

EMC TASK FORCE ON CORPORATE GOVERNANCE
SURVEY QUESTIONNAIRE
“CORPORATE GOVERNANCE IN EMERGING MARKETS”

BACKGROUND

In the recent years, corporate governance has come to be accepted as an important subject. Rightly, from the regulators perspectives also implementation of better corporate governance, both in facts and substance, has become a subject of highest emphasis and priority. Because, if issuers could function with a sense of enlightened self-interest, the regulatory burden would decrease considerably while at the same time stakeholders’ interests would be protected automatically and their wealth would multiply optimally.

The enclosed questionnaire is essentially a means to set the future agenda for promoting fair corporate governance practices among emerging market jurisdictions. The immediate objective of the questionnaire is to:

1. Assess the general framework of corporate governance practices prevailing in emerging market jurisdictions.
2. Identifying the best practices among jurisdictions which could be implemented across emerging market jurisdictions.
3. To develop a set of ideal corporate governance standards/ practices for emerging market jurisdictions to help them self-assess the extent of compliance to corporate governance in their respective jurisdictions and to take steps to fill the regulatory gaps in this regard.

**EMC TASK FORCE ON
CORPORATE GOVERNANCE**

**Corporate Governance in Emerging Markets
Questionnaire**

General Information

Country/ Jurisdiction	PANAMA
Regulator	NATIONAL SECURITIES COMMISSION OF PANAMA
Name of the Repondent	Jorge Navarro
Correspondence Address	Balboa Ave., Bay Mall Building, 2 nd Floor, Number 206
Tel. No.	Phone: (507) 501-1700
Fax. No.	Fax: (507) 501-1709
Email Address:	Email address: navarro@conaval.gob.pa

Please forward your reply to:

Mr. Prabhas Rath
Research Officer
Office of International Affairs
Securities and Exchange Board of India
Ph: +91-22-2287 1580
Fax: +91-22-2283 5692
Email: prabhasr@sebi.gov.in

QUESTIONNAIRE

I. Corporate Governance Overview

1. Corporate Governance Environment

- a. Number of companies listed on exchanges

R/. 94

- b. Availability of data about prevailing ownership pattern (i.e. whether diffuse stockholding or block-holding is prevalent)

R/. Block- Holding

- c. Legal board or oversight structure(s) of listed companies

R/. Legal board



- d. Option of listed companies to choose among alternative types of board structures

R/. No, it does not

2. Corporate Governance Standards

- a. Has your jurisdiction mandated any form of corporate governance code?

R/. Our jurisdiction purpose to issue recommendations for registered issuers in the Commission, regarding the application of principles consistent with a good corporate governance.

- b. What is the model adopted by the jurisdiction (OECD Code etc.)

R/. OECD Code.

- c. Is the standard

- rule based (detailed requirements)
- principle based (high end principles)
- a combination of the two? **R/. Is a combination of both.**

- d. What is the legal nature of the standards?

- Statutory provision
- code based recommendations **R/. Code based recommendations**
- listing requirement
- investment guidelines of major institutional investors
- other (specify)?

- e. To which companies does the standard apply: all companies/ all listed companies/ companies that meet some requirements (specify)?

R/. All listed companies

- f. Is the Code legally enforceable? Which organization monitors and enforces corporate governance compliance?

R/. Yes it is legally enforceable. The National Securities Commission monitors and enforces corporate governance compliance. It is hereby prohibited to every person to make a false or omits declaration on important facts. The National Securities Commission can punish this behavior.

g. What are the penal provisions for enforcing corporate governance?

R/. We do not have penal provisions.

II. Corporate Governance and Protection of Shareholders

1. Does the rights of shareholders include right to:

- a. secure method of ownership registration
- b. transfer shares
- c. obtain timely relevant information on the corporation
- d. participate and vote in general shareholders meetings
- e. elect members of the board
- f. share in the profits of the corporation
- g. participate in and to be informed on decisions concerning fundamental corporate changes

R/. Yes, it does.

2. Does the framework addresses the issue of equitable treatment of various classes of shareholders like controlling shareholders, minority share holders etc.? If yes, how?

R/. Yes, it does.

Measures tending to acquire equilibrium, transparency and the proper representation of all groups of shareholders in the power of direction, control and management of corporations, as well as the fair and timely disclosure of material information for all groups of shareholders

3. What is the mechanism to protect the interests of minority shareholders?

R/. Creation of basic structures of good government, efficient and appropriate to face risks related to diverging interests between property and management, which affects shareholders, directors, officers, employees, as well as the investing public.

And the adoption of measures and proceedings necessary to comply with information requirements, reliable, transparent and timely to all those who have interest in the company (shareholders, employees, clients, suppliers, regulatory authority, public in general).

4. Are there effective mechanisms to prohibit insider trading and abusive self-dealing

R/. We have the mechanisms but with out results because the implementation is new.

5. What is the average number of cases of violation of corporate governance in your jurisdictions? What is the percentage of these cases in which action against the company was warranted?

R/. We do not have this information.

6. What is the framework for facilitating investors' activism to promote corporate governance? What are the checks and balances on investors associations in this regard?

R/. We do not have framework for facilitating investors.

III. Corporate Governance Disclosure and Transparency

1. Does the framework ensure disclosure of audited material information on:

- a. the financial and operating results of the company
 - b. company objectives
 - c. major share ownership and voting rights
 - d. members of the board and key executives, their transactions and remuneration
 - e. Material foreseeable risk factors
 - f. material issues regarding employees and other shareholders
 - g. governance structure and policies
- R/. Yes, it does.**

2. Does the framework adequately address the issue of Management-Shareholders Communications? If yes, does the Management Discussion & Analysis forms a part of the Annual Report addressed to the shareholders? Which of the following are included in the Management Discussion & Analysis?

- a. Industry structure and developments
 - b. Opportunities and threats
 - c. Segment-wise or product-wise performance
 - d. Outlook, risks and concerns
 - e. Internal control systems and their adequacy
 - f. Discussion on financial performance with respect to operational performance
 - g. Material developments in Human Resources/ Industry Relations front, including number of people included
 - h. Information on newly appointed directors including his/ her brief resume, nature of his expertise in specific functional areas and names of companies in which the person also holds directorship and the membership of committees of the board etc.
- R/. Yes, it does.**
R/. Yes, it does.
R/. No, it doesn't
- R/. Yes, it does.**

IV. Board Independence



1. What is the responsibility of the Board?

R/.

- 1. Deciding on the strategic direction of the corporation, as well as approving and reviewing other relevant policies of the corporation.**
- 2. Establishing information and communication policies of the corporation before its shareholders, suppliers, clients, regulatory authorities and public in general.**
- 3. Defining and complying with an internal and external information system, efficient, safe, timely and transparent. Such an information system must be equal to all members of the Board.**
- 4. Define and regulate conflicts of interests of the Board members and key executives of the corporation and prevent members to take decisions that involve conflicts of interest.**
- 5. Creating the policies and proceedings for the selection, appointment, retribution and removal of key executives of the corporation.**
- 6. Defining the evaluation and performance systems of top executives of the corporation, in an objective, impartial and timely manner.**
- 7. To handle the reasonable control of corporate risk.**
- 8. To see that the accounting records of the corporation are accurate, that they reflect reasonably the financial position of the corporation and that they comply with the applicable accounting standards and the laws of the Republic of Panama.**
- 9. To ensure the protection of assets, prevention and detection of fraud and other irregularities.**
- 10. To encourage measures tending to the best and greater representation of all groups of shareholders, including minority shareholders.**
- 11. To establish the necessary internal control mechanisms for the proper management of the corporation, and supervise them annually.**
- 12. To approve or disapprove the internal rules of the permanent support committees and supervising that their provisions are strictly observed.**

2. What is the definition, if any, of independent directors in your jurisdiction?

R/. **Independent Director:** for the purposes of this Agreement, a Director will not be considered independent if he or she is:

- a) **Directly or indirectly the beneficial owner of outstanding shares of the issuer, in a proportion equal or superior to 5% of the total of shares issued and outstanding with voting rights, or of its controlling person, according to the definition of control established in Article 1 of Decree Law 1 of 1999.**
- b) **A person that has duties in the daily administration or management of the issuer or its controlling person, according to the definition of control established in article 1 of Decree Law 1 of 1999.**



- c) **The spouse and all persons with family bonds up to the second grade of lineal or collateral consanguinity with the individuals referred in the previous item.**

3. How are independent directors different in qualifications, roles, duties and entitlements/ rights from other board members?

R/. The independent directors are not different in qualifications from other board members. The roles, duties and entitlements/rights are not regulated.

4. How is it decided whether a candidate is independent? Who has the final authority in this regard?

R/. It is hereby recommended that the Board of Directors of registered issuers in the Commission be integrated by individuals whose knowledge and/or experience bring aggregated value and participation to the decisions that must be taken regarding the strategies and activities of the registered issuer.

It is hereby recommended that the majority of the Directors be individuals that do not participate in the day-to-day operations of the registered issuer, and whose participation does not pose material ethical conflicts or conflicts of interests. Therefore, in a minority proportion, the General Manager, the Operations Manager and/or the Financial Manager may be a part of the Board, none of which shall chair it.

5. Is it mandatory to have a minimum number of independent directors in the Board?

R/. Is not mandatory, we recommend having it. We recommended that of every five Directors, one be independent.

6. What are the specialized board committees in your jurisdiction? Is it mandatory for these committees to be chaired or have a minimum percentage of independent members?

R/. It is hereby recommended that registered issuers in the Commission establish among their corporate government rules, the duty of the board to create support committees that enhance the observance of corporate governance rules, which will be dedicated to the examination and monitoring of relevant issues concerning corporate governance.

For all issuers and registered persons, the constitution of at least the following committees is recommended:

- 1. Auditing Committee**
- 2. Compliance and risk administration**
- 3. Committee for Evaluation and appointment proposals for independent directors and key executives.**

In accordance with the guides and principles issued, it is hereby recommended that registered issuers in the Commission create a Compliance and Risk Administration Committee, integrated by at least three members of the board that do not participate in the daily management of the company. It is however, recommended, that at least 30% of its members are independent directors.

In case of registered issuers whose Boards are integrated by more than five members, it is hereby recommended the creation of a Committee for Evaluation and appointment proposals for independent directors and key executives.

The Board may also create other committees whenever deemed convenient, according to the needs of the organization, whether they are permanent or special commissions.

The names or denominations of the Committees recommended by this Agreement are merely indicative. The registered issuer may adopt whichever other denomination it considers convenient, provided that its nature and duties are the ones hereby recommended.

Auditing Committee: An organism devised to support the board of Directors that by virtue of delegation will aid in the examination, evaluation and permanent surveillance of the accounting and financial system of the corporation, constant verification of the independence criteria before the external auditor, as well as the follow-up of proceedings of internal systems of management controls.

Compliance and Risk-management Committee: An organism devised to support the board of directors, whose main duty would be the surveillance of compliance with the rules and principles that form the system of corporate governance, and the compliance with any other legal provisions that were applicable to the corporation. This committee should have the obligation to supervise the proper functioning of information and control policies adopted by the corporation, see that the rules of corporate governance are observed by the organization, review periodically its results, and raise to the board of Directors proposals for amendments and suggest the opening of internal proceedings to consider the sanctions that were deemed necessary for omission to comply with or breach of the internal by-laws of the corporation

Committee for Evaluation and appointment proposals of Independent directors and key executives: An organism devised to support the board of directors, with the main duty of seeing for the integrity of the selection, evaluation, appointment and replacement proceedings that should be applied by the competent body of the corporation, regarding Independent directors and key executives of the company. This Committee will make the recommendations to the competent body of the corporation about the selection criteria for independent directors and key executives and shall see for the correct and periodic evaluation of such parameters.

7. What is the term for appointment and reappointment of Independent directors?

R/. We do not have terms for appointment.

8. Are the shareholders entitled to nominate or appoint board members to represent themselves? If so, are these board members treated differently from the other board members?

R/. Yes, they are.

9. Who and under what circumstances has the authority to terminate an independent director?

R/. If it were the case that the selection or replacement of a Director is under consideration, the subject will be debated exclusively by the directors that are members of the Committee. If it were the case that the selection or replacement of a key executive position is under consideration, the subject will be debated by all the members of the Committee.

10. If an independent director resigns, does he or she or the listed company make any explanatory statement to the board/ audit committee or to exchange or securities regulator?

R/. Yes, they do.

11. Are there criteria, or limits, on stockholding by an independent board member in the company? How do they differ from those applicable to other board members?

R/. Yes, they are.

12. How are the compensation package and access to companies share holding of independent directors decided to ensure their independence?

R/. We do not have this information

13. Is there any standards on the maximum number of board memberships held by an independent board member and the number of meetings that a member is required to attend in a given period? How do they differ from other board members?

R/. No, they are not any standards about maximum number of board memberships.

14. Can independent directors hold separate meetings or meet share holders separately? What are the norms in this regard?

R/. It is not regulated



15. Do independent directors have access to external legal, accounting or other specialist advise at the company's expenses, the company's records including financial records, management and staff?

R/. It is not regulated

16. Can independent directors initiate legal proceedings against the company, and if so under what conditions?

R/. It is not regulated

17. Are boards as whole and individual independent board members evaluated regularly? By whom? How often?

R/. No

18. Do the board members required to comply with a prescribed code of conduct? Are they required to undergo continuing education?

R/. It is hereby recommended that registered issuers in the Commission adopt a Code of Ethics, which reflects the principles and corporate values encouraged by the company and that include, among others, the following aspects:

1. **A declaration of principles, and moral and ethical values.**
2. **Declaration of conflicts of interest at all levels of the organization and incorporation of the related mechanisms in the internal rules of the corporation of the registered issuer.**
3. **Proper use of the resources assigned to carry out the duties assigned.**
4. **Obligation to report on acts of corruption and mechanisms to improve the effective compliance with the rules of conduct.**

Is not regulated that the board members required to undergo continuing education.

V. Specialist Committees

Audit Committee

1. Is it mandatory for the company boards to have an audit committee?

R/. Is not mandatory, we recommend having it.

2. How are audit committees constituted? What are the minimum qualifications required to become a member of the audit committee?



R/. An Auditing Committee should at least have the following attributes and conditions for the effective achievement of its objectives:

- 1. Be expressly empowered by the Board to investigate any matter within its competence, having free access and the cooperation of the management, and full authority to invite, discretionally, any director or executive of the corporation to participate in its meetings.**
- 2. Be empowered to receive directly, reports from the internal auditor and its auditing team about the development of their duties. Reports from internal auditing must be submitted to the auditing committee, which will decide its disclosure to the management, for whichever correction that was necessary. The internal auditor and its team should report to the auditing Committee, in a manner totally independent from General Management.**
- 3. Be empowered to evaluate and grade the performance of the employees of internal auditing and set their remuneration.**
- 4. Recommend the hiring or removal of the internal auditor and the members of his working team.**
- 5. That the members of the Committee have the general knowledge about the fundamental problems of planning and control, as well as the functional aspects of the corporation management.**

The decisions taken in the Auditing Committee shall be recorded in a book of minutes, or by electronic devices according to legal provisions applicable, and they should be accessible to all shareholders of the corporation.

3. Generally what is the power and terms of reference of such audit committees in your jurisdiction?

R/. It is hereby recommended that the above referenced Auditing Committee issues its own internal rules, for the approval of the Board. The rules will contain, at least, the rules and proceedings for the fulfillment of the duties of the Committee, the periodicity of its meetings, its chairperson, the parameters and distribution of responsibilities for the supervision of auditing functions (internal and external), investigative proceedings in matters related to its duties, as well as the information that must be delivered to the board. It is hereby recommended that the internal auditor takes part, without a vote, in the committee's meetings, as well as any other guest that the committee deems necessary. It is hereby recommended that the Committee meets at least monthly.

4. What is the procedural framework in which the audit committee discharges its functions?

R/. It is hereby recommended that the above referenced Auditing Committee have, at least, the following functions:

- 1. To propose the hiring or replacement of the external auditor, the hiring**

conditions, the scope of the professional mandate and where applicable, the renewal or dismissal of its hiring.

2. To review the corporation's accounts, supervise compliance with all legal requirements that were applicable to the corporation and the correct application of the form and contents of Financial Statements filed with the National Securities Commission.
3. To verify the proper status and integrity of the internal control systems, review and propose the replacement of the responsible parties.
4. To verify that the internal and external auditing programs are complied with, including the independence of external auditors and their rotation, in accordance with Agreement 8-2000 of the National Securities Commission.
5. To establish the policies and proceedings for problem detection controls.
6. To recommend corrective measures deemed necessary by the evaluations made by internal auditing, external auditors and the authorities.
7. Supervise the inspection duties of the corporation's assets and ensure that the required conservation or safety measures are taken and of those under its custody, as well as verifying that all insurance policies that cover them be issued in time, renewed and regularized by the corresponding payment of the premiums.
8. To issue instructions, supervise the practice of inspections and requesting the reports that are necessary to establish a permanent control over the corporation's assets.
9. To serve as a link or coordinator between the duties of internal auditing and the duties of external auditors, particularly in aspects concerning the efficiency and effectiveness of internal control systems.
10. To review and prove that the information standard that the corporation must disclose to the shareholders, the regulatory authority, investors and the public is transparent, reliable and timely and adjusted to the proper disclosure mechanism.
11. To review the nature and extent of other additional services rendered by external auditors of the corporation, in order to determine if they affect the objectivity of the work proper of external auditing.
12. To review the interim and annual financial statements of the corporation before its distribution or publication, and the relevant press releases related with them.
13. To act as a mediator between management and auditors in case of any disagreement.

5. How does it maintain its independence from the Company Board?

R/. It is hereby recommended that the above referenced Auditing Committee issues its own internal rules, for the approval of the Board.

This Committee should be integrated by members of the Board that do not participate in the daily management of the corporation. However, it is hereby recommended that 30% of its members be independent directors.

6. How is the accountability of the remuneration committee ensured?

R/. It is not regulated.

Nomination Committee

1. Is it mandatory for the company boards to have a nomination committee?

R/. Is not mandatory, we recommend having it.

2. How is nomination committees constituted? What are the minimum qualifications required to become a member of the nomination committee?

R/ .It is hereby recommend that the nomination committee be integrated at least by:

- 1) Three members of the Board of Directors of the corporation, one of wich, at least must be independent.**
- 2) The General Manager**
- 3) The Financial Manager or its equivalent position in the organization.**

3. Generally what is the power and terms of reference of such nomination committees in your jurisdiction?

R/ . We do not have this information

4. What is the procedural framework in which the nomination committee discharges its functions?

R/.The National Securities Commission encourages the adoption of corporate proceedings within the organization of registered issuers, based on the recommendations made by the Organization of Economic Co-operation and Development (OECD), on the provisions adopted in jurisdictions where capital markets are deemed as developed markets, as well as in the recomendations and conclusions made by the organization called Center for Iternational Private Enterprise and expressed in the document titled “Instituting Corporate Governance in Developing Emerging and Transitional Economies” published in March of 2002.

5. How does it maintain its independence from the Company Board?

R/. It is recommended that at least 30% of its members be independent directors.

6. How is the accountability of the nomination committee ensured?



R/ .To make its internal rules and submit for the approval of the board

Remuneration Committee

1. Is it mandatory for the company boards to have a remuneration committee?

R/. It is not regulated.

2. How is remuneration committees constituted? What are the minimum qualifications required to become a member of the remuneration committee?

R/ . We do not have this information because the remuneration committees is not regulated.

3. Generally what is the power and terms of reference of such remuneration committees in your jurisdiction?

R/ . We do not have this information.

4. What is the procedural framework in which the remuneration committee discharges its functions?

R/ . We do not have this information

5. How does it maintain its independence from the Company Board?

R/ . We do not have this information.

6. How is the accountability of the remuneration committee ensured?

R/ . We do not have this information.

End of the Questionnaire