



**HAWKAMAH**  
THE INSTITUTE FOR CORPORATE GOVERNANCE

# **QFMA Code of Corporate Governance**

**Qatar Financial Markets Authority**

**Stakeholders Meeting**

May 3, 2009 Doha, Qatar

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**Hawkamah**

**Institute for Corporate Governance**

# Presentation Outline

- ❑ Definition and Business Case for Corporate Governance in Qatar
- ❑ International and Regional Benchmarks
- ❑ QFMA Code of Corporate Governance
- ❑ Monitoring and Compliance
- ❑ Recommended changes in Commercial Law

# Corporate Governance Defined

“Corporate governance is the system by which companies are directed and controlled.”

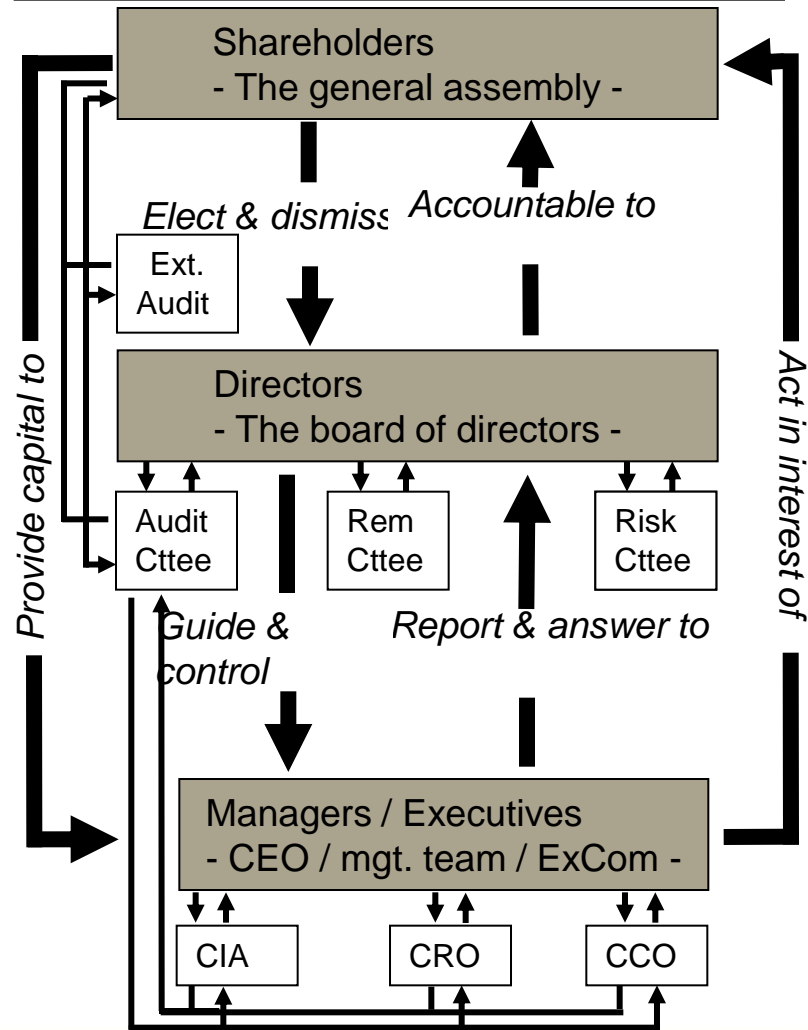
*Source: Sir Adrian Cadbury, UK Combined Code*

“Corporate governance involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.”

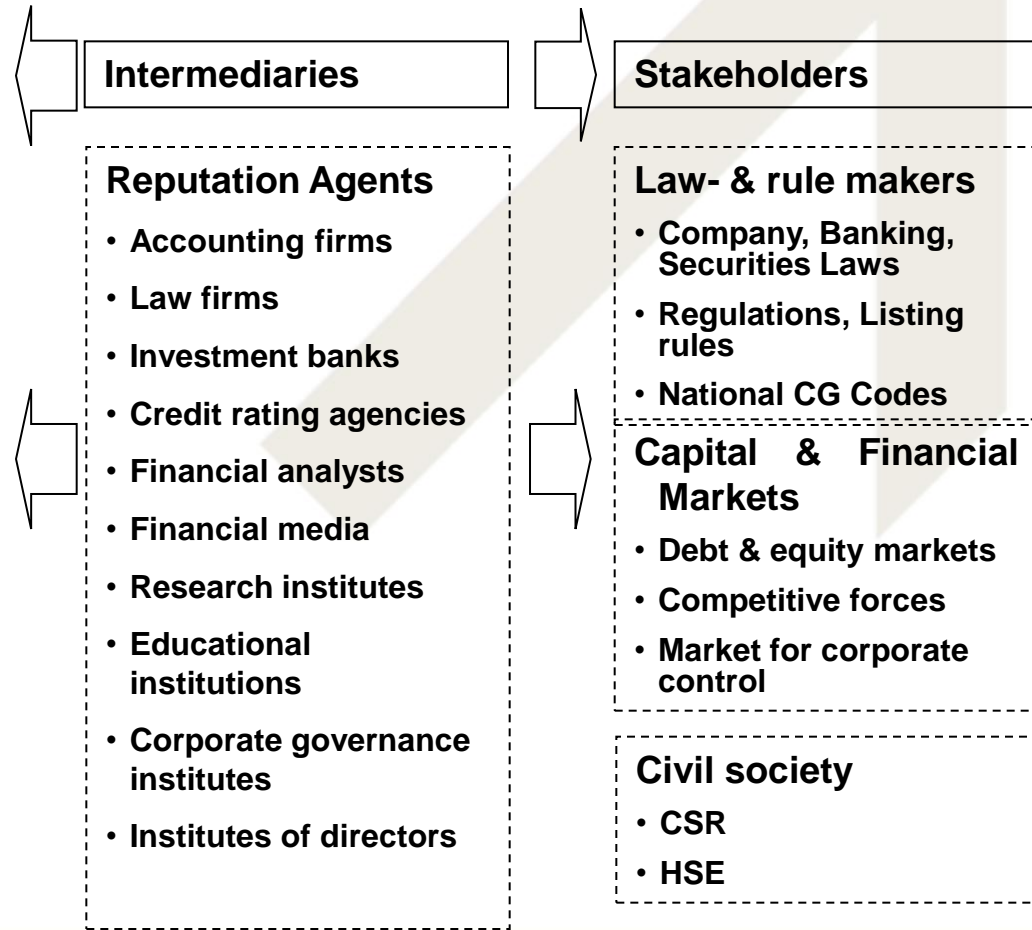
*Source: OECD Corporate Governance Principles, 2004*

# CG: Internal vs. the External Perspective

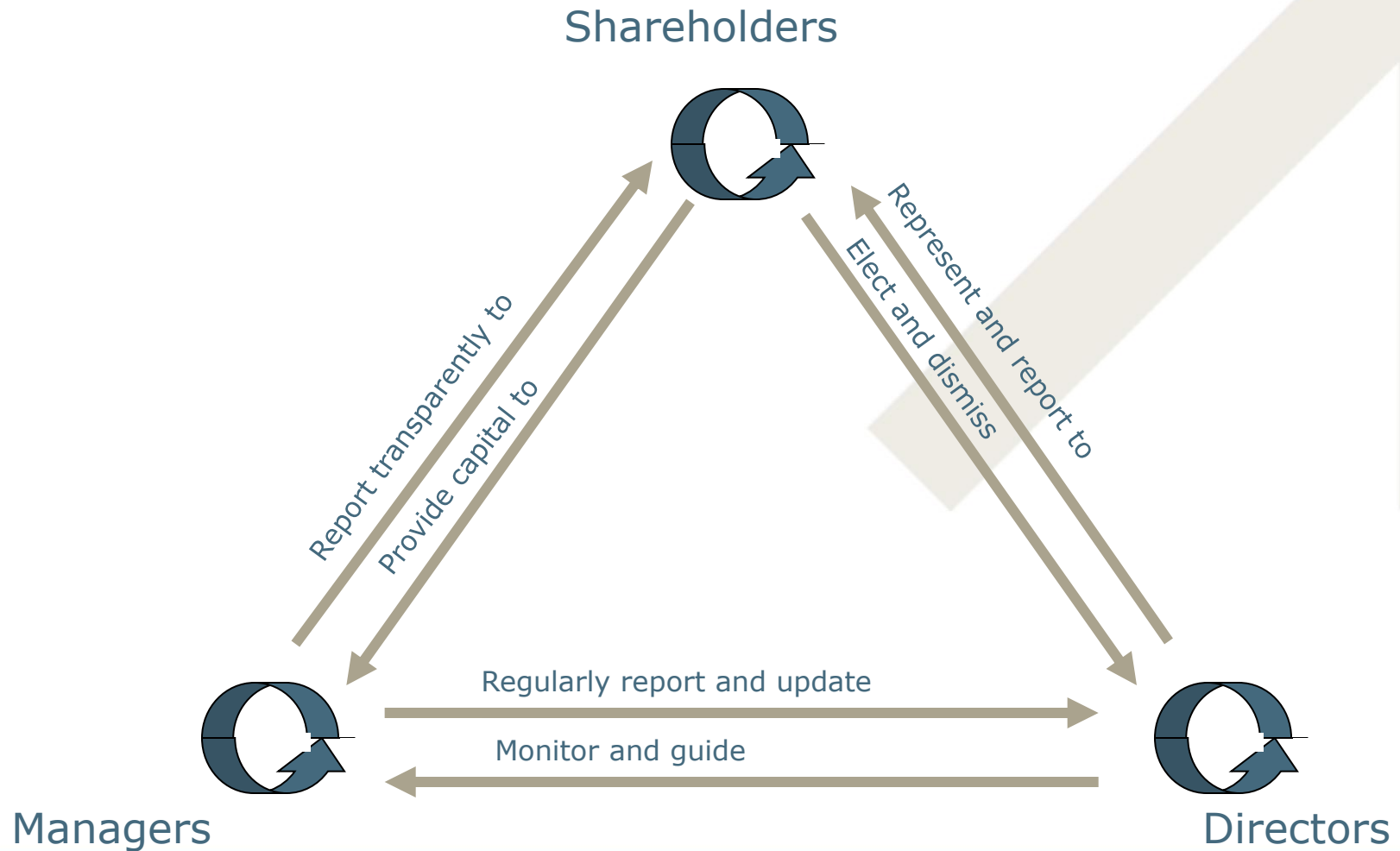
## Internal—Corporate—Perspective



## External—Stakeholder—Perspective



# Narrow View of Corporate Governance



# Pillars of Corporate Governance

As put forth in the 2004 OECD Principles of Corporate Governance



These Principles should:

<ul style="list-style-type: none"><li>▪ Ensure for mgmt.'s accountability to the Board</li><li>▪ Ensure for the Board's accountability to SHs</li></ul>	<ul style="list-style-type: none"><li>▪ Protect SH Rights</li><li>▪ Treat all SHs, incl. minorities, equitably</li><li>▪ Provide for effective redress for violations</li></ul>	<ul style="list-style-type: none"><li>▪ Ensure for timely and accurate disclosure</li><li>▪ On all material matters, incl. the:<ul style="list-style-type: none"><li>▪ Financial situation</li><li>▪ Performance</li><li>▪ Ownership</li><li>▪ Governance</li></ul></li></ul>	<ul style="list-style-type: none"><li>▪ Recognize the legal rights of stakeholders</li><li>▪ Encourage co-op. between the Co. &amp; stakeholders in creating<ul style="list-style-type: none"><li>▪ Wealth</li><li>▪ Jobs; and</li><li>▪ Sustainability</li></ul></li></ul>
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And while corporate governance issues will vary from company to company, these principles hold true for all companies.

# Why Corporate Governance Matters

- **Global financial crisis has shown that weak CG at the level of boards, failure of risk management and supervisory failure were major contributors to the crisis**
- **Global capital flows will generally avoid markets where investor protection is perceived as weak or uncertain.**
- **Improved integrity and oversight of management, scrutiny over board composition and independence, effective use of internal and external audit functions, higher levels of disclosure and transparency and greater engagement with investors.**
- **Transparency and disclosure are key elements in enhancing investor confidence and improved credit ratings, in turn these result in: lower capital costs, increased attractiveness to FDI, greater financial stability and long-term growth.**

# Transparency, Liquidity and Valuation: International Evidence

- Broad sample of companies across 21 countries from 1994 to 2006
- Looked at factors that reduced transparency: executives' efforts to "manage" earnings by controlling the timing of expenses and revenues, coverage by fewer analysts, and use of weaker auditing firms and less rigorous accounting standards

## FINDINGS:

- Companies ranked in top 25%--those that are most transparent—had 40% smaller bid-ask spread (investors are more confident in knowing the firm's value)
- More transparent firms were able to raise money more cheaply, and enjoyed higher stock prices

➤ Source: Lang, Mark; Karl Lins; Mark Maffett. 2009: Transparency, Liquidity and Valuation: International Evidence



# Good Governance Pays Off: Australia Case Study

- Measured top 300 Australian listed companies against ASX's Principles of Good Corporate Governance and Best Practice Recommendations

## FINDINGS:

- Australian companies with better corporate governance outperform poorly governed companies, particularly on earnings per share (EPS), return on assets (ROA), and also on one-year sales growth
- Companies found it beneficial to focus efforts on improving CG in board composition, remuneration, committee formation, and structure of company

Source: Brown, Rebecca and Tue Gorgens. Australian Treasury Working Paper: March 2009.

# Why Corporate Governance Matters to Qatar

**"There is a critical need to enhance corporate governance in the region, given the situation of the global financial markets. We need to urgently look at adapting global best-practices to the region's needs, which will help to stabilize our financial markets."**

**HE Youssif Hussain Kamal  
Minister of Economy and Finance**

(November 9, 2008, Doha, Qatar)

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- ❑ Recommended changes in Commercial Law

## Hawkamah-TNI BASIC Survey

- BASIC provides systematic insight into a number of essential parameters which constitute the backbone of Corporate Governance
- The methodology developed by The National Investor and Hawkamah is split into three distinct components:
  1. Trading history
  2. Corporate Communication
  3. Disclosure
- Applied to all GCC listed companies

**Table 1: BASIC parameters with their corresponding category**

<b>BASIC parameter</b>	<b>Cat</b>	<b>BASIC parameter</b>	<b>Cat</b>
Stock volatility	TH	Disclosure of possibility of foreign ownership	D
Market volatility	TH	Disclosure of % foreign ownership allowed	D
Stock market Trading History	TH	Is Disclosure available in English?	D
Trading frequency	TH	Is Disclosure typed?	D
Average daily turnover	TH	Is Disclosure in non-alterable format?	D
Relative daily liquidity (trading spread)	TH	Is interim Disclosure complete?	D
Number of shareholders	TH	Disclosure of management / chairman's report	D
Possibility of foreign ownership?	TH	Disclosure of financial performance summary	D
Proportion foreign ownership allowed	TH	Disclosure of summary of operations	D
		Disclosure of Corporate Governance policies	D
History of publicly available accounts	CC	Disclosure of board sub-committees	D
Availability of a corporate website	CC	Disclosure of director independence	D
Availability of latest annual report on website	CC	Disclosure of exec/non-exec directors	D
Availability of investor relations officer details	CC	Disclosure of management profiles	D
Pre-announcement of results publication dates	CC	Disclosure of board member profiles	D
Holding of analyst meetings/conference calls	CC	Disclosure of geographic mix	D
Is AGM date pre-announced?	CC	Disclosure of product mix	D
AGM's notice period in days	CC	Disclosure of directors' shareholdings	D
Availability of EPS calculation detail	CC	Disclosure of Shareholders holding $\geq 5\%$ stock	D
		Disclosure of pre-emptive rights policy	D
		Disclosure of proxy voting policy	D
		Disclosure of cumulative voting policy	D
		Disclosure of accounting policy	D
		Disclosure of auditor's approval	D

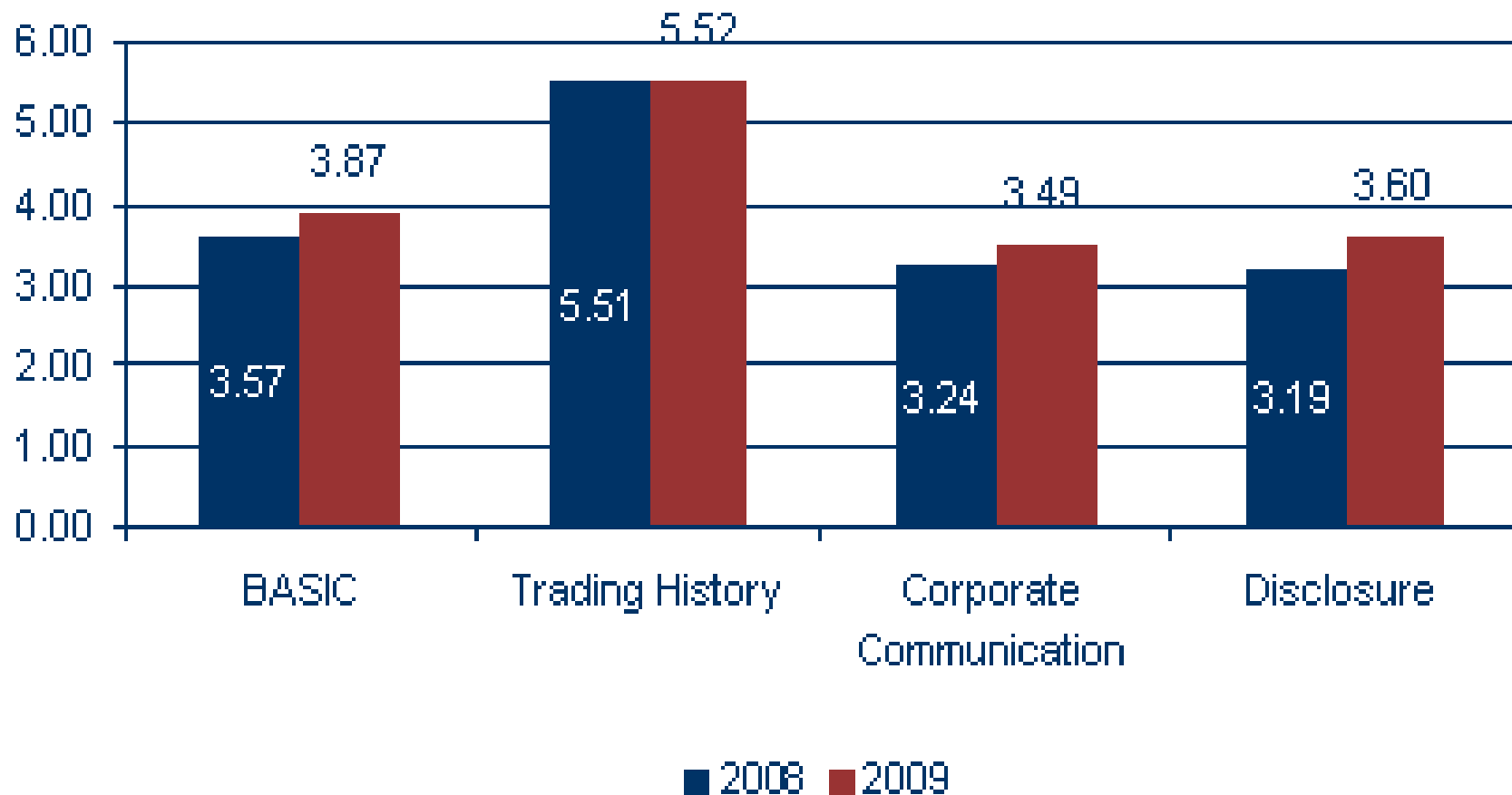
Source: TNI Investment Research

Note: **D** Disclosure, **CC** Corporate Communication, **TH** Trading History

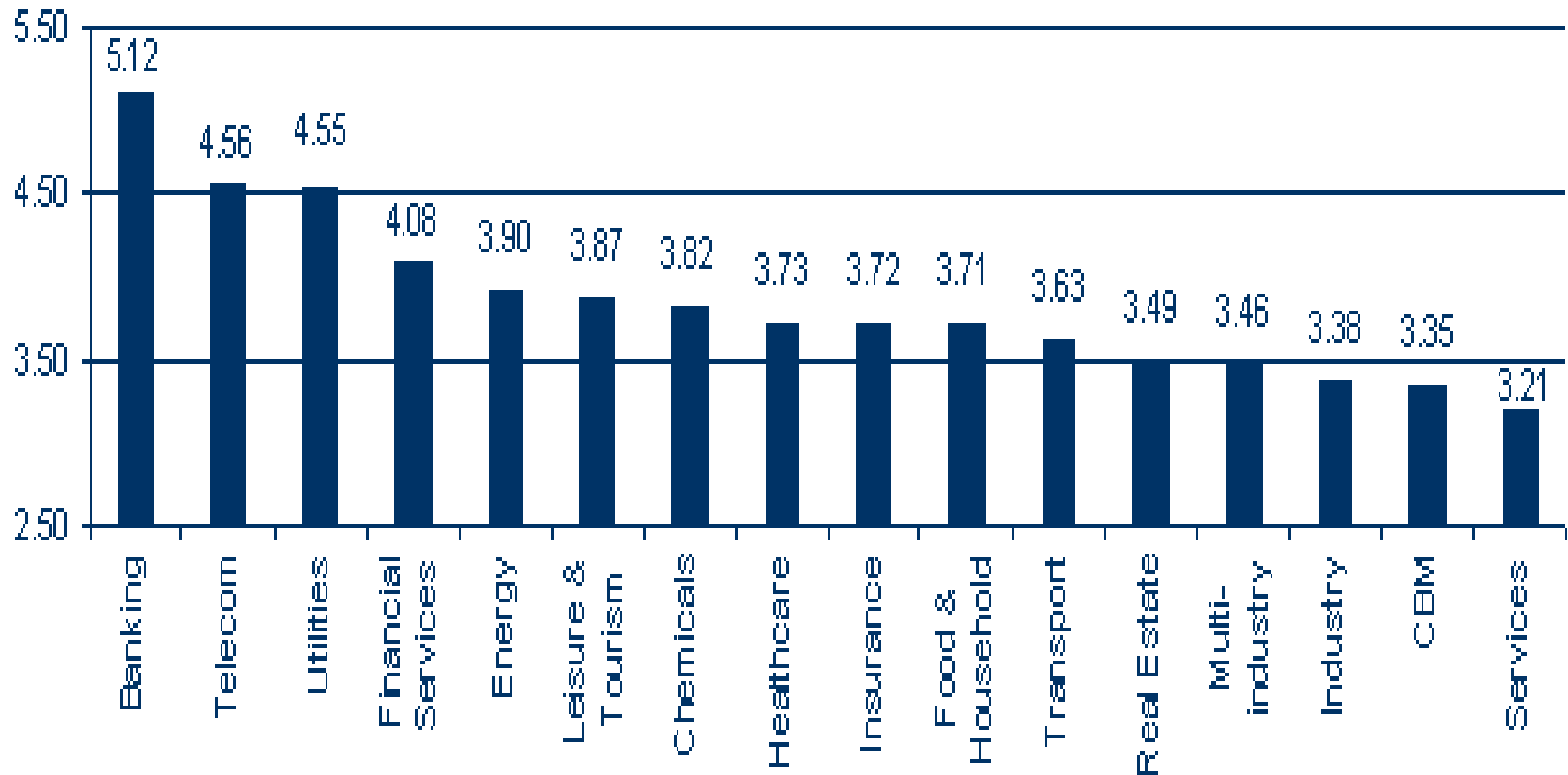
# Why is BASIC Useful?

- **Investors:** Allows investors to assess the liquidity, volatility, disclosure and transparency of GCC companies.
- **Companies:** methodology criteria offer companies identifiable functional areas for improvement.
- **Regulators:** useful indicator for policy reforms, identifying measures that will enhance market liquidity.
- BASIC is a measure of investment risk/investor 'friendliness' of companies

## BASIC 2 average scores improved across all Categories (2009)

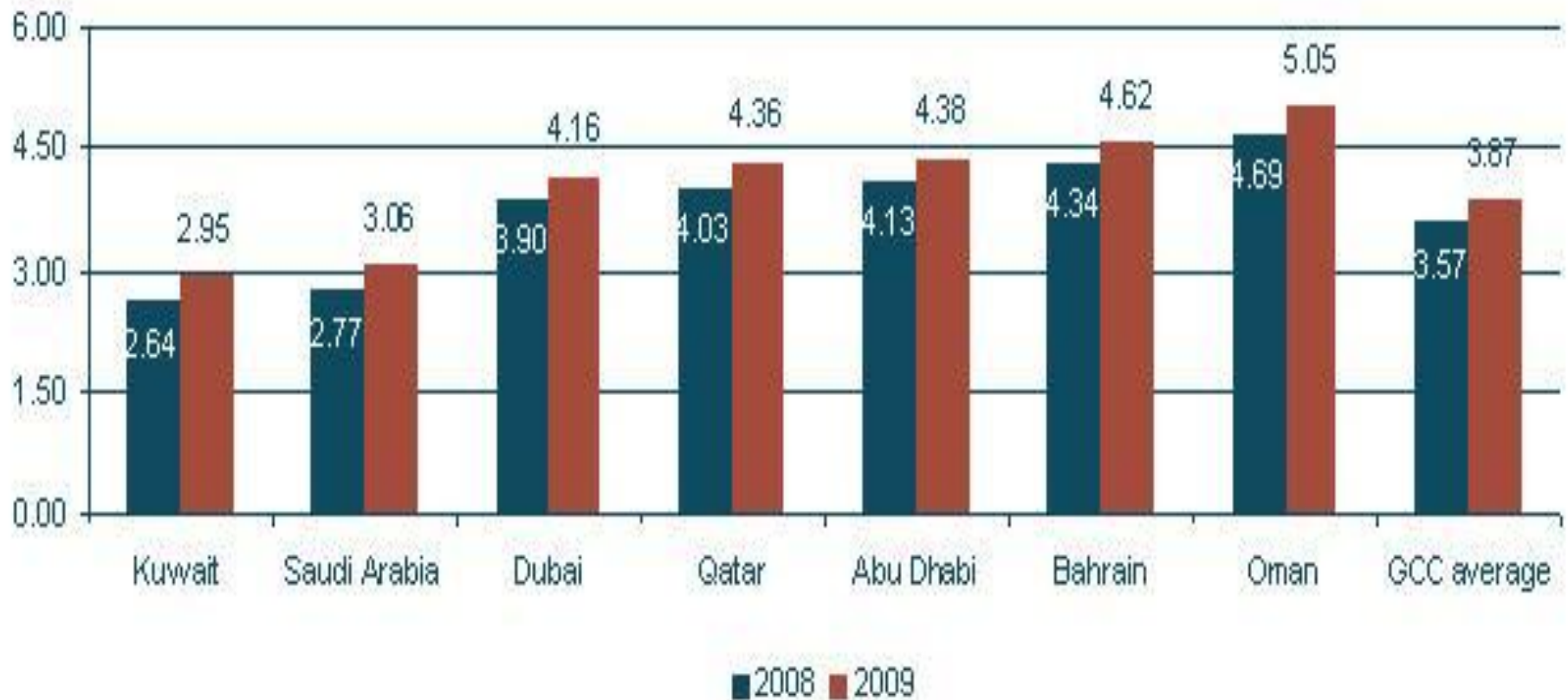


## BASIC 2 by Sector (2009): Regulated sectors have higher average scores

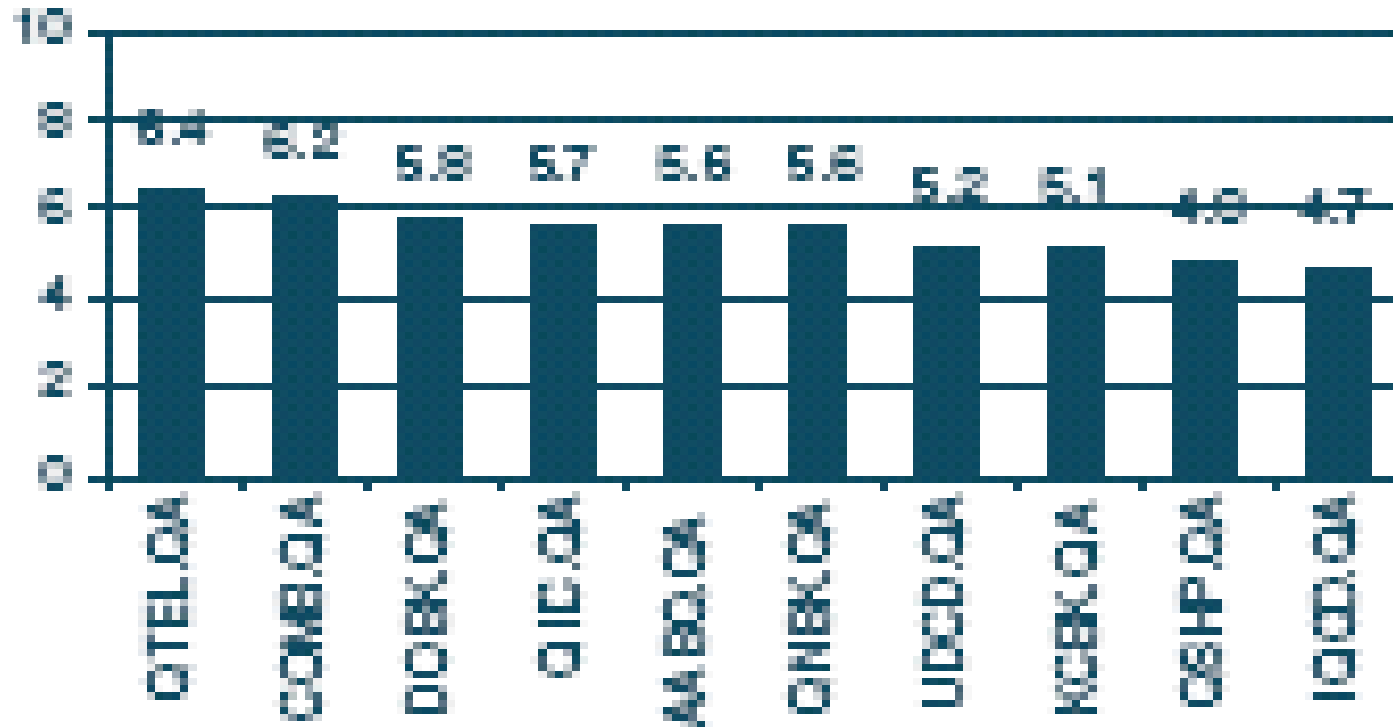




# All GCC Markets improved their score in 2009

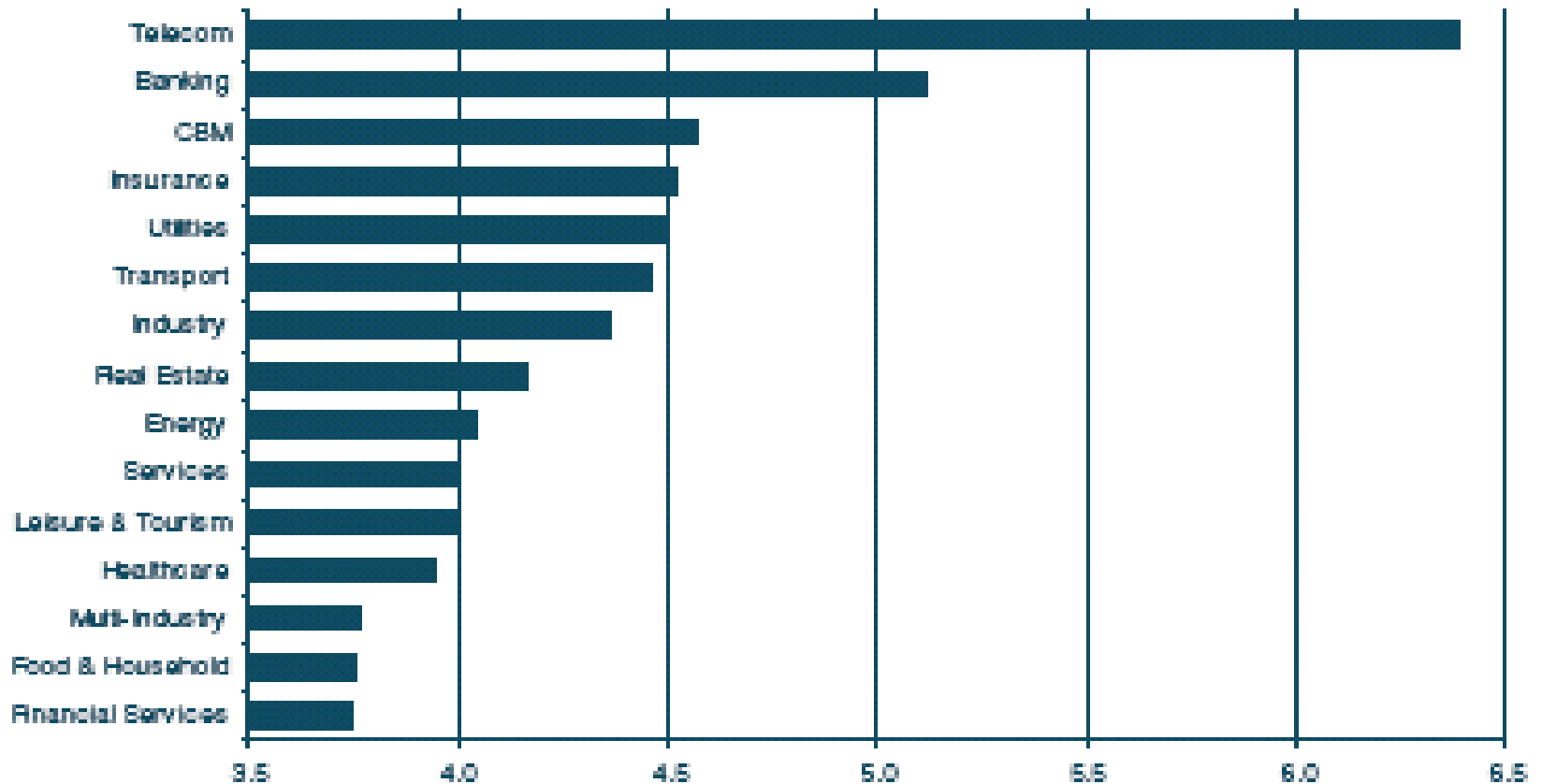


# Qatar Top 10 BASIC



Source: TMJ Investment Research

# BASIC By Sector - Qatar



Source: TMI Investment Research

# Take Away from BASIC 2

- Results of BASIC 2 encouraging:
  - 2/3 of GCC listed companies have shown some BASIC improvement
  - 26 companies increased their BASIC score by 100 percent
  - substantial improvements in disclosure on voting, ownership and management profiles, with more companies having investor/analyst meetings
- But no improvement in important areas such as availability of annual reports on websites, and pre-announcement of results publication dates.
- BASIC scores do not appear correlated with company size or length of existence
- GCC practices still fall short of international standards.
- **Country effects are dominant: reform must come from regulators & authorities requiring higher transparency and communication standards**

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# Initiative: Develop a CG Framework for Qatar

- Conduct a Corporate Governance Regulatory Structure Analysis Report
- Develop a code, based on international best practices and guidelines
- Engage key international investor institutions to provide feedback to the Code
- Review Qatar Company Law to address CG issues
- Hawkamah team and legal adviser, Nada Abu Samra, worked with QFMA and its international partners: OECD, IFC, WB GCG Forum, IIF

# Sources for Benchmarking

## International Benchmarks

- Organisation for Economic Cooperation and Development (OECD) Principles of Corporate Governance
- IOSCO's Principles for Securities Regulations
- Bank for International Settlements (BIS)
- International Corporate Governance Network (ICGN)
- International Institute of Finance (IIF)

## Review of Local Laws

- Qatar Commercial Companies Law No 5/2002
- The Law Establishing Doha Securities Market (Law No 14/1995)
- Doha Securities Market Internal Regulations (dated 16/07/2002)
- The Law on the Qatar Financial Market Authority and the Doha Securities Market
- Company (Law No 33/2005)

# Code of CG for Public and Listed Companies – Overall Structure

**Section I – Introduction**

**Section II – Compliance with Corporate Governance**

**Section III – Board of Directors**

**Section IV – Internal Controls**

**Section V – External Auditors**

**Section VI – Disclosure**

**Section VII – Shareholders Rights**

**Section VIII – Stakeholders Rights**

**Section IX – Corporate Governance Report**

**Section X – Code Enforcement and Redress Mechanisms**

**Appendices:**

- **Board Charter Form**
- **Fit and Proper Guidelines for Appointment of the Directors**



# Code of CG – Sections I-II

## Section I – Introduction

- > **Comply and Explain** approach for all joint-stock companies listed on any market in Qatar
- > Definition of **independent Board member** (Someone who is not under the influence of any factor that may limit his/her capacity to consider, discuss and decide upon the Company's matters in an objective and neutral manner).
- > Definition of **Non-Executive Board member** (Board member who is not in charge of executive management duties in the company and is not fully dedicated to the Company and who does not receive monthly or yearly remuneration from the Company other than his/her remuneration as Board member)
- > Definition of **Related Party** (Board member of Company or an affiliated company, member of senior Executive management, anyone owning or controlling 10% or more of voting rights in Company and affiliates, relatives of the Board member and Executive, company in which natural persons own jointly or severally 20% of voting rights; affiliated company/parent company)

## Section II – Compliance to Corporate Governance

- > Board is responsible for the company's commitment to good corporate governance

# Code of CG – Section III

## Section III – Board of Directors

- > Board charter – should be drafted to comply with provisions of the code
- > Board mission and responsibility – outlined the **role and responsibility of the Board** to include approving Company's strategic aims, appointing, replacing and overseeing management, ensuring the Company's compliance with laws and regulations, and delegating its functions to a special committees with clear and written instructions
- > Fiduciary duties of Directors – **duty of care, loyalty and compliance**; Board must act at all times on a fully informed basis, in good faith and with due diligence and care
- > **Separation of Chairman/CEO** and duties of the Chairman – clear division of responsibilities between Chairman/CEO
- > Board Composition – **at least 1/3 of Board shall be Independent**, and majority of Board shall be Non-Executive Board members
- > **Non-executive Directors** – participate in Audit Committee and overseeing the development of the Company's CG and overseeing their implementation/compliance
- > **Board Secretary** – appointed by the Board by a Board resolution; preferable that the Board Secretary is accredited, a lawyer or a graduate with at least 3 years of experience handling publicly listed companies
- > **Conflicts of interest and insider trading** – Company should develop and make public rules on insider trading/conflict of interest
- > **Induction program** for newly appointed Boards members; **training** for Board members; and Board is responsible to keep track of governance developments and best practices

# Board Committees

## Nomination Committee

- Chaired by independent Board member
- Suggests Board member's appointments and re-nominations for election by the General Assembly
- Committee's terms of reference, explaining its authority and role should be published

## Remuneration Committee

- Comprised of at least three Non-Executive Board members; majority should be independent.
- Sets remuneration policy of the Company to include remuneration of Chairman, Board, and Senior Executive Management
- Committee's terms of reference explaining its authority and role should be published.

## Audit Committee

- Comprised of at least three members; majority should be independent; at least one member with financial and audit experience
- Should meet once every three months
- Sets policy for contracting External Auditors; ensures their independence, oversees financial reporting, reviews financial and Internal control systems, policies and procedures, risk mgnt, ensures Company adheres to Code of Ethics

# Code of CG – Section IV-VII

## Section IV – Internal Controls

- > Compliance, internal control and the internal auditor (need to adopt a Company-wide **internal control system for risk management**, implementation of CG code, and compliance; system to include effective and independent **risk assessment, management, and financial/operational internal audit**; should have at least one **internal auditor** appointed by Board; internal auditor will prepare Internal Audit report every three months)

## Section V – External Auditors

- > External auditor should independent and qualified, and must be **appointed upon recommendation by Audit committee to the Board then to General Assembly**
- > **Annual and semi-annual external audit**
- > Auditor independence – Company should change External Auditors every **three years**

## Section VI – Corporate Governance Report

- > Board prepares annual CG report, **signed by the Chairman**, to be submitted to the authority
- > Board assesses compliance with the provision of the code and other good CG practices
- > **Financial reports in compliance with IFRS/IAS and ISA standards**

## Section VII – Shareholder Rights

- > Board has responsibility to protecting shareholder rights (**one-share, one-vote**)
- > Company is responsible for keeping valid and updated share ownership records; shareholders have right to access register for free at regular office hours; **Access to Information** procedures should be incorporated in articles of association and by-laws
- > **Company website** should post all relevant and public information/disclosures

# Code of CG – Section VIII - X

## Section VIII – Stakeholder Rights

- > Recognition of stakeholder rights and their participation in the CG process
- > Board is responsible that Company employees are treated fairly and equitably, without discrimination on basis of race, gender or religion
- > Board will adopt remuneration policy and packages to incentivize employees, taking into account long term performance of the company
- > “Whistleblower” mechanism will be adopted by the Board, ensuring confidentiality and protection to employees reporting improving behavior of any agent or fiduciary of the Company

## Section IX – Corporate Governance Report

- > Board prepares CG report, signed by Chairman, and assesses the company’s compliance with the provision of this code. Report is submitted to the Authority and will be made publicly available

## Section X – Code Enforcement

- > Authority shall issue all oversee the implementation of this Code

## Appendices

- Board Charter Form
- Fit and Proper Guidelines Directors

# Key Features of the Code (1)

- Applies “One Share, One-Vote” principle among shareholders, irrespective of number of shares they own
- Requires shareholder approval for capital changes (i.e. takeovers, mergers, buyouts and capital increases)
- Defines ‘independent’ and ‘non-executive’ board members
- Requires independent and non-executive board members to be elected to the Board

# Key Features of the Code (2)

- Assigns to the audit committee the responsibility to monitor risk factors
- Improves financial disclosure and transparency requirements and proposing the adoption of International Financial Reporting Standards (IFRS)
- Requires development of a '*Related Party Policy*' to regulate transactions undertaken with related parties such as board members, large shareholders and executive management to address potential conflicts of interest



# Qatar Code vs. OECD Guidelines (1)

## *I. Ensuring the Basis for an Effective Corporate Governance Framework*

*The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.*

Section X of the QFMA code specifies the framework and the enforcement provisions which fall within the jurisdiction of the QFMA to be exercised in respect of enforcing the provisions of this Code. In addition to this section, enabling legislation and/or Council of Minister's decrees may need to be issued to strengthen enforcement and provide for efficient redress mechanisms.



# Qatar Code vs. OECD Guidelines (2)

## *II. The Rights of Shareholders and Key Ownership Functions*

***The corporate governance framework should protect and facilitate the exercise of shareholders' rights.***

## *III. The Equitable Treatment of Shareholders*

***The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.***

**Section VIII of the QFMA code covers the Shareholders and Stakeholders rights and the Key ownership functions of the Shareholders and the Equitable treatment of Shareholders. However, detailing shareholders' rights may be better placed in the Companies Law.**

# Qatar Code vs. OECD Guidelines (3)

## *IV. The Role of Stakeholders in Corporate Governance*

***The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.***

Section IX of the Code addresses this principle

## *V. Disclosure and Transparency*

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

Section IV,V, VI and VII, of the QFMA Code covers Disclosure and Transparency

# Qatar Code vs. OECD Guidelines (4)

## *VI. The Responsibilities of the Board*

***The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.***

**Section III of the QFMA Code fully covers the Responsibilities of the Board.**

# Recommended Changes in the Company Law (1)

- Include an article calling for Qatari companies to abide by the principles of good CG, and expressly consecrating basic shareholder rights
- Clarify whether all listed companies will be open to non-Qataris up to 25% of their capital (Article 67)
- Allow cumulative voting, and provide for a minimum/maximum number of directors (Article 94)
- Remove guarantee share requirement to facilitate election of independent board members (Article 96)
- Exclusion of state representatives or persons with 10% minimum shares in the capital of the company from limits for board membership is considered favorable treatment and thus should be clarified (Article 97)

# Recommended Changes in the Company Law (2)

- Clarify the concept of 'board member deputed for management' consistent with CG principles on clear separation and division of responsibilities between board and management (Article 99)
- Clarify the separation of Chairman and General Manager, Chairman's liability in the event of delegation of his powers (Article 102)
- Clarify physical presence of Board members for meetings, or if presence by proxy is allowed; also allow for board resolutions by circulation (Article 103)
- Clarify responsibility of the board to declare consistently absent member as 'deemed as having resigned' (Article 104)

# Recommended Changes in the Company Law (3)

- Clarify key words concerning the joint responsibility of board members (Article 112)
- Clarify whether approval of general assembly of board remuneration is yearly (Article 118)
- Allow more days (for example 15 days) for the Board to review relevant company documents prior to the Board meeting (Article 121)
- Disclosure of all related party transactions, even when there is no actual conflict of interest should be mandatory (Article 121)
- Allow for the possibility to have a non-shareholder act as proxy to the absent shareholder, and remove the 5% and 25% caps (Article 128)

# Recommended Changes in the Company Law (4)

- Provide for the possibility of amending the company's objective by a reinforced quorum and majority decision possibly with the approval of the Minister (Article 137)
- Clarify 'essential/fundamental' effect criterion on disclosure of violations (Article 146)
- Company Law should be reconciled with other applicable laws and regulations to allow for dematerialization of shares and soft or e-registries (Articles 152-179)
- Clarify discrepancies between Articles 162 and 164 on who has the right to cash dividends and exercise rights on pledged shares (such as attending shareholders' meetings)

# Recommended Changes in the Company Law (5)

- Issuance of convertible bonds should be subject to the same strict quorum and majority requirements as the increase of capital (Articles 168 and 176)
- Review Articles 267 to 282 in light of policy to be adopted on mergers and acquisitions of listed companies and the protection of investors, especially minority shareholders.
- Take into consideration one-person companies when companies are dissolved to transfer shares to a single shareholder. Also, clarify source of 'minimum limit.' (Article 287)



# Qatar CG Code 1

- Qatar now has a up to date CG code compliant with best international practice
- Code provides minimal guidelines for company compliance
- Regulators are developing capacity to monitor compliance

# Qatar CG Code 2

- Listed companies have to look at benchmarking their practices against the Code, modify by-laws (if needed) and build governance capacity & should aim to 'overshoot' on CG and focus on the spirit and the letter of the law
- Hawkamah is willing to support QFMA, the Qatari authorities and companies through training, workshops & monitoring

**Q & A**

# **Qatar Financial Markets Authority**

## **Stakeholders Meeting**

**May 3, 2009 Doha, Qatar**

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