they commit to the company. Their remuneration should not be performance-related, but may be related to the evolution of the value of the company. Therefore, remuneration can take the form of company shares. However, it is recommended that the remuneration of non-executive directors should not take the form of stock options, nor of a participation in the pension scheme of the company. (Part I: B.2.1)</p>	<p><i>Not covered directly, but see Note to 2.2 (It is desirable that non-executive directors should not take part in plans in relation to the granting of share options and should not receive pensions by virtue of their mandate. The reason for this is to ensure their independence.).</i></p>

³⁴ See also 1994 NACD Report at 20 (“Each board must decide what plan best serves the needs of the company, its shareholders, and its directors. For companies that wish to increase stock ownership by directors, there is a range of possibilities, from restricted stock grants with prohibitions on resale, to stock options, to voluntary guidelines for stock purchases. Every board should develop clear and comprehensive criteria for director pay, making occasional exceptions when unforeseen events make this necessary. Also, each board must decide the most appropriate mechanics for disclosing its process for setting director compensation. Director pay should be set annually, but evaluated on an ongoing basis.”); ABA Guidebook at 18-19 (“Directors have an unavoidable conflict of interest in fixing their own compensation. That conflict is not reduced if the recommendation is made by management. When directors recognize they have the responsibility to determine their own compensation, they are more likely to make sure they have the data necessary to reach a fair conclusion. That includes data on comparable companies, together with analysis of any special factors that may relate to the particular corporation.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
11. Board Compensation Review				
<p>The board of directors should review the adequacy and form of the compensation of directors and ensure the compensation realistically reflects the responsibilities and risk involved in being an effective director. (Guideline 8)</p>	<p>[I]t is the board's duty to take the necessary measures to ensure members' attendance at its meetings and those of its advisory committees. Such measures may include . . . making fees proportional to attendance. . . .</p> <p>Considering the responsibilities borne by directors and the time they must devote to their duties, fees should be more than token, and it thus appears natural to encourage directors to participate in advisory committees by increasing fees. (Viénot I at 22)</p> <p>The third part [of a proposed chapter in the annual report disclosing compensation] would deal with attendance fees. It would specify the maximum amount permitted by the meeting of shareholders and the amount actually paid to the members of the Board of Directors during the elapsed financial year in relation to the previous year. In addition, the rules for allocation of the fees (Chairman, Directors, fixed portion, variable portion, additional fees for membership of Board committee) would be precisely stated. Last, this part would describe the rules for collection of attendance fees granted to members of the general-management team in respect of directorships held in group affiliates. (Viénot II at 12)</p> <p>[T]he Committee recommends that a statutory amendment favor the personal holding by Directors of shares of their corporation's stock, and for this purpose, allow the Board of Directors to resolve upon payment of all or part of the attendance fees in shares of the corporation's stock, valued at the market price on the date of payment. (Viénot II at 12)</p> <p>See Viénot I at 20 (Directors should personally own a fairly significant number of their company's shares, whether or not this is required by company by-laws. Should this not be the case on their appointment, they should use their directors' fees for this purpose.).</p>	<p><u>Management Board</u></p> <p>The remuneration of the members of the Management Board embraces fixed and variable components. The basis for determining the variable components of remuneration is systematic evaluation of the individual members of the Management Board carried out periodically by the personnel committee of the Supervisory Board. (The Code, III.6.2)</p> <p><u>Supervisory Board</u></p> <p>The remuneration of members of the Supervisory Board is made at a reasonable level and is related to performance. . . . Even if taking into consideration the fact that Supervisory Board remuneration is only tax deductible up to one-half, it should be adjusted upwards if it is unreasonably low. (The Code, IV.7.1)</p> <p>The basis for assessing the performance of the individual members of the Supervisory Board is the extent of their duties. What has to be taken into account in doing this is, in particular, chairmanship of the Supervisory Board, the number of memberships on its committees, and the frequency of participation in meetings. (The Code, IV.7.2)</p> <p>Supervisory Board members do not receive stock options or similar remuneration related to market price of the stock, in order to maintain the necessary distance from managerial measures taken by the Management Board. (The Code, VI.7.3)</p>	<p>Shareholders should have the right to . . . approv[e] the . . . compensation [of the board of directors]. (Recommendation 1.2.5)</p> <p>The compensation of non-executive members of the Board should be comparable to the time they devote to Board meetings and decision-making. Compensation should not be tied to the corporation's performance. Compensation may take the form of stock options but should not take the form of participation in the corporation's insurance or pension programs. (Recommendation 6.1)</p>	<p>[W]here the shareholders' meeting has not already done so, [the board of directors shall] allocate the total amount to which the members of the board . . . are entitled. (The Code, 1.2.c)</p> <p>Directors' pay is a field where decisions must be taken in such a way that no director can influence the determination of his or her remuneration It is also important that remuneration packages should be able to attract and motivate persons with adequate experience and ability. (The Report, 5.4.2)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
11. Board Compensation Review				
<p>[A] committee should be established within the board, with responsibilities for . . . setting directors' remuneration. (Principle 9B)</p>	<p>The remuneration of Supervisory Board members should not be dependent on the results of the company. Stock options should not be granted to a person by virtue of his capacity as a Supervisory Board member. Nor is it desirable to remunerate a Supervisory Board member separately for his advice. (Recommendation 2.13)</p> <p>Dutch company law prescribes that the General Meeting of Shareholders determines the remuneration of the members of the Board of Directors, unless the company's articles of association stipulate otherwise. Generally, this remuneration is fixed by the Supervisory Board. (Recommendation 4.4)</p>	<p>The board is encouraged to create internal control committees with powers conferred for matters in which there are potential situations of conflicts of interest, such as . . . analysis of the remuneration policy. (Recommendation 17)</p>	<p>The director remuneration policy, which is to be proposed, evaluated and reviewed by the Remuneration Committee, should meet the criteria of moderation, connection with the company's performance and include detailed and individualized information. (The Code, Recommendation 15)</p> <p>It is advisable that the [Remuneration] Committee be formally granted at least the following powers:</p> <ul style="list-style-type: none"> (a) proposing the system and amount of directors' annual remunerations to the Board; (b) reviewing remuneration programmes from time to time, gauging their adequacy and results; and (c) watching over the transparency of remunerations. <p>(The Report, II.7.1)</p> <p>[T]he Committee thinks it [appropriate] to favour schemes linking a significant part of directors' remunerations, particularly those of executive directors, to the company's performance, because director incentives are thereby better aligned with shareholder interests (which are to be maximized). (The Report, II.7.3)</p>	<p>The base for the size of remuneration is the time spent [by board members]. . . . It is important to . . . document . . . the size of the remuneration and how it is to be paid. (p. 17)</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
11. Board Compensation Review				
<p>There should be full and clear disclosure of directors' total emoluments and those of the chairman and highest-paid U.K. director, including pension contributions and stock options. Separate figures should be given for salary and performance-related elements and the basis on which performance is measured should be explained. (The Code, 3.2)</p> <p>Executive directors' pay should be subject to the recommendations of a remuneration committee made up wholly or mainly of non-executive directors. (The Code, 3.3)</p>	<p>Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully. The component parts of remuneration should be structured so as to link rewards to corporate and individual performance. (Principle B.I)</p> <p>Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors. (Principle B.II)</p> <p>Cadbury and Greenbury both recommended that the boards of listed companies should establish a remuneration committee to develop a policy on the remuneration of executive directors and, as appropriate, other senior executives; and to set remuneration packages for the individuals concerned. We agree. We also agree with Greenbury that the membership of this committee should be made up wholly of independent non-executive directors. (Guideline 4.11)</p> <p><i>See generally</i> Guidelines 4.1-4.21.</p>	<p>Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, but companies should avoid paying more than is necessary for this purpose. A proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance. (The Code, Principle B.1)</p> <p>Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors. No director should be involved in deciding his or her own remuneration. (The Code, Principle B.2)</p> <p>The performance-related elements of remuneration should form a significant proportion of the total remuneration package of executive directors and should be designed to align their interests with those of shareholders and to give these directors keen incentives. (The Code, Provision B.1.4)</p> <p>Executive share options should not be offered at a discount save as permitted by paragraphs 13.30 and 13.31 of the Listing Rules. (The Code, Provision B.1.5)</p> <p>In designing schemes of performance-related remuneration, remuneration committees should follow the provisions in Schedule A to this code. (The Code, Provision B.1.6)</p> <p>The board itself or, where required by the Articles of Association, the shareholders should determine the remuneration of the non-executive directors, including members of the remuneration committee, within the limits set in the Articles of Association. Where permitted by the Articles, the board may however delegate this responsibility to a small sub-committee, which might include the chief executive officer. (The Code, Provision B.2.4)</p> <p><i>See</i> the Code, Schedule A: Provision on the Design of Performance-Related Remuneration.</p>	<p>A significant ownership stake leads to a stronger alignment of interests between directors and shareholders. . . .</p> <ul style="list-style-type: none"> ▪ Boards should establish a process by which directors can determine the compensation program in a deliberative and objective way. ▪ Boards should set a substantial target for stock ownership by each director and a time period during which this target is to be met. ▪ Boards should define the desirable total value of all forms of director compensation. ▪ Boards should pay directors solely in the form of equity and cash – with equity representing a substantial portion of the total up to 100 percent; boards should dismantle existing benefit programs and avoid creating new ones. ▪ Boards should disclose fully in the proxy statement the philosophy and process used to determine director compensation and the value of all elements of compensation. <p>(p. 5)</p>	<p>Board compensation should be competitive in view of industry practices and the extent of burdens placed on board members. The form of such compensation will vary from corporation to corporation and may depend on the circumstances of the directors which the board may be seeking to attract and retain. Boards should consider aligning the interests of directors with those of the corporation's stockholders by including some form of equity, such as stock grants or options, as a portion of each director's compensation.</p> <p>Some corporations may wish to establish a specific goal for equity ownership by directors; however, the desirability of setting such a goal is company specific and may depend on the circumstances of its directors. For example, some directors whose principal occupations are in public service or academic settings may prefer current cash compensation.</p> <p>Although there has recently been a trend away from retirement programs for directors, [the BRT] believes that the focus should be on the appropriate level of total compensation, rather than the timing of payments. (p. 16-17)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
12. Executive Sessions of Outside Directors³⁵				
<p>The independent Directors of the Board will meet in Executive Session two or three times each year. Executive Sessions will be chaired by the Chairman of the Committee on Director Affairs. The format of these meetings will include a discussion with the Chairman and the Chief Executive Officer on each occasion. (Guideline 14)</p>	<p><i>Not covered.</i></p>	<p>It may be necessary to arrange separate meetings of the non-executive directors or to establish a strong governance or directors' affairs committee made up of independent directors. (Guideline 1.2)</p>	<p><i>Not covered directly, but see Part I: B.4.3.c</i> (The audit committee should have a discussion with the internal and external auditors (including statutory auditors) at least once a year, from which the executive directors may be excluded, to ensure that there are no unresolved issues of concern.).</p> <p><i>See also Part I: B.3.2</i> (In case no remuneration committee is created, the board of directors should decide on the principles of the remuneration of the executive management, in the absence of the executive directors.).</p>	<p><i>Not covered directly, but see 3.1</i> (If there is no remuneration committee, the remuneration of executive directors should be submitted to the non-executive directors.).</p> <p><i>See also Note to 4.3</i> (The [audit] committee should hear the company auditors at least once each year, on an occasion when the executive directors are not present.).</p>

³⁵ See also 1994 NACD Report at 4 (noting that the CEO should respect the outside directors' need to meet independently); ABA Guidebook at 17 (suggesting ways to strengthen the role of independent directors, including having "the independent directors meet periodically as a body to review the performance of management and of the members of the board.").

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
12. Executive Sessions of Outside Directors				
<p>Every board of directors should have in place appropriate structures and procedures to ensure that the board can function independently of management. . . . Appropriate procedures may involve the board meeting on a regular basis without management present or may involve expressly assigning the responsibility for administering the board’s relationship to management to a committee of the board. (Guideline 12)</p>	<p><i>Not covered.</i></p>	<p>In order to promote openness of discussion, the Supervisory Board meets at times for one sitting per year without the Management Board. (The Code, IV.5.3)</p> <p><i>See the Code, IV.5.2 ([Among Supervisory Board members,] [s]eparate preliminary discussions by the representatives of the stockholders and by those of the employees, if they take place, should ease the process of shaping opinion, but not lead to actual pre-arrangements.).</i></p>	<p><i>Not covered directly, but see Footnote 6 to Recommendation 5.7 (Certain [Board] members – executive or non-executive – may undertake special duties regarding certain corporate tasks for which they are accountable to the Board of Directors that meets in full membership.).</i></p>	<p><i>Not covered.</i></p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
12. Executive Sessions of Outside Directors				
<i>Not covered.</i>	At least once a year the Supervisory Board should meet without the Board of Directors and discuss its own performance, its relationship with the Board of Directors and the composition and performance of the Board of Directors, including issues regarding succession and remuneration. (Recommendation 3.5)	<i>Not covered.</i>	<i>Not covered directly, but see the Report, II.3.2 (suggesting that an independent Vice-President of the board be appointed and empowered to call meetings, add agenda items and submit information to directors).</i>	<i>Not covered.</i>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
12. Executive Sessions of Outside Directors				
<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>	<p>Executive sessions provide board members the opportunity to react to management proposals and/or actions in an environment free from formal or informal constraints. They also provide an opportunity for dialogue between and among independent directors that facilitates a more open and timely exchange of ideas, perspectives, and feelings.</p> <p>Regularly scheduled executive sessions set an expectation that private discussions among independent directors will be held as a matter of course, thus disarming concern over an action that may otherwise be perceived as unusual or threatening.</p> <p>Boards should adopt a policy of holding periodic executive sessions at both the full board and committee levels on a present schedule. (p. 6)</p>	<p>There should be an opportunity for the board to meet periodically, at least annually, outside the presence of the CEO and other inside directors. This may be a portion of a normally scheduled board meeting, and the CEO's annual performance evaluation is a good opportunity for such a meeting. (p. 17-18)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
13. Evaluating Board Performance³⁶				
<p>The Committee on Director Affairs is responsible to report annually to the Board an assessment of the Board's performance. This will be discussed with the full Board. This should be done following the end of each fiscal year and at the same time as the report on Board membership criteria.</p> <p>This assessment should be of the Board's contribution as a whole and specifically review areas in which the Board and/or the Management believes a better contribution could be made. Its purpose is to increase the effectiveness of the Board, not to target individual Board members. (Guideline 15)</p> <p>The full Board (independent Directors) should make this evaluation [of the Chairman of the Board] annually, and it should be communicated to the Chairman . . . by the Chairman of the Committee on Director Affairs. The evaluation should be based on objective criteria including performance of the business, accomplishment of long-term strategic objectives, development of management, etc. (Guideline 26)</p>	<p>Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are: financial reporting, nomination and executive and board remuneration. (OECD Principle V.E.1)</p> <p>Independent board members . . . can bring an objective view to the evaluation of the performance of the board. (OECD Principle V.E Annotation at 41)</p> <p>In order to improve board practices and the performance of its members, some companies have found it useful to engage in training and voluntary self-evaluation that meets the needs of the individual company. (OECD Principle V.E.2 Annotation at 42)</p>	<p>Nomination committees should have written terms of reference which set out their responsibilities and rights. These are likely to include assessing the performance of the board as a whole or making arrangements for the board to assess its own performance, and assessing the contribution of individual directors or arranging for the board to do so. (Guideline 2)</p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>

³⁶ See also 1994 NACD Report at 13-14 (“Directors should evaluate board performance as a whole. Each board should consider developing goals for the board as a whole and for each of its committees. . . . The board can then measure board, chairmen, and committee performance against these goals, position descriptions, and responsibilities, making any appropriate recommendations for improvement. . . . The board should evaluate not just its process for nominating director candidates, but also its process for educating and renominating new directors. It should evaluate the evaluation process itself. The focus of the evaluation should also include some evaluation of individual director performance.”); 1990 Business Roundtable Statement at 15 (“The most difficult duties of the board include a thorough evaluation of the board’s own effectiveness including the contributions of its individual members. The non-management directors (or a committee such as the Nominating Committee) are responsible for periodically undertaking a self-evaluation. The results of this evaluation will fortify and provide excellent background for the board’s recommendation of a slate of directors to the shareholders.”); ABA Guidebook at 5 (The board has the responsibility to “evaluate the overall effectiveness of the board.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
13. Evaluating Board Performance				
<p>Every board of directors should implement a process to be carried out by the nominating committee or other appropriate committee for assessing the effectiveness of the board as a whole, the committees of the board, and the contribution of individual directors. (Guideline 5)</p> <p>The governance committee will not only be responsible for the approach of the corporation to governance issues, but will also function as a forum for concerns of individual directors about matters that are not readily or easily discussed in a full board meeting. These matters could include . . . the performance of the board or individual members of the board. . . . We recognize that assessment of . . . individual directors may be the responsibility of the Nominating Committee. The important principle, of course, is that these responsibilities be assumed by one or more committees of the board. (§ 6.7 at pp. 39-40)</p>	<p>The Committee considers that each board should periodically review its membership, organization and operations and keep shareholders informed of conclusions and action taken. (Viénot I at 3)</p> <p>The Committee suggests that the board should collectively consider the status of its members and their capacity to fulfill their duties, notably in that they have the necessary information, and should not hesitate to impose requirements . . . if it believes the company’s circumstances make this necessary. These tasks could be carried out by the board’s selection committee. (Viénot I at 21)</p> <p>[A]bsenteeism is rare among directors. Where it does arise, it is the board’s duty to take the necessary measures to ensure members’ attendance at its meetings and those of its advisory committees. (Viénot I at 22)</p> <p>Among the measures recommended by the 1995 report, the Committee wishes to stress the duty for each Board to consider “the desirable equilibrium in its membership or those of its committees” and “to review periodically the adequacy of its organization and operation to its tasks.” . . .</p> <p>It is . . . fundamental for the proper practice of corporate governance that the Board should evaluate its ability to meet the expectations of the shareholders having appointed it to manage the corporation, by reviewing periodically its membership, its organization, and its operation (implying an identical review of the Board committees).</p> <p>The Committee considers that this review should be reported to the shareholders in the annual report. (Viénot II at 14-15)</p>	<p>Regular evaluation promotes continuous improvement in the corporate governance of a company. (Thesis 10)</p> <p><u>Management Board</u></p> <p>The individual performance of each Management Board member . . . is . . . to be systematically evaluated annually by the personnel committee. In this, the target-orientated development of the company and individual contributions made by Management Board members provide the scale for making the assessment. (The Code, II.1.10)</p> <p>Appointments of Management Board members whose performance falls short of the level of performance which may reasonably be expected are not renewed. Serious deficiencies in performance and mistakes lead as compelling grounds to premature dismissal. (The Code, II.1.11)</p> <p>The Management Board systematically supervises the success of its own decisions (preparatory to, and in addition to, the Supervisory Board). (The Code, III.2.6)</p> <p>[T]he Supervisory Board . . . checks in particular whether the dealings of the Management Board increase the value of the company on a sustained basis and correspond with generally accepted principles of proper company management. (The Code, IV.2.3)</p> <p><u>Supervisory Board</u></p> <p>The Supervisory Board subjects its activities to systematic evaluation at regular intervals in order to continually improve them. (The Code, IV.2.6)</p> <p>If the work of a member of the Supervisory Board displays serious flaws, it is the Supervisory Board that causes him to be removed. (The Code, IV.4.3)</p>	<p>The Board of Directors has the responsibility . . . for . . . monitoring the efficacy of the governance practices that characterize the operation of the Board of Directors and the decision-making procedures. (Recommendation 5.4)</p> <p>See Recommendation 5.13 (The structure and operational procedures of the Board of Directors should ensure the establishment of best performance conditions for the corporation.).</p>	<p>The importance of the responsibilities and tasks of directors led the Committee to call on them to make a conscientious self-assessment of their ability to devote sufficient care and attention to the duties of the office. (The Report, 5.1)</p> <p>See Topic Heading 8, <i>above</i>.</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
13. Evaluating Board Performance				
<p><i>Not covered directly, but see</i> Letter of Chairperson T. Suzuki (Our “16 Standard Principles” are aimed at positioning entrepreneurs and the board of directors at the heart of the corporate governance debate, and will give us appropriate standards against which we can judge ourselves.).</p>	<p>Deliberation regarding [the reappointment of a board member] should be conducted in the absence of the person concerned and should be held on the basis of a report drawn up by the chairman on the interview with the resigning Supervisory Board member.</p> <p>The proposal for reappointment should state the motives for reappointment and should explicitly mention why it is felt that the performance of the member in question was satisfactory. (Recommendation 2.7)</p> <p>A Supervisory Board member’s premature resignation can be expedient in cases of unsatisfactory performance, fundamental differences of opinion, or conflicts of interest or if his integrity is at issue. (Recommendation 2.8)</p>	<p>Corporate governance has . . . an internal aspect and an external aspect. . . . [E]xternal control . . . relates to the assessment of the performance of the company, which is conducted through the normal function of market mechanisms. . . .</p> <p>It is, indeed, the market itself that constitutes the main assessor of the excellence of the leadership and control options adopted by listed companies. (Introduction)</p>	<p>In order to ensure the proper operation of the Board of Directors, its meetings should be held with the necessary frequency to fulfill its mission. The Chairman of the Board should encourage all the directors to participate and freely state their views. The wording of the Minutes should be especially watched and the quality and efficiency of directors’ work should be evaluated at least once a year. (The Code, Recommendation 10)</p> <p>[I]t is advisable that the Board of Directors reflect at least once a year on its own performance, if possible, in a meeting devoted to this subject alone. It is a matter of evaluating the quality of its work, the efficiency of its rules and, as the case may be, of correcting whatever has proven to be non-functional. In this task, which has the final purpose of ensuring the efficiency of the Board and its ability to supervise business management, it will have to pay special attention to the reports of the Compliance Committee. (The Report, II.4.5)</p> <p>[The Committee] recommends that companies, as a major part of the re-election process, provide for the Nomination Committee to evaluate the candidate’s work and effective dedication during the last term, issuing a report to that effect. We expect this could reduce the risk of Boards deciding automatically to re-elect directors regardless of their performance. (The Report, II.5.4)</p>	<p><i>See</i> p. 19 (<i>list of items for board members to consider and/or to do</i>); p. 20 (<i>list of items for the chairman of the board to consider and/or do</i>); and p. 21 (<i>advice to a board member</i>).</p> <p><i>See also</i> p. 8 ([I]t is part of the role of the accountant appointed by the Board to ascertain that the Board and Managing Director have not acted in conflict with the General Corporation Act or the Articles of Association, and have not acted in a way that may result in litigation and subsequent damage claims on the company.).</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
13. Evaluating Board Performance				
<i>Not covered.</i>	A recent report of the US National Association of Corporate Directors recommended the introduction of formal procedures by which boards would assess both their own collective performance and that of individual directors. Some UK boards already operate such procedures. We believe that this is an interesting development which boards might usefully consider in the interest of continuous improvement, though we do not feel able at this stage to make a firm recommendation on the subject. (Guideline 3.13)	<i>Not covered directly, but see the Code, Schedule A: Provisions on the Design of Performance-Related Remuneration, 1-7.</i>	<p>Board effectiveness and credibility depend in part on regular self-evaluation. . . . The evaluation process should be:</p> <ul style="list-style-type: none"> ▪ controlled by the independent directors ▪ aligned with established evaluation processes and goals ▪ tailored to meet the needs of the individual company and board ▪ designed to ensure candor, confidentiality, and trust ▪ regularly reviewed and improved as necessary, and ▪ disclosed (process only) to shareholders and the public. <p>Evaluation of board performance should include consideration of the execution of general board responsibilities as well as:</p> <ul style="list-style-type: none"> ▪ delineation of board and management powers ▪ effective interaction between and among directors, and ▪ director education and development. <p>Evaluation of individual director performance should include consideration of the execution of specific board responsibilities as well as:</p> <ul style="list-style-type: none"> ▪ personal characteristics, and ▪ core competencies. <p>Additional consideration should be given to:</p> <ul style="list-style-type: none"> ▪ varying roles for directors, and ▪ means for removing under-performing directors, if necessary. <p>(p. 23)</p> <p><i>See also pp. 15-20 and Appendix D.</i></p>	<p>The board is responsible for its own evaluation from time to time. Such evaluations will provide the basis for the board's recommendation of a slate of directors to the stockholders. Boards also implicitly evaluate individual directors by endorsing them for re-nomination. Some boards formalize this process through evaluations of individual directors. Other boards formally address individual director performance only when it appears that a particular director is not contributing sufficiently to the performance of the board as a whole. While no particular approach to individual director evaluation is best for all companies at all times, each board should have a process, formal or informal, for discharging its responsibility to nominate good directors.</p> <p>The board should from time to time review its own structure, governance principles, composition, agenda, processes and schedule to consider whether it is functioning well in view of its responsibilities and the evolving situation of the corporation. (p. 9)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
14. Board Interaction with Institutional Investors, Press, Customers, etc.³⁷				
<p>The Board believes that the Management speaks for General Motors. Individual Board members may, from time to time at the request of Management, meet or otherwise communicate with various constituencies that are involved with General Motors. If comments from the Board are appropriate, they should, in most circumstances, come from the Chairman. (Guideline 16)</p>	<p><i>Not covered directly, but see</i> OECD Principle IV.D (Channels for disseminating information should provide for fair, timely and cost-efficient access to relevant information by users.).</p> <p><i>See also</i> OECD Principle V.D.7 (The board should fulfil certain key functions, including . . . [o]verseeing the process of disclosure and communications.).</p> <p><i>See also</i> Millstein Report, Perspective 17 (Governments should avoid regulations that unduly inhibit the ability of institutional investors to compete with one another. However, sound, prudent management of these funds should remain the overriding objective of public policy in this area.).</p>	<p><i>Not covered.</i></p>	<p>To operate in a [global] market, Belgian companies will need to improve transparency with respect to the shareholders and, more specifically, to local and international institutional investors. . . . Belgian companies will have to broaden their shareholder base and comply as closely as possible with international standards of corporate governance. (Part I: A.1)</p> <p><i>See</i> Part I: B.4.1 (The report and accounts . . . should contain the information needed to enable investors and their investment advisors to form a view of the company’s financial position and performance.).</p>	<p><i>Not covered.</i></p>

³⁷ See also American Society of Corporate Secretaries, Suggested Guidelines for Public Disclosure and Dealing with the Investment Community (1997) at 4-9 (“Corporate Secretaries Guidelines”) (Suggested guidelines include instituting an “open-door” policy in relating to the investment community, avoiding selective disclosure and curing any such occurrences with press releases, distinguishing between voluntary and required disclosure of forward-looking information in management’s discussion and analysis, adopting a prudent approach to commenting on analysts’ reports, and advice on how to avail oneself of the benefits of the “bespeaks caution” and “safe harbor” protections regarding liability for omissions or misrepresentations.); ABA Guidebook at 14, 17 (“[A]n individual director is not usually authorized to be a spokesperson for the corporation and, particularly when market-sensitive information is involved, should avoid responding to such inquiries. A director normally should refer investors, market professionals, and the media to the CEO or other individual designated by the corporation.” The Guidebook suggests that the role of independent directors can be strengthened by having “independent directors available to meet with substantial shareholders, particularly when those shareholders are not satisfied with responses they have received from management.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
14. Board Interaction with Institutional Investors, Press, Customers, etc.				
<p><i>Not covered directly, but see</i> Guideline 1(iv) (The board of directors of every corporation should explicitly assume responsibility for the stewardship of the corporation and, as part of the overall stewardship responsibility, should assume responsibility for . . . a communications policy for the corporation.).</p>	<p><i>Not covered directly, but see</i> Topic Heading C, below.</p>	<p>The communication system extends in particular to the supply of information for actual and potential investors (investor relations), the workforce (employee relations), the consumers (customer relations) and the public-at-large (public relations). (The Code, VI.1.2)</p> <p>All stockholders receive access to the same information without regard to the extent of their particular shares. The precept of equal treatment with information also applies particularly to institutional investors on the one side and private small investors on the other. (The Code, VI.1.3)</p> <p><i>See</i> the Code, VI.1.5 (The company also uses modern means of telecommunication such as the Internet for current and consistent information to the various stakeholders of the company. Provided that it is commercially justified, it opens up the possibility of being able to follow press and analyst conferences directly over the new media.).</p>	<p>Shareholders, and particularly institutional investors and pension funds, should be encouraged to use their voting rights in a manner that promotes the efficiency of the corporation and the market. The encouragement to make use of voting rights should take into account the increasing internationalization of the corporation's shareholder base and not be confined within the national limits. The use of voting rights by institutional investors should not be opposed to the interests of small private investors. (Recommendation 1.4.5)</p> <p><i>See</i> Recommendation 1.1.3 (Basic shareholder rights include the right to . . . obtain sufficient and relevant information on the corporation on a timely and regular basis.).</p> <p><i>See also</i> Recommendation 4.3 (Channels for dissemination of information should provide fair, timely and cost-efficient access to relevant information.).</p>	<p>The chairman of the board of directors and the managing directors shall . . . actively endeavor to develop a dialogue with . . . institutional investors based on recognition of their reciprocal roles. They designate a person or, where appropriate, create a corporate structure to be responsible for this function. (The Code, 11; <i>see</i> Commentary on the Code, 11 <i>and</i> the Report, 5.5, 6)</p> <p>[M]anaging directors . . . shall propose to the board of directors the adoption of an internal procedure for the disclosure of information to third parties. (The Code, 6.1; <i>see</i> the Report, 5.3)</p> <p>[I]t is in the interest of the generality of shareholders to know the personal traits and professional qualifications of candidates . . . sufficiently in advance for them to be able to cast their votes in an informed manner, especially in the case of institutional investors, which are often represented in shareholders' meetings by proxies. (Commentary on the Code, 7)</p> <p>[D]ialogue [with institutional investors] can be fostered by . . . an <i>ad hoc</i> . . . structure for this function. . . . The Committee . . . hopes that recognition by [institutional investors] of the importance of the rules of Corporate Governance contained in this Code may help to promote a more whole-hearted and widespread application of its principles by listed companies. (The Report, 5.5)</p> <p><i>See</i> the Report, 6 (The task of verifying the suitability of the choices made [in the Code], and the extent of the Code's application, is . . . reserved to shareholders' meetings and encounters with institutional investors.).</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
14. Board Interaction with Institutional Investors, Press, Customers, etc.				
<p>The board of directors should require that the management of the company be fully accountable to shareholders as well as the board of directors through the provision of accurate, substantive, practical and reliable information. It is the responsibility of the board of directors to oversee the company's entire information network, in particular the shareholder relation mechanism. (Principle 1A)</p> <p>The board of directors should be aware of the vital importance of the rigorous management of company risk and the timely disclosure of information which might seriously affect shareholders' interests, including for example, accidents, litigation, mergers and acquisitions and unfavorable business reports, etc. (Principle 2A)</p> <p>The board of directors should begin to report globally consolidated semi-annual accounts based on the mark to the market accounting system as soon as the "international standard" now under consideration is finalized. Quarterly reporting of accounts should also be introduced as soon as possible. (Principle 3A)</p> <p>Separately from the Annual General Meeting, open information meetings with major shareholders may be held for more detailed discussion. (Principle 15A)</p> <p>Research analysts and fund managers of institutional investors often receive privileged information through meetings with various companies. Other major shareholders (the largest 20 or 30) should be given equal privileges. (Comment on Principle 15A)</p>	<p>The providers of risk capital should be able to demand from the management a clear and transparent account of the policy that has been pursued. . . . The influence of the investors can be enhanced if there is active accountability towards the shareholders or holders of certificates of shares. [T]he Board of Directors and the Supervisory Board will have to take [investor] reactions into serious account in the conduct of their future policy. . . . The Committee is confident that if the shareholders, especially the institutional investors and other major shareholders, are . . . present at the General Meeting of Shareholders and make their views heard, this will lead to higher attendance rates and to a considerable improvement in the quality of the General Meeting of Shareholders. (Recommendation 5.1)</p> <p>The Committee believes that investors should be able to exert real influence within the company. . . . The company's management must not be allowed over a long period of time to ignore the opinions of investors on subjects that concern them. (Recommendation 5.4.1)</p> <p>See Recommendation 5.5.</p>	<p>The company should ensure the existence of permanent contact with the market, respecting the principle of equality for shareholders and taking precautions against asymmetries in access to information among investors. For this purpose, the creation of an investor information department is recommended. (Recommendation 7)</p> <p>The creation of an investor information department . . . should be encouraged, since it is one of the measures that allows centralization of all questions raised by investors and the necessary explanations that may be provided with the disclosure of this information to the market, when this is judged appropriate. (Commentary on Recommendation 7)</p> <p>See Introduction (Corporate governance has . . . an internal aspect and an external aspect. . . . [E]xternal control . . . relates to the assessment of the performance of the company which is conducted through the normal function of market mechanisms, a domain in which the proceedings of institutional investors are of capital importance.).</p> <p>See also Commentary on Recommendation 11 (It is important to allow the market to easily assess the attitude of institutional investors to the governance of listed companies.).</p>	<p>The Board of Directors should promote the implementation of proper measures to extend loyalty duties to significant shareholders, especially establishing cautionary measures in respect to transactions between those shareholders and the company. (The Code, Recommendation 17)</p> <p>Measures aimed at . . . emphasizing communication between the company and its shareholders, especially institutional investors, should be passed. (The Code, Recommendation 18)</p> <p>[The] Committee trusts in the increasing commitment of institutional investors with the promotion of best governance rules. In this respect, it invites them to state their preferences on Board of Director organization patterns and to make good use of their influence to promote or favour their acceptance by companies targeted for their investments. (The Report, II.9.4)</p>	<p><i>Not covered directly, but see</i> The Code, p. 15 (The Board should keep the bank informed and assist in the business dialogue [in order to form] a basis for a constructive cooperation.).</p> <p><i>See also</i> Foreword to The Code, p. 2 (Lenders and investors are attaching great interest to the composition of the board of directors.).</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
14. Board Interaction with Institutional Investors, Press, Customers, etc.				
<p>Institutional investors should encourage regular, systematic contact at senior executive level to exchange views and information on strategy, performance, board membership and quality of management. (The Report, 6.11)</p> <p><i>See The Report 6.1 - 6.16 (accountability of boards to shareholders).</i></p>	<p>[S]ome [institutional investors] now take a more active interest in corporate governance. They can do this by voting on resolutions in General Meetings, and informally through contact with the company. (Guideline 5.3)</p> <p>The idea of contact between companies and institutions was developed in 1995 in the report of a joint City/Industry working group chaired by Mr. Paul Myners and titled DEVELOPING A WINNING PARTNERSHIP. The main recommendations of this report included:</p> <ul style="list-style-type: none"> ▪ investors to articulate their investment objectives to management; ▪ investors to be more open with management in giving feedback on companies' strategies and performance; ▪ improved training for fund managers on industrial and commercial awareness; ▪ improved training for company managers involved in investor relations; ▪ meetings between companies and institutional investors to be properly prepared, with a clear and agreed agenda. (Guideline 5.10) <p>These recommendations have been broadly welcomed by companies and investors, and [the Committee] very much hope[s] that they will be widely adopted and acted on. (Guideline 5.11)</p> <p><i>See generally</i> Guidelines 5.1-5.25 (The Role of Shareholders).</p>	<p>Companies should be ready, where practicable, to enter into a dialogue with institutional shareholders based on the mutual understanding of objectives. (The Code, Principle C.1)</p> <p>Institutional shareholders should be ready, where practicable, to enter into a dialogue with companies based on the mutual understanding of objectives. (The Code, Principle E.2)</p> <p>When evaluating companies' governance arrangements, particularly those relating to board structure and composition, institutional investors should give due weight to all relevant factors drawn to their attention. (The Code, Principle E.3)</p> <p>The chairman of the board should ensure that the company maintains contact as required with its principal shareholders about remuneration in the same way as for other matters. (The Code, Provision B.2.3)</p> <p><i>See the Code, Provision E.1.1 (Institutional shareholders should endeavor to eliminate unnecessary variations in the criteria which each applies to the corporate governance arrangements and performance of the companies in which they invest.).</i></p>	<p><i>Not covered.</i></p>	<p>In general, the corporation's management should speak for the corporation. Communications with the public at large, the press, customers, securities analysts and stockholders should typically flow through and be coordinated by the CEO or other management. From time to time outside directors may be requested by the board or management to meet with or speak with other parties that are involved with the corporation. (p. 19)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
15. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management³⁸				
<p>The Board welcomes the regular attendance at each Board meeting of non-Board members who are in the most senior management positions of the company.</p> <p>Should the Chairman or the Chief Executive Officer want to add additional people as attendees on a regular basis, it is expected that this suggestion would be made to the Board for its concurrence. (Guideline 17)</p> <p>Board members have complete access to GM's management.</p> <p>It is assumed that Board members will use judgment to be sure that this contact is not distracting to the business operation of the Company and that such contact, if in writing, be copied to the Chairman or Chief Executive Officer, as appropriate.</p> <p>Furthermore, the Board encourages the Management to, from time to time, bring managers into Board meetings who: (a) can provide additional insight into the items being discussed because of personal involvement in these areas, and/or (b) are managers with future potential that the senior management believes should be given exposure to the Board. (Guideline 18)</p>	<p>In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information. (OECD Principle V.F)</p> <p>The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company. (OECD Principle V.F Annotation at 43)</p>	<p>The Working Group considers that, as a matter of principle, all directors, including non-executive directors, must have full access to all relevant information. Except where conflicts of interest are involved, there is no matter so secret that it should be withheld from directors. In the case of matters to be considered by the board, directors must insist that full details are made available to them in sufficient time to allow proper consideration. (Guideline 4)</p>	<p><i>Not covered directly, but see Topic Heading 20 and Topic Heading B, below.</i></p>	<p><i>Not covered directly, but see Note to 4.3 (The company auditors and, if such exist, the person responsible for the internal audit and the financial director, should attend the meetings of the [audit] committee.</i></p> <p><i>The [audit] committee should hear the company auditors at least once each year, on an occasion when the executive directors are not present.</i></p> <p><i>The [audit] committee has the widest investigative powers within its domain and may, by a majority decision, call upon professionals from outside the company and allow them to attend its meetings.).</i></p>

³⁸ See also [ABA Guidebook](#) at 41 & 21 (“[S]ome argue that attendance at board meetings of senior [management] officers in a non-director, nonvoting capacity is sufficient to ensure that directors have ready access to all necessary information regarding the business and operations of the corporation, without compromising the independence of judgment that an effective director must enjoy. . . . The law recognizes certain prerogatives as necessary to performance of a director’s duties. Among the most important [is] the right to communicate with key executives, subject to reasonable time constraints. . . .”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
15. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management				
<i>Not covered.</i>	<p>The Committee considers it legitimate for Board committees to be allowed the opportunity to approach the corporation's main executives, other than corporate officers, or to call for outside technical reviews at the corporation's expense. It goes without saying that this option should be exercised by committees only in performance of their respective duties, and after informing the Chairman of the Board of Directors. In all cases, the committees should report to the Board of Directors on the information and opinions obtained on such occasions. (Viénot II at 17)</p>	<p>In order to allow the members of the Supervisory Board the opportunity of systematically becoming acquainted with potential candidates for membership of the Management Board, the Management Board regularly suggests persons from the inner circle of junior management for presentations in the Supervisory Board and its committees. (The Code, II.1.7)</p> <p><i>See the Code, II.2.5 (The Supervisory Board, particularly its Chairman and its committees, require for their part all information from the Management Board which they . . . require in order to carry out efficiently the duties of supervision. The positive definition of the additional requirement of information is an important part of the duties of the Supervisory Board.).</i></p> <p><i>See also the Code, IV.5.2 (The exercise of supervision – apart from contacts of the Chairman of the Supervisory Board with the Management Board – is primarily made in the meetings of the Supervisory Board and its committees.).</i></p>	<p><i>Not covered directly, but see Recommendation 5.9 (Procedures should be established that allow the Board of Directors to obtain advice by external advisors which would assist the exercise of their duties.).</i></p> <p><i>See also Footnote 7 to Recommendation 5.10 (It is essential that the members of the Board have full access to all information required, under the responsibility of the chief executive officer and the secretary of the Board.).</i></p> <p><i>See also Recommendation 4.7 (The Internal Audit Committee should be able to obtain external advice and, if necessary, to invite external specialists to attend the workings of the committee.).</i></p>	<i>Not covered.</i>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
15. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management				
<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>	<p>The right of all directors to collect and obtain the information and advice needed to fulfill their supervision functions must be formally recognized. Appropriate channels should be created to exercise this right, even resorting to outside experts in special circumstances. (The Code, Recommendation 14)</p> <p>Within this [new directors' induction] program, it would be very useful to offer new directors the chance of knowing the organization directly and dealing personally with its main managers. (The Report, II.5.3)</p>	<p>The Managing Director should . . . use the Board of Directors as a “sounding board,” as advisors, to arrange access to new networks, and to act as “questioners.” (Foreword, p. 2)</p> <p>[T]he key person in the boardroom work is the Managing Director. . . . The issues that he puts on the table of the Board of Directors and the information which he is giving his fellow boardroom members to a very high degree determines the quality of the boardroom work in family-owned companies. (p. 12)</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
15. Attendance of Non-Directors at Board Meetings / Board Access to Senior Management				
<p>All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are followed and that applicable rules and regulations are complied with. (The Code, 1.6)</p> <p><i>See</i> The Report 4.14 (Non-executive directors lack the inside knowledge of the company of the executive directors, but have the same right of access to information as they do.).</p>	<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered directly, but see</i> p. 1 ([T]he board should act as a resource for management in matters of planning and policy. To ensure effective decision-making . . . board members must not only act as advisors, question-askers, and problem-solvers, but also as active participants and decision-makers in fostering the overall success of the company.).	Board members should have full access to senior management and to information about the corporation's operations. Except in unusual circumstances, the CEO should be advised of significant contacts with senior management. (p. 19)

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
16. Board Meetings & Agenda ³⁹				
<p>The Chairman of the Board/Chief Executive Officer will establish the agenda for each Board meeting. They will issue a schedule of agenda subjects to be discussed for the ensuing year at the beginning of each year (to the degree these can be foreseen). Each Board member is free to suggest the inclusion of item(s) on the agenda. (Guideline 19)</p>	<p><i>Not covered.</i></p>	<p><i>Not covered directly, but see Topic Heading 1, above, and Topic Heading A, below.</i></p>	<p><i>Not covered directly, but see Part II: B.2 (Information [to be disclosed] on the functioning of the board of directors [includes] the number of meetings per year [and] the most significant types of subjects discussed.).</i></p> <p><i>See also Topic Heading 1, above, and Topic Heading A, below.</i></p>	<p>The Board of Directors, which is a collegiate body, must meet at regular intervals. (1.1)</p> <p>The Secretary of the Board must ensure that the procedures in relation to the functioning of the Board and the regulations which apply to it are complied with.</p> <p>If there is no Secretary of the Board of Directors, the Board shall take the necessary action so that a person is given the task of monitoring compliance with the procedures in connection with the functioning of the Board and the applicable regulations. (1.5)</p> <p><i>See Topic Heading 1, above.</i></p>

³⁹ See also 1990 Business Roundtable Statement at 14 (“A carefully planned agenda is very important for effective board meetings. In practice, the items on the agenda are determined by the chairman in consultation with the board, with important subjects being suggested by various outside board members. A board member’s request to add a specific subject to a future agenda is almost always complied with promptly. To ensure continuing effective board operations, the CEO can periodically ask the directors for their evaluation of the general items for board meetings and any suggestions they may have for improvement.”); ABA Guidebook at 10, 20 (“While agendas for both board and committee meetings are generally initiated by management, a director is entitled to place matters the director reasonably considers to be important on the agenda. . . . Further, the board should satisfy itself that there is an overall annual agenda of matters that require recurring and focused attention, such as achievement of principal operational or financial objectives and review of the performance of the CEO and other members of executive management.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
16. Board Meetings & Agenda				
<p><i>Not covered directly, but see Topic Heading 1, above, and Topic Heading A, below.</i></p>	<p>[W]hile it is the Chairman's role to draw up and propose a strategy, this must be adopted by the board. By virtue of the same principle, [the board] must consider and decide on all strategically important decisions. (Viénot I at 8)</p> <p>In general, the boards of listed companies meet 3 or 4 times a year, and in practice meetings last around 2 hours.</p> <p>The frequency and duration of meetings are not amenable to the definition of general rules, and should be left up to each board to decide. Clearly, boards should meet whenever circumstances make this desirable, but where no special circumstances arise, 4 to 6 meetings should be sufficient to review business developments and take necessary decisions, especially if preparatory work has been carried out by specialized committees. The meetings should last long enough to allow proper consideration of the items on the agenda. (Viénot I at 16)</p> <p>The minutes of the meeting summarize discussion and report decisions taken. (Viénot I at 17)</p> <p>[T]he frequency and duration of meetings [of the Board] cannot be subjected to any standards, as the situations and needs vary extensively in this area.</p> <p>It remains that it is up to the Directors to ensure that they are such as to allow in-depth review and discussion of matters within the purview of the Board. (Viénot II at 16)</p> <p><i>See Topic Heading 1, above, and Topic Heading A, below.</i></p>	<p><u>Management Board</u></p> <p>The chairman or speaker of the Management Board sets the agenda for the meetings of the Management Board. Each member of the Management Board may include on the agenda points for discussion and decision by way of the chairman or speaker. (The Code, III.4.1)</p> <p><u>Supervisory Board</u></p> <p>The Supervisory Board normally meets on six occasions annually. Extraordinary events may require a higher number of meetings. The frequency of committee meetings is taken into account when determining the number of meetings of the entire Supervisory Board. The duration of the meetings should allow proper exercise of supervisory tasks. (The Code, IV.5.1)</p> <p>The exercise of supervision – apart from contacts of the Chairman of the Supervisory Board with the Management Board – is primarily made in the meetings of the Supervisory Board and its committees. (The Code, IV.5.2)</p> <p>The chairman of the Supervisory Board prepares a systematic schedule of supervision which stipulates the sequence and main focus of the topics more precisely to be discussed in the individual meetings of the Supervisory Board or its committees. (The Code, IV.5.4)</p> <p>The chairpersons stipulate the agenda for the individual meetings of the Supervisory Board and its committees on the basis of the schedule of supervision as well as current developments. (The Code, IV.5.7)</p>	<p>[T]he Board should meet at least once a month (according to the size of the corporation and the sector it belongs to). (Recommendation 5.1)</p> <p><i>See Footnote 7 to Recommendation 5.10 (It is essential that the members of the Board have full access to all information required, under the responsibility of the chief executive officer and the secretary of the Board.)</i></p>	<p>The chairman shall call the meetings of the board. (The Code, 4.1; <i>see</i> Commentary on the Code, 4; <i>see</i> the Report, 5.2)</p> <p>The chairman shall co-ordinate the activities of the board of directors and moderate its meetings. (The Code, 4.2; <i>see</i> the Report, 5.2)</p> <p>The Code . . . notes that the guidance function [of the board of directors] requires regular and sufficiently frequent meetings. (The Report, 5.1)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
16. Board Meetings & Agenda				
<i>Not covered directly, but see Topic Heading 1, above, and Topic Heading A, below.</i>	<i>Not covered directly, but see Topic Heading 1, above, and Topic Heading A, below.</i>	[The board] should meet at regular intervals. (Commentary on Recommendation 14)	[T]he Chairman of the Board is not only supposed to call, prepare the agenda and lead the meetings, but must also ensure that members of the Board receive the necessary information, participate actively and be committed to their tasks. (The Report, II.3.2) <i>See also the Report, II.3.2 (suggesting that an independent Vice-President of the board be appointed and empowered to call meetings, add agenda items and submit information to directors).</i>	An agenda committee may be important in instances where companies for whatever reason have the roles of the chair and chief executive in one person or a dominant board member appointed by the controlling shareholder. It could go some way in ensuring that matters which the minorities or other interested stakeholders would want to raise, are in fact raised on the agenda. (The Code, 11.2)

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
16. Board Meetings & Agenda				
<p>The board should meet regularly. (The Code, 1.1)</p> <p>The board should have a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the company is firmly in its hands. (The Code, 1.4)</p>	<p>The board can only fulfil its responsibilities if it meets regularly and reasonably often. (Guideline 3.11)</p> <p><i>See Topic Heading 1, above, and Topic Heading A, below.</i></p>	<p>The board should meet regularly. (The Code, Provision A.1.1)</p> <p>The board should have a formal schedule of matters specifically reserved to it for decision. (The Code, Provision A.1.2)</p>	<p>[D]eveloping the agenda for [board] meetings is a critical element in determining and reinforcing board independence and effectiveness.</p> <p>Boards should ensure that members are actively involved with their CEO in setting the agendas for full board meetings. A designated director or directors should work with the CEO to create board agendas (incorporating other board members' input as provided). . . .</p> <p>For committee meetings, committee chairs should work with the CEO and committee members to create agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting. (p.4)</p>	<p>A carefully planned agenda is important for effective board meetings, but it must be flexible enough to accommodate crises and unexpected developments. In practice, the items on the agenda are typically determined by the chairman in consultation with the board, with subjects also being suggested by various outside board members. A CEO should be responsive to a director's request to add a specific subject to a future agenda. (p. 18)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
17. Board Materials and Presentations⁴⁰				
<p>Information and data that is important to the Board’s understanding of the business [should] be distributed in writing to the Board before the Board meets. The Management will make every attempt to see that this material is as brief as possible while still providing the desired information. (Guideline 20)</p> <p>As a general rule, presentations on specific subjects should be sent to the Board members in advance so that Board meeting time may be conserved and discussion time focused on questions that the Board has about the material. On those occasions in which the subject matter is too sensitive to put on paper, the presentation will be discussed at the meeting. (Guideline 21)</p>	<p><i>Not covered directly, but see OECD Principle V.F (In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information.).</i></p> <p><i>See also OECD Principle V.F Annotation at 43 (Board members require relevant information on a timely basis in order to support their decision-making. Non-executive board members do not typically have the same access to information as key managers within the company. . . . In order to fulfil their responsibilities, board members should ensure that they obtain accurate, relevant and timely information.).</i></p>	<p><i>Not covered directly, but see Guideline 4 (The Working Group considers that, as a matter of principle, all directors, including non-executive directors, must have full access to all relevant information. Except where conflicts of interest are involved, there is no matter so secret that it should be withheld from directors. In the case of matters to be considered by the board, directors must insist that full details are made available to them in sufficient time to allow proper consideration.).</i></p>	<p>An internal procedure should be established to ensure that all directors, and in particular the non-executive directors, are provided with and have access to adequate information to enable them to perform their duties. The availability of information should be guaranteed to all directors equally.</p> <p>It is essential that the directors are provided with, and have access to, the information they require in good time. This is in particular the responsibility of the chairman, who may be assisted by the secretary to the board.</p> <p>Directors cannot use the information obtained for other purposes than for the exercise of their mandate. They have an obligation of discretion relating to the confidential information received in their capacity as director. (Part I: B.1.7)</p>	<p><i>Not covered.</i></p>

⁴⁰ See also ABA Guidebook at 10 & 20 (“When specific actions are contemplated, directors should receive appropriate information sufficiently in advance of the board or committee meeting to allow study of and reflection on the issues raised. Important time-sensitive materials that become available between meetings should be distributed to board members. . . . A balance should be sought between management presentations and discussion among directors and management” at board and committee meetings.).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
17. Board Materials and Presentations				
<p><i>Not covered.</i></p>	<p>[T]he chairman is obliged to provide directors, in due time, with all significant information necessary to the fulfillment of their supervisory duties. Directors should receive, in due time, documentation concerning items on the agenda requiring particular analysis and prior consideration (whenever this is not prevented by the need to respect confidentiality).</p> <p>The Committee considers that when directors believe they have not been put in a position to make an informed judgment, it is their duty to say so at the board meeting and to demand the information they need. (Viénot I at 17)</p> <p>Directors must ensure that they are properly informed and to this end make timely requests to the chairman for any information necessary for proper consideration of items on the board’s agenda. (Viénot I at 21)</p> <p>Prior and continuing information to the Directors is an essential requirement for proper performance of their duties.</p> <p>As the case-law has outlined it for the past 15 years, the Committee considers it desirable to affirm the following positions:</p> <ul style="list-style-type: none"> ▪ Corporations are bound to provide their Directors with the information required to take part effectively in the Board’s proceedings, prior to Board meetings if appropriate, in order to enable them to perform their duties appropriately. . . . ▪ This duty to provide prior and continuing information to the Directors, which must be sufficient, relevant and first-rate, lies with the chairman. . . . ▪ Conversely, the Directors are bound to call for the appropriate information that they consider necessary to perform their duties. <p>(Viénot II at 16)</p>	<p><u>Management Board</u></p> <p>All members of the Management Board receive information and supporting documentation relevant to the decision in good time before the Management Board meetings. (The Code, III.4.4)</p> <p><u>Supervisory Board</u></p> <p>To ensure the necessary basis of information for supervisory duties is the task of both the Management Board (“obligation lying in render”) and of the Supervisory Board (“obligation lying in collection”). The main responsibility for this lies with the Management Board as a result of the asymmetry of knowledge of both organs. (The Code, II.2.1)</p> <p>The Management Board’s general duty to provide information arises from the information system specified by the Supervisory Board. The Supervisory Board information system takes up the statutory duties to report and puts the content, frequency and technical provisions of the information to be supplied in concrete terms. (The Code, II.2.2)</p> <p>The Supervisory Board information system also stipulates that the Management Board reports once a year on the strategic development of the company. (The Code, II.2.3)</p> <p>All members of the Supervisory Board receive the schedule of supervision before each supervisory period. (The Code, IV.5.6)</p> <p>All documentation which is necessary for proper discussion of the items of the agenda pending, is delivered to the members of the Supervisory Board or the committees in good time before each meeting. (The Code, IV.5.8)</p> <p><i>See generally</i> the Code, II.2 (Provision of Information to the Supervisory Board).</p>	<p>The members of the Board of Directors should have all relevant information, act in good faith and with all required diligence and care in the interest of the corporation and its shareholders. (Recommendation 5.1)</p> <p>Internal audit procedures should be established ensuring that all members of the Board have timely, full and equitable access to all information required for the exercise of their duties. (Recommendation 5.10)</p> <p>It is essential that the members of the Board have full access to all information required, under the responsibility of the chief executive officer and the secretary of the Board. (Footnote 7 to Recommendation 5.10)</p> <p><i>See</i> Introduction (All functions of the Board of Directors . . . should aim at the enhancement of the entire performance of the corporation within an adequately supervised and informed environment.).</p>	<p>The chairman . . . shall endeavor to ensure that the members of the board are provided reasonably in advance of the date of the meeting (except in cases of necessity and as a matter of urgency) with the documentation and information needed for the board to express an informed view on the matters it is required to examine and approve. (The Code, 4.1; <i>see</i> the Report, 5.2)</p> <p><i>See</i> Commentary on the Code, 5 ([T]he Committee believes that, since the board of directors is required by law to inform the board of auditors, all the directors must possess at least as much information as is provided to the board of auditors.).</p> <p><i>See also</i> the Report, 5.1 (The Code . . . notes that the guidance function [of the board of directors] requires . . . knowledge of the facts.).</p> <p><i>See also</i> the Code, 6.2 and the Report, 5.3 (All the directors are required to treat the documents and information they acquire in the performance of their duties as confidential and to comply with the procedure for the disclosure to third parties of such documents and information.).</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
17. Board Materials and Presentations				
<i>Not covered.</i>	<p><i>Not covered directly, but see Recommendation 4.2 (The Board of Directors should report in writing to the Supervisory Board on the company's objectives, strategy and the associated risks and the mechanisms needed to control risks of a financial nature.).</i></p> <p><i>See also Recommendation 4.3 (The Board of Directors will report in writing to the Supervisory Board on the risks entailed in the policy and strategy.).</i></p> <p><i>See also Recommendation 4.3 (As a minimum requirement, the Board of Directors should report to the Supervisory Board on the results of its assessment of the structure and functioning of the internal control systems which are intended to provide reasonable certainty that the financial information is reliable.).</i></p>	<i>Not covered directly, but see the Code, Commentary on Recommendation 14 ([The board should] be duly informed at all times.).</i>	<p>The necessary measures must be adopted to ensure that Directors are duly provided with sufficient information, specifically put together for the purpose of preparing Board meetings. The significance or confidential nature of this information will not render this measure inapplicable, unless exceptional circumstances concur. (Code Recommendation 9)</p> <p>[T]he Chairman of the Board is not only supposed to call, prepare the agenda and lead the meetings, but must also ensure that members of the Board receive the necessary information. . . . (II.3.2)</p> <p>[A]mong the independent Directors, a Vice-President with co-ordination functions . . . could be empowered to call the Board meeting, put down new points on the agenda, submit information to directors, and voice their concerns. (II.3.2)</p> <p>The Secretary should see to the proper development of Board meetings, taking special care to provide directors with proper advice and information. . . . (II.3.3)</p> <p>We must underscore the authority and duty that each director individually has of seeking and obtaining all the information required for the fulfillment of his/her supervision functions. (II.6.1)</p>	<i>Not covered.</i>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
17. Board Materials and Presentations				
<p>It is for chairmen to make certain that their non-executive directors receive timely, relevant information tailored to their needs, [and] that they are properly briefed on the issues arising at board meetings. (The Report, 4.8)</p> <p>[T]he board should meet regularly, with due notice of the issues to be discussed supported by the necessary paperwork. (The Report, 4.23)</p> <p>See The Report, 4.14 (Boards should regularly review the form and the extent of the information which is provided to all directors.).</p>	<p>The board should be supplied in a timely fashion with information in a form and of a quality appropriate to enable it to discharge its duties. (Principle A.IV)</p> <p>We endorse the view of the Cadbury committee (Report, 4.14) that the effectiveness of non-executive directors (indeed, of all directors) turns, to a considerable extent, on the quality of the information they receive. (Guideline 2.6)</p>	<p>The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. (The Code, Principle A.4)</p> <p>Management has an obligation to provide the board with appropriate and timely information, but information volunteered by management is unlikely to be enough in all circumstances and directors should make further enquiries where necessary. The chairman should ensure that all directors are properly briefed on issues arising at board meetings. (The Code, Provision A.4.1)</p>	<p>A designated director or directors should work with the CEO . . . to ensure that all relevant materials are provided in a timely manner prior to each meeting. (p. 4)</p>	<p>The board must be given sufficient information to exercise fully its governance functions. This information comes from a variety of sources, including management reports, personal observation, a comparison of performance to plans, security analysts' reports, articles in various business publications, etc. Generally, board members should receive information prior to board meetings so they will have an opportunity to reflect properly on the items to be considered at the meeting. (p. 18)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
18. Number, Structure and Independence of Committees⁴¹				
<p>From time to time, the Board may want to form a new committee or disband a current Committee depending upon the circumstances. The current six Committees are Audit, Capital Stock, Director Affairs, Executive Compensation, Investment Funds and Public Policy. Except for the Investment Funds Committee, committee membership will consist only of independent Directors as defined in By-law 2.12. (Guideline 22)</p>	<p>Boards may consider establishing specific committees [which] may require a minimum number, or be composed entirely of, non-executive members. (OECD Principle V.E.1 Annotation at 42)</p> <p>Stock exchange listing requirements that address a minimal threshold for . . . audit committee independence have proved useful, while not unduly restrictive or burdensome. (Millstein Report, Perspective 15)</p>	<p>Where it is particularly important that boards exercise, and are seen to exercise, independent judgment, such as in the areas of company accounts, remuneration practices and the selection of board members, the independence and objectivity of the judgement can be enhanced by the appointment of appropriate committees. Their establishment is particularly important when boards are large or when executive directors constitute a powerful presence. In such cases, it is very desirable that the membership of the committees be seen to be predominantly independent.</p> <p>It is good practice for the membership of committees to be set out in the company's annual report, and consideration should be given to the disclosure of a summary of the terms of reference and other arrangements that have been put in place. (Guideline 1.3)</p> <p><i>See Topic Heading 19, below.</i></p>	<p>Certain directors – whether executive or non-executive -- may be given special responsibility for certain areas, on which they report to the full board. (Part I: B.1.5)</p> <p>The nomination committee should include a majority of non-executive directors and should be chaired by the chairman of the board or a non-executive director. (Part I: B.2.4)</p> <p>The executive management's pay should be subject to the recommendations of a remuneration committee . . . made up of a majority of non-executive directors. (Part I: B.3.2)</p> <p>[A]n audit committee should be established consisting of at least three non-executive directors whose authority and duties are clearly stated at the time of their appointment. (Part I: B.4.3)</p> <p><i>See Part I: B.1.5 (The board should lay down rules to determine materiality for different categories of transactions, establishing clearly which transactions require multiple board signatures. The board should also establish the procedures to be followed when, exceptionally, decisions are required between board meetings.).</i></p> <p><i>See also Part II: B.6 (If the company . . . is controlled or significantly influenced by one or more dominant shareholders, [disclosure should be made] of any agreements between these shareholders and of the contents of such agreements and of any committees established [and] the role played by these committees.).</i></p>	<p>If there is an appointments committee, it should be composed mostly of non-executive directors and chaired by the Chairman of the Board of Directors or by a non-executive director. The appointments committee should make proposals to the Board of Directors, on the one hand for the appointment of non-executive directors, and on the other hand for appointments to certain key posts. (Note to 2.3)</p> <p>If there is a remuneration committee, it should be exclusively composed of non-executive directors, and the remuneration of executive directors should be submitted to that committee for an opinion.</p> <p>If there is no remuneration committee, the remuneration of executive directors should be submitted to the non-executive directors. (3.1)</p> <p>The Board of Directors must exercise an audit function. To that end, it may set up an audit committee and determine its composition and mandate. (4.3)</p>

⁴¹ *See also 1990 Business Roundtable Statement* at 12-13 (“A wide diversity of approach in committee structure and function responds to the specific needs of companies facing different business challenges and different corporate cultures, and reflects the need to allow organizational experimentation. Each corporation should have an audit committee, a compensation/personnel committee, and a nominating committee. Other common committees are an executive committee to act for the board between meetings and handle other specifically assigned duties, and a finance committee. Some boards have a pension or retirement plan committee, a social responsibility or public policy committee, or other special function committees.”); *ABA Guidebook* at 24 (“Diversity in board structure and size does not allow uniform mandates for a particular committee organization.” Note that the Guidebook specifically discusses the Nominating, Audit and Compensation Committees (at 27-42). It also mentions the executive, finance and strategic planning committees, stating that each corporation needs to tailor the functions of these committees to its own needs (at 26).).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
18. Number, Structure and Independence of Committees				
<p>The board of directors of every corporation should appoint a committee of directors composed exclusively of outside, <i>i.e.</i>, non-management directors, a majority of whom are unrelated directors, with the responsibility for proposing to the full board new nominees to the board and for assessing directors on an ongoing basis. (Guideline 4)</p> <p>Committees of the board of directors should generally be composed of outside directors, a majority of whom are unrelated directors, although some board committees, such as the executive committee, may include one or more inside directors. (Guideline 9)</p> <p>Every board of directors should expressly assume responsibility for, or assign to a committee of directors, the general responsibility for, developing the corporation's approach to governance issues. This committee would, amongst other things, be responsible for the corporation's response to these governance guidelines. (Guideline 10)</p> <p>The audit committee of every board of directors should be composed only of outside directors. (Guideline 13)</p> <p>See § 6.3 at p. 39 (The inclusion of management on board committees should be the exception rather than the rule, reflecting our belief . . . on the importance of the board being able to function independently of management.).</p>	<p>[B]oards may appoint some of their members to form committees to consider specific aspects of company operations. Quite a number have set up such committees with responsibilities in such areas as remuneration, auditing and strategy, and these have been functioning satisfactorily for several years within the current legal framework. (Viénot I at 2)</p> <p>[I]t is up to each board to determine the most suitable structure for its own membership and that of the committees it sets up, and to ensure that markets and shareholders have no reason to doubt their independence and impartiality. (Viénot I at 10)</p> <p>The Committee recommends that all boards should set up special committees for the selection of directors, for remuneration and for accounting. (Viénot I at 18)</p> <p>[T]he presence of genuinely independent Directors in sufficient numbers on . . . Board committees is an essential factor in guaranteeing that the interests of all the shareholders will be taken into account in the corporation's decisions. In order to establish the role recognized for independent Directors, the Committee considers:</p> <ul style="list-style-type: none"> ▪ that they should account for at least one-third of the Board of Directors, the audit committee and the appointments committee; ▪ that they should be in the majority of the compensation and options committee, having regard to its duties; ▪ that they should be identified individually in the annual report. <p>(Viénot II at 15)</p> <p><i>See Viénot I at 18-19 (independence of remuneration and audit committees).</i></p> <p><i>See Topic Heading 3, above (Selection committee).</i></p>	<p>The Supervisory Board forms committees in order to increase working efficiency. The committees should have at least three but no more than five members. The Chairman of the Supervisory Board co-ordinates the activities between the committees in consultation with the chairpersons of the committees. (The Code, IV.3.3)</p> <p>The number and tasks of the committees depend on the size of the Supervisory Board and the respective realities of the company. This includes principally the size of the company as well as the type, degree of diversification and geographical extent of its value-creating processes. Normally, there is to be established:</p> <ul style="list-style-type: none"> ▪ at least one business committee for managerial key policy issues, ▪ a personnel committee for all matters affecting the personnel of the Management Board and, if necessary, a committee pursuant to §27(3) of the Co-Determination Act 1976, ▪ an investment and finance committee, ▪ an audit committee, and ▪ a committee for corporate governance. <p>Next to these are committees to be considered for particularly important functions (such as research and development), products and markets of the company. (The Code, IV.3.4)</p>	<p>The establishment of an Internal Audit Committee should be encouraged, which will consist of non-executive members of the Board of Directors whose power and duties are clearly described during the approval of their appointment by the general shareholder meeting. (Recommendation 4.7)</p> <p>It is a good practice that a review committee, consisting of the majority of non-executive Board members, be established by the general shareholder meeting, which would review management compensation. (Recommendation 7.2)</p>	<p>The board of directors shall . . . delegate powers to the managing directors and to the executive committee. (The Code, 1.2)</p> <p>Where the board of directors has established a committee to propose candidates for appointment to the position of director, the majority of the members of such committee shall be non-executive directors. (The Code, 7.2)</p> <p>However, the large proportion of companies with concentrated ownership . . . and the by-laws providing for election lists in some companies with a broad shareholder base, suggested that it would not be advisable to institutionalize such a [nominations] committee. (The Report, 5.4.1)</p> <p>The board of directors shall form a remuneration committee . . . , the majority of whose members should be non-executive directors (The Code, 8.1; <i>see</i> The Report, 5.4.2)</p> <p>[However,] [d]etermining . . . remuneration of top management obviously remains the task of the managing directors. (Commentary on the Code, 8)</p> <p>The board of directors shall establish an internal control committee . . . made up of an appropriate number of non-executive directors. (The Code, 10.1; <i>see</i> the Report, 5.4.3)</p> <p>[D]ialogue [with institutional investors] can be fostered by . . . an <i>ad hoc</i> . . . structure for this function. (The Report, 5.5)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
18. Number, Structure and Independence of Committees				
<p>Several committees should be established within the board, with responsibilities for the appointment of directors, setting directors' remuneration, expediting corporate governance, and so on. Non-executive directors should comprise the majority on these committees. The chairpersons of these committees should be non-executive directors. Remuneration of the <i>shacho</i> and the executive directors should be decided only by non-executive directors. (Principle 9B)</p> <p>An audit committee should be created within the board of directors as soon as the majority of the directors are independent and non-executive. All members of the audit committee should be non-executive directors. Its function will be to audit, in particular, the appropriateness of the company's risk management, in addition to overseeing compliance issues. (Principle 13B)</p> <p>Suitable outside persons should be included as non-executive members of the board of directors. For companies where this may be difficult to carry out immediately, we recommend the appointment of a "management advisory committee" composed of some outside persons as a transitional measure. In this case the rights and responsibilities of the advisory committee should be clearly defined. (Comment on Principle 5A)</p> <p>[T]he board of directors might make greater use of support and information staff, <i>e.g.</i>, "executive committees" which are common in the U.S. (Ch. 2.6)</p>	<p><i>Not covered directly, but see Recommendation 3.2 (The Supervisory Board considers whether to appoint from its midst a selection and nomination committee, an audit committee and a remuneration committee. These committees submit reports on their findings and make recommendations to the full Supervisory Board.).</i></p>	<p>The board is encouraged to create internal control committees with powers conferred for matters in which there are potential situations of conflicts of interest, such as the nomination of directors and managers, the analysis of the remuneration policy and assessment of the corporate structure and governance. (Recommendation 17)</p> <p>If an Executive Committee is created, its composition should reflect, insofar as it is possible, the balance existing in the board between directors linked to dominant shareholders and independent shareholders. (Recommendation 16)</p>	<p>The composition of the Executive Committee, if there is one, should reflect the existing balance in the Board of Directors among the different types [of directors]. Relationships between both [bodies] should be inspired on the transparency principle, in order that the Board is completely aware of the matters dealt with and the decisions made by the Committee. (The Code, Recommendation 7)</p> <p>The Board of Directors should create Control Committees within the Board, made up solely of outside directors, for information and accounting control matters (Audit Committee), the selection of directors and executives (Nomination Committee), defining and reviewing remuneration policies (Remuneration Committee), and evaluating the governance system (Compliance Committee). (The Code, Recommendation 8)</p> <p><i>See Topic Heading 19, below.</i></p>	<p><i>Not covered directly, but see p. 7 (Several larger companies have appointed Nomination, Remuneration, and Auditing Committees to propose remuneration to board members and to the managing director at the [Annual General Meeting]. The Auditing Committee, consisting of some of the board members, shall meet the accountants at least once a year. The managing director is not to participate in this committee.).</i></p> <p><i>See also the Code, 11.2 (recommending an "agenda committee" when the roles of chairman and CEO are combined).</i></p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
18. Number, Structure and Independence of Committees				
<p>The board should establish an audit committee of at least three non-executive directors with written terms of reference which deal clearly with its authority and duties. (The Code, 4.3)</p> <p>A nomination committee should have a majority of non-executive directors on it and be chaired by either the chairman or a non-executive director. (The Report, 4.30)</p> <p>Membership [of the audit committee] should be confined to the non-executive directors of the company and a majority of the non-executives serving on the committee should be independent. (The Report, 4.35)</p> <p>We also recommend that boards should appoint remuneration committees, consisting wholly or mainly of non-executive directors and chaired by a non-executive director, to recommend to the board the remuneration of the executive directors in all its forms, drawing on outside advice as necessary. (The Report, 4.42)</p> <p><i>See also</i> The Report, APPENDIX 4, AUDIT COMMITTEES, and Topic Heading 19, below.</p>	<p>We support the Cadbury committee’s endorsement of the nomination committee (Cadbury Report, 4.30); indeed, we believe that the use of such a committee should be accepted as best practice. (Guideline 3.19)</p> <p>Cadbury and Greenbury both recommended that the boards of listed companies should establish a remuneration committee to develop a policy on the remuneration of executive directors and, as appropriate, other senior executives; and to set remuneration packages for the individuals concerned. We agree. We also agree with Greenbury that the membership of this committee should be made up wholly of independent non-executive directors. (Guideline 4.11)</p> <p>Larger companies have implemented the [Cadbury Report] recommendations [that each company should establish an audit committee of at least three non-executive directors, at least two of them independent] almost universally, and we believe that the results have been beneficial. Audit committees have strengthened the independence of the auditors by giving them an effective link to the board; and the explicit remit of the audit committee has strengthened its members in questioning the executive directors. (Guideline 6.3)</p> <p>We do not favour relaxing the guidelines on this point by size of company. (Guideline 6.4)</p>	<p>Unless the board is small, a nomination committee should be established to make recommendations to the board on all new board appointments. A majority of the members of this committee should be non-executive directors, and the chairman should be either the chairman of the board or a non-executive director. (The Code, Provision A.5.1)</p> <p>Remuneration committees should consist exclusively of non-executive directors who are independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgment. (The Code, Provision B.2.2)</p> <p>The board should establish an audit committee of at least three directors, all non-executive, with written terms of reference which deal clearly with its authority and duties. The members of the committee, a majority of whom should be independent non-executive directors, should be named in the report and accounts. (The Code, Provision D.3.1)</p> <p>The role of board committees in the review [of the effectiveness of internal control], including that of the audit committee, is for the board to decide, and will depend upon factors such as the size and composition of the board; the scale, diversity and complexity of the company’s operations; and the nature of the significant risks that the company faces. (Turnbull Report, 26)</p>	<p>Boards should require that key committees—compensation, audit, and nominating or governance—include only independent directors, and are free to hire independent advisors as necessary.</p> <p>Boards should establish guidelines for, and discuss with some pre-defined frequency, the number of committees [and] the size and structure of committees. (p. 5)</p>	<p>For certain functions, such as membership on an audit or compensation committee, more specific standards of independence should be used. For example, Section 162(m) of the Internal Revenue Code prescribes certain standards that the compensation committee must meet to permit the deduction for federal income tax purposes of performance-based compensation exceeding \$1 million paid to the CEO and the four other highest paid executive officers. There are other examples of prescribed standards for members of the compensation committee under §16 of the Securities Exchange Act of 1934 and for members of the audit committee under rules of the New York Stock Exchange. In addition, more particularized rules apply in certain industries, such as banking. It is recommended that the board, or a committee such as the governance/nominating committee, periodically confirm that the composition of the relevant committees meets the applicable requirements as well as any other criteria determined by the board. (pp. 11-12)</p> <p>It is recommended that each corporation have an audit committee, which is required under New York Stock Exchange rules, a compensation/personnel committee, and a nominating/governance committee and that membership in these committees be limited to outside directors. The board may also wish to establish other committees with other specific responsibilities. (p. 15)</p> <p><i>For a full discussion of committee functions, see pp. 15-16.</i></p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
19. Assignment and Rotation of Committee Members⁴²				
<p>The Committee on Director Affairs is responsible, after consultation with the Chairman of the Board and with consideration of the desires of individual Board members, for the assignment of Board members to various Committees.</p> <p>It is the sense of the Board that consideration should be given to rotating Committee members periodically at about a five year interval, but the Board does not feel that such a rotation should be mandated as a policy since there may be reasons at a given point in time to maintain an individual Director's Committee membership for a longer period. (Guideline 23)</p>	<p><i>Not covered directly, but see</i> OECD Principle V.E Annotation at 41-42 ([Independent board members] can play an important role in areas where the interests of management, the company and shareholders may diverge, such as executive remuneration, succession planning, changes of corporate control, takeover defenses, large acquisitions and the audit function.).</p> <p><i>See also</i> Topic Heading 18, <i>above</i>.</p>	<p>It is particularly important that nomination committees should have at least a majority of independent non-executive directors, one of whom should be chairman. If the chairman of the board is an independent director, it is appropriate that they chair the nomination committee. (Guideline 2)</p> <p>The Working Group recommends that the boards of public companies, and in particular companies listed on the Australian Stock Exchange, should appoint remuneration committees with at least a majority of independent non-executive directors. (Guideline 5)</p> <p>The Working Group considers that each listed company board of more than four members should appoint an audit committee with at least a majority of non-executive directors; the members should preferably be independent. (Guideline 6)</p>	<p><i>Not covered directly, but see</i> Topic Heading 18, <i>above</i>, and Topic Heading 20, <i>below</i>.</p>	<p><i>Not covered.</i></p>

⁴² See also [1990 Business Roundtable Statement](#) at 12 (“It is recommended that the audit committee, compensation/personnel committee and nominating committee limit their membership to non-management directors only.”); [ABA Guidebook](#) at 25, 27, 34, 38, 40 (“The composition of the committee should be appropriate to its purpose. This includes relevant experience and independence from management by all or at least a majority of the members of such key committee as audit, nominating, and compensation. . . . “The role of the Nominating Committee in some corporations has been broadened to include making recommendations to the board regarding the responsibilities, organization, and membership of board committees. . . . The Compensation Committee should be composed solely of non-management directors. The Audit Committee should be composed solely of independent directors. The Nominating Committee should be composed of directors who are not officers or employees of the corporation.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
19. Assignment and Rotation of Committee Members				
<p>If the chair of the board is separate from the CEO, he or she might be an appropriate person to chair the governance committee or the committee responsible for governance matters. (§ 6.6 at p. 39)</p> <p>Any concern that the governance committee or the nominating committee has the real power of the board and therefore creates two classes of directors can be addressed by providing for rotation of membership through the committees. (§ 6.8 at p. 40)</p> <p><i>See Topic Heading 18, above.</i></p>	<p>[T]he Committee advises boards against appointing directors to their remunerations or audit committees when these directors represent another company where its own representatives are members of the equivalent committees. (Viénot I at 14)</p> <p>[T]he Committee recommends that boards should avoid appointing directors to their remunerations committee when these directors represent another company whose own representatives are members of the equivalent committee. (Viénot I at 18)</p>	<i>Not covered</i>	<i>Not covered.</i>	<p>The managing directors shall . . . appoint one or more persons to run [the internal control committee]. (The Code, 9.1)</p> <p>[P]rovision [is] made for the possible participation at meetings of the [internal control] committee of the chairman of the board of auditors, as the representative of the control body provided for in the by-laws. The managing directors may also participate in the internal control committee, since they are empowered to intervene in the matters examined and to identify adequate measures to tackle potentially critical situations. (Commentary on the Code, 10)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
19. Assignment and Rotation of Committee Members				
<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered directly, but see</i> Commentary on Recommendation 17 ([T]he members of each committee [need not] be different; however, it is not recommended to unite all responsibilities into one single committee, because of the risk of reducing its efficiency due to an excess of work and concentration of powers.).	The Nomination Committee's mission is to watch over the integrity of the process of appointing directors; to this end, it seems wise to entrust it with . . . propos[ing] which directors should be in each Committee. (The Report, II.5.1) [T]he Committee believes that other types of measures [besides term limits] must be considered to minimize risks [of weakened independence of directors due to long-term directorships] and specifically suggests the possibility of creating internal rotation guidelines for independent directors regarding their assignment to specific control tasks. It is basically a question of avoiding their permanent attachment to the same Control Committee. (The Report, II.5.4)	<i>Not covered.</i>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
19. Assignment and Rotation of Committee Members				
<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>	Boards should establish guidelines for, and discuss with some pre-defined frequency . . . the selection and rotation of committee members. (p. 5)	<i>Not covered.</i>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
20. Committee Meeting Frequency, Length and Agenda⁴³				
<p>The Committee Chairman, in consultation with committee members, will determine the frequency and length of the meetings of the Committee. (Guideline 24)</p> <p>The Chairman of the Committee, in consultation with the appropriate members of Committee and management, will develop the Committee's agenda.</p> <p>Each Committee will issue a schedule of agenda subjects to be discussed for the ensuing year at the beginning of each year (to the degree these can be foreseen). This forward agenda will also be shared with the Board. (Guideline 25)</p>	<p><i>Not covered directly, but see Topic Heading 18, above.</i></p>	<p><i>Not covered.</i></p>	<p>Certain directors – whether executive or non-executive -- may be given special responsibility for certain areas, on which they report to the full board. Irrespective of the special powers invested in certain individuals, the board of directors as a whole retains responsibility for fulfilling its obligations. (Part I: B.1.5)</p> <p>The Commission's recommendations on audit committees are as follows:</p> <p>a) They should be formally created as sub-committees of the main board, to whom they are answerable and should report regularly; they should be given written terms of reference which deal adequately with their membership, authority and duties; they should meet at least twice a year.</p> <p>b) Membership should be confined to the non-executive directors, and there should be a majority of independent directors. . . .</p> <p>c) The audit committee should have a discussion with the internal and external auditors (including statutory auditors) at least once a year, from which the executive directors may be excluded, to ensure that there are no unresolved issues of concern.</p> <p>d) The audit committee should have explicit authority to investigate any matters within its terms of reference, to have available the resources which it needs to do so and have full access to information. The committee should be able to obtain outside professional advice and, if necessary, to invite outsiders with the relevant experience to attend meetings. (Part I: B.4.3)</p>	<p>If there is an audit committee, it should comply with the following rules:</p> <p>a) It is set up by the Board of Directors, to which it is accountable and to which it must regularly give an account of its mandate. It meets at least twice each year.</p> <p>b) The composition of the committee is determined by the Board of Directors. It will ensure that the committee includes non-executive directors and independent directors. . . .</p> <p>c) The company auditors and, if such exist, the person responsible for the internal audit and the financial director, should attend the meetings of the committee. These meetings are also accessible to all directors who wish to attend.</p> <p>d) The committee should hear the company auditors at least once each year, on an occasion when the executive directors are not present.</p> <p>e) The committee has the widest investigative powers within its domain and may, by a majority decision, call upon professionals from outside the company and allow them to attend its meetings.</p> <p>f) The composition of the committee is announced in the Annual Report and the Chairman of the committee replies to the questions which are asked at the General Meeting about the activities of the committee.</p> <p>(Note to 4.3)</p>

⁴³ See also ABA Guidebook at 20 & 25 ("Time at . . . committee meetings should be budgeted carefully. A balance should be sought between management presentations and discussion among directors and management. Written reports that can be given concisely and effectively in advance should be furnished. . . . The full board should satisfy itself that its committees are following an appropriate schedule of meetings and have agendas and procedures to enable them to fulfill their delegated functions. Furthermore, the full board should be kept informed of committee activities. This includes periodic reports at board meetings and circulation of committee minutes and reports of meetings to all directors.").

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
20. Committee Meeting Frequency, Length and Agenda				
<p>[The governance or nominating] committee would propose changes to the board of directors necessary to respond to the governance guidelines. This committee would also be responsible for the explanation to the investment community of the differences between the corporation’s governance system and the guidelines. (§§ 6.4, 6.5 at p. 39)</p> <p>The governance committee . . . will also function as a forum for concerns of individual directors about matters that are not readily or easily discussed in a full board meeting. (§ 6.7 at p. 39)</p> <p>The audit committee should have direct communication channels with the internal and external auditors to discuss and review specific issues as appropriate. The audit committee duties should include oversight responsibility for management reporting on internal control. While it is management’s responsibility to design and implement an effective system of internal control, it would be the responsibility of the audit committee to ensure that management has done so. (§ 6.21 at p. 43)</p> <p>Executive committees are generally delegated all the powers of the board, except for powers which can effect a fundamental change to the corporation. The historical model of the executive committee comprised of the real decision-makers within the board has virtually disappeared. We support this trend. (§ 6.22 at p. 43)</p> <p>See § 6.18 at p. 40 (When the board appoints a committee, it has to spell out the authority of the committee and, in particular, whether the committee has the authority to act on behalf of the board or simply has authority to examine a particular issue and report back to the board with a recommendation.).</p>	<p>[T]he frequency and duration of meetings [of Board committees] cannot be subjected to any standards, as the situations and needs vary extensively in this area.</p> <p>It remains that it is up to the Directors to ensure that they are such as to allow in-depth review and discussion of matters within the purview of the Board and Board committees. (Viénot II at 16)</p> <p>The Committee considers that it is up to the audit committee to ascertain [the independence of a corporation’s outside auditors], and to report on this matter to the Board of Directors every year.</p> <p>Likewise, it is up to the audit committee to ascertain that the amount of fees for auditing, assistance and consultancy paid by the corporation and affiliates of its group to the statutory auditors’ network does not account for an excessive percentage of the total fees collected by that network during the year, and to report on the matter to the Board of Directors annually. (Viénot II at 17)</p> <p>The election among various [accounting] standards may be momentous for corporations’ earnings, according, for instance, to the duration selected for amortization of goodwill, or the duty to amortize intangible assets or not.</p> <p>The financial managers and statutory auditors of corporations are naturally in charge of the technical reviews of this matter.</p> <p>The Committee considers, however, that it is up to the audit committee to obtain the technical reviews supported by appropriate documentation, and to ensure that it is updated having regard to the rapid changes in accounting standards.</p> <p>The Audit Committee should then report to the Board of Directors. (Viénot II at 18)</p> <p>See Viénot I at 18-19 (overview of audit committee tasks).</p>	<p>The chairman of the Supervisory Board prepares a systematic schedule of supervision which stipulates the sequence and main focus of the topics more precisely to be discussed in the individual meetings of the Supervisory Board or its committees. (The Code, IV.5.4)</p> <p>The chairpersons stipulate the agenda for the individual meetings of the Supervisory Board and its committees on the basis of the schedule of supervision as well as current developments. (The Code, IV.5.7)</p>	<p>The Internal Audit Committee:</p> <ul style="list-style-type: none"> ▪ Should be established as a sub-committee of the Board of Directors, to which it is accountable, and should inform regularly. The operation of the sub-committee should be characterized by clearly defined reference terms. . . . The meetings of the sub-committee should take place regularly, two or three times per year. ▪ Should include in its composition at least three non-executive members of the Board of Directors. ▪ Should communicate with the internal (independent) and external auditors of the corporation ▪ Should have the authority to inquire into all matters that fall into its domain, have the required financial resources as well as have access to all necessary information required to accomplish its tasks. The Internal Audit Committee should be able to obtain external advice and, if necessary, to invite external specialists to attend the workings of the committee. ▪ Should disclose its composition in the corporation’s annual report. <p>(Recommendation 4.7)</p> <p>The Board of Directors should make available the resources required to assist the exercise of proper and efficient internal auditing. (Recommendation 4.8)</p> <p>See Recommendation 4.9 (The members of the Board of Directors should disclose to the Internal Audit Committee all necessary information regarding the prospects of the corporation.).</p>	<p>The executive committee – in the person of its chairman – and the managing directors shall periodically report to the board of directors. . . .</p> <p>The bodies with delegated powers shall also provide adequate information . . . to the board of directors. They shall provide the board of directors and the board of auditors with the same information. (The Code, 5)</p> <p>[The] remuneration committee . . . shall submit proposals to the board on the remuneration of the managing directors and of those directors who are appointed to particular positions and, on the indication of the managing directors, on the criteria for determining the remuneration of the company’s top management. (The Code, 8.1; see the Report, 5.4.2)</p> <p>[T]he internal control committee shall:</p> <ol style="list-style-type: none"> a) assess the adequacy of the internal control system; b) assess the work program prepared by the persons responsible for internal control, and receive periodic reports; c) assess the proposals put forward by auditing firms to obtain the audit engagement, the work program for carrying out the audit and the results thereof as set out in the auditors’ report . . . ; d) report to the board of directors on its activity and the adequacy of the internal control system at least once every six months . . . ; e) perform other duties entrusted to it by the board of directors, particularly as regards relations with auditing firms. <p>(The Code, 10.2; see the Code, 9.2 and the Report, 5.4.3)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
20. Committee Meeting Frequency, Length and Agenda				
<i>Not covered.</i>	The Supervisory Board or the Audit Committee should meet with the auditor at least once a year. (Recommendation 6.4)	As a general rule, the function of [the nomination, remuneration and corporate governance] committees should be basically informative and consultative, since they are not supposed to replace the board in decision-making but rather provide it with information, advice and proposals that may help it efficiently develop its function of supervision and increase the quality of its performance in these matters. (Commentary on Recommendation 17)	<p>The role of the Audit Committee is basically that of evaluating the company's auditing system, ensuring that the external auditor is independent, and reviewing the internal control system. The major function of the Nomination Committee is to see to the soundness of the selection process for the company's directors and top management, seeing to it that the candidates meet the profile required for the vacant position. The basic task of the Remuneration Committee is to assist the Board in determining and supervising the remuneration policy of the company's directors and top management. The basic mission of the Compliance Committee is to watch over compliance with the company governance rules, reviewing results from time to time and reporting reform proposals to the Board. (The Report, II.3.6)</p> <p>[T]he Audit Committee must be entrusted with at least the following powers: (a) propose the auditors, terms and conditions of the audit agreement and, as the case may be, revocation or non-renewal; (b) review the company's accounts, watching over compliance with legal requirements and the proper application of generally accepted accounting principles, as well as reporting management proposals to change accounting principles and criteria; (c) act as a communication channel between the Board of Directors and the auditors, evaluating the results of each audit and the management team's response to their recommendations, and mediate and arbitrate in the event of any disagreement regarding the appropriate principles and criteria to be used in the preparation of financial statements; (d) verify the adequacy and integrity of internal control systems and supervise the appointment and replacement of the individuals in charge; (e) supervise the fulfillment of the audit agreement, seeing to it that the opinion on the annual accounts and the main contents of the auditing report are written in a clear and accurate way. (The Report, II.11.1)</p>	<i>Not covered.</i>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	Combined Code (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
20. Committee Meeting Frequency, Length and Agenda				
<p>[A] nomination committee [has] the responsibility of proposing to the board, in the first instance, any new appointments, whether of executive or of non-executive directors. (The Report, 4.30)</p> <p>[Audit committees] should normally meet at least twice a year. (The Report, 4.35(a))</p> <p>The audit committee's duties should be determined in the light of the company's needs but should normally include:</p> <ul style="list-style-type: none"> i. making recommendations to the board on the appointment of the external auditor, the audit fee, and any questions of resignation or dismissal; ii. review of the half-year and annual financial statements before submission to the board; iii. discussion with the external auditor about the nature and scope of the audit, co-ordination where more than one audit firm is involved, any problems or reservations arising from the audit, and any matters which the external auditor wishes to discuss, without executive board members present; iv. review of the external auditor's management letter; v. review of the company's statement on internal control systems prior to endorsement by the board; vi. review of any significant findings of internal investigations. <p>(The Report, 4.35(e))</p> <p>Where an internal audit function exists, the audit committee should ensure that it is adequately resourced and has appropriate standing within the company. (The Report, 4.35(f))</p>	<p><i>See Topic Heading 18, above.</i></p>	<p>The remuneration committee should provide the packages needed to attract, retain and motivate executive directors of the quality required but should avoid paying more than is necessary for this purpose. (The Code, Provision B.1.1)</p> <p>Remuneration committees should judge where to position their company relative to other companies. They should be aware what comparable companies are paying and should take account of relative performance. (The Code, Provision B.1.2)</p> <p>Remuneration committees should be sensitive to the wider scene, including pay and employment conditions elsewhere in the group, especially when determining annual salary increases. (The Code, Provision B.1.3)</p> <p>To avoid potential conflicts of interest, boards of directors should set up remuneration committees of independent non-executive directors to make recommendations to the board, within agreed terms of reference, on the company's framework of executive remuneration and its cost; and to determine on their behalf specific remuneration packages for each of the executive directors, including pension rights and any compensation payments. (The Code, Provision B.2.1)</p> <p>The duties of the audit committee should include keeping under review the scope and results of the audit and its cost effectiveness and the independence and objectivity of the auditors. (The Code, Provision D.3.2)</p>	<p>For committee meetings, committee chairs should work with the CEO and committee members to create agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting. (p. 4)</p>	<p><i>Not covered.</i></p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
21. Formal Evaluation of the Chief Executive Officer⁴⁴				
<p>The full Board (independent Directors) should make this evaluation [of the CEO] annually, and it should be communicated to . . . the Chief Executive Officer by the Chairman of the Committee on Director Affairs. The evaluation should be based on objective criteria including performance of the business, accomplishment of long-term strategic objectives, development of management, etc. The evaluation will be used by the Executive Compensation Committee in the course of its deliberations when considering the compensation of the . . . Chief Executive Officer. (Guideline 26)</p>	<p><i>Not covered directly, but see OECD Principle V.D.2 (The board should fulfil certain key functions, including . . . [s]electing, compensating, monitoring and, when necessary, replacing key executives.).</i></p> <p><i>See also OECD Principle V.E Annotation at 41 ([Independent board members] can bring an objective view to the evaluation of the performance of . . . management.).</i></p>	<p>The board should assess the performance of the CEO annually. (Guideline 2)</p>	<p><i>Not covered.</i></p>	<p><i>Not covered directly, but see 2.1 (A recommendation from [the non-executive directors] is required for appointments to certain key posts and for the standards of conduct which the company imposes on itself.).</i></p>

⁴⁴ See also 1994 NACD Report at 1, 3 (“Formal performance reviews of the CEO are necessary. The process can take many different forms, depending on the company. Every board should consider developing a job description for the CEO. The CEO and the board should agree to performance objectives, established in advance of each fiscal year. Such objectives might include quantitative performance factors and qualitative ones, such as integrity, vision and leadership.”); 1990 Business Roundtable Statement at 8, 15 (“Boards must have in place a credible process that ensures that the CEO’s performance is reviewed periodically. That review must lead to appropriate compensation and continuation decisions. . . . The most difficult duties of the board include a thorough evaluation of the CEO. The non-management directors (or a committee such as the Compensation Committee) are responsible for periodically evaluating the CEO’s performance. This evaluation is used to guide the board’s decisions about the CEO’s compensation, incentive pay and continued employment, as well as to identify strengths or areas needing improvement. The CEO will, of course, be informed of the results of the evaluation.”); ABA Guidebook at 4 (The board has the responsibility to evaluate “the performance of senior management and to take appropriate action, including removal, when warranted. . . . Nominating Committee members should actively and directly review the performance of the CEO and members of senior management.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
21. Formal Evaluation of the Chief Executive Officer				
<p>The board of directors, together with the CEO, should develop position descriptions for the board and for the CEO, involving the definition of the limits to management’s responsibilities. In addition, the board should approve or develop the corporate objectives which the CEO is responsible for meeting. (Guideline 11)</p> <p><i>See § 6.7 at pp. 39-40 (The governance committee . . . will also function as a forum for concerns of individual directors about matters that are not readily or easily discussed in a full board meeting. These matters could include the performance of management or individual members of management. . . . We recognize that assessment of management may be the responsibility of the Human Resources Committee. . . . The important principle, of course, is that these responsibilities be assumed by one or more committees of the board.)</i></p>	<p><i>Not covered directly, but see p. 15 (The appointment of the chairman . . . is the sole responsibility of the board.)</i></p>	<p>The individual performance of . . . the Chairman of the Management Board is . . . to be systematically evaluated annually by the personnel committee. In this, the target-orientated development of the company and the individual contributions made [by the Chairman] provide the scale for making the assessment. (The Code, II.1.10 at 11)</p> <p>The Chairman of the Management Board . . . is <i>primus inter pares</i> (and not “CEO”). In particular, he does not have right of command over the other members of the Management Board. (The Code, III.3.3 at 18)</p>	<p>Shareholders should have the right to . . . the approval of the . . . chief executive officer (CEO) [and] his/her duties . . . , following the recommendations of the Board of Directors. (Recommendation 1.2.6)</p> <p><i>See Recommendation 5.1 ([T]he Board should . . . monitor continuously the corporation’s executive management.)</i></p> <p><i>See also Recommendation 5.3.3 (The Board of Directors has the responsibility . . . for . . . [t]he selection, appointment and monitoring of executive management . . . by taking account of the corporation’s interests, as well as the executive management’s dismissal and replacement.)</i></p>	<p><i>Not covered directly, but see the Code, 8.1 (The [remuneration] committee . . . shall submit proposals to the board . . . on criteria for determining the remuneration of the company’s top management.)</i></p> <p><i>See also the Code, 8.2 ([I]n determining the total remuneration payable to the managing directors, the board of directors shall provide for a part to be linked to the company’s profitability and, possibly, to the achievement of specific objectives laid down in advance by the board of directors itself.)</i></p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
21. Formal Evaluation of the Chief Executive Officer				
<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered directly, but see Recommendation 2 (Information should be disclosed on the actual functions of each member of the board of directors and executive management of the company.).</i>	[I]t seems wise to complement these measures [for counterbalancing the power of a combined CEO/Chairman] with an evaluation of the Chairman's performance once a year – as Chairman and as corporate CEO. (The Report, II.3.2)	<i>Not covered.</i>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
21. Formal Evaluation of the Chief Executive Officer				
<p><i>Not covered directly, but see The Report, 4.4 & 4.5 (noting the important contributions non-executive directors have in reviewing the performance of the board and of the CEO).</i></p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>	<p>Boards should regularly and formally evaluate the CEO. . . . Boards should ensure that independent directors create and control the methods and criteria for evaluating the CEO. (p. 6)</p>	<p>The selection and evaluation of the chief executive officer and concurrence with the CEO's selection and evaluation of the corporation's top management team is probably the most important function of the board. In its broader sense, "selection and evaluation" includes considering compensation, planning for succession and, when appropriate, replacing the CEO or other members of the top management team.</p> <p>The performance of the CEO should generally be reviewed at least annually without the presence of the CEO and other inside directors. The board should have an understanding with the CEO with respect to the criteria on which he or she will be evaluated, and there should be a process for communicating the board's evaluation to the CEO. (p. 5)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
22. Succession Planning / Management Development⁴⁵				
<p>There should be an annual report by the Chief Executive Officer to the Board on succession planning.</p> <p>There should also be available, on a continuing basis, the Chairman's and the Chief Executive Officer's recommendation as to a successor should he/she be unexpectedly disabled. (Guideline 27)</p> <p>There should be an annual report to the Board by the Chief Executive Officer on the Company's program for management development.</p> <p>This report should be given to the Board at the same time as the succession planning report noted previously. (Guideline 28)</p>	<p>The board should fulfil certain key functions, including . . . overseeing succession planning. (OECD Principle V.D.2)</p> <p>[Independent board members] can play an important role in areas where the interests of management, the company and shareholders may diverge, such as . . . succession planning. (OECD Principle V.E Annotation at 41-42)</p>	<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>

⁴⁵ See also 1990 Business Roundtable Statement at 7 (“The primary function of the board of directors includes concurrence with the CEO’s selection of the company’s top management team.”); ABA Guidebook at 41 (“[N]on-management directors may wish to utilize one or more board positions to evaluate the succession prospects of certain individuals and to ensure that they themselves develop a peer relationship and firsthand contact with senior executives who have detailed knowledge of the corporation’s business.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
22. Succession Planning / Management Development				
<p>The board of directors of every corporation should explicitly assume responsibility for the stewardship of the corporation and, as part of the overall stewardship responsibility, should assume responsibility for . . . succession planning, including, appointing, training and monitoring senior management. (Guideline (1)(iii))</p>	<p>In contrast to the situation in other countries, it is generally thought that French boards do not make adequate provision for the replacement of the chairman, which makes for some concern on the market.</p> <p>The Committee thus recommends that it should be the permanent responsibility of the selection committee to be in a position to propose successors at short notice, although clearly this would require confidentiality. (Viénot I at 15)</p> <p>The Committee wishes to stress the need for a plan for succession of executive Directors. This is one of the main tasks of the appointments committee, though it may, if appropriate, be assigned by the Board to an <i>ad hoc</i> committee.</p> <p>It is natural that the corporation's Chairman should be a member of the committee in performance of this assignment. However, even though his or her opinion should be obtained, it is not desirable that the Chairman should chair this committee. (Viénot II at 18)</p> <p>The appointments committee (or an <i>ad hoc</i> committee) should draw up a plan for succession of the executive directors. The chairman should be a member of that committee, but not its chairman. (Viénot II at 26)</p>	<p>Recruiting members of the Management Board from within the ranks of the company's own executives is the normal case and is the result of planned training for the next generation. The Management Board should be endowed with a particularly good insight into the current potential of junior management by reason of its position as organ of management. Consequently, it is advisable that the members of the Management Board (as part of their managerial functions) narrow down the circle of potential successors to a manageable number of persons. The Chairman of the Supervisory Board is kept informed about this from time to time. (The Code, II.1.4)</p> <p>The suggestions of the Management Board should certainly not unduly restrict the options of the Supervisory Board as regards personnel. The Supervisory Board can and must more objectively assess the contribution of possible candidates to an optimal qualification profile of the organ of management, by reason of its greater distance. Accordingly, the Management Board's knowledge of personnel matters is to be combined with the neutrality of the Supervisory Board. (The Code, II.1.5)</p> <p>In order to allow the members of the Supervisory Board the opportunity of systematically becoming acquainted with potential candidates for membership of the Management Board, the Management Board regularly suggests persons from the inner circle of junior management for presentations in the Supervisory Board and its committees. (The Code, II.1.7)</p>	<p>[E]fficient governance means that, in view of the accomplishment of good long-term corporate performance and sustainability, executive management should be endowed with considerably flexibility and freedom of movement which would make possible the proper and timely acquisition and implementation of organizational and technological knowledge. Efficient knowledge is an essential prerequisite for the effective confrontation of modern competitive challenges. In such a flexible framework, the required long-term commitment and efficiency of management will be secured by the proper development, consistent monitoring and effective supervision of the capital market. (Introduction)</p>	<p><i>Not covered.</i></p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
22. Succession Planning / Management Development				
<i>Not covered.</i>	<i>Not covered directly but see Topic Heading 12, above.</i>	<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
22. Succession Planning / Management Development				
<i>Not covered.</i>	<i>Not covered.</i>	<i>Not covered.</i>	<p>Boards should institute as a matter of course an independent director succession plan and selection process, through a committee or overseen by a designated director or directors. (p. 5)</p> <p>Boards should institute a CEO succession plan and selection process, through an independent committee or overseen by a designated director or directors. (p. 5)</p>	<p>[A] board should plan for its own continuity and succession – for the retirement of directors and the designation of new board members. Because the composition and circumstance of boards will vary, so too will the retirement policies of different corporations. (p. 14)</p> <p><i>See Topic Heading A, below.</i></p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
A. Board Job Description⁴⁶				
<p><i>Not covered directly, but see Topic Heading 1, above.</i></p>	<p>The board should fulfill certain key functions, including:</p> <ol style="list-style-type: none"> 1. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures. 2. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning. 3. Reviewing key executive and board remuneration, and ensuring a formal and transparent board nomination process. 4. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. 5. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law. 6. Monitoring the effectiveness of the governance practices under which it operates and making changes as needed. 7. Overseeing the process of disclosure and communications. <p>(OECD Principle V.D)</p> <p>The specific functions of board members may differ according to the articles of company law in each jurisdiction and according to the statutes of each company. (Annotation to OECD Principle V.D at 41)</p>	<p>The Working Group considers that whatever mechanism is adopted, there should be no doubt about which matters should be referred to the board for decision and which should be covered specifically in reports to the board. The division of responsibilities, terms of reference of delegations from the board to management should be put in writing and reviewed periodically, probably annually. (p. 8)</p> <p><i>See also Topic Heading 1, above.</i></p>	<p>The board of directors is responsible for ensuring that proper rules of corporate governance are in place. The board of directors is accountable for its administration to the general meeting of shareholders. (Part I: A.2)</p> <p>Non-executive directors should bring an independent judgment to bear on issues relating to the company's strategy, performance and resources, including key appointments and standards of conduct. (Part I: B.2.1)</p> <p>The board shall see to it that executive management develops and implements the tools necessary to allow appropriate and effective internal control. (Part I: B.4.4)</p>	<p>If there is a Secretary of the Board of Directors, the directors must be able to consult with him and call upon his services. The Secretary of the Board must ensure that the procedures in relation to the functioning of the Board and the regulations which apply to it are complied with.</p> <p>If there is no Secretary of the Board of Directors, the Board shall take the necessary action so that a person is given the task of monitoring compliance with the procedures in connection with the functioning of the Board and the applicable regulations.</p> <p>In both cases, he can only be replaced by a decision of the Board itself. (1.5)</p> <p>The Board of Directors defines the appointments which are within its powers. (Note to 2.1)</p> <p><i>See Topic Heading 1, above.</i></p>

⁴⁶ See also 1990 Business Roundtable Statement at 7 (“The board of directors should: (i) Select, regularly evaluate and, if necessary, replace the CEO. Determine management compensation. Review succession planning; (ii) Review and, where appropriate, approve the financial objectives, major strategies, and plans of the corporation; (iii) Provide advice and counsel to top management; (iv) Select and recommend to shareholders for election an appropriate slate of candidates for the board of directors, evaluate board processes and performance; (v) Review the adequacy of systems to comply with all applicable laws/regulations.”); ABA Guidebook at 4-5 (Under Model Act Section 8.01(b) “[a]ll corporate powers shall be exercised by or under authority of, and the business and affairs of the corporation managed under the direction of, its board of directors. . . . This language is used to emphasize the responsibility of directors, especially directors of publicly held corporations, to oversee the management of the corporation — not to manage, but to oversee.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
A. Board Job Description				
<p>The board of directors, together with the CEO, should develop position descriptions for the board and for the CEO, involving the definition of the limits to management's responsibilities. (Guideline 11)</p> <p><i>See also</i> Topic Heading 1, <i>above</i>.</p>	<p>With the exception of the powers which the law expressly reserves to the board as a whole, both the board of directors and the chairman have the widest powers to act in the company's name in all circumstances. (Viénot I at 4)</p> <p>While a company is instituted by private agreement, in France the respective powers of its governing bodies are determined by law and may not be altered by the terms of this agreement. (Viénot I at 5)</p> <p>The only conflicts of authority which have given rise to some dispute have concerned the divestment of major business operations and assets. The case law in this area is perfectly clear, making the board or its chairman alone competent to effect such divestments, except in the event that they prejudice the company's objects [<i>sic</i>], which the extraordinary general meeting of shareholders alone is competent to modify.</p> <p>Clearly, then, the board must respect the rights of the general meeting of shareholders when it envisages a transaction which is of a nature to affect, <i>de jure</i> or <i>de facto</i>, the company's objects [<i>sic</i>], which represent the purposes for which it was established. Even if this is not the case, it is the Committee's opinion that the board should also ask the general meeting of shareholders to consider any divestment representing a preponderant portion of the company's assets or activities. (Viénot I at 6)</p> <p>In addition to strict compliance with legal obligations to shareholders, the board of directors of a listed company bears special responsibility to the market. (Viénot I at 6)</p> <p><i>See</i> Viénot I at 20-21 (<i>directors' rights and obligations</i>).</p> <p><i>See also</i> Topic Heading 1, <i>above</i>.</p>	<p>The Management Board operates as initiator of measures, while the Supervisory Board takes up the role of informed discussion partner (sounding board). (The Code, II.3.2)</p> <p><u>Management Board</u> [R]esponsibility for developing the value of the company lies primarily with . . . the Management Board. (The Code, I.7)</p> <p>A member of the Management Board is responsible for the core activity of work and social services within the ambit of the Co-determination Act 1976 (director for employee relations). (The Code, V.2.4)</p> <p><i>See</i> the Code, III (Governance standards for the Management Board).</p> <p><u>Supervisory Board</u> The co-operation between representatives of the stockholders and of the employees in the Supervisory Board is based on consent. It is the joint discussions in Supervisory Board committees which offer the chance of preventing or breaking up dysfunctional formations of fractions between the two sides. (The Code, V.2.5)</p> <p>In the case of insurmountable divergences of opinion between the representatives of the stockholders and of the employees in a Supervisory Board where the members have parity, the Chairman of the Supervisory Board, who is normally appointed from the stockholder side, has a second vote for resolving the stalemate. (The Code, V.2.6)</p> <p><i>See</i> the Code, II.3 (Decision-making when setting fundamental directions); II.4 (Promotion of the culture of discussion).</p> <p><i>See also</i> the Code, IV (Governance standards for the Supervisory Board).</p>	<p>The Board of Directors has the responsibility, more specifically, for the following:</p> <ul style="list-style-type: none"> ▪ The design of the general strategy and planning of the corporation, the formation of the corporation's annual budget and business plan, the determination of the corporation's performance targets and the monitoring of the efficiency of governance practices followed during the operation of the corporation and in large capital transactions. ▪ The adoption and implementation of the corporation's general policy based on the suggestions and recommendations by executive management. ▪ The selection, appointment and monitoring of executive management and the determination of their compensation by taking account of the corporation's interests as well as the executive management's dismissal and replacement. ▪ The consistency of disclosed accounting and financial statements, including the report of the (independent) certified accountants, the existence of risk evaluation procedures, supervision, and the degree of compliance of the corporation's activities to existing legislation. ▪ The monitoring and resolution of conflicts among executive management, the members of the Board of Directors and the shareholders, including the cases of mismanagement of the corporation's assets and of privately beneficial transactions. ▪ The reporting of the corporation's activities to its shareholders. <p>(Recommendation 5.3)</p> <p><i>See</i> Introduction (It is important to establish the specification and distribution of tasks between executive and non-executive Board members and management.).</p> <p><i>See also</i> Footnote 4 to Recommendation 5.1 (<i>legally specified functions of the board</i>).</p>	<p>The board of directors shall:</p> <ul style="list-style-type: none"> ▪ examine and approve the company's strategic, operational and financial plans, and the corporate structure. . . ; ▪ delegate powers to managing directors and the executive committee. . . ; ▪ determine . . . remuneration. . . ; ▪ supervise the general performance of the company, with special reference to situations of conflict of interest. . . ; ▪ examine and approve transactions having a significant impact on the company's profitability, assets and liabilities or financial position. . . ; ▪ check the adequacy of the general organizational and administrative structure. . . ; ▪ report to the shareholders at shareholders' meetings. <p>(The Code, 1.2)</p> <p>Managing directors shall endeavor to inform the board of the main statutory and regulatory innovations. (The Code, 1.4)</p> <p>Non-executive directors shall bring their specific expertise to board discussions and contribute to the taking of decisions that are consistent with the shareholders' interests. (The Code, 2.2)</p> <p>The managing directors shall ensure the effectiveness and adequacy of the internal control system [and] define its procedures. (The Code, 9.1)</p> <p><u>Board of Auditors</u> The members of the board of auditors are required to treat the documents and information they acquire in the performance of their duties as confidential and to comply with the procedure for the disclosure to third parties of such documents and information. (The Code, 13.3)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
A. Board Job Description				
<p>Directors should concentrate their efforts on strategic decision-making for the company as well as overseeing business operations carried out by managers: thus they should be clearly distinguished from the “executive officers” whose role is to execute the business of the company. (Comment on Principle 7A)</p> <p>Probably, the major activity of the board of directors will comprise the oversight of management’s execution of business operations. (Comment on Principle 10B)</p> <p>The function of the board of directors should be rejuvenated to cope with the increasingly complex and rapidly changing global market, through its metamorphosis into an honest and rigorous advisory body for management, which might otherwise be tempted to be complacent. In order to achieve such a goal, the board of directors might make greater use of support and information staff, for example “executive committees” which are common in the U.S. (Ch. 2.6)</p>	<p>The Supervisory Board is responsible for the supervision of management policy and the general course of affairs in the company. (Recommendation 2.1)</p> <p>The Supervisory Board advises the Board of Directors. It acts as a body with collective responsibility, without a mandate and independently of subsidiary interests associated with the company. (Recommendation 2.1)</p> <p>The Supervisory Board has a chairman who ensures that the Supervisory Board functions properly. The chairman has specific duties regarding discussions on relevant issues, communication between the Supervisory Board members and the Board of Directors, the accountant and the external advisers appointed by the Supervisory Board. The chairman keeps in frequent contact with the chairman of the Board of Directors. The specific duties of the Supervisory Board and those of its chairman are laid down in the regulations for the Supervisory Board. (Recommendation 3.1).</p> <p><i>See Topic Heading 1, above.</i></p>	<p><i>Not covered directly, but see Topic Heading 1, above.</i></p>	<p>Internal regulations of the company must lay out the obligations arising from the general duties of diligence and loyalty, especially covering situations of conflicting interests, the obligation of confidentiality, and the use of business opportunities and corporate assets. (The Code, Recommendation 16)</p> <p>[T]he Committee recommends that the Board of Directors explicitly assume the following responsibilities:</p> <ul style="list-style-type: none"> (a) approval of the general corporate strategy; (b) appointment, remuneration and, as the case may be, removal of top management; (c) control of management and evaluation of performance; (d) identification of major corporate risks and implementation and follow-up of internal control and information systems; (e) establishment of information and report policies in respect of shareholders, markets and the public opinion. <p>The Committee considers that the Board of Directors should take the above as functions that cannot be delegated. (The Report, II.1.2)</p> <p>Directors as such have no specific function within the Board structure. All of them have to take part in the deliberations and collective decisions and are accountable for them. . . . Directors coming from the executive line are especially expected to provide information, strategic assessment and decision proposals, whereas outside directors are basically expected to provide an independent view, evaluation capacity and authority to solve conflicting interests. (The Report, II.3.4)</p>	<p>[T]he Board of Directors [should] delegate the running administration to the Managing Director. In order to safeguard against possible misunderstandings, the Board of Directors therefore should issue plain and clear directions and instructions for the Managing Director. (p. 4)</p> <p>It is the responsibility of the Board of Directors to make sure that there is a satisfying control of the bookkeeping and of the funds administration. (p. 4)</p> <p>In the interaction between the Managing Director (the Management) and the Board of Directors it is important to make clear the distribution of responsibility. (p. 5)</p> <p>The Board of Directors need to stimulate the management. The boardroom meetings shall be set up to be constructive and stimulating. (p. 5)</p> <p>A board member can never be passive but must all the time keep her/himself informed about the company development. (p. 13)</p> <p><i>See Topic Heading 1, above.</i></p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
A. Board Job Description				
<p>The board should have a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the company is firmly in its hands. (The Code, 1.4)</p> <p>It is the board’s duty to present a balanced and understandable assessment of the company’s position. (The Code, 4.1)</p> <p>We recommend that boards should have a formal schedule of matters specifically reserved to them for their collective decision, to ensure that the direction and control of the company remains firmly in their hands and as a safeguard against misjudgments and possible illegal practices. A schedule of these matters should be given to directors on appointment and should be kept up to date. (The Report, 4.23)</p> <p><i>These matters are discussed in detail at 4.25 of The Report.</i></p> <p><i>See also Topic Heading 1, above.</i></p>	<p>The board should maintain a sound system of internal control to safeguard shareholders’ investment and the company’s assets. (Principle D.II)</p> <p>Executive directors share with their non-executive colleagues overall responsibility for the leadership and control of the company. As well as speaking for the business area or function for which he or she is directly responsible, an executive director should exercise individual judgement on every issue coming before the board, in the overall interests of the company. (Guideline 3.6)</p> <p>Non-executive directors are normally appointed to the board primarily for their contribution to the development of the company’s strategy. (Guideline 3.8)</p> <p>The prime responsibility of the board of directors is to determine the broad strategy of the company and to ensure its implementation. To do this successfully requires high quality leadership. It also requires that the directors have sufficient freedom of action to exercise their leadership. The board can only fulfil its responsibilities if it meets regularly and reasonably often. (Guideline 3.11)</p>	<p>[R]emoval of the company secretary should be a matter for the board as a whole. (The Code, Provision A.1.4)</p> <p>All directors should bring an independent judgment to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct. (The Code, Provision A.1.5)</p> <p>The board of directors is responsible for the company’s system of internal control. It should set appropriate policies on internal control and seek regular assurance that will enable it to satisfy itself that the system is functioning effectively. The board must further ensure that the system of internal control is effective in managing risks in the manner which it has approved. (Turnbull Report, 16)</p> <p>Reviewing the effectiveness of internal control is an essential part of the board’s responsibilities. . . . Management is accountable to the board for monitoring the system of internal control and providing assurance to the board that it has done so. (Turnbull Report, 25)</p> <p>Should the board become aware at any time of a significant failing or weakness in internal control, it should determine how the failing or weakness arose and reassess the effectiveness of management’s ongoing processes for designing, operating and monitoring the system of internal control. (Turnbull Report, 34)</p> <p><i>Re: factors for the board’s consideration in determining its policies with regard to internal control, see the Turnbull Report, 17.</i></p> <p><i>Re: elements of a sound system of internal control, see the Turnbull Report, 20-24.</i></p>	<p>[E]ach board has the freedom – and . . . the obligation – to define its role and duties in detail. (p. 1)</p> <p>[B]oard responsibilities include:</p> <ul style="list-style-type: none"> ▪ approving a corporate philosophy and mission ▪ selecting, monitoring, evaluating, compensating, and – if necessary – replacing the CEO. . . ▪ reviewing and approving management’s strategic and business plans. . . ▪ reviewing and approving the corporation’s financial objectives, plans, and actions . . . ▪ reviewing and approving material transactions not in the ordinary course of business ▪ monitoring corporate performance against the strategic and business plans ▪ ensuring ethical behavior and compliance with laws . . . ▪ assessing its own effectiveness . . . ▪ performing such other functions as are prescribed by law. <p>(pp. 1-2)</p> <p>Boards should periodically review board . . . role descriptions to accommodate changes in corporate governance and company operations. (p. 4)</p> <p><i>See generally Ch. 2, pp. 3-6; see also Topic Heading 1, above.</i></p>	<p>The business of a corporation is managed under the direction of the board . . . but the board delegates to “management” the authority and responsibility for managing the everyday affairs. . . . The extent of this delegation varies depending on the size and circumstances of the corporation. In a large corporation that is performing well and has strong management, the board may delegate more; in a smaller or closely-held corporation, or one facing critical challenges, more detailed involvement by the board . . . may be appropriate. In a large public corporation that is not facing extraordinary difficulties, in addition to reviewing and approving specific corporate actions as required by law (<i>e.g.</i>, declaration of dividends), the principal [board] functions are:</p> <ol style="list-style-type: none"> i. Select, regularly evaluate and, if necessary, replace the [CEO], determine management compensation, and review succession planning; ii. Review and, where appropriate, approve the major strategies and financial and other objectives and plans of the corporation; iii. Advise management on significant issues facing the corporation; iv. Oversee processes for evaluating the adequacy of internal controls, risk management, financial reporting and compliance, and satisfy itself as to the adequacy of such processes; and v. Nominate directors and ensure that the structure and practices of the board provide for sound corporate governance. <p>(p. 4-5)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
B. Outside Advice⁴⁷				
<i>Not covered.</i>	<p>An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented. (OECD Principle IV.C)</p> <p>It is widely felt that the application of high-quality audit standards and codes of ethics is one of the best methods for increasing independence and strengthening the standing of the profession. Further measures include strengthening of board audit committees and increasing the board's responsibility in the auditor selection process.</p> <p>Other proposals have been considered by OECD countries. Some countries apply limitations on the percentage of non-audit income that the auditor can receive from a particular client. Other countries require companies to disclose the level of fees paid to auditors for non-audit services. In addition, there may be limitations on the total percentage of auditor income that can come from one client. Examples of other proposals include quality reviews of auditors by another auditor, prohibitions on the provision of non-audit services, mandatory rotation of auditors and the direct appointment of auditors by shareholders. (OECD Principle IV.C Annotation at 38)</p> <p>The contributions of non-executive board members to the company can be enhanced by providing . . . recourse to independent external advice at the expense of the company. (OECD Principle V.F Annotation at 43)</p> <p>Policy makers and regulators should encourage sound audit practices, which include board selection of, and reliance on, an independent auditor. (Millstein Report, Perspective 16)</p>	<p>To enable directors to discharge their fiduciary duties properly, it may be necessary for them to be provided with expert advice, particularly on legal and financial matters. Such advice should be objective and as independent as possible. In the first instance, advice is likely to be requested from company officers or advisers but in some circumstances, advice from independent external source may be appropriate. It is important that an agreed procedure be established which makes clear under what circumstances, with what information and by what method board committees or individual directors can obtain such advice at the company's expense. Where a nomination committee with a majority of independent directors has been appointed, it may be the best mechanism for considering requests. (Guideline 4)</p>	<p>There should be an agreed procedure for directors in the furtherance of their duties to take independent professional advice at the company's expense. (Part I: B.1.6))</p> <p>The board should ensure that the auditors have no relationship with the company, whether directly or indirectly, which could influence their judgment. (Part I: B.4.2)</p> <p>The audit committee should have a discussion with the internal and external auditors (including statutory auditors) at least once a year, from which the executive directors may be excluded, to ensure that there are no unresolved issues of concern. (Part I: B.4.3.c)</p> <p>The audit committee . . . should be able to obtain outside professional advice and, if necessary, to invite outsiders with relevant experience to attend meetings. (Part I: B.4.3.d)</p> <p><i>See</i> Part I: A.2 ([T]he General Meeting of Shareholders is responsible for appointing . . . the auditors. (Part I: A.2)</p>	<p>The Board of Directors must ensure that objective relationships are developed with the company auditors, based on the highest degree of professionalism. (4.2)</p> <p>This recommendation is, of course, only applicable in companies where there is a company auditor. (Note to 4.2)</p> <p>The company auditors and, if such exist, the person responsible for the internal audit and the financial director should attend the meetings of the [audit] committee. . . .</p> <p>The [audit] committee should hear the company auditors at least once each year, on an occasion when the executive directors are not present. . . .</p> <p>The [audit] committee has the widest investigative powers within its domain and may, by a majority decision, call upon professionals from outside the company and allow them to attend its meetings. (Note to 4.3)</p>

⁴⁷ See also ABA Guidebook at 7 (“A director should be able to communicate directly with the corporation’s principal external and internal advisers, including its auditors, legal counsel, and, when such relationships exist, its investment banking and executive compensation advisers. Further, there may be occasions when an outside adviser should be specially retained to assist the board or a committee in connection with a particular matter.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
B. Outside Advice				
<p>The audit committee should have direct communication channels with the internal and external auditors to discuss and review specific issues as appropriate. (Guideline 13)</p> <p>The board of directors should implement a system which enables an individual director to engage an outside adviser at the expense of the corporation in appropriate circumstances. The engagement of the outside adviser should be subject to the approval of an appropriate committee of the board. (Guideline 14)</p>	<p>The Committee considers it legitimate for Board committees to be allowed the opportunity . . . to call for outside technical reviews at the corporation's expense. It goes without saying that this option should be exercised by committees only in performance of their respective duties, and after informing the Chairman of the Board of Directors. In all cases, the committees should report to the Board of Directors on the information and opinions obtained on such occasions. (p. 17)</p> <p>The independence of a corporation's auditors should not be jeopardized by the award to entities belonging to their networks of assistance or consulting assignments (technical, legal, tax, organization, etc.) by the corporation itself or by other affiliates of its group, which are of material importance either in terms of stakes for the corporation and its group or in terms of the related fees. (Viénot II at 17)</p> <p>The choice among various [accounting] standards may be momentous for corporations' earnings. . . . The financial managers and statutory auditors of corporations are naturally in charge of the technical reviews of this matter. (Viénot II at 18)</p>	<p>[The Supervisory Board's] controlling activities are supported and complemented by the auditor who [independently] examines the company's rendering of accounts. (The Code, I.5)</p> <p>The auditor is an independent guarantor of open disclosure for the reference groups of the company and, in addition, is a supportive partner to the Supervisory Board in the supervisory process. The auditor controls separate parts of Management Board dealings but is also available to the Management Board as advisor. (The Code, VI.2.1)</p> <p>In the case of a public corporation with a stock market quotation, the auditor also has to assess the efficiency of risk management. (The Code, VI.2.4)</p> <p>Apart from the audit certificate required by statute, the auditor also prepares a report for the Management Board noting the weak points in the company (management letter). (The Code, VI.2.5)</p> <p>The independence of the auditor is essential for a consistent and reliable control. Hence, the auditor takes all reasonable steps to safeguard neutrality. (The Code, VI.2.6)</p> <p>The Supervisory Board should also take into consideration, on the recommendation for the appointment of the auditor, whether the work of the auditor should undergo evaluation by an expert third party at regular intervals (peer review). (The Code, VI.2.7)</p>	<p>[T]he general shareholder meeting has the responsibility of appointing . . . the external . . . auditors. (Introduction)</p> <p>Shareholders should have the right to . . . the approval of the appointment and/or dismissal of the external and internal auditors, their duties and compensation, following the recommendations of the Board of Directors. (Recommendation 1.2.7)</p> <p>The Board of Directors should ensure the general shareholder meetings that the external auditors have no relationship with the corporation, directly or indirectly, which could affect their judgment and evaluation. (Recommendation 4.5)</p> <p>The Internal Audit Committee . . . [s]hould communicate with the internal (independent) and external auditors of the corporation with the purpose of achieving a settlement of all unresolved issues in the corporation. (Recommendation 4.7.3)</p> <p>Procedures should be established that allow the Board of Directors to obtain advice by external advisors, which would assist the exercise of their duties. The corporation should meet the cost of external advice. (Recommendation 5.9)</p> <p>See Footnote 3 to Recommendation 4.6 (legal requirements for Board oversight of external and internal auditors, and expansion of such requirements).</p>	<p>[T]he [remuneration] committee may employ external consultants at the company's expense. (The Code, 8.1)</p> <p>[The internal control committee] should assess . . . the reports of the external auditors . . . and the offers and work programs of auditing firms. (The Report, 5.4.3)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
B. Outside Advice				
<p>The quality of corporate auditing should be improved by the appointment of more than one independent (external) corporate auditor, and by more carefully defining the role of independent external auditors vis-à-vis internal auditors. The neutrality of the auditing function should be ensured by selecting corporate auditors only with the full consent of the board of corporate auditors itself. The “five year rule,” by which a former officer of the company may be appointed as an external auditor after five years of absence from the company or a related company, must be abolished. (Principle 11A)</p> <p>Under [the] new system, public accountants will also be required to submit audit reports to the board of directors. (Comment on Principle 13B)</p> <p>See Principle 12A (Auditors should be free to request all information relating to the decision-making activities of managers and directors.).</p> <p>See also Comment on Principles 11A, 12A ([Under the new system, t]he auditing of directors activities [will] necessarily require[] the initial auditing of the appropriateness of these activities. Therefore, the Commercial Code should be clearly interpreted as requiring that auditors audit the appropriateness of directors strategic decision-making process as well as the actual decisions themselves. We also propose an increased role for public accountants, in performing independent and impartial auditing from a professional standpoint.).</p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>	<p>The right of all directors to collect and obtain the information and advice needed to fulfill their supervision functions must be formally recognized. Appropriate channels should be created to exercise this right, even resorting to outside experts in special circumstances. (The Code, Recommendation 14)</p> <p>The Board of Directors and the Audit Committee should watch over situations that may pose risks for the independence of the external auditors of the company. They should particularly check the percentage that the company’s fees represent in the total revenues of the auditing firm and should publicly report any fees corresponding to professional services other than auditing. (The Code, Recommendation 21)</p>	<p>There is no auditing law in Sweden, but the General Corporation Act requires the appointment of an accountant. The Code notes that the accountant normally is appointed by the Board at the AGM. The Code also notes that the accountant may also give general advice to the Board. (p. 8)</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
B. Outside Advice				
<p>There should be an agreed procedure for directors in the furtherance of their duties to take independent professional advice if necessary, at the company's expense. (The Code, 1.5)</p> <p>The board should ensure that an objective and professional relationship is maintained with the auditors. (The Code, 4.2)</p> <p>The company's statement of compliance should be reviewed by the auditors insofar as it relates to paragraphs 1.4, 1.5, 2.3, 2.4, 3.1-3.3, and 4.3-4.6 of the Code. (Footnote to the Code at 60)</p> <p>Occasions may arise when directors have to seek legal or financial advice in the furtherance of their duties. They should always be able to consult the company's advisors. If, however, they consider it necessary to take independent professional advice, we recommend that they should be entitled to do so at the company's expense, through an agreed procedure laid down formally, for example in a Board Resolution, in the Articles, or in the Letter of Appointment. (The Report, 4.18)</p> <p>We recommend that boards appoint remuneration committees [that draw] on outside advice as necessary. (The Report, 4.42)</p>	<p>The board should establish formal and transparent arrangements for maintaining an appropriate relationship with the company's auditors. (Principle D.III)</p> <p>The external auditors should . . . independently assure the board on the discharge of its responsibilities . . . in accordance with professional guidance. (Principle D.IV)</p>	<p>There should be a procedure agreed by the board for directors in the furtherance of their duties to take independent professional advice if necessary, at the company's expense. (The Code, Provision A.1.3)</p> <p>Remuneration committees should consult the chairman and/or chief executive officer about their proposals relating to the remuneration of other executive directors and have access to professional advice inside and outside the company. (The Code, Provision B.2.5)</p>	<p>Boards and board committees occasionally need independent advice. In most cases, the company and the board can jointly satisfy their needs through the retention of a common resource. In other cases, given the different roles and responsibilities of management and the board, the board may need to retain its own professional advisors.</p> <p>Board members and senior management, as necessary, should concurrently participate in the selection of outside professionals who give advice both to the board and to management.</p> <p>Under special circumstances, the board and board committees may wish to hire their own outside counsel, consultants, and other professionals to advise the board. (p. 6)</p>	<p>Because the information and expertise relevant to the board's regular decision-making will normally be found within the corporation, the main responsibility for providing assistance to the board rests on the internal organization. There may, however, be occasions when it is appropriate for the board to seek legal or other expert advice from a source independent of management, and generally this would be with the knowledge and concurrence of the CEO. (p. 19)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
C. Content and Character of Disclosure⁴⁸				
<i>Not covered.</i>	<p>The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.</p> <p>Disclosure should include, but not be limited to, material information on:</p> <ol style="list-style-type: none"> 1. The financial and operating results of the company. 2. Company objectives. 3. Major share ownership and voting rights. 4. Members of the board and key executives, and their remuneration. 5. Material foreseeable risk factors. 6. Material issues regarding employees and other stakeholders. 7. Governance structures and policies. (OECD Principle IV.A) <p>Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed. (OECD Principle I.D)</p> <p>Members of the board and managers should be required to disclose any material interests in transactions or matters affecting the corporation. (OECD Principle II.C)</p> <p><i>Re: public filing of information, see Annotation to OECD Principle IV.D at 39.</i></p> <p>Regulators should encourage ongoing improvements in both disclosure techniques and formats. (Millstein Report, Perspective 12)</p> <p>[C]orporations should disclose the extent to which they pursue projects and policies that diverge from the primary corporate objective of generating long-term economic profit so as to enhance shareholder value in the long term. (Millstein Report, Perspective 21)</p>	<i>Not covered.</i>	<p>Information about the relevant interests of directors should be disclosed in the annual report. (Part I: B.2.2)</p> <p>The report and accounts should contain a coherent narrative of the company's financial position, supported by information on the company's performance and prospects. . . . The need for the report to be readily understood emphasizes that words are as important as figures. (Part I: B.4.1)</p> <p>The directors should report on the company's prospects. (Part I: B.4.5)</p> <p>Information [to be disclosed] on the composition of the board of directors [includes]:</p> <ul style="list-style-type: none"> ▪ List of the directors <i>de facto</i> representing the dominant shareholders, the directors in charge of the daily management, and the directors considered by the company as being independent from the dominant shareholders and the management. ▪ When the function exercised by a director in the company is not his main function, indication of his main function outside the company. . . . ▪ Mention of the rules, if any, . . . governing the appointment of directors and the renewal of their mandates. . . . ▪ For natural persons representing directors, which are actually legal personae, indication of these persons' capacity in the company which they represent. (Part II: B.1) <p><i>See Topic Heading E, below.</i></p>	<p>The obligations, the duration of the mandate and the means of remuneration of directors must be announced at the time of their appointment. (Note to 1.6)</p> <p>The responsibilities of the Board of Directors include producing a comprehensive and objective Annual Report on the situation of the company each year. (4.1)</p> <p>This Annual Report and the annual accounts must represent the situation and results of the company and developments under consideration, as clearly as possible and in numerical form. This . . . must refer to both successes and failures, in words which are easy to understand. (Note to 4.1)</p>

⁴⁸ See also *Corporate Secretaries Guidelines* at 9-10 (In outlining how to design disclosure policies and procedures, the Guidelines suggest the following components: careful due diligence, designation of press/analyst spokespersons, centralized accountability for the disclosure process, approval of speeches to the investment community, avoidance of leaks and protection of confidential information, and monitoring of electronic communication.).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
C. Content and Character of Disclosure				
<p>Among the aspects of the corporate system that are not addressed in this report is the content of a corporation's annual disclosures to shareholders. (2.13)</p> <p>Corporations are obligated to disclose whether the board has a majority of unrelated directors and, if the corporation has a significant shareholder, the corporation will be obligated to disclose whether the board is constituted with the appropriate number of directors who are not related to either the corporation or the significant shareholder. (App. A)</p> <p>See Toronto Stock Exchange Listing Packet, Section entitled "Once Your Company Is Listed" (<i>The Toronto Stock Exchange has a listing requirement that every listed company must disclose in a timely manner "any information likely to affect the price of its shares."</i>).</p>	<p>While it is the Chairman's duty to provide the market with a regular flow of information on a day-to-day basis, the board of directors is responsible for presenting annual and half-yearly financial statements, and for informing the market of major financial transactions. . . . [T]he board must provide quality information, which is sufficiently reliable and clear to ensure the fair execution of transactions. . . .</p> <p>[T]he board should publish its assessment of all transactions concerning the company's securities, even when this is not legally required. (Viénot I at 6)</p> <p>The annual report is the location for the information due to the shareholders, to which the reasons for, and justification of, the options made by the Board should be reported. (Viénot II at 9)</p> <p>There remains . . . too much diversity in the practices of listed corporations with respect to the time required for the publication of accounts. The Committee recommends that listed corporations should take all necessary steps to achieve, as soon as possible, compliance with the following schedule:</p> <ul style="list-style-type: none"> ▪ if the corporation publishes estimated or provisional consolidated annual accounts, they should be published, at the latest, one month after the close of the financial year, followed by final accounts within three months after the close; ▪ if not, the final accounts should be published within two months after the close of the financial year; ▪ final consolidated half-yearly accounts, for their part, should be published, at the latest, two and a half months after the end of the first half, if the estimated or provisional accounts are not published sooner. <p>(Viénot II at 18-19)</p>	<p>Information on the efficiency of the company ensures the confidence of the stakeholders and is therefore of strategic importance. (Thesis 9)</p> <p>The public corporation does not restrict itself to information for the stockholders and other reference groups [by merely] fulfilling minimum statutory requirements which arise from the appropriate regulations concerning financial reporting and disclosure. Rather, the company establishes an integrated system of external communication which covers . . . the legitimate information needs of the various stake-holders of the company. (The Code, VI.1.1)</p> <p>The stockholders receive access to all information which has been provided to financial analysts and similar addressees. (The Code, VI.1.4)</p> <p>The company reports at regular intervals on, among other things, the company's strategy, and periodically on realized as well as planned development of important managerial ratios in the individual sectors of business. (The Code, VI.1.6)</p> <p>The company also makes the existing risks for the present, and for the business activities planned for the future, transparent. (The Code, VI.1.7)</p> <p>See Commentary on Thesis 9 (Adequate information on the terms, results and planned developments of the company's activities, for the stockholders and other reference groups, is a pre-condition for reinforcing the trust, and with it the necessary support, of those interested in the company.).</p>	<p>The corporate governance framework should ensure the full, timely and detailed disclosure of information on all material matters, including the financial situation, performance, ownership structure and governance of the corporation. (Principle 4)</p> <p>The establishment of transparency involves the disclosure of information on:</p> <ul style="list-style-type: none"> ▪ The financial and operating results of the corporation. ▪ The corporation's ownership structure. ▪ Members of the Board of Directors and management. ▪ Quantitative and qualitative matters concerning employees and other stakeholders in the corporation. ▪ Governance structures and policies. ▪ Corporate targets and prospects. ▪ The execution of unusual and complex transactions, transactions on derivative products and their level of risk. <p>(Recommendation 4.1)</p> <p>All investors should be able to obtain information on the voting rights affiliated with all classes of shares before their purchase of shares. (Recommendation 2.1.1)</p> <p>The Board of Directors should ensure the general shareholder meetings that the internal (independent) auditors are given the required financial and operating autonomy to accomplish their task completely. Internal auditors should be subject to oversight in a satisfactory manner. (Recommendation 4.6)</p> <p>The Internal Audit Committee . . . [s]hould disclose its composition in the corporation's annual report. (Recommendation 4.7.5)</p>	<p>See Topic Headings D, E and F, below.</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
C. Content and Character of Disclosure				
<p>The board of directors has the important responsibility of coordinating the various interests of all the other stakeholders, while substantively representing the immediate interests of the shareholders. Therefore, the directors should undertake wider disclosure of company information, including policy statements as well as environment-related reports, for the benefit of all stakeholders who may have divergent interests. (Principle 4A)</p> <p>When the company holds meetings for major shareholders, it should publicize the information it gives out through, for instance, the mass media or the internet. In this case, the offered information may be provided equally to other shareholders on request.</p> <p>Issues such as allocation of company profits and executive remuneration . . . , including for example stock option plans, should be disclosed to the shareholders in the form of business statements, enabling shareholders to evaluate them.</p> <p>Simplification of the Annual General Meeting must not result in the dilution of information offered to shareholders. (Comments on Principles 14A, 15A & 16B)</p> <p>[M]anagement oversight of the allocation of profit among stakeholders is indispensable, and should be accompanied by full disclosure. (Ch. 1.4)</p>	<p>[T]he chairman should ensure that information is not made available solely to certain groups of shareholders. (Recommendation 2.6)</p> <p>The Supervisory Board should report on the existence of . . . committees in the annual report. (Recommendation 3.2)</p> <p>The main points of the report of the Board of Directors to the Supervisory Board should be given a permanent place in the annual report. (Recommendation 4.2)</p> <p>In the General Meeting of Shareholders a thorough exchange of ideas should take place between company executives and investors. Relevant information should therefore be supplied so that, on the basis of soundly-based sector and investment analyses, it is possible to communicate effectively about and make a critical assessment of strategy, risks, activities and financial results. (Recommendation 5.2)</p> <p>The Board of Directors should take stock of the influence available to the investors in the company and should report its findings in writing to them. (Recommendation 5.4.3)</p> <p>To enhance the quality of the debate in the General Meeting of Shareholders and bring about a <i>de facto</i> increase in the influence of the investors, it is not only of importance that the Board of Directors provides good quality information in good time, but that the investors can also have recourse to the work done by investment analysts and the press. (Recommendation 5.4.4)</p> <p>The audit of the annual accounts is an integral part of a sound system for Corporate Governance. (Recommendation 6.3)</p>	<p>A description of the market behavior of the shares should be made and issued at least once a year. (Recommendation 3)</p> <p>Information should be disclosed to the public on the dividend policy commonly adopted by the company. (Recommendation 4)</p> <p>Shareholder agreements regarding the exercise of rights in the company or regarding transferability of shares, when relevant to the organization of companies, should be disclosed to the public. (Recommendation 5)</p> <p><i>See</i> Recommendation 6 (The use of new information technologies is encouraged for the disclosure of financial information.).</p>	<p>[T]his Committee recommends that the Board of Directors stretch its sense of duty to the point of offering immediate and sufficient information not only on relevant facts that may have a sizeable influence on price formation in the stock market, but also on anything that may:</p> <ul style="list-style-type: none"> ▪ influence the company's ownership structure (particularly significant share variations, syndication agreements and other coalitions that may be established); ▪ involve a substantial change of governance rules (this is in addition to what is laid out under 12.2 below); ▪ deal with specially relevant linked transactions (transactions within the group and with individuals linked to Board members); or ▪ have to do with the company's equity. <p>(The Report, II.10.1)</p>	<p>The Board should prepare its Annual Report and distribute the Report at least one week prior to the AGM. (p. 7)</p> <p>It is the responsibility of the Board of Directors to make sure that the company has an organization that is such that the accounting system makes it possible to generate running reports concerning the result and balance of the company. (p. 13)</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
C. Content and Character of Disclosure				
<p>An open approach to the disclosure of information contributes to the efficient working of the market economy, prompts boards to take effective action and allows shareholders and others to scrutinize companies more thoroughly. (The Report, 3.2)</p> <p>What is required of financial reporting is that it should be honest and that it should present a balanced picture of the state of the company's affairs. (The Report, 3.3)</p> <p>The lifeblood of markets is information and barriers to the flow of relevant information represent imperfections in the market. The need to sift and correct the information put out by companies adds cost and uncertainty to the market's pricing function. The more the activities of companies are transparent, the more accurately will their securities be valued. (The Report, 4.48)</p> <p>Boards should aim for the highest level of disclosure consonant with presenting reports which are understandable and with avoiding damage to their competitive position. (The Report, 4.51)</p> <p>The demand for an ever-increasing amount of detail in reports and accounts has to be weighed against the need for them to be understandable by the reasonably informed shareholder. (The Report, 4.58)</p>	<p>The board should present a balanced and understandable assessment of the company's position and prospects. (Principle D.I)</p> <p>The board should establish formal and transparent arrangements for maintaining an appropriate relationship with the company's auditors. (Principle D.III)</p> <p>The external auditors should independently report to shareholders in accordance with statutory and professional requirements and independently assure the board on the discharge of its responsibilities under D-I and D-II above in accordance with professional guidance. (Principle D.IV)</p>	<p>The board should present a balanced and understandable assessment of the company's position and prospects. (The Code, Principle D.1)</p> <p>The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets. (The Code, Principle D.2)</p> <p>The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors. (The Code, Principle D.3)</p> <p>The directors should explain their responsibility for preparing the accounts, and there should be a statement by the auditors about their reporting responsibilities. (The Code, Provision D.1.1)</p> <p>The board's responsibility to present a balanced and understandable assessment extends to interim and other price-sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements. (The Code, Provision D.1.2)</p> <p>The directors should, at least annually, conduct a review of the effectiveness of the group's system of internal control and should report to shareholders that they have done so. The review should cover all controls, including financial, operational and compliance controls and risk management. (The Code, Provision D.2.1)</p> <p>Companies which do not have an internal audit function should from time to time review the need for one. (The Code, Provision D.2.2)</p>	<p>Boards should disclose evaluation procedures to shareholders in the proxy statement or other shareholder communication. Board disclosure of procedures is distinct from sharing the substance of such deliberations, which should be confidential. (p. 17)</p> <p>Each board should debate [the subjects of board structure, process, composition and self-evaluation] thoroughly and disclose the results of its deliberations to shareholders. (p. 23)</p>	<p><i>Not covered.</i></p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
D. Disclosure Regarding Compensation and Director Assessment				
<i>Not covered.</i>	<p>The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.</p> <p>Disclosure should include, but not be limited to, material information on . . . [m]embers of the board and key executives, and their remuneration [and g]overnance structures and policies. (OECD Principle IV.A.4, 7)</p> <p>Companies are generally expected to disclose sufficient information on the remuneration of board members and key executives (either individually or in the aggregate) for investors to properly assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to performance. (Annotation to OECD Principle IV.A.4 at 37)</p>	<p>The remuneration of non-executive directors, including all benefits such as options, rights and pensions, should be fully disclosed to shareholders and approved by them. (p. 30)</p>	<p>It is recommended to disclose the total amount of the non-executive directors' remuneration separately in the annual report and to specify both the fixed and the variable part of the remuneration. In addition, the principles underlying the calculation of the variable part, if any, should be disclosed. (Part I: B.2.1)</p> <p>It is recommended to disclose the total amount of the executive management's remuneration separately in the annual report and to specify both the fixed and the variable part of the remuneration. In addition, the principles underlying the calculation of the variable part, if any, should be disclosed. (Part I: B.3.1)</p> <p>Information [to be disclosed] on the functioning of the board of directors [includes] the rules and procedures with regard to the determination of total emoluments, annual fees, benefits in kind and share options granted to directors, as well as loans and advances which may have been granted to them. (Part II: B.2)</p>	<p>The means of remuneration of directors must be stated in the Annual Report. (1.7)</p> <p>The Annual Report must state the method of remuneration of the directors (fixed amounts, bonuses, variable results-linked part, etc.)</p> <p>Large companies (in the sense of accounting law) are obliged to provide information in the notes to the Annual Accounts on the total remuneration of the directors. (Note to 1.7)</p>

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
D. Disclosure Regarding Compensation and Director Assessment				
<p><i>Although the Report makes no recommendations of its own, it discusses the Ontario rules requiring disclosure of executive compensation in the context of a discussion on openness and accountability. See § 3.2 at p. 11.</i></p>	<p>EU directives provide that corporations are required to state in the notes on the accounts the total compensation paid to the administration, management and supervisory bodies, but the information need not be published if it results in disclosure of an individual situation. (Viénot II at 10)</p> <p>The Committee recommends that with assistance from the compensation committee, the membership of which would be stated, the Board of Directors of any listed corporation should include in its annual report a specific chapter relating to disclosure to the shareholders of the compensation collected by the corporate officers. (Viénot II at 11; <i>for a description of contents of the proposed chapter, see Viénot II at 12</i>)</p> <p>[T]he Committee considers that any listed corporation, having granted options, ought to draft a related chapter to be included in the section of the annual report dealing with the structure of, and changes in, the corporate capital. (Viénot II at 12; <i>for a description of contents of the proposed chapter, see Viénot II at 13</i>)</p> <p>The annual report and the notice calling the annual meeting of shareholders, every year, should inform the shareholders, who are legitimately highly interested in the matter, of the number of shares held by each Director in the corporation's stock. (Viénot II at 14)</p> <p>The number of shares of stock held by each Director in his or her personal capacity in the corporation concerned should be entered in the annual report and notice calling the meeting of shareholders. (Viénot II at 24)</p>	<p><u>Management Board</u></p> <p>Apart from the emoluments of the Management Board as a whole, the company also discloses the fundamentals of the system for remuneration. In this are included, in particular, the procedure and the standards of comparison for evaluating the performance of the Management Board, as well as the form of any market price-orientated compensation systems. (The Code, III.6.4)</p> <p><u>Supervisory Board</u></p> <p>The company also publishes, apart from the total remuneration, the principles of the remuneration system of the members of the Supervisory Board. (The Code, IV.7.4)</p>	<p>Total compensation of non-executive members of the Board should be reported separately and with the required justification in the corporation's annual report. (Recommendation 6.1)</p> <p>It is a good practice that the total compensation of management be disclosed and justified in the financial statements of the corporation. (Recommendation 7.1)</p> <p><i>See Recommendation 7.2</i> (It is a good practice that a review committee, consisting of the majority of non-executive Board members, be established by the general shareholder meeting, which would review management compensation. The review committee's composition should be disclosed in the corporation's annual report.).</p>	<p>Directors' pay is a field . . . which calls for adequate disclosure of information and transparency concerning fees and the manner of determining them. (The Report, 5.4.2)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
D. Disclosure Regarding Compensation and Director Assessment				
<p>Issues such as allocation of company profits and executive remuneration should be excluded from the Annual General Meeting, and should be decided by the board of directors, but this will require the revision of Commercial Code. However these issues, including, <i>e.g.</i>, stock option plans, should be disclosed to the shareholders in the form of business statements, enabling shareholders to evaluate them. (Comment on Principle 14A)</p>	<p>The aggregate number of shares certificates of shares and stock options⁴⁹ held by all the Supervisory Board members should be published each year in the annual report. (Recommendation 2.12)</p> <p>The aggregate number of securities held by all the members of the Board of Directors at the end of the financial year should be included in the annual report and should be subdivided into:</p> <ul style="list-style-type: none"> ▪ shares/certificates of shares; ▪ convertible bonds; ▪ marketable options; ▪ options issued by the company; ▪ together with the most significant conditions relating thereto. <p>(Recommendation 4.5)</p>	<p>Information should be disclosed on the actual functions of each member of the board of directors and executive management of the company, as well as their positions in other companies. (Recommendation 2)</p>	<p>[T]he Committee recommends that director remuneration information policies be grounded on a principle of maximum transparency. Applying this principle requires a quick advancement from the current situation to more complete and detailed information on director remunerations. This involves individual information on each one, itemized by headings, whether they be remunerations attached to their director status (fixed earnings, allowances, share of profits, bonuses, incentives, pensions, insurance, payments in kind or others) or remunerations paid by the company for other kinds of legal relations (professional services, line management or executive positions).</p> <p>The Committee recommends that companies targeted by this report that do not choose to immediately apply this maximum transparency principle, but prefer a gradual implementation (or by stages), provide an explanation in their Annual Report. In either case, these companies should provide at least individualized information on the remunerations of all of the directors as such, for each of the items stated above as well as any professional fees. On the other hand, the remuneration of executive directors would be stated for all of them in the aggregate, stating how many directors receive each of the remuneration items. All this information would be included in the Annual Report. (The Report, II.7.4)</p>	<p><i>Not covered.</i></p>

⁴⁹ Marketable options and not employee stock options are meant here, because the Committee assumes that, in accordance with Recommendation 2.13, no employee stock options will be granted to Supervisory Board members.

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1977 BRT Report (USA)
D. Disclosure Regarding Compensation and Director Assessment				
<p>Shareholders are entitled to a full and clear statement of directors' present and future benefits, and of how they have been determined. We recommend that in disclosing directors' total emoluments and those of the chairman and highest-paid UK director, separate figures should be given for their salary and performance-related elements and that the criteria on which performance is measured should be explained. Relevant information about stock options, stock appreciation rights, and pension contributions should also be given. (The Report, 4.40)</p> <p><i>Note: Following the issuance of the Greenbury Report, the London Stock Exchange adopted listing rules requiring that companies listed on the exchange disclose directors' remuneration packages (broken down by director) including salary, bonuses, pensions, and stock option plans. Also, companies must state whether or not they comply with the remuneration committees and policy sections of the Cadbury Report. See London Stock Exchange Listing Rule 12.43 (w) and (x).</i></p> <p>See Topic Heading 11, above.</p>	<p>The company's annual report should contain a statement of remuneration policy and details of the remuneration of each director. (Principle B.III)</p> <p>We recommend that all names submitted for election or re-election as directors should be accompanied by biographical details indicating their relevant qualifications and experience. This will enable shareholders to make an informed decision whether to support the director's re-election. (Guideline 3.21)</p> <p>Directors' remuneration is of legitimate concern to the shareholders. They are entitled to expect that remuneration will be 'sufficient to attract and retain the directors needed to run the company successfully'; and that 'the remuneration of executive directors should link rewards to corporate and individual performance'. More generally, now that details of individual directors' remuneration are disclosed, they are liable to have an impact both on the company's reputation and on morale within the company. (Guideline 4.2)</p>	<p>Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors. No director should be involved in deciding his or her own remuneration. (The Code, Principle B.2)</p> <p>The company's annual report should contain a statement of remuneration policy and details of the remuneration of each director. (The Code, Principle B.3)</p> <p>The board should report to the shareholders each year on remuneration. The report should form part of, or be annexed to, the company's annual report and accounts. It should be the main vehicle through which the company reports to shareholders on directors' remuneration. (The Code, Provision B.3.1)</p> <p>The report should set out the company's policy on executive directors' remuneration. It should draw attention to factors specific to the company. (The Code, Provision B.3.2)</p> <p>In preparing the remuneration report, the board should follow the provisions in Schedule B to this code. (the Code, Provision B.3.3)</p> <p>Shareholders should be invited specifically to approve all new long term incentive schemes (as defined in the Listing Rules) save in the circumstances permitted by paragraph 13.13A of the Listing Rules. (The Code, Provision B.3.4)</p> <p>See also the Code, Schedule B: Provisions On What Should Be Included in the Remuneration Report, 1-7.</p>	<p>Shareholders' understanding of board and director assessment processes and criteria is indispensable to both board credibility and shareholders' ability to appraise the board's recommended resolutions and proposed slate of directors. Boards should disclose evaluation procedures to shareholders in the proxy statement or other shareholder communication. Board disclosure of procedures is distinct from sharing the substance of such deliberations, which should be confidential. (p. 17)</p> <p>Each board should debate [the subjects of board structure, process, composition and self-evaluation] thoroughly and disclose the results of its deliberations to shareholders. (p. 23)</p>	<p><i>Not covered directly, but see pp. 5-6</i> ("[S]election and evaluation" [of the CEO] includes considering compensation Boards have a responsibility to ensure that compensation plans are appropriate and competitive and properly reflect the objectives and performance of management and the corporation. Incentive plans will vary . . . and should be designed to provide the proper balance between long- and short-term performance incentives. Stock options and other equity-oriented plans should be considered as a means for linking management's interests directly to those of shareholders.).</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
E. Disclosure Regarding Corporate Governance⁵⁰				
<p><i>Not covered in the Guidelines, but the Guidelines are published by the company and widely available.</i></p>	<p>Disclosure should include, but not be limited to, material information on . . . [g]overnance structures and policies. (OECD Principle IV.A.7)</p> <p>Companies are encouraged to report on how they apply relevant corporate governance principles in practice. 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. (OECD Principle IV.A.7 Annotation at 38)</p> <p>See Millstein Report, Perspective 3 (Regulatory intervention in the area of corporate governance is likely to be most effective if limited to:</p> <ul style="list-style-type: none"> ▪ Ensuring the protection of shareholder rights and the enforceability of contracts with resource providers (Fairness); ▪ Requiring timely disclosure of adequate information concerning corporate financial performance (Transparency); ▪ Clarifying governance roles and responsibilities, and supporting voluntary efforts to ensure the alignment of managerial and shareholder interests, as monitored by boards . . . having some independent members (Accountability); and ▪ Ensuring corporate compliance with other laws and regulations. (Responsibility).). <p>See also Millstein Report, Perspective 23 (Individual corporations, shareholders and other interested parties should continue their efforts to articulate and adopt – voluntarily – corporate governance “best practices” designed to improve board independence and activism, and accountability to shareholders.).</p>	<p>On 1 July 1995, the ASX introduced Listing Rule 3C(3)(j) which requires listed companies to set out their main corporate governance practices in their annual report. More specifically, the rule states that a listed company must, for reporting periods ending on or after 30 June 1996, include in its annual report . . . a statement of the main corporate governance practices that the company has had in place during the reporting period. (p. 3)</p> <p>See ASX Guidance Note re: Disclosure of Corporate Governance Practices (September 2, 1998).</p>	<p>[The Code] proposes a so-called “comply or explain” approach. (Part I: A.5) <i>Note: This proposal was subsequently incorporated into the Euronext/ Brussels listing rules.</i></p> <p>[M]embership of the remuneration committee should be disclosed in the annual report. (Part I: B.3.2)</p> <p>[M]embership of the [audit] committee should be disclosed in the annual report. (Part I: B.4.3.e)</p> <p>Information [to be disclosed] on the functioning of the board of directors [includes]:</p> <ul style="list-style-type: none"> ▪ Indications on the most significant types of subjects discussed [in meetings]. ▪ Indication of specific rules, if any, . . . governing the decision-making process. . . ▪ A description of the way in which the board of directors is organized to supervise the daily management. . . ▪ A description of the way in which the board of directors is organized to follow the evolution of the activities of subsidiaries and participating interests. ▪ If the board of directors has adopted rules for the exercise of the director’s function, this should be mentioned together with a summary of these rules. <p>(Part II; B.2)</p> <p>See Part I: A.4 (Belgian company law already incorporates the basic concepts required for adequate corporate governance.).</p> <p>See also Part II: B.3 (disclosure of information on committees) and B.4 (disclosure re: organization of board oversight of daily management).</p> <p>See also Topic Heading C, above.</p>	<p>The composition of the [audit] committee is announced in the Annual Report. (Note to 4.3)</p> <p>See 2.1 (A recommendation from [the non-executive directors] is required for . . . the standards of conduct which the company imposes on itself.).</p>

⁵⁰ While American stock exchanges do not require any significant disclosure of corporate governance practices, some companies in the United States are beginning to voluntarily and formally disclose in annual reports and proxy statements information about corporate governance practices. See, e.g., Campbell Soup Company, Proxy Statement (1996) at 8. In contrast to American exchanges, some foreign exchanges have listing rules requiring companies to make annual disclosures about their corporate governance practices. See The Stock Exchange of Hong Kong Limited, Code of Best Practice contained in Guide for Directors of Listed Companies (1996); Toronto Stock Exchange, Listing Packet: “Once Your Company is Listed”; London Stock Exchange, Listing Rules, 12.43(j); Australian Stock Exchange, Listing Rules, 3C(3)(j).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
E. Disclosure Regarding Corporate Governance				
<p>The disclosure – a “Statement of Corporate Governance Practices” – should be made in the corporation’s annual report or information circular. [Such disclosure] would be relatively brief but would address at least the following points:</p> <ul style="list-style-type: none"> ▪ Mandate of the board . . . ▪ The composition of the board . . . ▪ If the board does not have a chair separate from the CEO, the structures and processes which are in place to facilitate functioning of the board independently of management ▪ Description of board committees . . . ▪ Description of decisions requiring prior approval by the board ▪ Procedures for recruiting new directors and other performance-enhancing measures . . . ▪ Measures for receiving shareholder feedback and measures for dealing with shareholder concerns ▪ The board’s expectation of management. (8.1) <p>[T]he TSE [might do well to] adopt the disclosure obligation as a listing requirement [and] discuss with other Canadian exchanges the extension of the listing requirement to companies listed on those exchanges. (8.2)</p>	<p>[E]ach board should periodically review its membership, organization and operations, and keep shareholders informed of conclusions and action taken. (Viénot I at 3)</p> <p>The Committee believes that each board should inform shareholders of the arrangements made to ensure that its duties are properly performed, and should periodically review the adequacy of its organization and operation. In particular, such arrangements should include more formal procedures for the preparation of meetings. (Viénot I at 16)</p> <p>[I]t is essential that the shareholders and third parties be fully informed of the options and of the allocation of powers selected by the Board. . . . It ought to be possible to append the rules of operation, having become the basic collection of rules for internal operation, to the by-laws, or at least to disclose them to third parties. Information to the latter relating to the nature of the election made could also be provided by measures such as an entry in the Registry of Commerce and Companies or a mention in the corporate documents. (Viénot II at 9)</p> <p>The annual report should specify the number of meetings of the Board of Directors and Board committees held during the elapsed financial year, and provide shareholders with information as to the Directors’ actual attendance at the meetings. (Viénot II at 16)</p> <p>The annual report should specify precisely the dates of the initiation and expiry of each director’s term, so as to highlight the staggering [of Directors’ terms]. It should also mention for each Director his or her age, major position, and directorships in other listed corporations (other than group affiliates), and specify the names of all the members of each Board committee. (Viénot II at 24)</p>	<p>Adequate information . . . is a pre-condition for reinforcing trust. . . . This applies not least to information on the chosen form of corporate governance. (Commentary on Thesis 9)</p> <p>Companies with more than 500 employees should formulate guidelines for the management and supervision of the company. (The Code, VII.3)</p> <p><i>See also:</i></p> <p>Thesis 1 ([This Code] strengthens the quality and transparency of the management of German companies.).</p> <p>Thesis 2 ([This Code] must take into account the special context of German companies in a globalized economy.).</p> <p>Thesis 3 (An effective [German Code] has a demonstratively managerial perspective.).</p> <p>Thesis 4 (Rules on corporate governance must be tailored to the particular characteristics of companies, principally their legal forms and owner structures.).</p> <p>Thesis 5 (The Management Board stands at the center point of [these] guidelines.).</p> <p>Commentary on Thesis 5 (Rules for the supervision of the Management Board by the Supervisory Board are certainly of importance, but they must not take center stage and dominate the understanding of corporate governance. In the final analysis, an excellent company management does not allow itself to be “checked into.”. . . . What is inappropriate in particular is the attempt to want to ‘check into’ the quality of management by concentrating on . . . supervision and the auditor of the company. Instead of such control, or Supervisory Board over-balance, the aim should rather be to establish terms most promising for success of the management of the company. (The Code, I.7)</p>	<p>The corporate governance framework should ensure the shareholders that the operation of the corporation is characterized by fairness and transparency:</p> <ul style="list-style-type: none"> ▪ The rules and procedures governing the selection of the members of the Board of Directors, the acquisition of control of a listed corporation and the execution of unusual and complex transactions . . . should be fully analyzed and disclosed so that investors know their rights and the procedure. The price of these transactions should be transparent and be settled in terms and conditions that protect the rights of the shareholders. ▪ Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed. (Recommendations 1.4.1 and 1.4.2) <p><i>See</i> Recommendation 2.2 (Actions and transactions based on insider information or undertaken for private benefit should be prohibited.).</p> <p><i>See also</i> Recommendation 2.3 (Members of the Board of Directors and executive managers should be required to disclose information on any private material interest involved in transactions or other matters affecting the corporation.).</p> <p><i>See also</i> Footnote 2 to Recommendation 4.1.1 (legal stipulations as regards disclosure of corporate information).</p>	<p>The Committee recommends that the election of members of the board of directors should take place in accordance with a transparent procedure. (Commentary on the Code, 7; <i>see</i> the Report, 5.4.1)</p> <p>Where . . . the board has delegated powers to the chairman, it shall disclose adequate information in its annual report on the powers delegated. (The Code, 4.3; <i>see</i> Commentary on the Code, 4; the Report, 5.2)</p> <p>[The nominations] committee . . . serves the primary purpose of rendering the selection procedure transparent. (Commentary on the Code, 7)</p> <p>[T]he Committee recommends that the members of the board of auditors be elected by means of a transparent procedure and that shareholders should receive the information they need to exercise their voting rights in an informed manner. (Commentary on the Code, 13; <i>see</i> the Report, 5.6)</p> <p><i>See</i> the Report, 6 (The task of verifying the suitability of the choices made [in the Code], and the extent of the Code’s application, is entrusted to the institutional <i>fora</i> for the confrontation between companies and the main actors interested in good Corporate Governance: It is therefore to be reserved to shareholders’ meetings and encounters with institutional investors.).</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
E. Disclosure Regarding Corporate Governance				
<p>The board of directors has the important responsibility of coordinating the various interests of all the other stakeholders, while substantively representing the immediate interests of the shareholders. Therefore, the directors should undertake wider disclosure of company information, including policy statements as well as environment-related reports, for the benefit of all stakeholders who may have divergent interests. (Principle 4A)</p> <p>[M]anagement oversight of the allocation of profit among stakeholders is indispensable, and should be accompanied by full disclosure of their allocation of profits to the company's various constituent stakeholders. In this sense, governance by the board of directors also comprehends elements of social responsibility: through their duty of supervising management's actions, directors contribute to the transparency of the market. In an opaque market, the directors are not able to coordinate the relative interests of stakeholders in an appropriate way. (Ch. 1-4)</p>	<p>The profile [of the Supervisory Board] is a public document and should be available for inspection at the company's offices. (Recommendation 2.2)</p> <p>The annual report should state the ages of the individual Supervisory Board members, their occupation, main job, nationality and the main additional posts they hold, to the extent that the latter are of importance for performing the duties of a Supervisory Board member. The report should also state when a member was first appointed and the current term of the appointment. (Recommendation 2.4)</p> <p>The main principles of Corporate Governance in the company should be outlined in the annual report. In its annual report the company should give an argued explanation of the extent of its compliance with the recommendations. (Recommendation 6.1)</p> <p>The fact that discussion [regarding performance of the Supervisory Board & the Board of Directors] has been held is to be mentioned in the Supervisory Board's report in the annual report. (Recommendation 3.5)</p>	<p>[[I]t is recommended that listed companies and institutional investors include a mention in their annual reports of the adoption, or degree of adoption, of these recommendations, with the grounds for this adoption. (Introduction)</p> <p>Information should be disclosed on the sharing of powers between the different bodies and departments or divisions of the company, within the framework of the corporate decision process, particularly through flowcharts or functional maps. (Recommendation 1)</p> <p>It is recommended that, for those matters which are central to the configuration of corporate governance, information be disclosed, even if only summarized, on the special procedures of decision, particularly regarding the company's strategic options. (Commentary on Recommendation 1)</p> <p>It is recommended that, within the internal organization of the company, specific regulations be established aimed at regulating situations of conflict of interest between members of the board and the company, as well as the main obligations resulting from duties of diligence, loyalty and confidentiality of the members of the board, particularly regarding the prevention of improper use of business opportunities and company assets. (Recommendation 12)</p> <p>Internal control procedures, besides the possibility of them having a significant impact on the level of corporate efficiency, are . . . privileged means to guarantee transparent corporate governance. (Commentary on Recommendation 12)</p>	<p>The Board of Directors, beyond current regulatory requirements, should be in charge of furnishing markets with quick, accurate and reliable information, particularly in connection with the shareholder structure, substantial changes in governance rules, and especially relevant transactions or those having to do with treasury stock. (The Code, Recommendation 19)</p> <p>The Board of Directors should include in its public annual report some information concerning its governance rules, providing an explanation in connection with any rules deviating from the recommendations of this Committee. (The Code, Recommendation 23)</p> <p>[T]he Board of Directors would be bound to include in the company's Annual Report information on transactions carried out with significant shareholders (volume of transactions and nature of the most significant transactions) so that their reach and importance will be known to all. (The Report, II.8.6)</p> <p>The objective is that the Board of Directors include information on its governance rules within its annual public documentation. It seems very wise that companies justify their decision to not follow the recommendations of the Code of Best Practice issuing from this report. (The Report, II.12.2)</p>	<p><i>Not covered.</i></p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
E. Disclosure Regarding Corporate Governance				
<p>We recommend that listed companies . . . should state in the report and accounts whether they comply with the Code and identify and give reasons for any areas of non-compliance. (Cadbury Report 3.7)</p> <p>We envisage, however, that many companies will wish to go beyond the strict terms of the London Stock Exchange rule and make a general statement about the corporate governance of their enterprises as some leading companies have already done. We welcome such statements and leave it to boards to decide the terms in which they make their statements of compliance. (Cadbury Report 3.8)</p> <p><i>Note: Rule 12.43(j) of the Listing Rules of the London Stock Exchange requires companies listed on the exchange to state whether or not they comply with the Cadbury Report Code of Best Practice and to give reasons for any areas of non-compliance.</i></p>	<p>We draw a distinction between principles of corporate governance and more detailed guidelines like the Cadbury and Greenbury codes. With guidelines, one asks: “How far are they <u>complied with</u>?”; with principles, the right question is: “How are they <u>applied</u> in practice?” [The Committee] recommends that companies should include in their annual report and accounts a narrative statement of how they apply the relevant principles to their particular circumstances. Given that the responsibility for good corporate governance rests with the board of directors, the written description of the way in which the board has applied the principles of corporate governance represents a key part of the process. We do not prescribe the form or content of this statement, which could conveniently be linked with the compliance statement required by the Listing Rules. (Guideline 2.1)</p> <p>See Principle C.III (When evaluating companies’ governance arrangements, particularly those relating to board structure and composition, institutional investors and their advisers should give due weight to all relevant factors drawn to their attention.).</p>	<p><i>In June 1998, when the Combined Code was issued, it stated:</i></p> <p>The London Stock Exchange intends to introduce a requirement that listed companies disclose how they apply the Principles of Good Governance and whether they are in compliance with the Code of Best Practice Provisions. (Preamble)</p> <p><i>This Combined Code requirement became part of The London Stock Exchange Listing Rules in January 1999 as §12.43A(a) and (b).</i></p> <p>The chairman, chief executive officer and senior independent director should be identified in the annual report. (The Code, Provision A.2.1)</p> <p>Non-executive directors considered by the board to be independent . . . should be identified in the annual report. (The Code, Provision A.3.2)</p> <p>The chairman and members of the nomination committee should be identified in the annual report. (The Code, Provision A.5.1)</p> <p>The members of the remuneration committee should be listed each year in the board’s remuneration report to shareholders. (The Code, Provision B.2.3)</p> <p>The members of the [audit] committee, a majority of whom should be independent non-executive directors, should be named in the report and accounts. (The Code, Provision D.3.1)</p> <p>If the company does not have an internal audit function and the board has not reviewed the need for one, the Listing Rules require the board to disclose these facts. (Turnbull Report, 47)</p>	<p>The most important result the Commission seeks is board deliberation on the subjects raised and on the judgments expressed in this Report. Each board should debate these issues thoroughly and disclose the results of its deliberations to shareholders. The board’s conclusions can and should be amended from time to time as circumstances change. (p. 23)</p>	<p>It is important that each board consider its policies and practices on corporate governance matters. Whether or not a board will formalize its board practices in written form will vary depending on the particular circumstances. Some corporations have found that over-formalization leads to a rigid structure which emphasizes form over substance, while others have found that insufficient formalization leads to a lack of clarity. (p. 19)</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
F. Accuracy of Disclosure / Liability⁵¹				
<p><i>Not covered.</i></p>	<p>The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. (OECD Principle IV)</p> <p>Information should be prepared, audited, and disclosed in accordance with high quality standards of accounting, financial and non-financial disclosure. (OECD Principle IV.B)</p> <p>The Principles support development of high quality internationally recognized standards. (Annotation to OECD Principle IV.B at 38)</p> <p>An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented. (OECD Principle IV.C)</p> <p>Regulators should require that corporations disclose accurate, timely information concerning corporate financial performance. (Millstein Report, Perspective 9)</p> <p>Regulators should cooperate internationally in developing clear, consistent and comparable standards for disclosure. (Millstein Report, Perspective 10)</p> <p>Policy makers and regulators should articulate clearly the legal standards that govern shareholder, director and management authority and accountability, including their fiduciary roles and legal liabilities. . . . [L]egal standards should be flexible and permissive of evolution. (Millstein Report, Perspective 13)</p> <p><i>See</i> OECD Principle V.D.7 (The board should fulfil certain key functions, including . . . [o]verseeing the process of disclosure and communications.).</p> <p><i>See also</i> Topic Headings B and C, above.</p>	<p><i>Not covered.</i></p>	<p>Integrity demands that the financial reports and other information disseminated by the company present an accurate and complete picture of the company’s position. . . . [T]he responsibility of the board of directors chiefly relates to the quality of the information it provides to shareholders. (Part I: A.7)</p> <p>The report and accounts should contain a coherent narrative of the company’s financial position, supported by information on the company’s performance and prospects. Depending on the nature of the company, it should contain the information needed to enable investors and their investment advisers to form a view of the company’s financial position and performance. . . . Balance requires that setbacks should be dealt with as well as successes. (Part I: B.4.1)</p>	<p>The Secretary of the Board must ensure that the procedures in relation to the functioning of the Board and the regulations which apply to it are complied with.</p> <p>If there is no Secretary of the Board of Directors, the Board shall take the necessary action so that a person is given the task of monitoring compliance with the procedures in connection with the functioning of the Board and the applicable regulations.</p> <p>In both cases, he can only be replaced by a decision of the Board itself. (1.5)</p>

⁵¹ *See also Corporate Secretaries Guidelines* at 1 (“Developing and continually refining procedures to manage ‘formal’ and ‘informal’ communications to avoid legal liability and enhance company credibility is a challenging but essential exercise for all public companies.”).

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
F. Accuracy of Disclosure / Liability				
<p>We support the examination by Canadian securities administrators of the imposition of civil liability upon boards of directors for the accuracy of corporate disclosures concerning material changes in the business and affairs of corporations. (1.17)</p> <p>The prospectus is the most comprehensive disclosure document and its accuracy is certified by the corporation and the board of directors. The directors, in addition to the corporation, are liable for any misrepresentations contained in the prospectus although the directors have available a due diligence defense. (7.13)</p> <p>There is no statutory civil liability attaching to the decision as to the timing of the publication of a timely disclosure release. In addition, no statutory civil liability attaches to the content of the timely disclosure or quarterly or annual reports, with two exceptions, i.e., issuers undertaking securities offerings in the short form system and issuers who are registered in the United States. (7.14)</p> <p>[T]he issue of legislated civil liability in respect of timely and continuous disclosure should be put back on the policy agenda. We applaud the appointment by the TSE of a committee to explore disclosure issues relating to listed companies. The timeliness and quality of information is not only critical to efficient capital markets but also to effective corporate governance. (7.16)</p> <p>See Appendix 5.56 (“Statutory Liabilities of Directors”); Appendix 5.60 (“Response of Governments to Committee Invitation to Review Legislation Imposing Personal Liability Upon Directors”).</p>	<p>While it is the Chairman’s duty to provide the market with a regular flow of information on a day-to-day basis, the board of directors is responsible for presenting annual and half-yearly financial statements, and for informing the market of major financial transactions. In such cases, the board must provide quality information . . . sufficiently reliable and clear to ensure the fair execution of the transactions concerned. (Viénot I at 6)</p> <p>[The board of directors] must carry out its duties in the interests of the company and, if it fails to do so, its members are jointly and severally liable. (Viénot I at 10)</p> <p>The Committee recommends that each board should appoint an advisory committee principally charged with ensuring the appropriateness and consistency of accounting policies applied in consolidated and company financial statements, and with verifying that internal procedures for collecting and checking information are such that they guarantee its accuracy. (Viénot I at 19)</p> <p>The statutory rules with respect to civil and criminal liability would need to be amended so as to provide for the situation where the Board of Directors elects to separate the positions of Chairman and Chief Executive Officer. In such a case, as the Chairman of the Board of Directors is devoid of management prerogatives, he or she should be subject to either civil or criminal liability only in respect of misconduct in the performance or in connection with performance of his or her personal duties, exclusive of mismanagement. (Viénot II at 8; see also at 22)</p> <p>The choice among various [accounting] standards may be momentous for corporations’ earnings. . . . [F]inancial managers and statutory auditors of corporations are naturally in charge of the technical reviews of this matter. (Viénot II at 18)</p>	<p><i>Not covered.</i></p>	<p>Information should be prepared, audited and disclosed according to the prevailing rules of the European Union, and should be in the spirit of the rules of the [OECD]. (Recommendation 4.2)</p> <p>The annual report and the quarterly financial statements should contain consistent reporting of the entire financial situation of the corporation, supplemented by the provision of sufficient information on the corporation’s performance and prospects. . . . [T]he annual report and the quarterly financial statements should contain all necessary information, in comprehensive form, required by investors and their consultants for the formation of a clear profile of the corporation’s financial situation and prospects. (Recommendation 4.4)</p> <p>The Board of Directors has the responsibility . . . for . . . [t]he consistency of disclosed accounting and financial statements, including the report of the (independent) certified accountants, the existence of risk evaluation procedures, supervision, and the degree of compliance of the corporation’s activities to existing legislation. (Recommendation 5.3.4)</p> <p>See Recommendation 1.2.4 (Shareholders should have the right to . . . be sufficiently, timely and properly informed on decisions that need to be made regarding fundamental changes in the corporation. These changes include . . . the solution of problems related to designing, reporting and maintaining transparency in the financial statements and profit-sharing policies.)</p> <p>See Recommendation 7.3 (It is a good practice that a financial chief executive officer be appointed as part of the management team.)</p>	<p>The internal control system is charged with the task of checking effective compliance with the operational and administrative internal procedures adopted to guarantee a sound and efficient management and to identify, forestall and limit, as far as possible, financial and operational risks and fraud at the company’s expense. (The Code, 9.2; see the Report, 5.4.3)</p> <p>[The internal control] committee is the formally constituted body able to assess autonomously and independently from both the managing directors on issues concerning the safeguarding of the company’s integrity and from the auditing firms on the results set out in the auditors’ report and their letter of suggestions. (Commentary on the Code, 10)</p> <p>See the Code, 9.3 (The persons appointed to run the internal control system . . . shall report on their activity to the directors delegated to the task, to the internal control committee, and to the members of the board of auditors.)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
F. Accuracy of Disclosure / Liability				
<i>Not covered.</i>	The agenda for the annual General Meeting of Shareholders is organized in such a way that clearly identifiable decisions can be made concerning . . . approval of the policy pursued by the Board of Directors and of the supervision carried out by the Supervisory Board, which approval shall likewise imply a release from liability for the Board of Directors and the Supervisory Board. (Recommendation 3.6)	<i>Not covered.</i>	<p>The Board of Directors, beyond current regulatory requirements, should be in charge of furnishing markets with quick, accurate and reliable information, particularly in connection with the shareholder structure, substantial changes in governance rules, and especially relevant transactions or those having to do with treasury stock. (The Code, Recommendation 19)</p> <p>Any periodic financial information which is made available to markets (besides the annual accounts) must be produced according to the same principles and professional practices as the annual accounts and must be verified by the Audit Committee prior to its disclosure. (The Code, Recommendation 20)</p> <p>The Board of Directors should try to avoid that its accounts be submitted to the General Shareholders' Meeting with reserves [sic] and provisos on the audit report. Whenever this is not possible, both the Board of Directors and the auditors should clearly explain to shareholders and markets the nature and scope of those discrepancies. (The Code, Recommendation 22)</p> <p>The duty of loyalty also involves the obligation for directors to report personal circumstances, those of close relatives or even circumstances relating to companies where they may play a significant role. This includes shareholdings, positions and activities performed in other organizations, unionization agreements and, in general terms, any fact, situation or link which might be relevant for their loyal performance as trustees. (The Report, II.8.5)</p>	[I]t is part of the role of the accountant appointed by the Board to ascertain that the Board and Managing Director have not acted in conflict with the General Corporation Act or the Articles of Association, and have not acted in a way that may result in litigation and subsequent damage claims on the company. (p. 8)

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
F. Accuracy of Disclosure / Liability				
<p>Directors are responsible under s. 221 of the Companies Act 1985 for maintaining adequate accounting records. To meet these responsibilities, directors need in practice to maintain a system of internal control over the financial management of the company, including procedures designed to minimize the risk of fraud. There is, therefore, already an implicit requirement on directors to ensure that a proper system of internal control is in place. (The Report, 4.31)</p> <p>Since an effective internal control system is a key aspect of the efficient management of a company, we recommend that the directors should make a statement in the report and accounts on the effectiveness of their system of internal control and that the auditors should report thereon. (The Report, 4.32)</p> <p>The cardinal principle of financial reporting is that the view presented should be true and fair. Further principles are that boards should aim for the highest level of disclosure consonant with presenting reports which are understandable and with avoiding damage to their competitive position. They should also aim to ensure the integrity and consistency of their reports and they should meet the spirit as well as the letter of reporting standards. (The Report, 4.51)</p> <p>The Committee is convinced that an effective internal control system is an essential part of the efficient management of a company. . . . A great deal of detailed work is now necessary to develop these proposals, and we recommend that the accounting profession . . . should take the lead. (The Report, 5.16)</p> <p><i>See APPENDIX 6: AUDITORS' LIABILITY: THE CAPARO CASE.</i></p>	<p>The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets. (Principle D.II)</p> <p>The board should establish formal and transparent arrangements for maintaining an appropriate relationship with the company's auditors. (Principle D.III)</p> <p>Accounting principles and the content of financial statements are regulated by both the law and by accounting standards. The Cadbury committee drew attention to weaknesses which then existed in financial reporting, and endorsed the objectives of the then newly established Financial Reporting Council and the Accounting Standards Board in setting reporting standards. Cadbury also welcomed the actions of the Financial Reporting Review Panel in monitoring compliance. These bodies are making good progress. We note that there are moves towards the international harmonization of accounting standards. However, we do not consider that our remit requires us to review these areas, in which the accounting authorities are closely involved. (Guideline 6.16)</p> <p>In this report we do not propose any change in the role of auditors or their public reporting responsibilities. We feel that best practice should be allowed to develop and evolve. It is clear, however, that while boards often seek greater reassurance about controls and other matters, auditors feel inhibited in going beyond their present functions because of concerns about the present law on professional liability. We consider that account should be taken of these concerns by those setting professional standards and when decisions on changes in the relevant law are taken. (Guideline 6.19)</p> <p><i>See generally PART 6, ACCOUNTABILITY AND AUDIT.</i></p>	<p>The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets. (Principle D.2)</p> <p>The directors should, at least annually, conduct a review of the effectiveness of the group's system of internal control and should report to shareholders that they have done so. (Provision D.2.1)</p> <p>Effective financial controls, including the maintenance of proper accounting records, are an important element of internal control. They help ensure that the company is not unnecessarily exposed to avoidable financial risks and that financial information used within the business and for publication is reliable. They also contribute to the safeguarding of assets, including the prevention and detection of fraud. (Turnbull Report, ¶12)</p> <p>It is the role of management to implement board policies on risk and control. (Turnbull Report, ¶¶16, 18)</p> <p>An internal control system encompasses the policies, processes, tasks, behaviors and other aspects of a company that, taken together, facilitate its effective and efficient operation. . . . This includes the safeguarding of assets from inappropriate use or from loss and fraud, and ensuring that liabilities are identified and managed. (Turnbull Report, ¶20)</p> <p>A sound system of internal control therefore provides reasonable, but not absolute, assurance that a company will not be hindered in achieving its business objectives. . . . [It] cannot, however, provide protection with certainty against a company failing to meet its business objectives or all material errors, losses, fraud, or breaches of laws or regulations. (Turnbull Report, ¶24)</p> <p><i>See the Turnbull Report, passim.</i></p>	<i>Not covered.</i>	<i>Not covered.</i>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
G. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote)				
<i>Not covered.</i>	<p>The corporate governance framework should protect shareholders' rights. (OECD Principle I)</p> <p>The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.</p> <p>A. All shareholders of the same class should be treated equally.</p> <ol style="list-style-type: none"> 1. Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights attached to all classes of shares before they purchase. Any changes in voting rights should be subject to shareholder vote. 2. Votes should be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares. 3. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. <p>...</p> <p>B. Insider trading and abusive self-dealing should be prohibited. (OECD Principle II.A & B))</p> <p>Some companies issue preferred (or preference) shares which have a preference in respect of receipt of the profits of the firm but which normally have no voting rights. Companies may also issue participation certificates or shares without voting rights which would presumably trade at different prices than shares with voting rights. All of these structures may be effective in distributing risk and reward in ways that are thought to be in the best interest of the company and to cost-efficient financing. The Principles do not take a position on the concept of "one share/one vote." (OECD Principle II.A.1 Annotation at 30)</p>	<p>Shareholders should have made a sufficient analysis to vote in an informed manner on all issues raised at general meetings. Where appropriate, reasons for voting against a motion should be made known to the board beforehand. (p. 52)</p> <p>Shareholders in listed companies should take a positive interest in the performance of the board and should exercise their votes in the election of directors in an informed manner. (p. 52)</p> <p>Shareholders should take a positive interest in the election of auditors and should exercise their votes in an informed manner. (p. 52)</p>	<p>Belgian company law already incorporates . . . the principle of "one share/one vote." (Part I: A.4)</p>	<i>Not covered.</i>

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
G. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote)				
<p><i>Not covered directly, but see 7.1 (Decisions made by shareholders relate to the election of directors, the election of auditors, and generally to fundamental changes to the corporation's constitution or business. Good governance also requires shareholder votes in circumstances where the board of directors may be interested in the transaction. Shareholder votes may be mandated by the governing corporate law, securities commission policy statements, etc. Periodically, a shareholder advisory vote will be conducted by a board in respect of a matter on which the board seeks shareholder views, although the results of the vote do not technically bind the board and are simply for the board's guidance.)</i></p>	<p><i>Not covered.</i></p>	<p><i>Not covered directly, but see Topic Headings H and I, below.</i></p>	<p>Basic shareholder rights include the right to . . . cast a vote for each share, regardless of class. (Recommendation 1.1.7)</p> <p>Shareholders should be able to vote in person or through a representative, and equal effect should be given to votes whether cast in person or through a representative. (Recommendation 1.3.3)</p> <p>Multiple voting procedures and the issuance of non-voting privileged shares should be discouraged. (Recommendation 1.6)</p> <p>Votes through a representative should be cast after consultation with the legal owner of the shares. (Recommendation 2.1.2)</p> <p>The procedures of the corporation should make it simple and inexpensive to cast votes. (Recommendation 2.1.3)</p>	<p><i>Not covered.</i></p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
G. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote)				
<p><i>Not covered.</i></p>	<p>The general principle should be that proportionality exists between capital contribution and influence. The maxim of “one share/one vote” is the customary way of expressing this principle. (Recommendation 5.1)</p> <p>[M]easures such as priority shares and certification may be justified [in certain circumstances]. (Recommendation 5.1.1)</p> <p>[T]he trust office should give a proxy to those holders of certificates of shares who request such, unless – in exceptional cases – the nature of the relevant certification system is opposed to this. (Recommendation 5.6.1)</p> <p>The board of the trust office will in general have to take account of the opinions of the holders of certificates of shares and, if necessary, adjust its voting behavior accordingly at the General Meeting of Shareholders. (Recommendation 5.6.1)</p> <p>Regarding priority shares issued to protect the company’s interests, the Committee proposes that, in situations where approval has to be given in advance, the holder of priority shares should not stand in the way of the decisions called for by the investors in the General Meeting of Shareholders. (Recommendation 5.6.2)</p> <p>[F]inancing preference shares should not be issued until the Board of Directors has given account of the intended issue in the General Meeting of Shareholders and has explained what evident financial benefits the issue will bring for the company. (Recommendation 5.6.3)</p> <p>[P]rotective preference shares should under normal circumstances not be issued. The voting right on protective preference shares should be exercised with due regard for the function of the shares. (Recommendation 5.6.3)</p>	<p><i>Not covered directly, but see Topic Heading H, below.</i></p>	<p>[A] rule of abstention . . . would oblige significant shareholders not to vote in board decisions regarding which they have a direct or indirect interest (for instance, defensive measures against hostile takeover bids). (The Report, II.8.6)</p>	<p>A shareholder is not allowed to vote more than one-fifth of all shares represented at the AGM. (p. 6)</p> <p>In case the Articles of Association must be changed, the change must be made with at least 2/3 majority of shares as well as of votes at the AGM. The reason is to protect minorities. (p. 7)</p>

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<i>Not covered directly, but see Topic Heading H, below.</i>	<i>Not covered directly, but see</i> Guideline 9.5 (It has been suggested that institutions should make public their voting records, both in the aggregate, in terms of the proportion of resolutions on which votes were cast or non-discretionary proxies lodged, and in terms of the numbers of votes cast and proxies lodged on individual resolutions. Institutional investors should, in our view, take steps to ensure that their voting intentions are being translated into practice; publishing figures showing the proportion of voting opportunities taken would be one way of doing this. We therefore recommend that institutions should, on request, make available to their clients information on the proportion of resolutions on which votes were cast and non-discretionary proxies lodged.).	<i>Not covered directly, but see</i> the Code, Provision E.1.3 (Institutional shareholders should take steps to ensure that their voting intentions are being translated into practice.).	<i>Not covered.</i>	Cumulative voting is generally not recommended for large publicly owned corporations because it may lead to the election of directors who represent particular groups of stockholders, which can in turn create factionalism and undermine the effectiveness of the board. (p. 8)

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
H. Shareholder Voting Powers				
<i>Not covered.</i>	<p>The corporate governance framework should protect shareholders' rights.</p> <p>A. Basic shareholder rights include the right to:</p> <ol style="list-style-type: none"> 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5) elect members of the board; and 6) share in the profits of the corporation. <p>B. Shareholders have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes.</p> <p>C. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings. (OECD Principle I)</p> <p>The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights. (OECD Principle II)</p> <p>In some OECD countries it was customary for financial institutions . . . to vote in support of management unless specifically instructed by the shareholder to do otherwise. . . . Rules in some countries have recently been revised to require custodian institutions to provide shareholders with information concerning their options in the use of their voting rights. (OECD Principle II.A.2 Annotation at 30)</p> <p>Policy makers and regulators should protect and enforce shareholders' rights to vote. (Millstein Report, Perspective 14)</p>	<i>Not covered.</i>	<i>Not covered directly, but see Topic Heading G, above, and Topic Heading I, below.</i>	<i>Not covered directly, but see Topic Heading I, below.</i>

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
H. Shareholder Voting Powers				
<p>Decisions made by shareholders relate to the election of directors, the election of auditors, and generally to fundamental changes to the corporation's constitution or business. Good governance also requires shareholder votes in circumstances where the board of directors may be interested in the transaction. Shareholder votes may be mandated by the governing corporate law, securities commission policy statements, etc. Periodically, a shareholder advisory vote will be conducted by a board in respect of a matter on which the board seeks shareholder views, although the results of the vote do not technically bind the board and are simply for the board's guidance. (7.1)</p>	<p><i>Not covered.</i></p>	<p>All stockholders have the same powers of influence over the public corporation according to their holding in the company. The precept of equal treatment within the limits of the extent of the participation also applies in particular against institutional investors on the one side and private small stockholders on the other. (The Code, V.1.1)</p> <p><i>See the Code, V.1.3 (Depositary banks have a particular responsibility for safeguarding the interests of stockholders. They must keep clear of possible conflicts of interest. . . . Proper representation of the rights of the stockholders is also a duty of the protection associations.).</i></p>	<p>The corporate governance framework should protect shareholder rights. (Principle 1)</p> <p>The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain an effective redress for violation of their rights. (Principle 2)</p> <p>Basic shareholder rights include the right to . . . vote in general shareholder meetings [and protection of] the rights of minority shareholders in a manner that establishes their representation and their ability to exercise control of managers. (Recommendations 1.1.4, 1.1.6)</p> <p>Shareholders should have the right to participate equitably and efficiently in the general shareholder meetings and be sufficiently, timely and properly informed on the decisions that need to be made regarding fundamental changes in the corporation. These changes include . . . the adoption of voting procedures compatible with the market's prevailing exchange ethics as regards voting influence and the concentration of corporate ownership. (Recommendation 1.2.8)</p> <p>All shareholders of the same class should be treated equally: within any class, all shareholders should have the same voting rights. . . . Any changes in voting rights between or within classes should be subject to shareholder vote. (Recommendation 2.1.1)</p>	<p>In the event of a significant change in the market value of the company, the composition and/or the number of shareholders, the directors shall assess whether proposals should be submitted to the shareholders' meeting to amend the by-laws as regards the majorities required for the approval of resolutions to adopt the measures and exercise the rights provided to protect minority interests. (The Code, 12.5)</p> <p>The Committee believes that in a correct system of Corporate Governance, the interests of the generality of shareholders must all be put on the same footing and equally protected and safeguarded.</p> <p>The Committee is convinced that the interests of the majority and minority shareholders must confront each other in the election of the governing bodies; subsequently, the governing bodies, and hence also the members of the board of auditors, must work exclusively in the interest of the company and to create value for the generality of shareholders. (Commentary on the Code, 13; see the Report, 5.6)</p> <p><i>See Topic Heading I, below.</i></p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
H. Shareholder Voting Powers				
<p>Shareholders, who may be widely dispersed, can elect directors, who in turn choose managers to manage the company effectively on behalf of the shareholders. (Ch. 1.2)</p>	<p>In principle Dutch company law grants considerable powers to shareholders. At the same time, however, it offers possibilities, which are frequently applied, for these powers to be substantially curtailed in the companies' articles of association, for example, by stipulating that the cooperation of the priority shareholder(s) is required for the adoption of resolutions in the General Meeting of Shareholders. (Recommendation 5.2)</p> <p>Those who exercise powers on behalf of the real providers of risk capital should, during the decision-making process at the General Meeting of Shareholders, be aware at all times that the said powers are in principle vested in those providers of risk capital. This creates an obligation for them to attach particular importance to the interests of the investors when exercising these powers. (Recommendation 5.2)</p> <p>Although the Committee realizes that under the circumstances mentioned above the continuity of decision-making and the protection against hostile takeovers may justify a departure from the principle that the investor should be able to exercise a degree of influence which is proportionate to the capital contribution, the Committee believes that this should never lead to the investors being deprived of exerting a real influence. (Recommendation 5.4.1; cf. 5.4.4, 5.7)</p> <p>[T]he Supervisory Board and the Board of Directors, if an initiative for decision-making is needed in the General Meeting of Shareholders, should not stand in the way of decisions called for by the investors in the General Meeting of Shareholders, unless a substantial company interest rules against such. (Recommendation 5.6.4)</p>	<p>The active exercise of voting rights should be stimulated, whether directly (postal) or by representation. (Recommendation 8)</p> <p>Institutional investors should take into consideration their own responsibilities for diligent, efficient and critical use of the rights conferred by the securities of which they are holders, or whose management has been entrusted to them, in particular as regards information and voting rights. (Recommendation 10)</p> <p><i>See</i> Commentary on Recommendation 5 (Voting agreements and other shareholder agreements to contest takeover bids are considered shareholder agreements [and should therefore be disclosed].).</p> <p><i>See also</i> Recommendation 11 (Institutional investors should disclose information on the practice followed regarding the exercise of voting rights on securities whose management has been entrusted to them.).</p>	<p>Measures aimed at making the system of voting by proxy more transparent and emphasizing communication between the company and its shareholders, especially institutional investors, should be passed. (The Code, Recommendation 18)</p> <p>All shareholders are, as a whole, the owners of the company, but the different roles of each of the groups of shareholders requires that moderation or counterweight steps are passed so that none of the groups assumes power at the expense of the interests of other groups. (Introduction, I.2)</p> <p>[The Committee suggests that there be] a rule of powers, according to which the Board of Directors should formally keep to itself knowledge of any direct or indirect transactions between the company and a significant shareholder, in order that it may not be passed unless the most appropriate delegated Committee issues a favorable opinion. Said Committee will evaluate the transaction from the standpoint of equal consideration for all shareholders and equal market conditions. (The Report, II.8.6)</p> <p>Regarding the use of non-public information, the Committee is aware of a degree of concern in the market on the unequal distribution of information among shareholders and on significant shareholders accessing confidential information. The Board of Directors should watch over such situations, in order to decide whether there are any anomalies or leakages that someone would be held accountable for. In any event, it might be appropriate to consider extending to significant shareholders the obligation of keeping certain information confidential and not using inside information to their advantage. (The Report, II.8.6)</p>	<p>Only shareholders entered in the stock register are entitled to vote. (p. 6)</p> <p>At the AGM, unless otherwise stipulated in the Articles of Association, a shareholder is not allowed to vote more than one fifth (1/5) of all the shares represented at the AGM. This is valid either if it is the shareholder's own shares or shares represented by proxy. (p. 6)</p> <p>The accountant of the company or stockholders holding at least 10% of the shares can exercise their right to ask the Board of Directors to summon an extra AGM within two weeks of having received such a request. (p. 6)</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
H. Shareholder Voting Powers				
<p>The formal relationship between the shareholders and the board of directors is that the shareholders elect the directors, the directors report on their stewardship to the shareholders and the shareholders appoint the auditors to provide an external check on the directors' financial statements. (The Report, 6.1)</p> <p>Institutional investors should make positive use of their voting rights, unless they have good reason for doing otherwise. They should register their votes whenever possible on a regular basis. (The Report, 6.11.2)</p> <p>The Institutional Shareholders' Committee's advice to its members to use their voting rights positively is important in the context of corporate governance. Voting rights can be regarded as an asset, and the use or otherwise of those rights by institutional shareholders is a subject of legitimate interest to those on whose behalf they invest. We recommend that institutional investors should disclose their policies on the use of voting rights. (The Report, 6.12)</p>	<p>Institutional shareholders have a responsibility to make considered use of their votes. (Principle C-I; see Guideline 2.14)</p> <p>[S]hareholders should be invited specifically to approve all new long-term incentive plans . . . which potentially commit shareholders' funds over more than one year, or dilute the equity. (Guideline 4.20)</p> <p>[S]ome [institutional investors] now take a more active interest in corporate governance. They can do this by voting on resolutions in General Meetings, and informally through contact with the company. (Guideline 5.3)</p> <p>The right to vote is an important part of the asset represented by a share, and in our view an institution has a responsibility to the client to make considered use of it. (Guideline 5.7)</p> <p>[S]hareholders should have an opportunity to vote separately on each substantially separate proposal. (Guideline 5.17)</p> <p>[P]rivate investors [can] hold shares through nominees. This deprives the investors concerned of the right to vote and to receive company information, unless some special arrangement is made. A number of companies have established their own "in-house" nominee and use it to restore rights to private shareholders. We commend this. (Guideline 5.25)</p>	<p>Institutional shareholders should, on request, make available to their clients information on the proportion of resolutions on which votes were cast and non-discretionary proxies lodged. (The Code, Provision E.1.2)</p> <p>See the Code, Principle E.1 (Institutional shareholders have a responsibility to make considered use of their votes.).</p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
I. Shareholder Meetings / Proxy Proposals				
<p><i>Not covered.</i></p>	<p>Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:</p> <ol style="list-style-type: none"> 1. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting. 2. Opportunity should be provided for shareholders to ask questions of the board and to place items on the agenda at general meetings, subject to reasonable limitations. 3. Shareholders should be able to vote in person or <i>in absentia</i>, and equal effect should be given to votes whether cast in person or <i>in absentia</i>. <p>(OECD Principle I.C)</p> <p>Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes. (OECD Principle II.A.3)</p> <p>The Principles recommend that voting by proxy be generally accepted. Moreover, the objective of broadening shareholder participation suggests that companies consider favorably the enlarged use of technology in voting. (OECD Principle I.C.3 Annotation at 26)</p> <p>Proposals to change the voting rights of different classes of shares are normally submitted for approval at general shareholders meetings by a specified majority of voting shares in the affected categories. (OECD Principle II.A.1 Annotation at 30)</p>	<p><i>Not covered directly, but see p. 52</i> (Shareholders should take a positive interest in the auditor’s report and the competence of auditors and where appropriate, be prepared to ask questions of the auditor.).</p>	<p>[T]he general meeting of shareholders is responsible for appointing the members of the board of directors and the auditors. The board of directors is responsible for . . . reporting to the shareholders on the performance of its duties. (Part I: A.2)</p> <p>It is the board’s duty to present a clear and accurate evaluation of the company’s situation to the general meeting of shareholders. (Part I: B.4.1)</p> <p><i>See</i> Part II: B.5 (Information [to be disclosed] on the functioning of the board of directors [includes] information on the policy applied by the board of directors in its proposals to the General Meeting with regard to the appropriation and, especially, the distribution of the results.).</p>	<p>According to Belgian law, the General Meeting appoints all directors, whether they are executive or not.</p> <p>For non-executive directors, however, this appointment must take place on a proposal from the Board of Directors. (Note to 2.3)</p> <p>[T]he Chairman of the [audit] committee replies to the questions which are asked at the General Meeting about the activities of the committee. (Note to 4.3)</p> <p>The Board of Directors has the task of producing the Annual Accounts and presenting them to the General Meeting. (4.4)</p> <p>This recommendation corresponds to a requirement of company law. (Note to 4.4)</p>

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
I. Shareholder Meetings / Proxy Proposals				
<p>The effectiveness of the proxy solicitation process and the shareholder meeting as a forum for shareholders to express their views is open to question but is an issue which the Committee does not propose to address in any detail. We note that shareholders and corporations recognize the limitations of the shareholders meeting and are becoming more creative in exchanging views. (7.2)</p> <p>See 4.6(4) (The fourth principal responsibility of the board is to ensure the corporation has in place a policy to enable the corporation to communicate effectively with its shareholders, other stakeholders and the public generally. This policy must effectively interpret the operations of the corporation to shareholders and must accommodate feedback from shareholders, which should be factored into the corporation's business decisions.)</p>	<p>[T]he board of directors is collectively answerable to the General Meeting of Shareholders for the fulfillment of its duties. . . . [It] informs the shareholders' meeting through its annual report and the financial statements which it adopts. (Viénot I at 5)</p> <p>[T]he board must respect the rights of the General Meeting of Shareholders when it envisages a transaction which is of a nature to affect, <i>de jure</i> or <i>de facto</i>, the company's [purposes]. (Viénot I at 6)</p> <p>[I]t is the Committee's opinion that the board should also ask the general meeting of shareholders to consider any divestment representing a preponderant portion of the company's assets or activities. (Viénot I at 6)</p> <p>The Committee recommends that all boards should set up special committees [and] inform the Annual General Meeting of Shareholders of the existence of these committees and of the number of meetings they have held in the course of the year. (Viénot I at 18)</p> <p>[T]he Committee considers it highly desirable for directors to attend general meetings of shareholders. (Viénot I at 21)</p> <p>The Committee recommends first that the company statute provide for the following system: The statute would require listed corporations with Boards of Directors to refer to the extraordinary meeting of their shareholders, within a period in the order of 18 months after its enactment, the appropriate amendment of the by-laws to allow the option between combination and separation of the offices of Chairman of the Board of Directors and Chief Executive Officer.</p> <p>The purpose of the amendment in the by-laws would be to include the provisions required for exercise of the option by the Board of Directors. (Viénot II at 7)</p>	<p>The annual general meeting as the organ of the stockholders decides mandatorily in certain basic questions as well as when so demanded by the Management Board. It elects the members of the Supervisory Board insofar as they may be appointed by the stockholders – depending on the co-determination situation – either completely, or as to two-thirds, or as to one half. (The Code, I.5)</p> <p>The annual general meeting also appoints the auditor. (The Code, I.5)</p> <p>Properly understood checks and balances in company management are expressed by the fact that the Management Board . . . presents fundamental issues, subject to certain pre-conditions, to the annual general meeting for final decision. (The Code, II.3.1)</p> <p>After approval by the Supervisory Board has been given, the Management Board lets the annual general meeting decide in cases expressly provided for by statute, or if the fundamental structural and managerial measures affect the core membership rights of stockholders. (The Code, II.3.5)</p> <p>Stockholders exercise their influence at the annual general meeting. (The Code, V.1.2)</p> <p>The Management Board, the Supervisory Board and the auditor participate in the annual general meeting. (The Code, V.1.4)</p> <p>The stockholders alone decide whether to accept or reject offers of acquisition. (The Code, V.1.6)</p>	<p>[T]he general shareholder meeting has the responsibility of appointing the Directors to the Board, the external and internal auditors, and approving the corporation's general strategy. (Introduction)</p> <p>All functions of the . . . general shareholder meetings should aim at the enhancement of the entire performance of the corporation within an adequately supervised and informed environment. It is important to . . . empower the authority of the general shareholder meeting and establish the rights of the minority shareholders. (Introduction)</p> <p>Shareholders should have the right to participate equitably and efficiently in the general shareholder meetings and be sufficiently, timely and properly informed on the decisions that need to be made regarding fundamental changes in the corporation. (Recommendation 1.2; <i>for a list of proposed changes in the corporation about which shareholders should be informed, see Recommendation 1.2</i>)</p> <p>Procedures for general shareholder meetings should ensure the equitable treatment of all shareholders. (Recommendation 2.1.3)</p> <p>The Board of Directors should present to the general shareholder meeting a clear and credible evaluation of the existing situation and the prospects of the corporation. (Recommendation 4.4)</p> <p>See Recommendation 1.3 (shareholders' active participation and voting in general shareholder meetings).</p>	<p>The directors shall encourage and facilitate the broadest possible participation of shareholders in shareholders' meetings. (The Code, 12.1; <i>see the Report, 5.5</i>)</p> <p>As a general rule, all the directors shall attend shareholders' meetings. (The Code, 12.2; <i>see the Report, 5.5</i>)</p> <p>Shareholders' meetings shall also be an opportunity to provide shareholders with information on the company. (The Code, 12.3; <i>see the Report, 5.5</i>)</p> <p>The board of directors shall propose for the shareholders' approval a set of rules to ensure the orderly and effective conduct of the company's ordinary and extraordinary shareholders' meetings, while guaranteeing the right of each shareholder to speak on the matters on the agenda. (The Code, 12.4)</p> <p>In the event of a significant change in the market value of the company, the composition and/or the number of shareholders, the directors shall assess whether proposals should be submitted to the shareholders' meeting to amend the by-laws as regards the majorities required for the approval of resolutions to adopt the measures and exercise the rights provided to protect minority interests. (The Code, 12.5)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
I. Shareholder Meetings / Proxy Proposals				
<p>The company Annual General Meeting should be utilized to enhance the scope of dialogue between shareholders and the board of directors. This is desirable to promote the quality of directors' accountability. (Principle 14A)</p> <p>Resolutions submitted for decision at the Annual General Meeting should be limited to those which are of vital importance to the business, <i>e.g.</i>, revision of corporate articles, transfer of business rights, mergers and acquisitions which require a three-quarter majority special resolution of the shareholders, and the election of directors and corporate auditors. (Principle 16B)</p> <p>The Annual General Meeting should be a good opportunity to exchange opinions between shareholders, directors and management. Therefore, the issues to be reported upon and discussed should be of a broad scope without any rigid limitation. the timing of the Annual General Meeting should, where possible, not coincide with that of other companies. (Comment on Principle 14A)</p>	<p>[I]f the shareholders, especially the institutional investors and other major shareholders, are in actual fact present at the General Meeting of Shareholders and make their views heard, this will lead to higher attendance rates and to a considerable improvement in the quality of the General Meeting of Shareholders. (Recommendation 5.1)</p> <p>[E]ach company's General Meeting is the forum to which the Board of Directors and the Supervisory Board report and to which they are accountable for their performance. The agenda items should include the company strategy, policy – financial and otherwise – and the business results. (Recommendation 5.2)</p> <p>In the General Meeting of Shareholders a thorough exchange of ideas should take place between company executives and investors. Relevant information should therefore be supplied. (Recommendation 5.2)</p> <p>The basic principle is that the Board of Directors and the Supervisory Board should have the confidence of the shareholders' meeting. (Recommendation 5.3)</p> <p>[A]n effective proxy solicitation system without prohibitive costs would improve the representative nature of the General Meeting of Shareholders. The Committee is aware that a study group is preparing a proposal for the implementation of proxy solicitation. (Recommendation 5.4.4)</p> <p>An efficient proxy solicitation system should be established [and] entrusted to a neutral body that draws up and publishes the conditions for admission. (Recommendation 5.9)</p>	<p>The principles of good practice and transparency which should inform corporate governance recommend that the procedures related to requests for proxy voting at General Meetings should be developed. In particular, it is fundamental that shareholders be provided not only with the information necessary to take a correct decision regarding the stipulation of voting instructions, but also that the grounds explaining how the representatives should vote be clear, especially in the event of a lack of instructions from the shareholder represented. (Recommendation 9)</p> <p><i>See</i> Recommendation 6 (The use of new information technologies is encouraged for the disclosure of . . . preparatory documents for General Meetings.).</p> <p><i>See also</i> Commentary on Recommendation 8 (The generic regulations set out in the Portuguese Companies Act . . . on the exercise of voting rights leave room for companies, in their own statutes, to establish measures to stimulate the exercise of this right, in order to combat the frequent absence of shareholders at General Meetings. In line with this philosophy, the new Securities Code . . . has confirmed the principle of admissibility of postal votes at General Meetings of publicly-held companies, and developed the system of representation of shareholders by proxy, a sign of a legislative development that should be accompanied in practice by companies.).</p>	<p>Measures aimed at making the system of voting by proxy more transparent . . . should be passed. (The Code, Recommendation 18)</p> <p>The Board of Directors should try to avoid that its accounts be submitted to the General Shareholders' Meeting with reservations and provisos on the audit report. Whenever this is not possible, both the Board of Directors and the auditors should clearly explain to shareholders and markets the nature and scope of those discrepancies. (The Code, Recommendation 22)</p> <p>[T]his Committee cannot ignore an undeniable fact—the effectiveness of the General Shareholders' Meeting of listed companies as an instrument of control and decision is subject to many structural limitations. Experience shows, in fact, that most ordinary shareholders neglect General Shareholders' Meeting tasks. . . .</p> <p>To a great extent, the reform movement driving this report, with the purpose of boosting the Board as a supervising body, takes rise from the proven lack of disciplinary efficiency of the General Shareholders' Meeting. Against this backdrop, this Committee harbours doubts on the effectiveness of certain policies directed towards the reactivation of the General Shareholders' Meeting by fostering participation of shareholders (creating shareholder committees, seeing to it that meetings urged by shareholders are called, resorting to attendance premia, etc.). This does not mean, however, that any action directed to increase the efficiency of shareholder control should be rejected. In fact, the Committee considers that this is a field where a lot can still be done. (The Report, II.9.1)</p>	<p>[The] Annual General Meeting [is] the shareholders' own institution and the highest decision-making body. (p. 3)</p> <p>The Annual General Meeting: A forum coming together once each year in order to ratify the annual report, to decide whether they should grant a discharge of responsibility for the members of the Board of Directors, select the new Board of Directors and CPAs for the following year and to establish their remuneration. (p. 3)</p> <p>The right of the stockholders to make decisions regarding the affairs of the company is exercised at the Annual General Meeting. It is then and only then that the owners of the company in their capacity as owners can make their voices heard. (p. 6)</p> <p>Stockholders can exercise their right to vote by attending personally. However, it is also possible through a dated proxy, valid for maximum one year, to hand over the right to vote to an agent. A shareholder is also allowed the company of an assistant, <i>i.e.</i>, a person skilled in legal or financial matters supporting her/his own actions. The assistant has the right to express her/himself. (p. 6)</p> <p>The Board should arrange the Annual General Meeting (AGM), to be held latest six months after the end of the accounting year. (p. 6)</p> <p>At the regular AGM, the Annual Report of the Board of Directors is dealt with. (p. 7)</p> <p>The AGM also appoints the Board of Directors and the Accountants. (p. 7)</p> <p>It is only at the AGM that a decision of giving out a stock dividend issue or to submit convertible promissory notes or subscription rights can be taken. Sometimes the AGM can delegate the decision to the Board of Directors. (p. 7)</p> <p><i>See generally</i> section titled “The Role of the Annual General Meeting (AGM) – The Cadbury Report,” pp. 6-7.</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
I. Shareholder Meetings / Proxy Proposals				
<p>[T]he chairman of the [remuneration] committee should be available to respond to any concerns of shareholders at the Annual General Meeting. (The Report, 4.44)</p> <p>The Annual General Meeting provides the opportunity for shareholders to make their views on such matters as directors' benefits known to their boards. . . . [S]hareholders can play a more practical governance role by aiming to influence board policies in this way, than by seeking to make the detail of board decisions subject to their vote. (The Report, 4.45)</p> <p>[S]hareholders can make their views known to the boards of the companies in which they have invested by communicating with them direct and through their attendance at general meetings. (The Report, 6.5)</p> <p>Reports and accounts are presented to shareholders at the Annual General Meeting. . . . In particular, the Annual General Meeting gives all shareholders . . . direct and public access to their boards. (The Report, 6.7)</p> <p>[T]he chairman of the [audit] committee should be available . . . at the AGM. (Appendix 4, 6(f))</p>	<p>Companies should use the AGM to communicate with private investors and encourage their participation. (Principle C.IV)</p> <p>The AGM is often the only opportunity for the small shareholder to be fully briefed on the company's activities and to question senior managers on both operation and governance matters. (Guideline 5.13)</p> <p>[C]hairmen of . . . committees [should] be available to answer questions at the AGM. (Guideline 5.19)</p> <p>[D]irectors must lay before the AGM the annual accounts and the directors' report. . . . Most boards propose a resolution relating to the report and accounts. . . . We recommend this as best practice, which allows a general discussion of the performance and prospects of the business, and provides an opportunity for the shareholders in effect to give – or withhold – approval of the directors' policies and conduct of the company. (Guideline 5.20)</p> <p>Notice of the AGM and accompanying documents should be circulated at least 20 working days in advance. (Guideline 5.21)</p>	<p>Boards should use the AGM to communicate with private investors and encourage their participation. (The Code, Principle C.2)</p> <p>The board's annual remuneration report to shareholders need not be a standard item of agenda for AGMs. But the board should consider each year whether the circumstances are such that the AGM should be invited to approve the policy set out in the report and should minute their conclusions. (The Code, Provision B.3.5)</p> <p>Companies should count all proxy votes and, except where a poll is called, should indicate the level of proxies lodged on each resolution, and the balance for and against the resolution, after it has been dealt with on a show of hands. (The Code, Provision C.2.1)</p> <p>Companies should propose a separate resolution at the AGM on each substantially separate issue, and should in particular propose a resolution at the AGM relating to the report and accounts. (The Code, Provision C.2.2)</p> <p>The chairman of the board should arrange for the chairmen of the audit, remuneration and nomination committees to be available to answer questions at the AGM. (The Code, Provision C.2.3)</p> <p>Companies should arrange for the Notice of the AGM and related papers to be sent to shareholders at least 20 working days before the meeting. (The Code, Provision C.2.4)</p>	<p><i>Not covered.</i></p>	<p>Meetings of stockholders provide an important forum for the consideration of management and stockholder proposals. An orderly discussion of the corporation's affairs is facilitated by following a specific agenda and by adhering to a code that governs the conduct of the meeting. (p. 20)</p> <p>The consideration of management and stockholder proposals and board nominations is largely conducted through the proxy process rather than through proposals raised at stockholder meetings. This gives all stockholders, rather than only those who attend the meeting, the opportunity to consider relevant matters. . . . [M]atters brought to stockholder attention through the proxy statement should be matters of significance to the business of the corporation and to stockholders as a whole. (p. 20)</p> <p>Reasonable notice of topics permits all interested parties to participate in the process in a considered way. As a result, The [BRT] recommends that corporations consider advance notice requirements in by-laws because such requirements generally promote good corporate governance. (p. 21)</p> <p><i>See generally</i> Section IV (Stockholder Meetings) at 20-21.</p>

General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
J. Anti-Takeover Devices				
<p><i>Not covered directly, but see</i> By-Law 6.12: Except as set forth in Subsection (b) hereof, in addition to any affirmative vote of stockholders required . . . , neither the corporation nor any subsidiary shall knowingly effect any direct or indirect purchase or other acquisition of any GM Equity Security of any class or classes issued by the corporation at a price which is in excess of the highest Market Price of such GM Equity Security on the largest principal national securities exchange in the United States on which such security is listed for trading on the date that the understanding to effect such transaction is entered into by the corporation . . . from any Interested Person . . . who has beneficially owned such GM Equity Securities for less than two years prior to such date, without the affirmative vote of the holders of the Voting Shares which represent at least a majority of the aggregate voting power of the corporation, excluding Voting Shares beneficially owned by such Interested Person, voting together as a single class.</p>	<p>Shareholders have the right to participate in, and to be sufficiently informed on . . . extraordinary transactions that in effect result in the sale of the company. (OECD Principle I.B)</p> <p>Markets for corporate control should be allowed to function in an efficient and transparent manner.</p> <ol style="list-style-type: none"> 1. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class. 2. Anti-takeover devices should not be used to shield management from accountability. (Principle I.E) <p>In some countries, companies employ anti-takeover devices. However, both investors and stock exchanges have expressed concern over the possibility that widespread use of anti-takeover devices may be a serious impediment to the functioning of the market for corporate control. In some instances, takeover defenses can simply be devices to shield management from shareholder monitoring. (OECD Principle I.E.2 Annotation at 28)</p> <p>[Independent board members] can play an important role in . . . changes of corporate control. (OECD Principle V.E Annotation at 41-42)</p>	<p><i>Not covered directly, but see</i> p. 55 (A director must act honestly, in good faith and in the best interests of the company as a whole. . . . A director must not allow personal interests, or the interests of any associated person, to conflict with the interests of the company.).</p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
J. Anti-Takeover Devices				
<i>Not covered.</i>	<p>The Committee has reviewed a resolution by a meeting of shareholders, the legitimacy of which has given rise to recurring discussion, to wit, permission granted to the Board of Directors to use delegations of authority to increase capital after a takeover bid has been made.</p> <p>In 1989, the legislature laid down a principle of suspension of those delegations at such a time, subject to one exception: the extraordinary meeting of shareholders may expressly permit the Board of Directors, for a term not exceeding one year, to make use, after a takeover bid has been made, of the delegations of authority granted to it by the meeting of shareholders for a capital increase with or without preemptive subscription rights, provided that the capital increase is open (not restricted). . . .</p> <p>Since then, most listed companies have submitted to their meeting of shareholders every year a resolution for this purpose. In recent years, approval by the shareholders of this resolution, to which many institutional investors object as a “poison pill,” has been increasingly lukewarm.</p> <p>Accordingly, the Committee recommends that corporations cease in future to submit to the extraordinary meeting of their shareholders a resolution expressly permitting the use of delegations of authority to increase the capital after a takeover bid has been made. (Viénot II at 19)</p>	<p>The stockholders alone decide whether to accept or reject offers of acquisition. The Management Board and the Supervisory Board are obliged to present the chances and risks of the offers in a balanced manner. The chief measure for evaluation in this is the presumed development in the prosperity of the company on an acquisition or with independence. Securing the independence of the company is not normally a material aim of the company. (The Code, V.1.6)</p>	<p>Devices that limit or prevent merger and acquisition activity should be adopted only when they are considered to be in the interest of the corporation and its shareholders. (Recommendation 1.4.3)</p> <p>The corporate governance framework should discourage the use of devices that prevent merger and acquisition activity. However, any such use should take place only in the interest of the shareholders. (Recommendation 5.13)</p> <p><i>See</i> Recommendation 1.2.3 (Shareholders should have the right to participate equitably and efficiently in the general shareholder meetings and be sufficiently, timely and properly informed on the decisions that need to be made regarding fundamental changes in the corporation. These changes include . . . the approval of unusual and complex capital transactions, such as mergers, acquisitions and sales of the corporation’s assets.).</p> <p><i>See also</i> Recommendation 5.8 (The Board of Directors should establish rules governing the procedures for special transactions, such as mergers, acquisitions and other import capital transactions in the corporation.).</p>	<i>Not covered.</i>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
J. Anti-Takeover Devices				
<i>Not covered.</i>	<p>In the situation where the company becomes the target of a hostile takeover bid by a party attempting to acquire control over it, the company's management should be allowed the time to provide adequate protection for the interests to which the hostile takeover bid relates. Protective measures can, within certain limits, be accepted in these circumstances. Anti-takeover regulations do not fall within the remit of the Committee and it awaits the proposed legislation on this subject. (Recommendation 5.1.2)</p> <p>Although the Committee realizes that under the circumstances mentioned above the continuity of decision-making and the protection against hostile takeovers may justify a departure from the principle that the investor should be able to exercise a degree of influence which is proportionate to the capital contribution, the Committee believes that this should never lead to the investors being deprived of exerting a real influence. (Recommendation 5.4.1)</p> <p>The Committee believes that protective preference shares should under normal circumstances not be issued. The voting right on protective preference shares should be exercised with due regard for the function of the shares. The holder of these shares should be reticent in using the voting rights attached to these shares when decisions are being taken that do not concern the protection of the company against an unfriendly acquisition of control. (Recommendation 5.6.3)</p>	<p>[S]hareholder agreements to contest takeover bids [should be disclosed to the public]. (Commentary on Recommendation 5)</p> <p>Measures adopted to prevent the success of takeover bids should respect the interests of the company and its shareholders. Measures considered contrary to these interests include defensive clauses intended to cause an automatic erosion in company assets in the event of transfer of control or change of composition in the board, detrimental to the free transferability of shares and the free assessment by shareholders of the performance of members of the board. (Recommendation 13)</p> <p>Efficiency of the shareholder control market is based essentially on the right to transferability of shares, on the unwaivable possibility granted to the shareholder to assess the situation of the company and on the responsibility of its leaders for the results obtained. These principles require a distinction to be made between benign defensive measures and those that harm the rights and expectations of shareholders and the market in general. For this reason, it is important to condemn the adoption of certain defensive measures which, seeking at all costs to contain the success of takeover bids without the agreement of the board, end up damaging the interests of partners and the company. (Commentary on Recommendation 13)</p>	<p>[A] rule of abstention . . . would oblige significant shareholders not to vote in board decisions regarding which they have a direct or indirect interest (for instance, defensive measures against hostile takeover bids). (The Report, II.8.6)</p> <p>[I]n the event of including a proposal to introduce defensive measures against hostile takeover bids, it should be stated that the Board of Directors is in a conflicting situation. (The Report, II.9.2)</p>	<i>Not covered.</i>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
J. Anti-Takeover Devices				
<p><i>Not covered directly, but see The Report, 4.6 (An important aspect of effective corporate governance is the recognition that the specific interests of the executive management and the wider interests of the company may at times diverge, for example, over takeovers. . . . Independent non-directors, whose interests are less directly affected, are well-placed to help to resolve such situations.).</i></p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>	<p><i>Not covered.</i></p>

g152General Motors Board Guidelines	OECD Principles / Millstein Report (International)	Bosch Report (Australia)	Merged Code Recommendations (Belgium)	Federation of Belgian Companies Recommendations (Belgium)
K. Executive Compensation				
<i>Not covered.</i>	<p>The board should fulfil certain key functions, including [reviewing] key executive and board remuneration. (OECD Principle V.D.3)</p> <p>[Independent board members] can play an important role in areas where the interest of management, the company and shareholders may diverge, such as executive remuneration. (OECD Principle V.E Annotation at 41-42)</p> <p>See OECD Principle IV.A.4 (Disclosure should include, but not be limited to, material information on . . . [m]embers of the board and key executives, and their remuneration.).</p>	<p>The primary functions of the remuneration committee should include matters such as the remuneration arrangements for the chief executive officer and other senior executives (including incentive plans, share options and other benefits) and service contracts. (p. 31)</p>	<p>The Belgian Commission on Corporate Governance regards it as good practice for part of the executive management’s pay to be related to the company’s performance and/or value. (Part I: B.3.1)</p> <p>The executive management’s pay should be subject to the recommendations of a remuneration committee, where such exists, made up of a majority of non-executive directors. In case no remuneration committee is created, the board of directors should decide on the principles of the remuneration of the executive management, in the absence of the executive directors. (Part I: B.3.2)</p>	<p><i>Not covered directly but see 3.1 ([T]he remuneration of executive directors should be submitted to [the remuneration] committee for an opinion.</i></p> <p>If there is no remuneration committee, the remuneration of executive directors should be submitted to the non-executive directors.).</p>

Dey Report (Canada)	Viénot Reports I & II (France)	Berlin Initiative Group Code (Germany)	Mertzanis Report (Greece)	Preda Report (Italy)
K. Executive Compensation				
<p>The board of directors should review the adequacy and form of the compensation of directors and ensure the compensation realistically reflects the responsibilities and risk involved in being an effective director. (Guideline 8)</p> <p>The board must ensure that objectives are in place against which management's performance can be measured. Not only is this a sensible management approach but the relationship between management performance and compensation must be reasonable. This relationship is being closely monitored by the investment community as a result of the fairly recent executive compensation disclosure requirements. (4.6(3))</p> <p>See 3.2 ([T]he enactment of the Ontario rules requiring disclosure of executive compensation [is] intended to enable shareholders to better relate executive and corporate performance to compensation. The amount of executive compensation and the process for determining the amount are high profile aspects of corporate governance.).</p>	<p>Most boards already have a committee charged with recommending remuneration levels for corporate officers, including in some cases stock option plans, although these may be the responsibility of a separate committee. (Viénot I at 18)</p> <p>See Topic Heading D, above.</p>	<p>The remuneration of members of the Management Board is made at a reasonable level and is related to performance. (The Code, III.6.1)</p> <p>The remuneration of the members of the Management Board embraces fixed and variable components. The basis for determining the variable components of remuneration is systematic evaluation of the individual members of the Management Board carried out periodically by the personnel committee of the Supervisory Board. (The Code, III.6.2)</p> <p>The variable remuneration can also be paid in part according to stock option schemes or comparable schemes orientated towards the market price of stock. (The Code, III.6.3)</p>	<p>Shareholders should have the right to . . . the approval of the . . . chief executive officer (CEO) [and] his/her . . . compensation, following the recommendations of the Board of Directors. (Recommendation 1.2.6)</p> <p>The Board of Directors has the responsibility . . . for . . . [t]he selection, appointment and monitoring of executive management and the determination of their compensation. (Recommendation 5.3.3)</p> <p>It is good practice that management compensation be tied to the corporation's general level of profitability and overall performance. . . . It is good practice that concrete determination procedures be adopted for management compensation. (Recommendation 7.1)</p> <p>It is a good practice that a review committee, consisting of the majority of non-executive Board members, be established by the general shareholder meeting, which would review management compensation. (Recommendation 7.2)</p>	<p>The board of directors shall . . . determine, after examining the proposal of the special committee and consulting the board of auditors, the remuneration of the managing directors and of those directors who are appointed to particular positions within the company and, where the shareholders' meeting has not already done so, allocate the total amount to which the members of the board and of the executive committee are entitled. (The Code, 1.2.c)</p> <p>The [remuneration] committee . . . shall submit proposals to the board on the remuneration of the managing directors and of those directors who are appointed to particular positions and, on the indication of the managing directors, on the criteria for determining the remuneration of the company's top management. (The Code, 8.1)</p> <p>As a general rule, in determining the total remuneration payable to the managing directors, the board of directors shall provide for a part to be linked to the company's profitability and, possibly, to the achievement of specific objectives laid down in advance by the board of directors itself. (The Code, 8.2)</p> <p>The Committee believes that the appropriate structuring of the total remuneration of managing directors is one of the main means of aligning their interests with those of the shareholders and that systems of variable remuneration linked to results . . . make it easier to motivate the entire top management. (Commentary on the Code, 8; see the Report, 5.4.2)</p> <p>It is important that remuneration packages should be able to attract and motivate persons with adequate experience and ability . . . for top management positions. (The Report, 5.4.2)</p>

Corporate Governance Forum Principles (Japan)	Peters Code (The Netherlands)	Securities Markets Comm'n Recommendations (Portugal)	Olivencia Report (Spain)	Swedish Academy Report (Sweden)
K. Executive Compensation				
<p>[E]xecutive remuneration . . . should be decided by the board of directors, but this will require the revision of the Commercial Code. [S]tock option plans, <i>e.g.</i>, should be disclosed to the shareholders in the form of business statements, enabling shareholders to evaluate them. (Comment on Principle 16B)</p>	<p><i>Not covered.</i></p>	<p>The board is encouraged to create internal control committees with powers conferred for matters in which there are potential situations of conflicts of interest, such as . . . analysis of the remuneration policy. (Recommendation 17)</p>	<p>[T]he Committee recommends that director remuneration information policies be grounded on a principle of maximum transparency. Applying this principle requires a quick advancement from the current situation to more complete and detailed information on director remunerations. This involves individual information on each one, itemized by headings, whether they be remunerations attached to their director status (fixed earnings, allowances, share of profits, bonuses, incentives, pensions, insurance, payments in kind or others) or remunerations paid by the company for other kinds of legal relations (professional services, line management or executive positions). The Committee recommends that companies targeted by this report that do not choose to immediately apply this maximum transparency principle, but prefer a gradual implementation (or by stages), provide an explanation in their Annual Report. In either case, these companies should provide at least individualized information on the remunerations of all of the directors as such, for each of the items stated above as well as any professional fees. On the other hand, the remuneration of executive directors would be stated for all of them in the aggregate, stating how many directors receive each of the remuneration items. All this information would be included in the Annual Report. (The Report, II.7.4)</p>	<p>The remuneration is often paid only to external board members, while internal (employed by the company or main owners) do not enjoy remunerations. (p. 17)</p>

Cadbury Report (United Kingdom)	Hampel Report (United Kingdom)	The Combined Code / Turnbull Report (United Kingdom)	1996 NACD Report (USA)	1997 BRT Report (USA)
K. Executive Compensation				
<p>[Executive] Directors' service contracts should not exceed three years without shareholders' approval. (The Code, 3.1)</p> <p>Executive directors' pay should be subject to the recommendations of a remuneration committee made up wholly or mainly of non-executive directors. (The Code, 3.3)</p> <p>We also recommend that boards should appoint remuneration committees, consisting wholly or mainly of non-executive directors and chaired by a non-executive director to recommend to the board the remuneration of the executive directors in all its forms, drawing on outside advice as necessary. (The Report, 4.42)</p>	<p>[A] significant part of executive directors' remuneration should be linked to the company's performance, whether by annual bonuses, share option schemes, or long-term incentive plans. (Guideline 4.6)</p>	<p>A proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance. (The Code, Principle B.1)</p> <p>Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors. No director should be involved in deciding his or her own remuneration. (The Code, Principle B.2)</p> <p>The performance-related elements of remuneration should form a significant proportion of the total remuneration package of executive directors and should be designed to align their interests with those of shareholders and to give these directors keen incentives to perform at the highest levels. (The Code, Provision B.1.4)</p> <p>Executive share options should not be offered at a discount save as permitted by paragraphs 13.30 and 13.31 of the Listing Rules. (The Code, Provision B.1.5)</p>	<p>[The] board should . . . determine the method for selecting and compensating . . . the CEO. (p. 21)</p>	<p>“[S]election and evaluation” [of the CEO] includes considering compensation. . . . Boards have a responsibility to ensure that compensation plans are appropriate and competitive and properly reflect the objectives and performance of management and the corporation. Incentive plans will vary . . . and should be designed to provide the proper balance between long- and short-term performance incentives. Stock options and other equity-oriented plans should be considered as a means for linking management's interests directly to those of shareholders. (pp. 5-6)</p>

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* Investor viewpoint.

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* Investor viewpoint.

** Hybrid consisting of investors, academics and private business sector representatives.

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* Investor viewpoint.

** Hybrid consisting of investors, academics and private business sector representatives.

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APPENDIX II

Excerpts from Business Sector Advisory Group on Corporate Governance Report to the OECD

CORPORATE GOVERNANCE

Improving Competitiveness
and Access to Capital
in Global Markets

A Report to the OECD
by the Business Sector Advisory Group
on Corporate Governance

Ira M. Millstein (Chairman)
Michel Albert
Sir Adrian Cadbury
Robert E. Denham
Dieter Feddersen
Nobuo Tateisi

April 1998

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LETTER FROM THE CHAIRMAN

2 April 1998

Dear Mr. Secretary-General,

I am pleased to submit to the OECD the Report of the Business Sector Advisory Group on Corporate Governance, entitled "Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets".

OECD economies increasingly rely on the vitality and strength of their respective private sectors, in what has become a world market. The corporation is the primary engine of each respective private sector – it raises capital, creates jobs, earns profits, and divides its value added among those contributing to its success.

The governance of the corporation, the internal means by which it accomplishes its performance, is therefore of current great international interest and concern. There is little debate that good corporate governance can positively impact the corporation's overall economic performance. Moreover, there is little debate that transparent corporate governance is key to accessing global capital markets; visible governance provides investors with a definitive description of their rights *vis à vis* the corporation.

While governance is comprised of the internal relationships amongst shareholders, boards of directors, and managers, those relationships are the result of government regulations, public perception and voluntary private initiatives. To understand those relationships requires an understanding of the respective roles of the government and private sector in shaping corporate governance.

Recognizing the significance of corporate governance to the economies of its Member countries, and the necessary interplay of governmental and private sector initiatives involved, the OECD determined to ascertain whether it could be of significant assistance to its Members in developing an understanding of the respective roles of government and private sector. Such an understanding would be of invaluable assistance to policy makers, public and private, throughout the OECD Member countries.

At the 1996 meeting of the Council at Ministerial level, OECD Ministers requested that there be commenced such a study of corporate governance. The Business Sector Advisory Group on Corporate Governance was established that same year to review and analyze international corporate governance issues and to suggest an agenda and priorities for further OECD initiatives.

Since that time, the Advisory Group has met in Paris on a number of occasions and, between meetings, has communicated in writing and through telephone conferences. As an integral part of its work, the Advisory Group has consulted with a wide circle of business sector practitioners from OECD Member countries and has held a Business Sector Colloquium on Corporate Governance in June 1997 to achieve even greater input. A summary of the Colloquium discussions, and a list of participants and other commentators is appended to this Report. The quotations in the text of this Report derive from this Colloquium.

In addition, the Advisory Group has invited and received comments on the Colloquium topics including comments through BIAC (the Business and Industry Advisory Committee to the OECD) and comments submitted by Australian business leaders who participated in a series of related colloquia sponsored by the Australian Institute of Company Directors, Blake Dawson Waldron lawyers and the Australian Stock Exchange Limited.

All of this input has provided a rich resource base for the Advisory Group to draw on in formulating its Report, and has assisted the Group to identify some key areas of common understanding:

- ◇ Corporate governance practices constantly evolve to meet changing conditions. As a work-in-progress, there is no single universal model of corporate governance. Nor is there a static, final structure in corporate governance that every country or corporation should emulate. Experimentation and variety should be expected and encouraged.
- ◇ Corporate governance practices vary and will continue to vary across nations and cultures. We can learn a great deal from observing experiences in other countries.
- ◇ Corporate governance practices will also vary as a function of ownership structures, business circumstances, competitive conditions, corporate life cycle and numerous other factors.

There are, however, a few fundamental parameters:

- ◇ Increasingly, it is accepted that the corporate objective is maximizing shareholder value, which not only requires superior competitive performance but also generally requires responsiveness to the demands and expectations of other stakeholders.
- ◇ Increased transparency and independent oversight of management by boards of directors are the central elements of improved corporate governance.
- ◇ Board practice should be subject to voluntary adaptation and evolution, in an environment of globally understood minimum standards.
- ◇ There are certain areas in which the adoption of universal rules is preferable (such as in accounting).

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The Advisory Group has endeavored in this Report to explain why it has emphasized the foregoing parameters as a basis for both public and private sector initiatives to improve corporate governance throughout the OECD countries, to suggest certain public and private initiatives and to suggest an agenda and priorities for further OECD efforts in corporate governance.

We hope therefore that this Report will contribute positively to the economic performance of corporations throughout the OECD countries, and thereby contribute to the welfare and prosperity of their respective economies and citizens.

It has been a great honor, as well as an intellectual and personal pleasure, to chair the Advisory Group and work with its highly talented and experienced members – Michel Albert, Sir Adrian Cadbury, Robert E. Denham, Dieter Feddersen and Nobuo Tateisi. Each Advisory Group member has contributed generously of his time and insights – all in his individual capacity, and not as representatives of any organization, government or country. I think the Report reflects this remarkable collaboration, which enabled a consensus to emerge from individuals grounded in diverse national and cultural experiences.

The Advisory Group wishes to emphasize that this Report reflects the consensus of the Advisory Group members as regards the principal perspectives and recommendations set forth. Individual members may not necessarily agree with every aspect of the Report.

On behalf of the Advisory Group, I wish to thank Joanna R. Shelton, Deputy Secretary-General of the OECD, for her considerable intellectual support and assistance. We especially wish to acknowledge the substantive research, drafting and organizational assistance of Mats Isaksson and Rauf Gönenç of the OECD staff. They were instrumental in organizing the June 1997 Colloquium, and in providing each of the members of the Advisory Group, and certainly its Chairman, with knowledgeable and steady assistance throughout. Thanks also to Holly J. Gregory of Weil, Gotshal & Manges LLP, for her invaluable editing of this Report, and her assistance in coordinating much of the communications on which this Report is based.

Finally, on behalf of the Advisory Group, I thank you and the OECD for the opportunity to explore and comment on the important issues of corporate governance in the context of evolving international markets.

Sincerely yours,

Ira M. Millstein
Chairman

MEMBERS OF THE OECD BUSINESS SECTOR ADVISORY GROUP ON CORPORATE GOVERNANCE

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CHAPTER 1

OVERVIEW, PUBLIC POLICY PERSPECTIVES AND RECOMMENDATIONS TO THE OECD

1.1 Corporate Governance in a New Economic Environment

1. Individual OECD nations are at an economic (and perhaps social) watershed as their market-oriented economies increasingly rely on the vitality and strength of the private sector in what rapidly is becoming a world market. OECD economies rely on the corporation – as the engine, worldwide, for private sector participation in the global market – to raise capital, create jobs, earn profits and divide the value added among those contributing to its success.
2. To succeed in their primary objective of generating long-term economic profit, corporations must seek to achieve a sustained competitive advantage. This requires significant flexibility to take necessary risks in responding quickly to opportunities and challenges in a constantly changing environment. Corporations must be able to develop and implement their respective competitive advantages, to raise capital, to assemble and re-deploy resources to that end and, at the same time, to meet the expectations of their shareholders, employees, suppliers, creditors, customers, communities and society at large.
3. Corporate governance comprehends that structure of relationships and corresponding responsibilities among a core group consisting of shareholders, board members and managers designed to best foster the competitive performance required to achieve the corporation’s primary objective.
4. Corporate governance tends to gain public attention when performance problems are apparent, both at national and company levels. For example, the current crisis in East Asian economies is generating considerable discussion about failed corporate governance practices relating to lending and borrowing. Similarly, performance problems at the company level frequently draw attention to governance problems. While developing appropriate remedies for cases of visible failure is important, the more long-term policy objective is to prevent such failures. All OECD nations share this challenge in their efforts to improve the functioning of their market economies.
5. While there may be some debate in the academic literature about the impact of corporate governance on corporate performance, the Advisory Group is convinced – based on its collective experience, the views of respected business groups, and recent research and academic commentary – that improved corporate governance can positively impact overall corporate performance.
6. The quality of corporate governance is of particular importance at a time when interactions between corporations and their capital suppliers are undergoing fundamental changes, with significant implications for other corporate stakeholders, such as employees. Given the globalisation of competition in markets for goods, services, key human resources and capital, corporations in all OECD countries face common competitive challenges and opportunities. Due to global deregulation and technological change, capital suppliers are encountering new opportunities to improve their returns; entrepreneurs and companies are exposed to a wider and more complete range of capital-raising vehicles; and employees are experiencing greater exposure to the risks and rewards of increased competition.

7. With international deregulation, investment capital is more mobile and investors are demanding broader investment opportunities with internationally competitive levels of profitability (risk-adjusted returns). For corporations, this development has brought about access to a wider pool of financing and a greater range of risk- and reward-sharing equity placements; broader financing options in turn can support a variety of research and development activities, spin-offs, capacity expansion and new firm creation. However, greater competition for capital results in greater pressure for corporate economic performance and significant pressures on long-standing relationships with employees.

“Due to domestic and international deregulation, financial institutions have access to a much broader group of investment opportunities, which has resulted in very aggressive return expectations. Enhanced opportunities to find higher returns on investments have raised a challenge for all companies competing to attract capital.”

Ms. Heidi Kunz, Chief Financial Officer, ITT Industries (United States)

8. Good corporate governance should allow corporations and economies to capture fully the inherent benefits from these developments while maintaining a sensitivity to the social concerns raised. Failure to adapt to efficient governance practices may well lead to restricted access to capital markets. Again, the current crisis in East Asian economies provides a stark example. Capital providers increasingly rely on the corporate governance of the corporations they invest in, or lend to, to provide actual accountability and responsibility to investors and lenders.
9. Because worldwide the corporation is the essential engine driving the private sector economically, and because corporate governance can be critical to competitive performance in all of a corporation’s markets (goods, services, capital and human resources), the quality of corporate governance can affect the dynamism of the private sector and ultimately the credibility of market economies in providing economic growth and promoting citizen welfare. Accordingly, corporate governance has become an important international topic for discussion.
10. The task of adapting, refining and adjusting corporate governance is a necessary and ongoing process. To be competitive, both corporations and investors must be allowed to innovate relentlessly and to adapt their governance practices to new economic circumstances; corporate governance should be viewed as “work in progress”. For this reason, the Advisory Group rejects a “one-size-fits-all” approach to corporate governance practice and focuses this Report on a set of general public policy perspectives and guiding norms in a context of pluralism and adaptability.
11. To enable flexibility, experimentation and continuous improvement, the design of corporate governance relationships and practices should be left to market forces: corporate governance should remain, basically, decisions by individual actors in the private sector. While the need to protect investor rights is undisputed, the Advisory Group believes that market-driven solutions emerging from competition among alternative practices are generally superior to those mandated by regulating authorities.
12. This market-based perspective does not exclude a role for government. Policy makers and regulatory bodies have a distinct and important responsibility for shaping a regulatory framework, compatible with their respective societal values, that allows market forces to work and permits investors and companies to design their governance arrangements in accordance with their respective needs.
13. The collective efforts of the business community to evaluate and disseminate experiences in the form of “best practices” and governance guidelines are important as well. It is the Advisory Group’s view that such efforts increase

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the collective knowledge about workable solutions and thereby help to invigorate a broad understanding of the principles underlying good corporate governance practices, and the continued evolution of better practices.

14. Although this Report focuses on publicly traded corporations (*i.e.*, corporations whose stock is listed on a stock exchange or other market), the Advisory Group believes that many of the issues discussed are also of importance to wholly privately held, family-owned and state-owned companies – which account for a significant portion of economic activity in many OECD countries. Increasingly, banks and other lenders are relying on principles of improved corporate governance to protect their investments. Moreover, privately held, family-owned and state-owned companies are affected by corporate governance standards as soon as they seek capital from equity markets to finance their activities (and convert into the legal structure of a publicly traded corporation). Therefore, privately held, family-owned and state-owned companies – many of which will be the publicly traded companies of tomorrow – are well-advised to consider the corporate governance principles applicable to publicly traded corporations.

1.2 An Agenda for Modernization

15. The Advisory Group believes that enabling the corporation to improve its competitiveness and access to capital markets through improved corporate governance will require both public policy and private sector initiatives. The Advisory Group offers this Report to promote supportive international public policy perspectives, to encourage voluntary private sector initiatives and, particularly, to offer the OECD suggestions about the direction of its further efforts.

“There will be increased pressure on all our economies and societies to adjust to the requirements of global financial markets. This process of convergence must of course be guided by building up a consensus on what should be the rules of the game. Institutions like the OECD can play an important role in shaping that process.”

Dr. Henning Schulte-Noelle, Chairman of the Board of Management, Allianz AG (Germany)

16. The Advisory Group suggests that such further public and private sector initiatives – and OECD efforts – focus on the following Agenda (which is described in the remaining chapters of this Report):

- ◇ **Defining the mission of the corporation in the modern economy:** Generating long-term economic gain to enhance shareholder (or investor) value is necessary to attract equity investment capital and is, therefore, the corporation’s central mission. At the same time, however, corporations must function in the larger society. To varying degrees, different national systems and individual corporations may temper the economic objective of the corporation to address non-economic objectives. Full transparency of economic and non-economic objectives – both as to the national system and the individual corporation – will be necessary in the global competition for capital. (Chapter 2)
- ◇ **Ensuring adaptability of corporate governance arrangements:** The primary role for regulation is to shape a corporate governance environment, compatible with societal values, that allows competition and market forces to work so that corporations can succeed in generating long-term economic gain. Specific governance structures or practices will not necessarily fit all companies at all times. Nor should it be taken for granted that a given design may suit the same company during different stages of its development. For dynamic enterprises operating in a rapidly changing world, corporate governance adaptability and flexibility – supported by an enabling regulatory framework – is a prerequisite for better corporate performance. (Chapter 3)

- ◇ **Protecting shareholder rights:** For companies to attract equity investment, regulatory safeguards must emphasize fairness, transparency and accountability. These safeguards should take into account the new and growing category of non-controlling shareholders who have emerged in the form of institutional investors. The focus of current efforts to improve shareholder protection should center on investor access to performance-related information, shareholder exercise of voting rights, and promotion of active and independent (non-executive) members of boards of directors to strengthen the quality of corporate governance. (Chapter 4)
- ◇ **Aligning the interests of shareholders and other stakeholders:** Corporate success is linked to the ability to align the interests of directors, managers and employees with the interests of shareholders. Performance-based compensation is a useful tool for this purpose. Independent (non-executive) members of the board of directors – or in certain nations, board of auditors – have a special responsibility in designing and approving appropriate remuneration schemes. (Chapter 6)
- ◇ **Recognizing societal interests:** Companies do not act independently from the societies in which they operate. Accordingly, corporate actions must be compatible with societal objectives concerning social cohesion, individual welfare and equal opportunities for all. Attending to legitimate social concerns should, in the long run, benefit all parties, including investors. At times, however, there may be a trade-off between short-term social costs and the long-term benefits to society of having a healthy, competitive private sector. Societal needs that transcend the responsive ability of the private sector should be met by specific public policy measures, rather than by impending improvements in corporate governance and capital allocation. (Chapter 7)

17. The specific topics on this Agenda are interrelated and complementary. Therefore, the consequences of any particular public policy reform measure need to be carefully considered to ensure a coherent approach to corporate governance.

18. Based on its discussion of this Agenda in the ensuing Chapters, the Advisory Group has formulated Perspectives that it believes should guide:

- ◇ public policy makers and regulators to encourage the development of improved governance practices, with strong emphasis on government enabling voluntary private sector development rather than attempting to regulate it; and
- ◇ corporations and investors voluntarily to improve governance practices.

19. Based on these Perspectives, and the Advisory Group’s discussion of specific substantive issues in this Report, the Advisory Group has also formulated Recommendations for further efforts by the OECD.

1.3 Perspectives for Public Policy Improvement

20. For the private sector and specifically the publicly traded corporation to flourish, policy makers and regulators need to shape a corporate governance environment, compatible with the respective society’s values, that allows market forces to work and corporations to succeed in generating long-term economic profit. Largely this entails protecting the integrity and efficiency of capital markets (thus promoting confidence), by protecting shareholder rights and providing for the disclosure of information.

21. Since regulation is a powerful and potentially rigid tool, it should be used with care in the context of corporate governance. If corporations are to fulfill their potential in exploiting opportunities to create long-term economic profit, market forces must be allowed to determine the most efficient deployment of investment and other corporate resources.

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22. Protecting shareholders and promoting investor confidence are key elements in providing the access to capital needed to create and maintain a dynamic, competitive corporate sector. By focusing primarily on shareholder protection, disclosure of information and voluntary corporate governance improvements, policy makers and regulators can avoid developing overly rigid and intrusive regulatory systems.

Perspective 1 (Flexibility). Policy makers and regulators should be sensitive to corporations' need for flexibility in responding to the changing competitive environment and the related need for flexible, adaptive governance structures. Regulation should support a range of ownership and governance forms so that a market for governance arrangements develops.

Perspective 2 (Regulatory Impact). Policy makers and regulators should consider the impact of any proposed regulatory initiative on the ability of the corporate sector to respond to competitive market environments. They should avoid those regulations that threaten to unduly interfere with market mechanisms.

◇ The Advisory Group endorses and encourages efforts by the OECD to promote greater reliance on competition and market forces through its multi-sector study of regulatory reform. The Advisory Group invites the international business community to support the OECD's efforts.

Perspective 3 (Regulatory Focus). Regulatory intervention in the area of corporate governance is likely to be most effective if limited to:

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

1.3.1 Fairness

23. To encourage both the domestic and foreign capital investment necessary for the development of globally competitive enterprises, shareholders require reasonable assurances that their assets will be protected against fraud, managerial or controlling shareholder self-dealing, and other "insider" wrongdoing.

24. Market confidence also depends on a clear understanding of – and faith in – contractual relationships among other corporate resource providers and consumers, and an expectation that contractual relationships are enforceable.

Perspective 4 (Clarity, Consistency, Enforceability). Policy makers and regulators should provide clear, consistent and enforceable securities and capital market regulations designed to protect shareholder rights and create legal systems capable of enforcing such regulations. Such regulations should seek to treat all equity investors – including minority shareholders – fairly, and should include protections against fraud, dilution, self-dealing and insider trading.

Perspective 5 (Litigation Abuse). Regulations aimed at protecting shareholder rights should be designed to protect against litigation abuse. This can be accomplished through the use of tests for the sufficiency of shareholder complaints and the provision of safe harbors for management and director actions.

Perspective 6 (Basic Contract, Commercial and Consumer Law). Policy makers and regulators should ensure that an adequate system of contract, commercial and basic consumer protection law is in place, so that contractual relationships are enforceable. (This is particularly relevant to those developing and emerging market nations with less established legal systems).

Perspective 7 (Regulatory Impact on Active Investors). Policy makers and regulators should review whether their securities, tax and other regulations unduly hinder active investors, and whether their regulations concerning institutional investors inappropriately inhibit them from participating as active investors.

Perspective 8 (Corruption and Bribery). Policy makers and regulators should ensure that corporations function in an environment that is free from corruption and bribery.

◇ The Advisory Group welcomes the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and encourages efforts by the OECD to establish common international rules outlawing bribery by corporations. The Advisory Group invites the international business community to support the OECD's efforts.

1.3.2 Transparency

25. Investor confidence and market efficiency depend on the disclosure of accurate, timely information about corporate performance. To be of value in the global capital markets, disclosed information should be clear, consistent and comparable. This enables investors worldwide to make educated decisions concerning the allocation of their assets, and provides high-performing corporations with lower-cost capital.

Perspective 9 (Accurate, Timely Disclosure). Regulators should require that corporations disclose accurate, timely information concerning corporate financial performance. Adequate enforcement mechanisms should be provided.

Perspective 10 (Consistent, Comparable Disclosure). Regulators should cooperate internationally in developing clear, consistent and comparable standards for disclosure of corporate financial performance, including accounting standards.

Perspective 11 (Ownership Disclosure). Regulators should extend such disclosure requirements to the corporate ownership structure, including disclosure of any special voting rights and of the beneficial ownership of controlling of major blocks of shares.

Perspective 12 (Disclosure Improvement). Regulators should encourage ongoing improvements in both disclosure techniques and formats. This may encompass both the use of new information technologies, and the disclosure of non-financial but relevant information concerning intangible assets.

1.3.3 Accountability

26. The potential for management and shareholder interests to diverge is a defining characteristic of the modern, publicly traded corporation. Addressing this "agency" problem is a central concern of corporate governance, and the

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system of rights and responsibilities it encompasses. For corporate governance to be most effective, the major participants – shareholders, directors and managers – need a clear understanding of their respective roles, rights and responsibilities.

27. The board of directors – or in certain nations, the board of auditors – is uniquely positioned as the internal corporate mechanism for holding management accountable to shareholders. Board oversight can be viewed as a means of reducing the potential for significant divergences between management and investor interests. The board is best positioned to perform this role when – at least to an effective degree – its members are distinct from, and independent of, management. Although the structure of corporate boards for publicly traded corporations differs among OECD nations – for example, by including both single- and two-tier boards – board independence can be promoted in any type of board system.

28. Accountability generally is based on a system of internal checks and balances. In the corporate context, these include sound audit practices.

29. Within the broad limits set in a given national economy, each corporation needs flexibility to determine for itself the governance practices that best fit.

Perspective 13 (Corporate Governance Legal Standards). *Policy makers and regulators should articulate clearly the legal standards that govern shareholder, director and management authority and accountability, including their fiduciary roles and legal liabilities. However, because corporate governance and expectations concerning roles and liabilities continue to evolve, legal standards should be flexible and permissive of evolution.*

Perspective 14 (Shareholder Protection). *Policy makers and regulators should protect and enforce shareholders' rights to vote and participate in annual shareholders' meetings.*

Perspective 15 (Independent Corporate Boards). *Policy makers and regulators should encourage some degree of independence in the composition of corporate boards. Stock exchange listing requirements that address a minimal threshold for board independence – and frequently board audit committee independence – have proved useful, while not unduly restrictive or burdensome. However, policy makers and regulators should recognize that corporate governance – including board structure and practice – is not a “one-size-fits-all” proposition, and should be left, largely, to individual participants.*

Perspective 16 (Sound Audit Practices). *Policy makers and regulators should encourage sound audit practices, which include board selection of, and reliance on, an independent auditor.*

Perspective 17 (Investor Competition). *Governments should avoid regulations that unduly inhibit the ability of institutional investors to compete with one another. However, sound, prudent management of these funds should remain the overriding objective of public policy in this area.*

1.3.4 Responsibility

30. While pursuing their objectives, corporations should observe the standards of the societies in which they operate.

31. In economic systems that rely heavily on market forces to organize the economic foundations of society, a fundamental role of government is to provide a framework that can support and protect individuals in adjusting to the impacts of market forces.

Perspective 18 (Law-abiding Corporations). *Policy makers and regulators should ensure that corporations abide by laws that uphold the respective society's values, such as criminal, tax, antitrust, labor, environmental protection, equal opportunity, and health and safety laws.*

Perspective 19 (Individual Welfare). *Policy makers and regulators should support and encourage education and training efforts, the provision of unemployment benefits, and other similar efforts aimed at promoting the welfare of individuals.*

Perspective 20 (Income and Opportunity Divergence). *Policy makers and regulators may wish to consider the implications of significant divergence in income and opportunity paths. In particular, government action may be necessary to promote skill acquisition in certain sections of society that do not benefit from present market trends.*

1.4 Perspectives for Voluntary Self-Improvement

32. Good corporate governance is a key element in corporate competitiveness and access to capital.

33. The focal point of corporate governance is the board of directors as a mechanism to represent shareholder interests, prevent conflicts of interest (*i.e.*, address the agency problem), monitor managerial performance and balance competing demands on the corporation.

34. For the board to play this role in a meaningful way, it needs to be capable of acting independently of management. This requires board members (or in some nations, board of auditor members) capable of exercising business judgement independently of management – whether in a single-tier or two-tier board.

35. Suggested governance “best practices” and individual board guidelines have proliferated in the 1990s and serve as useful tools for board self-improvement.

36. The right to vote and participate in annual meetings that is generally associated with share ownership is an important investor asset.

Perspective 21 (Corporate Objective). *Individual corporations should disclose the extent to which they pursue projects and policies that diverge from the primary corporate objective of generating long-term economic profit so as to enhance shareholder value in the long term.*

Perspective 22 (Governance and Competition). *Individual corporations and shareholders should recognize the important role that corporate governance plays in positioning the corporation to compete effectively while meeting the expectations of its primary resource providers.*

Perspective 23 (Board “Best Practices”). *Individual corporations, shareholders and other interested parties should continue their efforts to articulate and adopt – voluntarily – corporate governance “best practices” designed to improve board independence and activism, and accountability to shareholders.*

Perspective 24 (Independent Oversight). *Whether in a single-tier or two-tier board system, individual corporations should ensure that an effective number of board of director members – or in certain nations, board of auditor members – are persons who are capable of exercising judgement, independent of*

APPENDIX II

Excerpts from Business Sector Advisory Group on Corporate Governance Report to the OECD

management views. Generally, this will require that such board members are persons who are not employed by the company.

Perspective 25 (Voting as an Asset). *Investors should consider the right to vote and participate in annual meetings as an asset that provides an opportunity to influence the direction and management of the company.*

1.5 Recommendations for Further OECD Efforts

37. The Advisory Group believes that future OECD efforts on corporate governance will be most valuable if they extend beyond collection and synthesis of information about the issues discussed in this Report. OECD efforts should extend to the articulation of a set of common public policy principles to guide national policy reviews and reforms in OECD Member nations, as well as private sector initiatives. The Advisory Group believes that the OECD is ideally situated to formulate a set of common public policy principles, grounded in a review and understanding of Member country governance policies. We expect that such an OECD effort will lead to improved corporate governance, competitiveness and access to capital markets for corporations throughout the world, with resulting benefits to economic growth, employment and society at large.

Recommendation 1. *The Advisory Group recommends that, in its ongoing efforts to encourage Member nations to create an enabling regulatory framework, the OECD pay special attention to the needs of both investors and enterprises in adapting corporate governance arrangements to changing competitive and market forces, so as to support the generation of long-term economic gain and thereby benefit society.*

Recommendation 2. *The Advisory Group recommends that OECD efforts to assist policy reviews in the area of corporate governance be based on the consideration of the Perspectives set forth in this Report, as well as a comparison of OECD nations' corporate governance and disclosure policies and practices, and that such efforts focus on:*

- ◇ Formulating and issuing a public policy document or instrument recommending minimum international standards of corporate governance designed to promote fairness, transparency, accountability and responsibility.
- ◇ Formulating and issuing a suggested code of voluntary corporate governance "best practices" designed to improve the board's ability to be responsible and accountable to shareholders, which would encompass processes to ensure board independence.
- ◇ Encouraging common principles for addressing the comparability, reliability and enforcement of corporate disclosure concerning corporate financial performance, corporate ownership structure and corporate governance, culminating in the formulation and issuance of a public policy document or instrument.

Recommendation 3. *The Advisory Group recommends that, as part of its overall work on corporate governance, the OECD emphasize the importance of societal concerns and the need to clarify responsibilities between the public and private sectors.*

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