OECD Corporate Governance Committee
CorporateGovernance&CorporateFinance@oecd.org

Rabat, October 21, 2022

Re: Public Consultation on the review of the G20/OECD Principles of Corporate Governance

Dear Committee Members

The Institute of Moroccan Directors (IMA) welcomes the opportunity to comment on the review of the OECD /G20 Corporate Governance Principles. (G20/OECD Principles)

The Moroccan Institute of Directors (IMA) was created in 2009 as a non-profit organization by the National Commission on Corporate Governance Corporate Governance", with the purpose of providing board members with the right training, information and expertise necessary to fulfill their mandates and to promote good governance practices governance practices. IMA is positioned as a center of expertise on corporate governance, issuing regular surveys on corporate governance practices of public debt issuers; providing tailored trainings to board members in Morocco, and expanding its programs to West African countries (Ivory Coast and Burkina Faso). It also serves as a platform of exchange and dialogue to a network including more than 600 directors from its various certificate programs, and it is a trusted stakeholder of public authorities in consultations on corporate governance frameworks. In 2018, it became a member of the National Commission on Corporate Governance in charge of amending Morocco corporate governance codes. For more information visit: www.institutma.ma

OECD provided an important support to the elaboration of the Moroccan Codes in 2008 through the Global Corporate Governance Platform (OECD-IFC). The Moroccan Code of Good Corporate Governance Practices (along with its annexes for SMEs, family-owned enterprises and banks) issued in 2008 and OECD Corporate Governance Principles underpinned both the Code of Corporate Governance of State-Owned Enterprises issued in 2012. There were the results of a broad consultation effort that brought together both public and private stakeholders, in addition to civil society actors and were tailored to Morocco environment and companies' ownership specificities. G20/OECD Principles represent a benchmark to the current amendment of the various codes undertaken by the National Commission on corporate governance.

In this letter, we have the pleasure to provide comments related to each of the six chapters of the G20/OECD Principles.

Chapter 1: Ensuring the basis for an effective corporate governance network

We believe that the first chapter of the Principles "ensuring the basis for an effective corporate governance framework" has rightly addressed two major challenges facing enforcement of corporate governance codes in our country in particular: the lack of "comply or explain disclosure mechanism" and the complexities surrounding governance of company groups, in particular when the State is a controlling shareholder. Morocco adopted in the past, a voluntary "comply or explain approach" that was inefficient in enhancing governance disclosure mechanisms. Governance disclosure was uneven across companies in the absence of mandatory requirements. The past two years registered significant progress when the Moroccan Authority of Capital Markets (AMMC) introduced mandatory disclosure of ESG reports to public debt issuers. The National Commission revising the Code is seeking to introduce mandatory "comply or explain" disclosure mechanism in the next revised corporate governance codes. We also welcome the focus on the importance to set a "clear regulatory framework to ensure the effective oversight of listed companies within company groups". We understand that although the focus is on listed companies, the Principles seek to raise awareness to other larger companies, including state-owned enterprises. With this respect, we think that stating the key principle of duty of loyalty of board members relating to a company and all its shareholders is of crucial importance in concentrated ownership environments, especially when the State is a controlling shareholder.

Chapter II: the rights and equitable treatment of shareholders and key ownership functions

II.A. Shareholders' rights

Basic shareholder rights also include the right to file resolutions and to ask questions to management and board members.

II.C.3: Virtual/Hybrid meetings

We have the impression that OECD is not sufficiently considering drawbacks of virtual meetings, putting on equal footing virtual and hybrid meetings. Although virtual meetings were of particular help during Covid-19 crisis and should be considered and authorized in legislations, some warning points need to be highlighted. Shareholders should be able not only to ask questions to management and board but also to cast votes live. Features of in person meetings should be replicated as much as possible in virtual meetings. It is also important to integrate disclosure recommendations on virtual and hybrid meetings' processes: access, participants' registration and identification, the capacity for shareholders to cast votes live and to raise questions to management and board in advance and live. Regulators should also be encouraged to issue guidelines and best practices on virtual and hybrid meetings in order to enable a meaningful dialogue between company and shareholders and allow shareholders reasonable access to ask questions and the opportunity to receive quality and relevant answers.

II.F .1 Addressing conflicts of interest in related party transactions

We would suggest a forceful recommendation on the approval of certain large transactions, using "should" instead of "may": "shareholders should approve certain large transactions or it is good practice that shareholders approve large transactions" as a means to protect against spoliation of minority shareholders' rights. At the end of the paragraph, the example provided on jurisdictions that also "require an opinion or external evaluation from an external auditor or outside specialist": it would be useful to further elaborate and explain how those independent third parties provide “valuations” in order to ensure the fairness of the proposed prices of the evaluated transactions and thus, protect minority shareholders.

II.G Rights of minority shareholders

It would be interesting to acknowledge the experience of some jurisdictions in allowing minority shareholders to elect independent directors (Italy) or the required approval of both a majority of shareholders and a majority of minority shareholders for independent directors’ election or reelection (United Kingdom). These rules aim at improving minority investors’ protection in controlled companies and provide incentives for independent directors to stand up to the controlled shareholder, when conflicts might arise at the expense of minority shareholders.

Chapter III: Institutional investors, stock markets and other intermediaries

III.A Internal governance framework of institutional investors

We suggest adding the importance for institutional investors to keep under review their own internal governance structure and practices as a founding premise to fulfill their fiduciary duties and implement their stewardship policy, as stated in ICGN Global Stewardship Principles. Institutional investors should indeed lead by example, prior to fulfilling their stewardship responsibilities.

III. C Conflicts of interest

In addition to conflicts of interest that arise from material business relationships, institutional investors should be careful about the composition of their board and ensure that their appointed directors can act independently for the benefit of their ultimate clients/beneficiaries.

III.D Proxy advisors

It would be relevant to add a specific recommendation on the use by institutional investors of proxy advisors' services: investors should disclose how they use proxy and research services and the extent to which they follow their recommendations, against their own voting and stewardship policies.

Chapter IV: Disclosure and Transparency

IV. A.5 Remuneration of board members and key executives

We consider that it is more important to focus on the rationales of remuneration rather than on individual levels of remuneration. Shareholders should get comprehensive information on the remuneration components: fixed pay, bonus, stock options, free shares, remuneration of boards’ members serving in specialized committees, exceptional remuneration, retirement conditions and special benefits etc... Each component of the remuneration should be in line with the performance of the company and assessed (wherever possible) against business and market benchmarks.

IV.C Audit regulator and audit quality

We appreciate the new reference to the critical role played by an audit regulator that is much needed in markets where statutory auditors are self-regulated, in order to improve audit quality and to enable shareholders to hold auditors to account. The primary purpose of auditors is to provide an independent opinion, as a trusted third party, on whether financial statements of the company give a “true and fair view” of the state of affairs of the company. An audit regulator with the right leadership, skills and resources would play a key role in enforcing audit requirements to improve audit quality. It would also be important to recommend that it extend the remit of its mandate to members of audit committees to ensure they fulfill their role and do not recklessly breach their duties.

Chapter V: The responsibilities of the board

V.A. Consideration of stakeholders' interests by board members

We would recommend a different terminology in the statement of this sub-principle. Instead of board members (…) "taking into account the interests of stakeholders," we propose: "balancing the interests of stakeholders". Board members are expected to act in the long term interest of the company but also to assess and understand the impacts of their decisions on stakeholders and try to balance conflicting interests whenever possible, in order to minimize adverse impacts.

The last paragraph "Where consistent with jurisdictional requirements, board members may take into account the interests of stakeholders". This might be interpreted as if the consideration of interests of stakeholders is limited to "public benefit corporations" or "entreprises à mission", while it became a "mainstream" recommendation across many Corporate Governance Codes to take into account the interests of relevant stakeholders in a company (creditors, employees, suppliers, customers, communities etc..), while seeking risk-adjusted returns on capital for shareholders.

V.A Information and training

The duty of care requires board members to act on a fully informed basis. This implies the attention on the quality of corporate information board members receive but should also include a specific requirement on regular mandatory training board members should undertake to ensure they have the capacity to oversee complex systemic risks (climate risk among others...).

V.D.1: Board functions

We agree on the core board responsibilities but given the weight and importance given to sustainability and resilience matters, we would add among board responsibilities: overseeing sustainability matters and ensuring that there are embedded in the company strategy and that a proper climate governance and sustainability governance are set up to hold the board to account on these issues.

V.D.2 Assessing risk management processes

Given the systemic nature of climate risk, we would recommend to single it out among sustainability matters as a key risk to consider by board members, when fulfilling their fiduciary duties in risk management oversight. We also think that it would be helpful to refer specifically to systemic risks identified in the United Nations Sustainable Development Goals (UN SDGs), given that institutional investors in the ICGN Global Governance Principles issued clear guidance on risk oversight by the board that "should extend beyond financial capital to include human capital and natural capital and in particular, systemic risks identified in the United Nations Sustainable Development Goals, where these are relevant to the company's business model and strategy". Reference to SDGs would also be helpful to enhance a more comprehensive disclosure of sustainability matters by public debt issuers in our market, as required by the Moroccan Authority of Capital Markets (AMMC) since 2019.

V.D.5 Aligning key executives remuneration with the longer term interests of the company and its shareholders

It is worth noting that in some jurisdictions (France), corporate governance codes went beyond company long-term strategy, business context and competitive factors, to include "social norms" and "fairness ratio" (*ratio d'équité*). The goal is to enable a comparison between the level of remuneration of key executives and the average level of pay and the average median remuneration of employees in the company. The disclosure of a "fairness ratio" could also enable the comparison with the country minimum wage, as an independent and fixed benchmark for all companies.

V.D.6 Transparency of board nomination process

We consider that established nomination procedures should not only be transparent but also disclosed to shareholders. Selection criteria of all board members should also be clearly communicated, along with the recruitment process, including the use of external search firms.

V.D.7 Monitoring and managing conflicts of interest

In addition to establishing a whistleblowing policy, the board should make sure that an independent, confidential mechanism is set up, and that a contact point for employees and stakeholders is able to collect reporting about unethical or illegal behaviors.
Codes of conduct should also be duly communicated to shareholders and all stakeholders, and must be embedded in the company's strategy and business conduct, including in risk management. Such disclosure would provide shareholders with information to compare companies in the same sector and see if conflicts of interest are effectively addressed.

V.E Board independence

It would be useful to disclose to shareholders, the boards in which a director serve, among selection criteria when electing board members, in particular independent board members to ensure that candidates holding other board mandates have sufficient amount of time and no conflicts of interest to serve in the company. Conflicts of interest should also be closely monitored in the company annual reports, where they identify board members that are considered independent. Some boards put in place as a good practice an annual statement on conflicts of interest by their board members and a monitoring procedure.

Chapter VI: Sustainability and Resilience

VI.A.1 Materiality

We are monitoring the current debate around materiality disclosure that will certainly affect disclosure requirements in our market. IFRS Foundation acknowledged the "double materiality concept" but chose to use financial materiality in the ISSB climate-related disclosure standard, while EFRAG in the European Union focused on double materiality, which considers both the sustainability matters impacting the performance of the company and the impact of the company activities on environment and society. We noted that the OECD paper "Climate change and corporate governance" addressed the challenges surrounding the use of the "double materiality concept" not only for SMEs which it can represent an additional disclosure costs but also to securities regulator and auditors. Securities regulators would presumably go beyond the scope of their mandate by addressing systemic climate risks and would potentially conflict or duplicate work of environmental agencies. Likewise, audit firms also need toe stablish new systems to assess the materiality of ESG risks. Despite these challenges, we think that it is important that OECD/G20 principles acknowledge more clearly the relevance of the double materiality concept.

VI. A.2 Sustainability disclosure frameworks

We are aware of current efforts of international standard setters to set up climate-related and sustainability related reporting frameworks. We appreciate OECD statement under this principle on the necessary flexibility that should be allowed by international standards and frameworks for complementary local requirements. We think that it would be important to also refer to proportionality in the implementation of those future international disclosure frameworks: the adoption of those standards will represent a significant additional cost not only to listed small and medium companies but also to larger companies. Thus, it is important to tailor disclosure requirements to the financial and technical constraints of companies in our market that would potentially rely on international funding to implement their transition plans.

Please do not hesitate to contact IMA or me, shall you have any questions about our answer.

Yours faithfully,

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