

DRAFT

**Corporate
Governance
Code
for
Egyptian
Companies**



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The Center for International Private Enterprise is a non-profit affiliate of the U.S. Chamber of Commerce and one of the four core institutes of the National Endowment for Democracy. CIPE has supported more than 800 local initiatives in over 90 developing countries, involving the private sector in policy advocacy and institutional reform, improving governance, and building understanding of market-based democratic systems. CIPE programs are also supported through the United States Agency for International Development.

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Background

Corporate scandals, financial crises, sharp increases in global private sector capital flows, and privatization in developing and transitioning economies have all put an increased emphasis on corporate governance reform. Although the Asian and Russian financial crises have underscored the importance of corporate governance reform in developing, not just developed countries, only few policymakers and corporate leaders in many developing economies treat corporate governance reform with the attention and urgency it deserves.

The conventional view of corporate governance has been that of governance mechanisms for companies that trade their shares on the stock market. Such a view, however, has virtually excluded many companies in developing and transitioning economies that do not use the stock market as a source of capital. For those companies, it is equally important to have mechanisms that ensure good standards of corporate behavior because good corporate governance, as many studies have shown, contributes directly to firm long-term performance as well as access to capital. This new paradigm, which emphasizes the value of corporate governance for all types of companies, both listed and non-listed, is especially applicable in the Middle East and North Africa region where, according to some estimates, as many as 90% of all enterprises are family-owned businesses.¹ There is an urgent need to reach out to companies and policymakers in the region and build awareness of the important role that good corporate governance plays in building better companies and stronger economies. More importantly, there is an even greater need to help local reformers develop their own solutions to the corporate governance problem, solutions that underscore the international experience while embracing the local realities of doing business.

At the core of corporate governance lie the values of transparency, fairness, accountability, and responsibility. However, good corporate governance is much more than a checklist of minimum board and management policies and duties. It cannot be evaluated simply by the existence of thoughtful and well-drafted policies and procedures. Although having procedures is important in its own right, governance mechanisms will fail if their existence is seen as the end result and policies are not properly enforced and compliance is not monitored. Corporate governance rules, their enforcement, and compliance mechanisms must be seen as parts of an overall governance framework. Through such a framework, CEOs, management, boards of directors, and shareholders can interact effectively and respond quickly to changing circumstances to provide enduring value to the stockholders who invest in the corporation.

In June 2004, recognizing the urgent need for effective corporate governance mechanisms in Egypt and the rest of the Middle East and North Africa region, the Center for International Private Enterprise (CIPE), with the support of the Middle East Partnership Initiative (MEPI), began working with local reform and business leaders to develop a corporate governance code for Egyptian companies listed on the Cairo and Alexandria Stock Exchange, financial institutions, companies that use the banking system as a financing source, and non-traded large family firms. The significance of this initiative was not only in the fact that it addressed the need for good corporate governance for all companies. More importantly, if successful, such an initiative would create a first ever code of corporate governance originally written in Arabic and developed locally, not translated from English or borrowed from another country.

Developing a Code of Corporate Governance in Egypt

Egypt began looking at corporate governance mechanisms in the mid-1990s, when after an early focus on monetary policy and price deregulation, the country started to privatize its state-run enterprises. Large-scale privatization began in 1996 although it quickly tapered off to much lower levels the next year. However, the supply of shares created by privatization stimu-

lated the development of the capital markets and led to the need for and creation of modern market institutions. At the same time, corruption began to appear as one of the key problems in private sector development, and the need for private sector governance mechanisms continued to grow stronger. Also, the Al Rayan Group scandal and other corporate failures have had a significant impact on the Egyptian markets, further underscoring a need for measures to institutionalize corporate governance mechanisms. As such, Egypt took the initiative in promoting and developing a corporate governance code in June 2004.

As the first step in the effort to develop an Egyptian code of corporate governance, CIPE and its local partners undertook an extensive review of international best practices and standards in the field of corporate governance. This included a review of the international guidelines as well as countries' experiences in issuing corporate governance codes of conduct and implementing corporate governance reform. Next, CIPE and its partners conducted a review of the existing legal and regulatory framework for corporate governance in Egypt and the local literature and research on the subject. This review included recent reports prepared by international organizations, reports issued by Egyptian regulatory agencies, discussions by Egyptian stakeholders during conferences, workshops, and seminars held by CIPE during the past several years, as well as other events held by Egyptian organizations. In addition, an assessment was made regarding the proposed amendments in laws and regulations, including the proposed Draft Company Law, with respect to the improvement of the corporate governance framework.

Once the review was completed, the next step was to determine the framework for the development of the corporate governance code – its legal nature, subject matter, and the scope of its application. The legal nature of the code depends on the tools used to issue it. For example, ministerial decrees differ from decrees by regulatory agencies, which often issue guidance on best practices. The legal nature of the code was based on discussions with the Egyptian Institute of Directors.

The outcome was to create a voluntary code of corporate governance, meaning that companies would volunteer to adopt the Egyptian corporate governance code while being under no obligations to implement it. However, while the decision was to create a voluntary code, the capital market and company laws on which the code itself would be based were obligatory and enforced by the state. Further, it was decided that the code would be submitted to and adopted by the Egyptian Institute of Directors (EIOD), which would then distribute it to the business community. Based on the findings and comprehensive reviews, a local expert, Dr. Ziad Bahaa El-Din, drafted an actual Egyptian Code of Corporate Governance in Arabic.

Once the code was developed, in March 2005 CIPE held a series of meetings, workshops, and discussions with various interested entities concerning the draft code and its effectiveness, usefulness, relevance, and application. Participants at these events included a variety of private sector members and government agencies, including representatives from the Egyptian Institute of Directors, the Egyptian Capital Market Authority, the Cairo and Alexandria Stock Exchange, the Egyptian Banking Institute, Egyptian Junior Business Association, Alexandria business Association, Assiut Junior Business Association, Tax Professional Society, Entrepreneurs Business Forum, Chamber of Textile Industry, medium-sized firms of accountants and auditors, and owners of large family firms, listed and unlisted. During the workshops, CIPE surveyed the participants to assess their views on corporate governance practices and their opinions as to the effectiveness of the code in addressing the challenges they face. The findings, which provided crucial input into the final code of corporate governance, are presented later in this report. These findings were extracted from an electronic analytical database that made the analysis of the findings and results accurate and comprehensive.

Dr. Ziad Bahaa El-Din then incorporated the findings from the discussions on the draft code of corporate governance into the final text of the code. Upon completion, the code was submitted to the Egyptian Institute of Directors for final review and comments. The EIOD, chaired by the Minister for investment development has decided to obtain a wider corporate consensus on the provisions of the code before its final ratification. EIOD will send the final revised version of the code to all stakeholders, media representatives, business organizations, listed and unlisted firms, financial institutions, and accountant and audit organizations to ensure that all stakeholders provide their input for ratification of the code by the EIOD. The EIOD will then incorporate the required modifications in the code which will be the basis for the EIOD syllabus and curriculum to be developed by the North Carolina University. The code will be officially launched at a conference in partnership with the Egyptian Institute of Directors by September 2005.

Business Community Survey

In March 2005, CIPE conducted a survey of the Egyptian business community to determine business opinions on corporate governance reform and to evaluate their views on the draft code of corporate governance. CIPE distributed a questionnaire to more than ninety Egyptian firms and business associations' leaders. The survey was made available at the regional corporate governance website <http://www.hawkama.net/>

The survey targeted key areas of concern in developing corporate governance mechanisms and aimed to access the private sectors opinions in issues such as general assemblies, boards of directors, internal audit departments, social policy disclosure, and rules governing conflicts of interest. Responses to the survey showed a general acceptance and willingness to adopt the code, which is uplifting considering the fact that 80% of the participants were owners of unlisted companies.

Companies increasingly see the benefits of having good corporate governance practices in place. Most companies that would voluntarily implement corporate governance are listed companies on the stock exchange who already have to comply with the Stock Exchange listing rules, however, the number of listed companies is small compared to non-listed companies, therefore, it is imperative to address family firms in the corporate governance code and create proper incentives for such companies to implement corporate governance mechanisms.

Many participants stressed the need to protect minority shareholder's rights, which is crucial given the fact that minority shareholders are frequently marginalized in many developing economies. Conflict of interest issues arose frequently during the discussions, with participants recognizing the importance of addressing such problems in order to improve governance and also to limit corruption. In a similar context, in the discussions on audit mechanisms, participants noted that the same firm cannot perform two functions of consulting and auditing a company.

Discussions on disclosure focused on issues that have attracted a lot of attention in both developed and developing countries, mainly – who should have access to company's financial information. Participants agreed that for the benefit of good governance companies must disclose financial information; however such a process should not undermine the competitive position of a company

Participants also engaged in insightful discussions on transparency and board governance. Survey questionnaires, the major findings, and commentaries are presented below.

A. General Assembly

Do you think that corporate governance is an effective way to manage corporations and to promote economic development?

I approve	92%
I don't approve	8%

Comments: The Egyptian business community has begun to recognize the important role that corporate governance plays in managing corporate risk. The financial collapse of a number of major Egyptian companies sounded an alarm within the Egyptian business community and increased the push for corporate governance reform. One Egyptian businessman noted that if what happened to Enron were to occur in the Egyptian market today, the effect on the market could be devastating. The Egyptian business community, banks excepted, is based on family investment. Banks are either owned by the state or by foreign entities.

Is your company listed on the stock exchange?

Yes	20%
No	80%

Comments: The number of companies listed on the Cairo and Alexandria Stock Exchange is decreasing because of increasingly burdensome listing requirements, and the number of listed companies is expected to continue to decline, according to local business people, if the stock exchange issues a new package of restrictive laws. Today, many listing requirements are difficult and very costly to implement and are not beneficial to companies. With the most recent introduction of new rules, the number of listed companies has dropped from 1,500 to 700 companies. Prior to the issuance of Egypt new tax law in 2005, it was expected that the number of listed companies will even go less than 700 companies. However, because the new tax law has abolished all types of tax exemptions, the number of companies to exit the stock exchange will not be significantly less than its current number.

Corporations that will volunteer to implement the code of corporate governance are:

Corporations registered in the stock exchange	43%
Capital-based firms	33%
Individual-based firms	4%
Large family-owned corporations	20%
Others	1%

Comments: Most of the participants agreed that companies listed on the Cairo and Alexandria Stock Exchange are most probable to volunteer to adopt the corporate governance code. However, only 20% agreed that big family-owned corporations would adopt the code. Considering the large number of large family-owned companies in Egypt, proper incentives need to be created for family-owned firms to introduce good governance mechanisms.

Do you agree that small shareholders should not be entitled to attend the general assembly meetings?

Agree	21%
I don't agree	79%

Comments: Most participants agreed that it is necessary to include minority shareholders in the general assembly meetings. Protection of minority shareholders' rights is crucial, as their rights are often marginalized in developing economies.

B. Board of Directors

Comments: All the participants agreed that the board of directors should include both executive and non-executive members. Many expressed an interest in having non-executive members compose the majority of the board.

The participants also agreed that the board functions should include regularly scheduled meetings, reviewing reports by management on the performance, prospects, and plans of the company, and immediate issues facing the corporation. In addition to its general oversight role, the board should also perform a number of specific functions, including:

- Selecting the chief executive officer (CEO) and overseeing his or her performance, as well as the performance of other senior management.
- Reviewing and monitoring strategic, financial, and operating plans and budgets and their development and implementation by management.
- Assessing and monitoring risks and risk management strategies.
- Reviewing and approving major corporate actions.
- Reviewing and monitoring processes designed to maintain the integrity of the corporation – including financial statements, compliance with law and ethics, and relationships with shareholders, employees, customers, and suppliers.
- Planning for management succession.
- Nominating directors, appointing committee members, and overseeing effective corporate governance.
- Directors should not stand for election past the age of 72.

The participants suggested that the qualifications of the board members should include but not be restricted to:

- Work experience of at least ten years.
- A certain level of education or training.
- Independent judgment.
- Certain skills or experiences that enrich the board.
- Devoting adequate time and effort.
- Ability to make reasonable decisions.
- Knowledge of the best international management practices and their application to the company.
- Capacity and time to deal with crises and manage them on both the long- and the short-term.
- Leadership.
- Ability to motivate high performance employees.

Participants also suggested the number of board members should be small enough to allow accountability and large enough to allow diversity. The best international practices indicate that the ideal number of board members in any company is between 9 and 11.

To guarantee independence, the participants suggested the following:

- The need for members to disclose in writing whether he/she or his/her spouse or relative has a personal interest in any transaction or contract the company is a part of, or if any of them has an interest in a company that is a part of that transaction or contract. He/she should not attend any meeting where that transaction or contract is discussed.
- The member should have a reasonable understanding and knowledge of risks and operations that the company faces.
- It would be possible to hold the company's decision-makers accountable through providing transparency and clear responsibilities.
- Providing an internal mechanism to the management that permits correction procedures in case of mismanagement.
- Providing a balanced system so decisions can be made, taking into consideration all parties, especially minority shareholders.

What are the best voting methods for the nomination of the corporation's board of directors?

Proxy voting	61%
Voting independently for each nominee	39%

Comments: The participants agreed that the voting system should enable the majority group to appoint all board members. Taking into consideration the existing laws and regulations, most participants preferred adding an article allowing per proxy voting and establishing methods for such voting. These standards for voting must take current laws and regulations into consideration to put limits on the number of votes a shareholder can have regardless of the number of shares he/she owns.

In order to protect the shareholders, effective procedures have to be instituted to redress grievances; for example, arbitration could take place at the general assembly meeting. A participant added that all holders of the corporation's common stock should have equal voting rights of one vote per share. Each shareholder of the corporation who desires to vote confidentiality should be permitted to do so.

Do you think that the corporation should provide each new board member with a complete and comprehensive corporation information file, including information on its points of strengths and weaknesses?

Yes	94%
No	6%

Comments: Most participants agreed that adequate information on the company should be available to new board members. An article should be added requiring the board and top executives in the company to inform the board in case they or their relatives have interests that might affect their decisions on a certain matter. Participants also mentioned that every new director should participate in an orientation program and receive materials and briefings to acquaint the director with the corporation's business, industry, management, and corporate governance policies and practices. Continuing education should be provided for all directors through board materials and presentations, discussions with management, visits to corporate facilities, and other sources.

Do you see the need to designate two different people for the posts of chairman of the board of directors and the CEO?

Yes, it is necessary	53%
No, it is not necessary	47%

Comments: Although participants clearly expressed a need to separate the positions of the CEO and the chairman, some noted that they could be combined into one position provided that the board provides the reasons for this combination to the general assembly in an open discussion and that the general assembly can vote on the decision.

Do you think that the board of directors should disclose essential information to shareholders, creditors, and stakeholders?

Yes	80%
No	20%

Comments: The participants agreed that essential information should be disclosed to shareholders, creditors, and stakeholders. A large number of participants were in disagreement over the word “essential” because it is ambiguous. Many agreed to provide such information that would not “affect the company’s financial and social position before the stakeholders.” Other recommendations included:

- Taking into consideration all investors’ interests, the company should disclose to the shareholders any significant purchases and selling deals that are related to individuals working in the company or their relatives.
- Shareholders holding 3-7% of the company’s shares must report their transactions.
- There should be extensive disclosure on information regarding human resources, training, and employment.
- Specific procedures should be established in case the company has financial difficulties in order to encourage creditors to disclose information relating to financial difficulties in a timely manner. Transparency in this context enables creditors to review the company’s position to guarantee their rights.

Should the board of directors be entitled to seek the assistance of external consultants on matters related to the company at the expense of the corporation?

Yes	99%
No	1%

Comments: The participants agreed that the board is the main party to monitor the company’s performance, but the board may appoint special consultants at the expense of the company on specific issues. Most participants emphasized that conflicts of interest must be considered when consulting an external organization in matters relating to the company. Most participants preferred to prohibit consulting any other organization owned or managed by a relative of a board member or a high-ranking officials.

Who should be responsible for determining the financial recompense of the Executive Director?

The majority of board members	61%
The majority of only non-executive board members	6%

A special committee created for that purpose	22%
The general assembly	7%
Other	4%

Comments: Some participants suggested that a committee should be formed, especially for the financial compensation of the executive director. Such a committee would be headed by a non-executive member who is given the authority necessary for this purpose. The majority of board members should decide the financial compensation of the executive director. Further, most participants agreed that it is necessary to disclose the financial compensation of the executive board members, and that the disclosure should include all details in the annual report.

Do you support the principle of distributing stock options to executive board members?

Yes	82%
No	18%

Comments: The participants agreed upon the necessity of giving stock options along with establishing a clear policy on the members' right to keep or not keep those stocks if he/she left the company. In Egypt, the stock exchange laws and regulations that oblige the company to keep those stocks for at least one year must be taken into consideration.

Do you support disclosure of the total remuneration rewarded to the executive board members, including wages, allowances, real privileges, and any other elements of financial nature?

Yes	92%
No	8%

Comments: Most participants agreed that it is necessary to disclose the financial compensation of the executive board members, and that the disclosure should include all details in the annual report. The current procedure only mentions the whole sum without details on each member.

What is the suitable term of contract for executive board members?

One year	4%
Two years	12%
Three years	74%
Five years	9%
Other	1%

Comments: Most participants said that the duration of the executive board member's contract must be three years, but some of them felt that it should be either greater or less depending on the nature of the company's work.

Who should be responsible for determining the financial compensation of the non-executive board members?

The general assembly	45%
The majority of executive board members	23%
Constituting a special committee for that purpose	31%
Other	1%

Comments: The participants who said that the financial compensation should be decided by either the majority of executive board members or constituting a special committee believe that the financial compensation should not be reported to the general council. The reasoning for that is that the compensation may be questioned by people who do not have adequate information on the industry/market average salaries for such positions. Participants also emphasized the necessity of financial equality between non-executive members.

How many times per year should the board of directors hold its meetings?

Twice	3%
Three times	7%
Four times	60%
Six times	17%
Other	14%

Comments: Most participants agreed that the board should meet at least four times per year and that the annual report should include the members' names. If a member did not attend two meetings in one year without providing acceptable justification, such a member could be removed from the board. The board meeting is the official permanent record of the actions the board and its committees take and the decisions they make. As such, minutes should be taken at the meetings covering the decisions that have been made and any other matters that have been discussed. They should also include specific records of any voting that took place in those meetings, including questions on the matter or abstentions from voting.

Which of the following choices is the worst action for the board to take?

Making the decision by means of passing	39%
Making a non-urgent decision in an emergency session	20%
Both	41%

Comments: Taking into consideration the existing laws, most participants agreed to add an article that prohibits making any decision by passing that decision without discussions, as this method often has negative effects on the company.

Should non-executive board members be entitled to meet with the corporation's managers for consultation and negotiation without informing the executive members?

Yes	19%
No	81%

Comments: Most participants agreed that non-executive members should not meet with directors unless they inform the CEO. It is preferred that the CEO should attend such meetings to avoid discrepancies in instructions given by the higher administration.

Do you think the board of directors should be entitled to all information and reports on the performance of the corporation?

Yes	91%
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No	9%
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Comments: The majority of the participants agreed that the board is entitled to obtain all the financial and non-financial information and reports on the company.

Do you support the right of the board to designate committees formed from its members to perform specific functions?

Yes	96%
No	4%

Comments: A vast majority of the participants concurred that the board has the full authority to form committees that include its members and outsiders, specifying in detail the task, duration, and authorities of those committees. Some of the participants noted that organizational control requires clear identification of the responsibilities of the board's committees, which could be achieved by adopting a standard procedure for forming committees approved by the board.

Do you support the expansion of the authority of the secretary of the board of directors to be the liaison between board members and the corporation?

I approve	48%
I don't approve	52%

Comments: Participants emphasized the need to appoint a secretary general for the company, taking into consideration the existing laws and regulations. However, many rejected the idea of granting him/her any additional authorities, since the secretary general is a paid staff and his/her role should not be expanded to include such tasks as communicating with the members. Therefore, many participants thought that the authority of the secretary should be restricted and should not be expanded as has happened in the Egyptian banking sector. The main reasoning was to avoid conflict of instructions and authorized parties.

The participants suggested that shareholders, employees, and other interested persons "who wish to communicate with the board of directors may do so by letters addressed to the care of the corporation's secretary general." Such mail can be reviewed by him/her and submitted to the CEO of the corporation. All letters regarding, accounting policies, internal accounting controls and procedures, auditing matters, financial reporting processes, or disclosure of controls and procedures should also be forwarded by the recipient director to the chair of the audit committee.

C. Internal Supervision Committee

Comments: Participants concluded that the board has the authority over the internal control unit, the work of which should be reviewed in the annual report of the general assembly. The board is responsible for managing risks and may ask for feedback from auditors and managers. Risk assessments should be conducted regularly.

Do you think that each corporation should provide a secure system for internal supervision?

Yes	97%
No	3%

Comments: Most participants agreed that it is necessary to establish an efficient internal control system. Some noted that any company that has more than 15 employees should adopt such a system.

In case the internal auditing department is managed by a full-time director, who should here report to?

The board of directors	50%
The managing director	28%
The general assembly	12%
Other	10%

Comments: Participants generally agreed that it is necessary to appoint a person to manage internal control depending on the size of the company. In companies that employ more than 25 people, it is necessary to establish an internal control unit that reports to the board.

Who should be responsible for designating or removing the internal auditor?

The board of directors	71%
The managing director	6%
The general assembly	15%
A special supervisory committee	3%
Other	5%

Do you support assigning the same consulting company to conduct internal and external audits?

Yes	40%
No	60%

Comments: Most participants agreed that the company's internal and external review should not be given to the same company, since this would negatively affect the company and make it difficult to separate the two tasks, which might open the door to corruption.

D. Legal Advisor

Do you support the idea that each corporation should have an external legal adviser who does not have any business relationship with the corporation or its legal department?

Yes	84%
No	16%

Comments: The participants suggested appointing an independent legal adviser who does not have any relationship to the company. They agreed that such an adviser should not be working for another company in the same industry. Participants also stressed that he/she should not be related to any members of the board or the senior management. The legal adviser and affiliated parties should not hold more than 5% of the company's shares.

Who should be responsible for designating or removing the legal advisor?

The board of directors	59%
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The managing director	11%
The general assembly	27%
A special supervisory committee	0%
Other	3%

Do you approve of granting the legal advisor stock options?

I approve	20%
I don't approve	80%

Comments: Most of the participants agreed that the legal advisor should not be given stock options. However, they believe that a decision of giving him/her stock options should be decided by each individual company, as there may be some exceptions.

Do you agree that the minutes of the general assembly's annual meeting should include legal updates from the legal adviser?

I agree	75%
I don't agree	25%

E. Disclosure

Do you agree that all stakeholders should be entitled to all of the corporation's non-financial information, such as its social, environmental, and occupational health and safety policies?

I agree	66%
I don't agree	34%

Comments: Most participants stressed that the company must disclose its non-financial social, professional, environmental, public safety, and health policies. Such disclosure must take place at least once a year and the policies mentioned above must be clear and straightforward. They should provide plans to train the employees, as the participants thought this would build better relations with Egyptian society.

F. Conflict of Interest and Ethical Issues

Do you agree that the corporation should provide a written code to all staff, board members, and managers to outline policies on conflict of interest?

I agree	98%
I don't agree	2%

Do you think that giving the corporation's board members, managers, and staff the opportunity to sell their shares prior to declaring financial information is fair to the rest of the members of the general assembly?

Fair	5%
Not fair	95%

Comments: Taking into consideration the existing laws and restrictions, the board members, managers, employees, and their relatives are prohibited from trading the company's shares before any significant information is disclosed. This is called insider trading. Taking into the consideration all investors' interests, the company should disclose to the shareholders any significant purchases made by individuals working in the company and can affect the value of the company's stock.

Do you think the corporation's staff should be consulted when drafting the rules regulating occupational behavior?

Yes	90%
No	10%

Comments: Most participants agreed that companies should consult with their employees while establishing rules on occupational behavior. Importantly, the participants underscored a need for an internal system to monitor the enforcement of those rules.

Do you think that ethical behavior should be one of the basic factors used by a corporation in dealing with other corporations?

Basic factor	96%
Not a basic factor	4%

Comments: Most participants stressed that one of the most significant standards in dealing with other companies should be the "professional-ethical behavior" standard. One of the participants said that corporate behavior should be the main factor in the business decision-making process. He added that he would make deals with ethical companies even if such deals would be more expensive.

(Footnotes)

1 "Corporate Governance Needed in Family-Owned Businesses" Gulfnews.com

CODE OF CORPORATE GOVERNANCE

Introduction

These set of rules relates to principles of corporate governance in Egypt. The phrase “principles of corporate governance” is used to describe the rules, regulations, and procedures that achieve the best protection of and balance between the interests of corporate managers, shareholders, and other stakeholders.

These rules should be considered an addition to the corporate-related provisions stated under various laws - especially the Law on Shareholding Joint-Stock companies, Partnerships and Limited Liability companies issued by virtue of Law #159/1981; the Capital Market Law issued by virtue of Law #95/1992 and the Executive Regulations and decrees implementing such. Yet, what makes these rules unique and different from all others stated under the above-mentioned laws is that the rules governing corporate governance are not mandatory and are not legally binding; rather, they are regulating and organizing responsible and transparent behavior in managing corporations according to the international standards and means which strike equilibrium between various party interests.

These rules also have been drafted in a manner affirming their analytical nature and leading to an ample explanation of the provisions. The explanation of the provisions will not use the legislative phrasing style that is based on being brief and deals with general and abstract provisions.

On the other hand, Egyptian corporations and their shareholders should seek to abide by these rules and apply them to whatever interests they attain not only on the complying corporations but also on the general investment environment. Further, a fundamental role falls upon corporate auditors and legal advisors to spur the corporate directors to abide by these rules and to observe the extent by which they are achieved. Moreover, when dealing with or evaluating corporations and banks, other financing institutions and credit rating institutions are to take into consideration the extent by which the provisions and content of these rules are upheld. It should be expected that all those in charge of managing corporations, financial institutions, professional societies, shareholders groups, and directors implement and promote the provisions of this code; they should be expected to consider the compliance to these provisions an indicator of success.

1. Scope of implementation of the rules

1.1. These rules are to primarily be implemented in joint-stock companies listed on the stock exchange, especially those undergoing active operations, and financial institutions in the form of joint-stock companies; for those are the ones with ownership dispersed over numerous partners and necessitate a definition of the relation between ownership and management or are the ones which directly affect a vast majority. It is also applicable to companies which use the banking systems as a source of financing – in this case compliance with corporate governance rules ensures the rights of creditors. The rules have been drafted in such a manner so as to suit these corporations within the framework of the provisions of the Law on Joint-Stock companies, Partnerships and Limited Liability companies law #159/1981, the Capital Market Law

#95/1992, as well as the rules governing the listing, ongoing listing and de-listing of financial securities from the Cairo and Alexandria Stock Exchange (CASE) and other decrees and laws to be latter on mentioned. Thereupon, any reference to the terms “Corporation” or “Corporations” in the rules shall indicate the corporations listed in the CASE, in addition to the financial institutions in the form of joint-stock companies even if not listed in the CASE, specifically: banks; insurance companies; real estate financing companies; finance leasing houses, and corporations working in the field of securities, as well as companies that obtain financing from the banking sector.

1.2. Nevertheless, and due to the general importance of the rules governing corporate governance for all corporations and other forms of corporations may be regarded as ones in the initial phases preceding the potentiality of being listed on the CASE or offered for public trading, these rules have, after having dealt with the details of corporate governance for CASE listed corporations or financial institutions in the form of joint-stock companies, revealed in a more abridged manner the extent to which they may be implemented on closely-controlled joint-stock companies, followed by limited liability companies and, finally, partnerships. Although this method does not fit under the scope of rules governing corporate governance in other countries where their scope is limited to financial institutions and joint-stock companies listed on the stock exchange, yet it has its significance in Egypt: out of the total number of Egyptian joint-stock companies, no more than 2.5% are listed in the CASE, further a maximum of thirty companies of which undergo active circulation.

1.3. From another point of view, the development of the Egyptian economy, especially the stock exchange, in recent years indicates that numerous closely-controlled joint-stock companies will well find their way to being listed on the CASE; a matter making it beneficial that shareholders and management of these companies pay attention to the rules governing corporate governance as a preparatory phase to being listed, as proper qualification for public subscription or for stock listing is from among the objectives of the rules. As such, shareholders, corporations, creditors and corporation staff in general bear interest in stimulating and monitoring the adherence of all forms of corporations to these rules to the greatest extent possible.

1.4. The above relates to the understanding that implementing corporate governance in the right manner is not only limited to respecting a set of rules and interpreting it literally in a restricted manner, but is also a culture and way of managing the relationship between owners of the company, its directors, and its stakeholders. Hence the interest of the whole community becomes more achievable when more people apply the code provisions.

2. General Assembly

2.1. The General Assembly is constituted comprising all corporation shareholders pro-rata to the percentage of shares held by each. Although the Articles of Association of a corporation may stipulate that no shareholders possessing less than a specific percentage of shares may attend the General Assembly meeting, yet such provision should be deemed an exception to the rule which entitles all shareholders to attend the meeting unless their number exceeds the capacity by which the corporation can provide a meeting place, in which case the stipulation may be resorted to; it should also not be a mean for discarding and ruling out small shareholders.

2.2. Shareholders should be spurred to attend the corporation’s General Assembly meeting; moreover, the meeting date and place should be set in a manner facilitating and encourag-

ing their attendance.

2.3. Each subject matter on the agenda of the Ordinary or Extraordinary General meeting is to be accompanied by an ample elaboration and a sufficient presentation of all its aspects, in a manner enabling the shareholders to take their decisions based upon the information furnished to them. Furnishing of the information should be for the purpose of enabling shareholders to take their decisions in a sound and well-studied manner and not just as a completion of meeting formalities.

2.4. The general assembly is managed in a manner allowing full and adequate disclosure for information related to all items in the agenda to allow shareholders express their opinions based on adequate and full information.

2.5. Voting on general assembly decisions need to be registered in absolute accuracy. In case of disputes over the right representation of some votes at the general assembly, voting on the validity or annulment of the disputed votes should be made and presented later to the concerned administrative or judicial party; meaning that the proceedings of the general assembly should continue in any case.

3. Board of Directors (BOD)

3.1. The BOD of a joint-stock company assumes the role of managing its affairs based upon authorization delegated by the General Assembly; as a result, the final responsibility for the company remains under the Board even if it constitutes committees or authorizes other bodies or individuals to undertake its operations.

3.2. Despite the fact that the BOD of a corporation is constituted comprising representatives that have been nominated from among various groups of shareholders, nevertheless whenever a member of the Board is designated he/she must consider his/herself as a representative of all the shareholders and obliged to attain the interest of the corporation as a whole and not just that of the group being represented or having voted for the designation.

3.3. Egyptian laws stipulate that the BOD of a corporation shall be nominated for the purpose of representing the shareholders; but, the rules governing voting enable the General Assembly majority group to designate the entire Board via voting for each nominee separately; accordingly, corporate governance necessitates that an accumulative system be adopted, in voting for BOD members, so that the final result can be a reflection of the proportional representation of shareholders on the Board. A summarized curriculum vitae for each BOD nominee should be submitted to the shareholders upon being called to vote for the Board.

3.4. The BOD should include a majority of non-executive members who should have technical or analytical experience or skills which may generate gain to the Board or corporation. Under all circumstances, upon nomination of the non-executive board member, it must be observed that the board member will be capable of allotting sufficient time and attention to his board directorship and that it will not represent any conflict with his other interests.

3.5. Sufficient information and data on the corporation should be made available to new BOD members upon their designation to forthwith familiarize them with all its general aspects, points of weakness, administrative structure, budgetary elements and everything that will enable them to assume their responsibility to the fullest extent.

- 3.6. The BOD undertakes the designation of the Chairperson and Managing Director; it is preferred that the two posts not be held by the same person. Should joining between the posts be necessary, its reasons should be clarified in the corporation's annual report; further, a non-executive Vice-Chairperson should be designated.
- 3.7. The BOD must closely monitor at all times the general status of the corporation and to not entrust any other person with that responsibility.
- 3.8. The Board must lay down the mechanisms and systems ensuring corporate respect for the laws and regulations in force and compliance with the furnishing of essential information to shareholders, creditors and other stakeholders; which should all , under any circumstance, be based on objective and not just subjective standards.
- 3.9. Any entrustment made by the BOD of the corporation, be it to one of its members or to any other, should be specified in title and term of validity and should include a date on which attained results are to be presented before the Board. The board should avoid delegating its authorities in general or unspecified time limits, as this means that the board has actually condescended its authorities.
- 3.10. The BOD members are entitled to all information and data on the corporation at the time and in the form specified by them.
- 3.11. The BOD members may seek an external advisory opinion on any corporation matter and at its expense provided that the majority of members approve such act; this will be subject to the observance of the provisions averting conflict of interests stated under these provisions.
- 3.12. The corporation should reward its executive managers with financial remuneration in a manner allowing for the attraction and maintenance of the best qualified elements in the market. This is to be determined by constituting a Committee comprising mostly or wholly of the non-executive BOD members who will have the authority of proposing the executive member's financial remuneration and negotiating it with them in consultancy with the Managing Director; the final decision will however be of the non-executive Board members. Names of the Committee members will be revealed in the corporation's annual report; moreover, the Head of the Committee should attend the annual General Assembly to answer any questions posed by shareholders on that matter.
- 3.13. Remuneration received by an executive BOD member should be revealed including: remuneration, allowances, real privileges, stock options and any other element of financial nature. Elements related to the performance of the corporation are always preferred to represent the greater portion of the total financial remuneration so that the executive Board member will always be stimulated to improve its performance.
- 3.14. As for stock options in particular, consideration must be given not to incite the Board on taking decisions achieving only short-run corporate interests, but also to be related with considerations that improve the corporate performance in the medium and long term.
- 3.15. A term of contract of an executive BOD member should not exceed three years unless for a clear and defined purpose that is to be revealed in the corporation's General Assembly.
- 3.16. The above-mentioned Committee referred to in Item 3.12 should recommend the remuneration received by each of the non-executive BOD members provided that it be submit-

ted to the General Assembly for approval. The range in remuneration paid to non-executive board members should be quite limited and against specific tasks and work assigned to them or against their membership in specific committees.

3.17. The Board should convene no less than once every three months. The number of conventions and the names of the members who failed to attend the meetings of the Board or its sub-committees will be revealed in the corporation's annual report. Invitation to the meetings should be done on dates, at places and according to arrangements that can allow for the members to attend; moreover, all information on any matter that will be submitted to the Board or any decision that will be made should be made available to all Board members prior to its convention with sufficient time, unless for specific cases requiring speedy submission; in which case, only executive members or managers capable of amply explaining the matter and responding to member questions are to attend the meeting. It is preferred that decisions not be taken by means of passing except in cases where the meeting can not be held by regular means and that voting not be exercised except on urgent decisions only where the vote must be unanimous.

3.18. The non-executive BOD members may meet with the managers of the corporation for consultation on any of its affairs whether with or without the attendance of the executive members, provided that they together coordinate the date of meeting and that they be informed on what will be negotiated.

3.19. The Board should regularly review the corporation's internal rules of procedures to ensure their suitability and efficiency. The Board is entitled to obtain all the financial and non-financial information and reports on the performance of the corporation.

3.20. The Board may constitute committees comprising BOD or other members to perform particular tasks and for specific periods; these committees should be considered as means of assisting the Board in performing its functions and not as a mean for de-shouldering its responsibilities or transferring it to another body.

3.21. Constitution of the committees affiliated to the BOD should be done according to general procedures laid down by the Board, which should include: specifying the function of the committee, its term of operation, authorities granted to it during such term and means of its monitoring via the Board. Unless otherwise specified under the decision to constitute the committee, the committee should notify the Board with absolute transparency of what functions it undertakes, what results it culminates and the decisions it makes. The Board is to periodically monitor the operation of the committees to ensure its assumption of the assigned tasks.

3.22. The Board is to constitute a committee for internal auditing and another for determining the financial remuneration to be rewarded to BOD members in addition to the other committees required as per the nature of operation and size of the corporation.

3.23. It is recommended that the non-executive Board members participate in the committees formed by the Board one of them to be its chairman. Committees may seek the assistance of external consultants in the performance of their functions at the expense of the corporation. The corporation's annual report should include a brief presentation on each committee's constitution, number of meetings, assigned functions and accomplishments; moreover, committee heads have to attend the corporation's General Assembly meeting.

3.24. The corporation's Board of Directors should have a secretary designated upon their

approval to manage all Board records, minutes and books; as well as, to attend all its meetings unless otherwise requested as regards a particular subject matter. Members are entitled to communicate with the Secretary during inter-meeting intervals. Authorities necessary for the Secretary to assume relevant tasks must be approved by the Board. It is preferred that the functions of the Secretary not be limited to their traditional understanding set forth under the Egyptian law as to simply attending Assembly meetings and taking minutes, but rather extend to being an ongoing link between members and between members and the corporation in addition to being a source that can be resorted to for any requested information.

3.25. The BOD is generally responsible for the corporation's risk management in accordance with the nature of its activity, size and market in which it operates; moreover, the Board assumes the responsibility of laying down a strategy for identifying threats faced by the corporation, means of dealing with them and the degree of operational risk exercised, all of which should be clearly presented to the shareholders.

4. Internal Audit Department

4.1. The corporation should have a sound system for internal audit that is established in cooperation between the board of directors and the corporation management. Failure to do so will require the Board to explain to the annual general assembly reasons for that failure.

4.2. Internal audit should be managed by a full-time senior level manager who reports directly to the Managing Director. The internal audit manager maintains the right to communicate and consult directly with the chairman of the board and attends all internal audit committee meetings.

4.3. Designation, renewal, removal and determination of financial dealings of the Internal Audit Director are to be by a decision taken by the Managing Director provided the approval of the Board's relevant sub-committee.

4.4. The Director should have necessary authorities that enable him/her to fully assume the functions of the post.

4.5. The director of the internal audit department should report on quarterly basis to the chairman of the board and to the internal audit committee. The report should include the degree of compliance of the company with the laws and rules that regulate its activity and its compliance with the rules of corporate governance.

4.6. Defining the objectives, functions, and authorities of the Internal Audit Department, as well as the name of its Director and his assistants should be issued in a clear and detailed report to be written by the corporation's BOD.

4.7. Internal audit aims at laying down systems for evaluating the means, methods and procedures of risk management within the corporation and for implementing soundly the rules governing corporate governance; moreover, for monitoring these systems and rules and for providing the BOD with necessary relevant reports and information.

4.8. Internal audit mechanisms and procedures should be laid down based upon an overview and study of the risks facing the corporation, provided that the opinions and reports of the Board, auditors and managers are sought and that the monitoring and evaluation processes are periodically updated.

5. External financial auditor

5.1. The corporation should have external financial auditor who is independent and does not have any business relationship with the corporation.

5.2. The corporation should take into consideration an external financial auditor who is efficient, has a good reputation, and adequate experience; his/her efficiency, experience, and abilities to be relevant to the size of the corporation, the nature of its operations, and its stakeholders.

5.3. The external financial auditor, should be independent from the corporation and its Board members. He/she should be appointed by a general assembly decision, in which his/her annual remunerations would be set. In case the external financial auditor is one of the shareholders, he/she needs to consider complete separation between his/her interests as a shareholder and his/her interests as an external financial auditor, and he/she should disclose any conflict between those interests.

5.4. The external financial auditor should attend the corporation's annual General Assembly meeting.

5.5. The external financial auditor should comply with the Egyptian accounting standards and regulations, in spirit and content.

5.6. It is impermissible to contract the company's external financial auditor to carry out any additional tasks.

5.7. The external financial auditor should be independent and unbiased to any opinion. He/she should be protected against the intervention of the board of directors. The board of directors should not control the decision to continue his/her assignment or to decide his/her remuneration.

6. Disclosure of social policies

6.1. The corporation must reveal to the shareholders, the dealing public and its staff non-financial information on its social, environmental, occupational health and safety and other policies at least once per year.

6.2. Declared policies should be observed to be clear and not misleading, they should include what the corporation intends to undertake as regards: development and changes in the number and training of employees and social welfare schemes whether within the corporation or within its surrounding environment. As for health and environmental policies, they have to be in conformity with the enforced Egyptian laws and regulations and should aim at achieving the welfare of the staff and the surrounding environment; moreover, they should be sustainable on the long-run.

6.3. The corporation, its surrounding environment and the suppliers and clients dealing with it should be correlated based upon credibility, care to attain common interests and the revealing of policies and intentions; this should be done in such a manner that does not conflict with the duty of the corporation, its staff and its managers to maintain confidentiality of financial and commercial information.

7. Avoiding conflict of interest

7.1. Each corporation should have written rules and regulations known by the BOD members, administration, managers and staff on the prevention of conflict of interest and should include the provisions stated in this regard.

7.2. BOD members, managers and staff are prohibited to deal in the shares of the corporation for a certain period of time prior to the declaration of the results of its financial activity or prior to the declaration of any other information of effective financial nature; all which should be done while observing the enforced provisions of the law and the enforced rules governing listing, circulation and revealing.

7.3. The corporation, in consultancy with its staff and dealers, should lay down the rules governing its occupational behavior; these include:

- Rules governing dealing with the corporation whether for buying, selling or others;
- Delegated authorities;
- Means of declaring new policies;
- Safety and health standards adopted;
- Sound occupational standards for dealings among staff and managers and among them and those outside the corporation.

7.4. The corporation should lay down an internal system for monitoring the implementation of the rules governing its occupational behavior.

7.5. In its dealings with suppliers, the corporation should seek the nomination of those at the same occupational and ethical levels observed within it.

8. Corporate Governance Rules for other corporations

These rules mainly address the companies listed on the stock exchange, financial institutions, and companies that are mainly financed through the banking sector. However, as mentioned above, corporate governance applies to all corporations as it balances the different interests, and creates a new corporate culture. Hence, the more the degree of compliance with the provisions of the code, the more the interests of the society, the partners, and the shareholders are achieved.

Non-traded shareholding companies or family business and limited liability corporations should take into consideration, in the best of their capacity, compliance with these rules.

As for sole proprietorship companies, it should consider complying with those provisions that limits conflict of interests, establishing internal audit systems, ensure independence of legal and financial advisors, and financial auditors, and disclosure of social policies.

In all cases, if non-traded shareholding companies, family corporations, limited liability companies, or sole proprietorship companies do not have the capacity to comply with corporate governance rules, they should seek less costly alternatives that meets their financial and managerial capacity ensuring that these alternatives lead to the same results that are addressed through the corporate governance rules.

قواعد حوكمة الشركات المصرية

يوليو 2005

تمهيد

تتناول هذه المجموعة من القواعد مبادئ حوكمة الشركات في مصر. والمقصود بمبادئ حوكمة الشركات هو القواعد والنظم والإجراءات التي تحقق أفضل حماية وتوازن بين مصالح مديري الشركة والمساهمين فيها، وأصحاب المصالح الأخرى المرتبطة بها.

وبينما يمكن اعتبار هذه القواعد مكملة للنصوص الواردة بشأن الشركات في القوانين المختلفة - بالذات قانون شركات المساهمة وشركات التوصية بالأسهم والشركات ذات المسؤولية المحدودة الصادر بالقانون رقم 159 لسنة 1981 وقانون سوق رأس المال الصادر بالقانون رقم 95 لسنة 1992 واللوائح التنفيذية والقرارات الأخرى الصادرة تطبيقاً لهما - إلا أن ما يعطى هذه القواعد خصوصية ويجعلها مختلفة عن القواعد القانونية المشار إليها هو أن قواعد حوكمة الشركات لا تمثل نصوصاً قانونية أمره ولا يوجد الزام قانوني بها، وإنما هي تنظيم وبيان للسلوك الجيد في إدارة الشركات وفقاً للمعايير والأساليب العالمية التي تحقق توازناً بين مصالح الأطراف المختلفة. لذلك فإن هذه القواعد قد تم صياغتها بما يؤكد طبيعتها الإرشادية، وبما يؤدي إلى شرح أحكامها شرحاً وافياً دون التقييد بأسلوب الصياغة التشريعية الذي ينهض على الاختصار وتناول الأحكام العامة والمجردة.

من جهة أخرى، فإن المأمول أن تسعى الشركات المصرية وأن يسعى المساهمون بها إلى العمل على تطبيقها والالتزام بها لما تحققه من مصالح عديدة ليس للشركات التي تطبقها فقط وإنما للمناخ الاستثماري العام. كذلك فإن دوراً رئيسياً يقع على مراقبي حسابات الشركات ومستشاريها القانونيين لحث مديري الشركات على الإلتزام بهذه القواعد ورصد مدى تحقق ذلك، وكذلك على البنوك ومؤسسات التمويل الأخرى ومؤسسات التصنيف الائتماني في أن تأخذ في اعتبارها - عند التعامل مع الشركات أو تقييمها - مدى التزامها بنصوص وروح هذه القواعد.

والأمل معقود على كافة القائمين على إدارة الشركات والمؤسسات المالية والجمعيات المهنية وتجمعات المساهمين والمديرين لوضع هذه القواعد موضع التطبيق والترويج لها واعتبار التزام الشركات بها علامة للنجاح.

قواعد حوكمة الشركات في مصر

1. نطاق تطبيق هذه القواعد

1.1 تنطبق هذه القواعد في المقام الأول على شركات المساهمة المقيدة في بورصة الأوراق المالية - خاصة التي يجري عليها تعامل نشط - وكذلك على المؤسسات المالية التي تتخذ شكل شركات المساهمة. فتلك هي الشركات التي تكون ملكيتها موزعة بين عدد كبير من الشركاء والتي يلزم تحديد العلاقة بين ملكيتها وإدارتها أو التي تكون مؤثرة بشكل مباشر على جمهور واسع. كذلك تنطبق على وجه الخصوص على الشركات التي يكون تمويلها الرئيسي من الجهاز المصرفي لما يترتب على التزامها بقواعد الحوكمة من ضمان للدائنين. وقد صيغت هذه القواعد بحيث تتلاءم مع هذه الشركات في إطار أحكام قانون شركات المساهمة وشركات التوصية بالأسهم والشركات ذات المسؤولية المحدودة الصادر بالقانون رقم 159 لسنة 1981، وقانون سوق رأس المال الصادر بالقانون رقم 95 لسنة 1992، وكذلك قواعد قيد واستمرار قيد وشطب الأوراق المالية ببوصتي القاهرة والإسكندرية للأوراق المالية. لذلك فإن كل إشارة في هذه القواعد إلى "شركة" أو "شركات" تدل على الشركات المقيدة في بورصتي الأوراق المالية بالقاهرة والإسكندرية، بالإضافة إلى المؤسسات المالية التي تتخذ شكل شركات المساهمة ولو لم تكن مقيدة في البورصتين، ويقصد بها تحديدا البنوك وشركات التأمين وشركات التمويل العقاري وشركات التأجير التمويلي والشركات العاملة في مجال الأوراق المالية، وكذلك الشركات التي يكون تمويلها الرئيسي من القطاع المصرفي.

1.2 مع ذلك فإنه، ونظرا لأهمية قواعد حوكمة الشركات بشكل عام لكل أنواع الشركات ونظرا كذلك لأن الأشكال الأخرى من الشركات يمكن النظر إليها على أنها في مراحل أولية تسبق احتمال قيدها في بورصة الأوراق المالية أو طرحها للاكتتاب العام، فإن هذه القواعد بعد أن تناولت تفاصيل قواعد الحوكمة بالنسبة للشركات المقيدة في البورصة أو المؤسسات المالية التي تتخذ شكل شركات المساهمة، قد تناولت بشكل أكثر إجازا بيان ما ينطبق منها على شركات المساهمة المغلقة، ثم على الشركات ذات المسؤولية المحدودة، وأخيرا على شركات الأشخاص. ولعل هذا الأسلوب في تناول، وإن كان يخرج عن نطاق قواعد الحوكمة في بلدان أخرى حيث يقتصر نطاقها على شركات المساهمة المقيدة في بورصات الأوراق المالية والمؤسسات المالية، إلا أن هذا الخروج له ما يبرره في الحالة المصرية حيث لا تتجاوز نسبة الشركات المقيدة في بورصتي القاهرة والإسكندرية 2,5% من إجمالي شركات المساهمة المصرية، ولا يزيد من بين هذه النسبة ما يجري تداول نشط عليه عن ثلاثين شركة.

1.3 من جهة أخرى فإن التطور الذي يشهده الاقتصاد المصري وسوق الأوراق المالية على وجه الخصوص في السنوات الأخيرة يشير إلى أن كثيرا من شركات المساهمة المغلقة سوف يجد طريقه إلى القيد في بورصتي القاهرة والإسكندرية، مما يجعل من المفيد أن ينتبه المساهمون وإدارة هذه الشركات إلى قواعد الحوكمة تمهيدا واستعدادا للقيد في سوق الأوراق المالية. فالتأهيل السليم للطرح العام أو القيد في البورصة من أهداف هذه القواعد. لذلك فإن المساهمين والشركات والدائنين والعاملين في الشركات عموما لديهم مصلحة في تشجيع ومراقبة التزام الشركات لمختلف أشكالها بهذه القواعد قدر المستطاع، حتى ولو لم تكن شركات مساهمة مقيدة في البورصة.

1.4 يرتبط بما سبق أيضا أن حوكمة الشركات على نحو سليم لا تعنى فقط مجرد احترام مجموعة من القواعد وتفسيرها تفسيراً ضيقاً وحرافياً، وإنما هي ثقافة وأسلوب في ضبط العلاقة بين مالكي الشركة

ومديريها والمتعاملين معها، ولذلك فكلما اتسع نطاق من يأخذون بها كلما كانت المصلحة أكبر للمجتمع بأسره.

2. الجمعية العامة

- 2.1 تتكون الجمعية العامة من كل مساهمي الشركة، كل بحسب نسبة ما يمتلكه من أسهمها. وبينما أن النظام الأساسي للشركة يمكن أن ينص على ألا يحضر اجتماع الجمعية العامة سوى المساهم الذي يمتلك نسبة معينة من الأسهم، إلا أن مثل هذا النص يجب أن يعتبر استثناء على القاعدة التي تعطي كل مساهم حق حضور الجمعية العامة ولا يتم اللجوء إليه إلا في الحالات التي يتجاوز فيها عدد المساهمين قدرة الشركة على تدبير مكان انعقاد الجمعية، ولا يكون وسيلة لتجاهل صغار المساهمين أو استبعاد بعضهم.
- 2.2 يجب حث المساهمين على حضور اجتماع الجمعية العامة للشركة، وترتيب موعد ومكان اجتماعهم بما ييسر عليهم ويشجعهم على الحضور.
- 2.3 يكون كل موضوع معروض في جدول أعمال الجمعية العامة العادية أو غير العادية مصحوبا بشرح واف واستعراض كاف لكافة جوانبه بما يمكن المساهمين من اتخاذ قراراتهم بناء على المعلومات المقدمة إليهم. ويجب أن يكون القصد من تقديم تلك المعلومات هو تمكين المساهمين من اتخاذ قراراتهم بشكل سليم ومدروس وليس مجرد استكمال الجوانب الشكلية للاجتماع.
- 2.4 يتم ادارة الجمعية العامة على النحو الذى يسمح للمساهمين بالتعبير عن آرائهم، وعلى ادارة الشركة الافصاح التام والكافى عن كل ما يتضمنه جدول أعمال الجمعية من موضوعات.
- 2.5 يجب قيد التصويت على قرارات الجمعية العامة للشركة بدقة متناهية. وفي حالة نشوء أى تنازع بشأن صحة تمثيل بعض الاصوات فى الجمعية، يؤخذ التصويت باعتبار صحة هذه الاصوات مرة وبطلانها مرة أخرى للعرض لاحقا على الجهة الادارية أو القضائية المختصة بحيث تستمر اجراءات الجمعية العامة فى جميع الاحوال.

3. مجلس الإدارة

- 3.1 مجلس إدارة شركة المساهمة هو الذي يتولى إدارة أمور الشركة بناء على تفويض من الجمعية العامة. لذلك فإن المسؤولية النهائية عن الشركة تظل لدى المجلس، ولو قام بتشكيل لجان أو تفويض جهات أو أفراد آخرين في القيام ببعض أعماله.
- 3.2 برغم أن مجلس إدارة الشركة يتكون من ممثلين تم اختيارهم من مجموعات مختلفة من المساهمين، إلا أنه متى تم تعيين عضو مجلس الإدارة فيجب عليه أن يعتبر نفسه ممثلا لكافة المساهمين وملتزمًا بالقيام بما يحقق مصلحة الشركة عموما وليس ما يحقق صالح المجموعة التي يمثلها أو التي قامت بالتصويت على تعيينه في المجلس فقط.
- 3.3 تنص القوانين المصرية على أن مجلس إدارة الشركة يتم انتخابه لكي يمثل المساهمين، ولكن قواعد التصويت تجعل المجموعة صاحبة الأغلبية في الجمعية العامة قادرة على تعيين المجلس بأكمله من خلال التصويت على كل مرشح على حدة. لذلك فإن الحوكمة الرشيدة للشركة تقتضي أن يتم استخدام

أسلوب تراكمي في التصويت على مرشحي مجلس الإدارة بحيث تكون النتيجة النهائية معبرة عن التمثيل النسبي للمساهمين في مجلس الإدارة. ويجب أن تقدم سيرة ذاتية مختصرة عن كل مرشح لعضوية مجلس إدارة الشركة إلى المساهمين عند دعوتهم لانتخاب المجلس.

3.4 يجب أن يتضمن مجلس الإدارة أغلبية من الأعضاء غير التنفيذيين في الشركة. ويجب أن تكون لدى الأعضاء غير التنفيذيين خبرات أو مهارات فنية أو تحليلية مما يجلب نفعاً للمجلس والشركة. وفي جميع الأحوال يتعين عند اختيار الأعضاء غير التنفيذيين لأي شركة مراعاة أن يكون العضو قادراً على تخصيص الوقت والاهتمام الكافيين لعضويته وألا تمثل هذه العضوية تعارضاً مع مصالح أخرى له.

3.5 يجب توفير المعلومات والبيانات والشرح الكافي لأعضاء مجلس الإدارة الجدد عن الشركة عند تعيينهم حتى يتمكنوا في أقرب وقت ممكن من الإلمام بكافة جوانبها العامة ونقاط ضعفها وهيكلها الإداري وعناصر ميزانيتها وكل ما يمكنهم من القيام بعملهم على أكمل وجه.

3.6 يتولى المجلس تعيين رئيس مجلس الإدارة والعضو المنتدب، ويفضل ألا يجمع ذات الشخص بين الصفتين. فإذا كان الجمع بين المنصبين ضرورياً، وجب أن يتم توضيح أسباب ذلك في التقرير السنوي للشركة وأن يتم تعيين نائب رئيس مجلس إدارة غير تنفيذي.

3.7 على مجلس الإدارة أن يظل في كل وقت متابعاً عن كثب لأحوال الشركة بشكل عام وألا يتخلى عن هذه المتابعة لغيره.

3.8 على المجلس وضع الآليات والنظم التي تضمن احترام الشركة للقوانين واللوائح السارية، والتزامها بالإفصاح عن المعلومات الجوهرية للمساهمين والدائنين وأصحاب المصالح الآخرين. وفي جميع الأحوال يجب أن يكون احترام القوانين واللوائح وكذلك الإفصاح عن المعلومات الجوهرية مستنداً إلى معايير موضوعية لا شكلية فقط.

3.9 يجب أن يكون كل تفويض يصدر من مجلس إدارة الشركة، سواء لأحد أعضائه أو لغيرهم، محدداً في موضوعه وفي المدة الزمنية لسريانه وأن يتضمن موعد عرض نتائجه على أعضاء المجلس. وعلى المجلس تجنب إصدار تفويضات عامة أو غير محددة المدة لما يعنيه ذلك من تنازل فعلي من المجلس عن صلاحياته.

3.10 يتاح لأعضاء المجلس الحصول على كافة المعلومات والبيانات الخاصة بالشركة في الموعد وبالشكل الذي يحدده.

3.11 لأعضاء المجلس طلب الحصول على رأي استشاري خارجي في أي من أمور الشركة، وعلى نفقتها، متى وافق على ذلك أغليبيتهم وبشرط مراعاة أحكام تجنب تعارض المصالح المنصوص عليها في هذه القواعد.

3.12 على الشركة تقديم مقابل مادي لمديرها التنفيذيين بما يسمح باستقطاب والاحتفاظ بأفضل العناصر المؤهلة لذلك في السوق. ويتم تحديد ذلك عن طريق تشكيل لجنة تتكون بغالبيتها من أعضاء مجلس الإدارة غير التنفيذيين ويكون لها صلاحية اقتراح المقابل المادي الذي يحصل عليه الأعضاء التنفيذيون، والتفاوض معهم في هذا الشأن بالتشاور مع العضو المنتدب، على أن يكون القرار النهائي

لأعضاء المجلس غير التنفيذيين. ويتم الإفصاح عن أسماء أعضاء اللجنة في التقرير السنوي للشركة، كما يجب أن يحضر رئيس اللجنة الجمعية العامة السنوية للإجابة على أسئلة المساهمين في هذا الشأن.

3.13 يجب أن يكون الإفصاح عن ما يتقاضاه أي من أعضاء مجلس الإدارة التنفيذيين شاملا المرتب والبدلات والمزايا العينية وأسهم التحفيز وأية عناصر أخرى ذات طبيعة مالية. ويفضل دائما أن تمثل العناصر التي ترتبط بأداء الشركة الجانب الأكبر من مجموع المقابل المادي حتى يكون لعضو مجلس الإدارة التنفيذي حافزا مستمرا للعمل على تحسين أدائها.

3.14 فيما يتعلق بأسهم التحفيز على وجه الخصوص، يجب أن يراعى فيها ألا تحفز المجلس على اتخاذ قرارات تحقق مصلحة الشركة في الأجل القصير فقط، وإنما أن تكون أيضا مرتبطة بما يحسن أداء الشركة على المدى الطويل والمتوسط.

3.15 لا يجب أن تتجاوز مدة التعاقد الواحدة لعضو مجلس الإدارة التنفيذي أكثر من ثلاث سنوات، ما لم يكن ذلك لأسباب واضحة ومحددة يتم الإفصاح عنها في الجمعية العامة للشركة.

3.16 تتولى اللجنة المشار إليها في البند (3,12) أعلاه اقتراح المقابل الذي يتقاضاه كل من أعضاء مجلس الإدارة غير التنفيذيين على أن يعرض ذلك على الجمعية العامة للشركة لكي تتخذ قرارا بشأنه. ولا يجب أن تكون هناك تفرقة بين ما يتقاضاه أعضاء المجلس غير التنفيذيين إلا في أضيق الحدود واستنادا إلى أعمال ومهام محددة يتم تكليفهم بها أو لجان يشاركون في عضويتها.

3.17 لا يجب أن يقل عدد مرات انعقاد المجلس عن مرة كل ثلاثة أشهر، ويتم الإفصاح في التقرير السنوي للشركة عن هذا العدد وعن أسماء الأعضاء الذين تغيبوا عن حضور اجتماعات المجلس أو اللجان المنبثقة عنه. ويجب أن تتم الدعوة للاجتماعات في مواعيد وأماكن ووفقا لترتيبات تسمح للأعضاء بالحضور، وأن تتوفر كافة المعلومات الخاصة بأي موضوع سيرعرض على المجلس أو قرار سيتم اتخاذه لكافة الأعضاء قبل موعد الانعقاد بوقت كاف، ما لم يكن ذلك في حالات خاصة تتطلب عرضا سريعا، ولكن على أن يحضر الاجتماع في هذه الحالة من لديه القدرة من الأعضاء التنفيذيين أو من المديرين في الشركة على شرح الموضوع شرحا وافيا والإجابة على أسئلة الأعضاء. ويفضل عدم اللجوء إلى اتخاذ القرارات بطريق التمرير إلا في الحالات التي لا يمكن فيها عقد الاجتماع بالوسائل المعتادة، وعلى ألا يتم التصويت في هذه الحالة إلا على القرارات الطارئة وحدها، وذلك مع مراعاة أن يكون القرار في هذه الحالة بالإجماع.

3.18 لأعضاء مجلس الإدارة غير التنفيذيين أن يلتقوا بمديري الشركة للتشاور في أي من شئونها، سواء بحضور أعضاء المجلس التنفيذيين أم بدونهم، على أن يتم التنسيق معهم في تحديد المواعيد وإطلاعهم على ما سوف يتم التشاور بشأنه.

3.19 على المجلس مراجعة نظم وإجراءات الشركة الداخلية بشكل مستمر للتحقق من ملاءمتها ومن كفاءتها. وللمجلس الحصول على كافة المعلومات والتقارير المالية وغير المالية عن أداء الشركة.

3.20 للمجلس تكوين لجان من أعضائه ومن غيرهم للقيام بمهام محددة ولقترات معينة. ويجب اعتبار هذه اللجان وسائل مساعدة للمجلس في أداء عمله لا وسيلة لكي يتصل المجلس من مسؤوليته أو ينقلها إلى جهة أخرى.

3.21 يجب أن يكون تشكيل اللجان التابعة لمجلس الإدارة وفقا لإجراءات عامة يضعها المجلس، تتضمن تحديد مهمة اللجنة، ومدة عملها، والصلاحيات الممنوحة لها خلال هذه المدة، وكيفية رقابة المجلس

عليها. وعلى اللجنة أن تخطر المجلس علما بما تقوم به أو تتوصل إليه من نتائج أو تتخذه من قرارات بشفافية مطلقة. وعلى المجلس أن يتابع عمل اللجان بشكل دوري للتحقق من قيامها بالأعمال الموكولة إليها.

3.22 يجب أن تشكل على الأقل لجنة للمراقبة الداخلية من أعضاء غير تنفيذيين تكون مهمتها مراجعة عمل إدارة الرقابة الداخلية ونظم العمل الداخلية بالشركة.

3.23 يحبذ أن يشارك أعضاء المجلس غير التنفيذيين في اللجان التي يشكلها المجلس، وأن يتولى أحدهم رئاستها. وللجان أن تستعين بمستشارين خارجيين لمساعدتها في أداء مهامها وذلك على نفقة الشركة. ويجب أن يتضمن التقرير السنوي للشركة عرضا مختصرا عن تشكيل كل لجنة وعدد اجتماعاتها وما كلفت به وما قامت به من أعمال، وأن يحضر اجتماع الجمعية العامة للشركة رؤساء اللجان.

3.24 يكون لمجلس إدارة الشركة أمين سر يوافق المجلس على تعيينه للقيام بكافة أعمال إدارة سجلات ومحاضر ودفاتر المجلس، ويحضر اجتماعات المجلس ما لم يطلب منه الخروج من قاعة الاجتماع بالنسبة لموضوع محدد، ويكون للأعضاء الاتصال به خلال الفترات التي تفصل بين اجتماعات المجلس. ويجب أن يقر المجلس لأمين السر بالصلاحيات الواجبة للقيام بعمله. ويحبذ العمل على أن يتجاوز عمل أمين السر المفهوم التقليدي له في القانون المصري والخاص بحضور الجمعية وتدوين المحضر، إلى أن يكون رابطة مستمرة بين الأعضاء وبينهم وبين الشركة ومصدرا للمعلومات التي يطلبونها.

3.25 مجلس إدارة الشركة مسئول بشكل عام عن إدارة المخاطر بها على النحو الذي يتفق وطبيعة نشاطها وحجمها والسوق التي تعمل بها، وتقع عليه مسؤولية وضع استراتيجية لتحديد المخاطر التي تواجه الشركة، وكيفية التعامل معها، ومستوى المخاطرة التي تتعامل بها الشركة وعرض ذلك كله على المساهمين بشكل واضح.

4. ادارة المراجعة الداخلية

4.1 يجب أن يكون لدى الشركة نظام محكم للرقابة الداخلية وأن يتعاون في وضعه مجلس الإدارة مع مديري الشركة، وإلا وجب عليه بيان أسباب عدم وجود مثل هذا النظام للجمعية العامة السنوية.

4.2 يتولى إدارة المراجعة الداخلية مسئول متفرغ لذلك بالشركة ويكون من القيادات الإدارية بها، ويتبع مباشرة العضو المنتدب، كما يكون له الاتصال مباشرة والتشاور مع رئيس مجلس الإدارة، ويحضر كل اجتماعات لجنة الرقابة الداخلية.

4.3 يكون تعيين وتجديد وعزل مدير ادارة المراجعة الداخلية وتحديد معاملته المالية بقرار من العضو المنتدب، بشرط موافقة لجنة الرقابة الداخلية المنبثقة عن مجلس الإدارة.

4.4 يجب أن تكون لمسئول الرقابة الداخلية الصلاحيات اللازمة التي تمكنه من القيام بعمله على أكمل وجه.

4.5 يقدم مدير ادارة المراجعة الداخلية تقريرا ربع سنوي إلى مجلس الادارة وإلى لجنة الرقابة الداخلية عن مدى التزام الشركة بأحكام القانون والقواعد المنظمة لنشاطها وطذلك عن مدى التزامها بقواعد الحوكمة.

- 4.6 يصدر بتحديد أهداف ومهام وصلاحيات ادارة المراجعة الداخلية وأسماء مديرها ومن يعاونوه قرار واضح ومفصل ومكتوب من مجلس إدارة الشركة.
- 4.7 تهدف المراجعة الداخلية إلى وضع نظم لتقييم وسائل ونظم وإجراءات إدارة المخاطر فى الشركة ولتطبيق قواعد الحوكمة بها على نحو سليم، وكذلك لمتابعة ما سبق وإعطاء مجلس الإدارة التقارير والمعلومات اللازمة عنه.
- 4.8 يتم وضع نظم وإجراءات المراجعة الداخلية بناء على تصور ودراسة للمخاطر التى تواجه الشركة، على أن يستعان فى ذلك بأراء وتقارير مجلس الإدارة ومراقبى الحسابات ومديرى الشركة وأن يتم تحديث متابعة وتقييم تلك المخاطر بشكل دورى.

5. مراجع الحسابات الخارجى

- 5.1 يكون للشركة مراجع حسابات خارجى لا تربطه بها علاقة عمل ويكون مستقل عن إدارتها الداخلية.
- 5.2 على مجلس الإدارة مراعاة اختيار مراجع حسابات خارجى ممن تتوافر فيه الكفاءة والسمعة والخبرة الكافيين، وأن تكون خبرته وكفاءته وقدراته متناسبة مع حجم وطبيعة نشاط الشركة ومن تتعامل معهم.
- 5.3 يجب أن يكون مراجع الحسابات الخارجى مستقلاً عن الشركة وعن أعضاء مجلس إدارتها ويفضل ألا يكون مساهماً فيها أو عضواً ذا خبرة فى مجلس إدارتها وأن يتم تعيينه بقرار من الجمعية العامة للشركة مع تحديد أتعابه السنوية فاذا كان مساهماً وجب عليه مراعاة الفصل التام بين مصالحه كمساهم ومصالحه كمراجع حسابات خارجى مستقل والإفصاح عن أى تعارض بينهما.
- 5.4 يحضر مراجع الحسابات الخارجى الجمعية العامة السنوية للشركة.
- 5.5 على مراجع الحسابات الخارجى للشركة الالتزام بمبادئ وقواعد المحاسبة المصرية من حيث المضمون لا الشكل فقط.
- 5.6 لا يجوز التعاقد مع مراجع الحسابات الخارجى للشركة لأداء أية اعمال اضافية للشركة.
- 5.7 يكون مراجع الحسابات الخارجى مستقلاً ومحايداً فيما يبديه من آراء، ويجب أن يكون عمله محصناً ضد تدخل مجلس الادارة وألا يكون تقرير استمراره فى عمله وتقدير أتعابه واقعياً مما يمكن أن يتحكم مجلس الادارة فيه.

6. الإفصاح عن السياسات الاجتماعية

- 6.1 على إدارة الشركة أن تفصح للمساهمين ولجمهور المتعاملين معها والعاملين لديها مرة على الأقل سنوياً عن معلومات غير مالية بشأن سياسات الشركة الاجتماعية والبيئية وتلك المتعلقة بالسلامة والصحة المهنية وغير ذلك.
- 6.2 يُراعى أن تكون السياسات المعلن عنها واضحة وغير مضللة وأن تتضمن ما تنوى الشركة القيام به من تطوير أو تغيير فى حجم العمالة أو تدريبيها، وبرامجها للرعاية الاجتماعية، سواء داخل الشركة

أو فى المجتمع المحيط بها. أما بالنسبة للسياسات الصحية والبيئية فيجب أن تكون متفقة مع القوانين والنظم المعمول بها فى مصر وأن يكون هدفها تحقيق صالح العاملين بالشركة والمجتمع المحيط بها وأن تكون قابلة للاستمرار على المدى الطويل.

6.3 يجب أن تربط الشركة بالمجتمع المحيط بها وبمن تتعامل معهم من موردين أو عملاء علاقة تقوم على المصداقية والحرص على تحقيق المصالح المشتركة والافصاح عن السياسات والنوايا بما لا يتعارض مع واجب الشركة والعاملين والمديرين بها فى الحفاظ على سرية المعلومات المالية والتجارية.

7. قواعد تجنب تعارض المصالح

7.1 يجب أن يكون لكل شركة نظام مكتوب ومعروف من أعضاء مجلس الإدارة والمديرين والعاملين بشأن تجنب تعارض المصالح، وأن يتضمن الأحكام الواردة فى هذا الجزء.

7.2 يحظر على أعضاء مجلس إدارة الشركة والمديرين والعاملين بها التعامل فى أسهم الشركة لمدة محددة تسبق الإعلان عن نتائج نشاطها المالية أو قبل الإعلان عن أية معلومات أخرى ذات طبيعة مالية مؤثرة، وذلك كله مع مراعاة أحكام القانون وقواعد القيد والتداول والافصاح المعمول بها.

7.3 تضع الشركة، بالتشاور مع العاملين فيها والمتعاملين معها، قواعد لسلوكها المهني تتضمن :

- قواعد التعامل مع الشركة بيعاً أو شراءً أو غير ذلك.
- ما يتم تفويضه من صلاحيات.
- أساليب الإعلان عن السياسات الجديدة.
- معايير السلامة والصحة المتبعة.
- المعايير المهنية السليمة للتعامل بين العاملين والمديرين وبينهم وبين من هم خارج الشركة

7.4 على الشركة أن تضع نظاماً داخلياً لمراقبة تطبيق قواعد سلوكها المهني.

7.5 تسعى الشركة فى معاملاتها مع الموردين إلى اختيار من يتعامل معهم بذات المستوى المهني والأخلاقي الذي تحرص عليه الشركة داخلها.

8. قواعد الحوكمة بالنسبة للشركات الأخرى

إن هذه القواعد موجهة على وجه الخصوص الى الشركات المقيدة فى بورصة الأوراق المالية وإلى المؤسسات المالية والشركات التى يكون تمويلها الرئيسى من الجهاز المصرفى. ولكن كما ورد سابقاً فإن حوكمة الشركات تخدم كافة أنواع الشركات لما تحققه من توازن بين المصالح وما تدعو إليه من ثقافة جديدة فى أسلوب ادارتها. ولذلك فإنه كلما التزم المزيد من الشركات بهذه القواعد كلما كان ذلك ممكناً لصالح المجتمع ولصالح الشركاء والمساهمين فيها.

على وجه الخصوص فإن شركات المساهمة المغلقة أو العائلية والشركات ذات المسؤولية المحدودة وعليها مراعاة أحكام هذه القواعد بقدر الإمكان.

أما شركات الأشخاص فإن عليها مراعاة ما يتعلق منها بأن تراعى الشركة عدم تعارض المصالح وضرورة وجود نظم للرقابة الداخلية واستقلال المستشارين القانونيين والمحاسبين ومراقبي الحسابات والإفصاح عن السياسات الاجتماعية.

وفي جميع الأحوال فإنه في حالة عدم إمكان الالتزام بقواعد الحوكمة بالنسبة للشركات المساهمة المغلقة أو العائلية أو الشركات ذات المسؤولية المحدودة أو شركات الأشخاص فيكون عليها تطبيق بدائل أقل تكلفة وأكثر تناسبا لقدراتها المالية والإدارية، ولكن بما يحقق ذات النتائج التي ترمى هذه القواعد إلى تحقيقها.