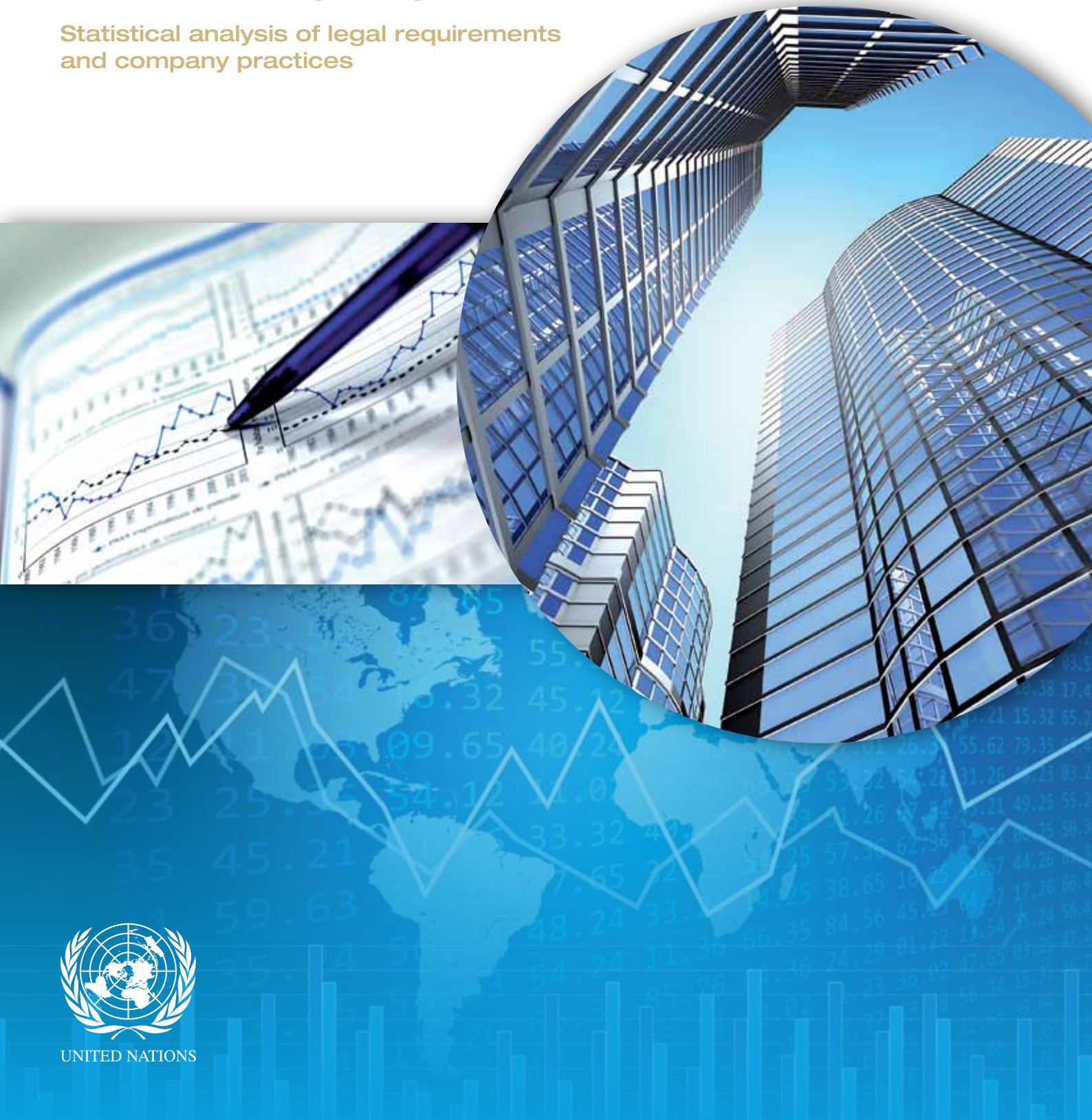




CORPORATE GOVERNANCE DISCLOSURE IN EMERGING MARKETS

Statistical analysis of legal requirements
and company practices



UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Corporate Governance Disclosure in Emerging Markets

*Statistical analysis of legal requirements and
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UNITED NATIONS

New York and Geneva, 2011

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UNCTAD/DIAE/ED/2011/3

UNITED NATIONS PUBLICATION

Key Messages

Published in 2006, and developed by UNCTAD's Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR), UNCTAD's *Guidance on Good Practices in Corporate Governance Disclosure* provides a benchmark ("UNCTAD ISAR benchmark") of more than 50 corporate governance disclosure items. This benchmark has been a key measurement tool in UNCTAD's multi-year research programme on corporate governance disclosure.

This report integrates and compares four years of UNCTAD's cross country comparative data on corporate governance disclosure in emerging markets. This work will assist policy makers in identifying regulatory gaps, comparative best practices, and priorities for capacity building. It includes:

- A comparison of mandatory corporate governance disclosure requirements in emerging markets and an assessment of the extent to which large emerging market enterprises comply with these requirements; and
- An overview of common challenges and pitfalls in the design of corporate governance disclosure regulations, along with recommendations for addressing these.

Key findings and recommendations of the report are:

- 1) A policy challenge faced in many countries is how to make disclosure based regulation work. The findings of this report indicate a three-fold approach:
 - a. *increase the number of required items;*
 - b. *increase the clarity of disclosure regulations; and*
 - c. *ensure that the information reaches the general public.*
- 2) There are troubling gaps in the disclosure of *Audit* related issues with some of the key UNCTAD *ISAR benchmark* disclosure items in this category largely missing both in regulation and in company practice. *Given the importance of auditing disclosure in assessing the quality of a company's governance, regulators should consider new disclosure requirements in line with international best practices.*
- 3) More disclosure is almost always welcomed by investors, but there are good arguments for avoiding excessive disclosure: reporting can be costly and not all information is useful information. *Regulators should focus on a core set of mandatory disclosure items.*
- 4) Companies do not always comply with mandatory disclosure rules. In most countries direct enforcement by government of disclosure rules is impractical: there are too many individual disclosure points to check. *Policy makers should consider focusing on a smaller set of leading enterprises, or conducting random reviews. Periodic checks, combined with moderate fines, could send a signal that regulators take disclosure seriously.*
- 5) Regulators cannot do everything; investors must play an active role as market participants and communicate with investee companies about disclosure gaps. *Policy makers should promote responsible investment and active ownership by investors. Investors should be encouraged to engage in dialogue with companies to ensure they meet regulatory requirements and voluntary best practices.*

Preface

Today's global economy relies upon the stable functioning of large enterprises. When governance mechanisms break down, the impacts are felt not only in the home country but around the world. For over 25 years, improving corporate transparency through the development of practical tools and informative research has been a major focus of UNCTAD's Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR). In recent years, UNCTAD's work in this area has produced the broadest comparison of corporate governance disclosure requirements and practices in emerging markets available. Such a detailed cross country examination of governance disclosure is unique and fills an important void in the existing literature.

The status of the implementation of national reporting requirements also sheds light on an important policy area. A number of studies have examined the subject of government regulations in the area of corporate governance at a macro level, examining institutions and laws. Detailed examination of specific disclosure rules is less common. Examination of compliance with those rules is less common still.

While this report finds that disclosure requirements in emerging markets are relatively strong, there are still generally fewer requirements than in more developed markets and compliance gaps tend to be larger. There is a clear need to improve, promote and enforce disclosures and in some instances make them mandatory in order to strengthen reporting regimes and help enterprises improve their communication with shareholders and other stakeholders. There is still much work to do.

While we must continue to build capacity on the part of policy makers and regulators in the design, implementation and review of corporate governance regulations, it is also important to recognize the shared role that enterprises and investors play and encourage them to contribute proactively to efforts to build more transparent, responsible and sustainable markets.



Supachai Panitchpakdi

Geneva, Dec 2011

Secretary-General, UNCTAD

Acknowledgements

Corporate Governance Disclosure in Emerging Markets was prepared by Anthony Miller, Economic Affairs Officer, Accounting and Corporate Governance Section, under the overall supervision of Tatiana Krylova, Head, Enterprise Development Branch, Division on Investment and Enterprise, and Jean Francois Baylocq, Chief, Accounting and Corporate Governance Section.

Richard Frederick, UNCTAD resource person on corporate governance, played a valuable role in reviewing the data in the report and contributing to the report's analysis and discussion. Crucial editing, drafting and data management support was provided by research assistant Leonie Goodwin.

This consolidated report was prepared by the UNCTAD secretariat on the basis of data compiled over several years by a dedicated team of UNCTAD research assistants including: Albertine Azar, Natalie Djodat, Cheng Feng, Arthur Louche, Yalan Lui, Yusuke Nakazawa, and Bo Zhao. The data was further corroborated by independent research conducted by Dr. Kevin Campbell director of the CFA Program Partner MSc in Investment Analysis at the University of Stirling, United Kingdom, and a visiting professor in the Faculty of Management at the University of Gdansk, Poland. Research assistance was provided to Dr. Campbell by Yung-Hsiang Teng and Barbara Tschirnich.

Valuable comments and suggestions were provided by Jackie Cook, UNCTAD resource person on corporate governance, and UNCTAD staff members Yoseph Asmelash and Richard Bolwijn.

Contents

Key Messages	iii
Preface	v
Acknowledgements	vi
Overview	ix
<i>UNCTAD’s role in encouraging better corporate governance</i>	<i>ix</i>
<i>The role of disclosure in improving corporate governance</i>	<i>ix</i>
<i>Major findings</i>	<i>x</i>
<i>Policy implications</i>	<i>xii</i>
CHAPTER I: Regulatory requirements and company practices	1
<i>A. Introduction</i>	<i>1</i>
<i>B. Statistical overview</i>	<i>3</i>
<i>C. Analysis of disclosure requirements</i>	<i>4</i>
<i>D. Analysis of company disclosure practices</i>	<i>10</i>
<i>E. Compliance with disclosure requirements</i>	<i>14</i>
<i>F. Conclusion</i>	<i>17</i>
CHAPTER II: Main challenges and policy recommendations ... 19	
<i>A. The ‘comply or explain’ principle: challenges in application</i>	<i>19</i>
<i>B. Models of mandatory and voluntary disclosure regulation</i>	<i>21</i>
<i>C. Disclosure chain: does the information get to the public?</i>	<i>23</i>
<i>D. Other challenges</i>	<i>25</i>
<i>E. Conclusion</i>	<i>27</i>
ANNEXES	29
<i>Annex I. Methodological notes for chapter I</i>	<i>30</i>
<i>Annex II. List of disclosure items in the UNCTAD ISAR benchmark</i>	<i>34</i>
<i>Annex III. List of information sources by market</i>	<i>36</i>
<i>Annex IV. List of enterprises included in the study by market</i>	<i>41</i>
<i>Annex V. Number of enterprises that disclose by market</i>	<i>44</i>

List of Tables

Table I.1.	Disclosure requirements and practices in emerging markets.....	4
Table I.2.	Corporate responsibility issues least required	8
Table I.3.	Gap analysis of disclosure requirements in 25 emerging markets and three large established markets	9
Table AI.1.	The 25 markets included in the study	31

List of Figures

Figure I.1.	Disclosure requirements vary greatly by category and market.....	7
Figure I.2.	Comparison of company disclosure practices by market	12
Figure I.3.	Higher consistency coincides with higher disclosure levels.....	13
Figure I.4.	A 25% compliance gap with mandatory requirements.....	15
Figure I.5.	A high compliance rate does not necessarily indicate more CG disclosure	16
Figure I.6.	Auditing category suffers from the largest disclosure gap	17
Figure II.1.	Models of voluntary and mandatory disclosure regulation	21
Figure AI.1.	A diverse range of industries examined	32

Overview

UNCTAD's role in encouraging better corporate governance

In 2006, UNCTAD published its *Guidance on Good Practices in Corporate Governance Disclosure*. This guidance was based on the consensus of the ISAR expert group and makes recommendations with respect to what enterprises should disclose regarding their governance practices. It also helps countries to structure their corporate governance (CG) reporting requirements.

Since publishing the guidance, UNCTAD has distilled its recommendations into a benchmark of 52 disclosure items covering five broad categories (hereafter the UNCTAD *ISAR benchmark*). The UNCTAD *ISAR benchmark* has been used to measure the regulatory requirements of individual countries, and to benchmark the disclosure practices of companies. Over the years, it has been used to evaluate the disclosures of more than 500 enterprises and the disclosure requirements of more than 45 countries. This work has allowed UNCTAD to draw conclusions regarding the impact of the regulatory framework on company practices and on the level of compliance with corporate governance disclosure requirements.

UNCTAD's work and this report specifically, represent the broadest comparison of corporate governance disclosure requirements and practices currently available. It is also unique in the examination of areas in which UNCTAD holds special expertise: audit and financial reporting.

The role of disclosure in improving corporate governance

Why should one care about the disclosure of governance practices? The bottom line, after many years of debate and study, is that good corporate governance benefits companies, investors and markets. Governance practices affect company performance, and are an important element in analysts' evaluations of risk both for individual companies and for markets. From the perspective of policy makers, better corporate governance has the potential to enhance the efficiency of companies and markets, reduce the cost of capital, and encourage innovation. In short, corporate governance is important.

Disclosure is important because reporting is widely viewed as the most effective tool that regulators have to encourage better corporate governance. Reporting puts information in the hands of the markets. And markets and investors make investment decisions based on this information. The markets function best when they have access to sufficient information to properly assess governance. Good information helps the markets ascertain the degree to which companies respond to shareholder needs; it reveals risks, and shows the quality of future cash flows.

One should note that this report and the studies that it is based on do not measure the *substance* of the reporting, that is the quality of the disclosure or the quality of the underlying corporate governance practices of the enterprise. Such an evaluation would have been highly complex and largely subjective. The approach that was taken in this report was both simpler and more objective, focused on the content of corporate public disclosures. The report asks three simple yet important questions:

1. Is a particular disclosure item from the UNCTAD *ISAR benchmark* required at country level;
2. Do enterprises make the disclosures suggested by the UNCTAD *ISAR benchmark*; and
3. Do enterprises make the disclosures that are required in their own home country?

Thus, what is being measured is not the substance of the reporting, but whether a reporting process occurred and how that process conforms to both international best practices and national requirements. This is important since the reporting process is an indicator for whether companies:

- subject themselves to internal examination;
- subject themselves to external examination; and
- consider the impact that reporting will have on the public.

The process of self-examination and reporting can be viewed as more important in encouraging better corporate practices than encouraging specific governance practices such as, for example, requiring a specific number of independent directors on a board. Self-examination and assessment can be seen as a necessary precursor to any attempt at improvement.

Major findings

This report combines the results of five major studies on corporate governance disclosure (annex I.A) conducted by UNCTAD's Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR).

Chapter I provides an inventory of mandatory disclosure requirements (based on national regulations) for publicly listed firms in 25 emerging markets, and then compares company practices within 22 of these emerging markets to this inventory, in order to make some generalizations about compliance with national regulations. Chapter II analyzes different models of corporate governance rule making, summarizes some of the main challenges regulators in emerging markets face in design and implementation and provides policy recommendations. The remaining discussion below in this Overview is a summary and synthesis of the findings and policy implications found in chapters I and II.

Disclosure requirements

Most of the 25 emerging markets analyzed make considerable use of mandatory disclosure: 18 countries (nearly three quarters of the sample) require disclosure of two thirds or more of the 52 items in the UNCTAD *ISAR benchmark*.

The categories of disclosure most subject to mandatory national requirements relate to *Ownership Structure and Exercise of Control Rights* and *Financial Transparency*. There is considerable variability in the level of mandatory requirements in the category of *Board and Management Structure and Process* with some countries requiring a large number of items to be disclosed and others relatively few. This appears to reflect the difficulty in defining precisely which board practices are fundamental to good governance.

The two categories with the least number of mandatory disclosure requirements are *Auditing* and *Corporate Responsibility and Compliance*. The lower frequency of mandatory disclosure for corporate responsibility issues may be a result of the relative novelty of environmental and social issues within the broader area of traditional corporate governance subjects. More surprising is the lesser frequency of mandatory disclosure requirements on auditing issues, since auditing is widely recognized as a crucial area of corporate governance. Nevertheless, many of audit related disclosures are also relatively new, with most emerging as international best practice only in the last decade following the infamous Enron-era corporate scandals and strongly influenced by the 2002 Sarbanes Oxley Act in the United States.

It was found that in most countries a majority of disclosure requirements are explicit and direct, yet indirect or implicit disclosure rules still persist to a greater or lesser extent in all countries. Explicit requirements can be viewed as being more effective regulatory tools since they leave less room for interpretation, and fewer opportunities for error and gamesmanship. Disclosure rules could be made stronger by making disclosure requirements clearer and more explicit. A comprehensive listing of disclosure requirements in every market might bring further clarity to the reporting process, assist enterprises in preparing their reports, and help investors in understanding what information can be expected from companies.

Finally, it was found that some companies consider that they make public disclosure when they submit documents to regulators. Upon examination, however, none of these disclosures were found to be readily accessible to the public. Further steps might usefully be taken by both companies and regulators to provide better access to the corporate governance information found in the regulatory filings of companies. These could include, for instance, maintaining a centralized database of reports, and/or making information accessible via the internet. For their part, companies may wish to improve disclosure by including in their direct communication to shareholders the corporate governance information that has already been prepared for regulatory filings.

Company practices

With respect to the disclosure practices of the sampled companies, on average, enterprises disclose around 70% of the UNCTAD *ISAR benchmark*. It is also noted that many emerging market enterprises are disclosing more information than some enterprises in developed markets. Six of the emerging markets reviewed had enterprises disclosing an equal or greater number of items than enterprises in the most developed markets. This finding may reflect the fact that some companies have multiple listings, one in the local market and another in an international market which may have more stringent reporting requirements.

Whether companies disclose specific items or not corresponds very closely to whether these disclosures are mandatory. The data shows clearly that mandatory

requirements yield more disclosure. A number of the least prevalent disclosures by companies fall into the scope of accounting and auditing. Perhaps one of the most troubling gaps is the lack of requirements to disclose and lack of disclosure on the “Impact of alternative accounting decisions”. Additional gaps are disclosures on: “Rotation of audit partners” and “Board confidence in the independence and integrity of external auditors” and “Auditors’ involvement in non-audit work and the fees paid to the auditors”. These disclosure items represent many of the lessons learned from the earlier Enron-era corporate failures, yet failure to require such disclosures, or for company to not disclose such information, is to risk repeating the history of those earlier corporate scandals.

Compliance

The report approaches the issue of compliance in two different ways. First, it illustrates the variability in reporting practices within countries. Second, it compares the items that the sampled companies actually disclose to the items that are required by national regulation or stock exchange listing rules. The report also examines compliance by counting the number of required disclosures made by companies. Overall, 75% of mandatory disclosures are made. However, gaps in compliance exist. For some countries these gaps are relatively small. In others they are quite large. In the case of the latter, this report should serve as impetus to re-examine enforcement of disclosure requirements.

Policy implications

A number of important policy questions are raised by the report. One of these is how to strengthen disclosures so as to complement the existing regime, whether disclosure-based or substantive. Substantive regulation requires companies to comply with laws that prescribe certain actions. Disclosure-based regulation mandates the disclosure of information and relies on the markets, particularly investors, to assess, reward or punish the company in the marketplace. Almost all financial markets rely on both substantive and disclosure-based regulation to varying degrees.

A strong disclosure-based regulatory regime shifts some of the responsibility for monitoring and enforcement from regulators, (who are often under-resourced), to the markets. Reliance on substantive regulation, on the other hand, requires considerable monitoring and the effective application of regulatory enforcement mechanisms. While disclosure-based regulation is neither perfect nor a panacea, the trend in emerging markets is clearly towards this form of regulation. Therefore a key policy question is how to make disclosure-based regulation work better. The findings of this report indicate a three-fold approach to improving corporate governance disclosure in emerging markets: increasing the number of required items; increasing the clarity of disclosure regulations; and ensuring that the information reaches the general public.

Increasing the number of required disclosure items raises the question: what elements of corporate governance disclosure should be subject to mandatory requirements? International best practice, as identified in the UNCTAD *ISAR benchmark*, is a good place to start. Priority areas are *Auditing* and *Board and Management Structure and Process*. In many countries, some of the key disclosure

items in these categories are largely missing both in regulation and in practice. This is an area of concern as these topics are so closely linked to the quality of corporate governance.

When deciding what disclosure should be required, it is also important to strike a balance in the quantity of required disclosures. More information and more disclosure is almost always welcomed by investors and the markets, and bemoaned by companies. There are good arguments for hemming in excessive disclosure for both since reporting can be costly and not all information is useful information. Focusing on a core set of mandatory disclosure items will help countries strengthen their disclosure regimes and help companies better tailor their disclosure to what is important.

The report shows the frequency of reporting in a number of areas, and it would be tempting to mandate disclosure of only those items on which there is a broad international consensus. However, it would be an error to construe items that are not commonly disclosed as being unimportant. One of the least reported items in this report (whistle bower protections) has been made the subject of much attention in the United States in the wake of the 2008/2009 financial crisis. It may in fact be those items that do not typically garner attention that may be the greatest weakness to the system.

Policy makers must also recognize that while mandatory items are much more likely to be reported, companies do not always comply with mandatory rules. This means policy makers should also consider issues of enforcement. In most economies, direct enforcement by governments of disclosure rules is impractical: there are simply too many individual disclosure points to check and too little resources with which to check them. Policy makers may consider focusing oversight on a smaller set of leading enterprises, those that make up the largest contribution to total market capitalisation. In many emerging markets, a few dozen companies can account for more than 50% of the market capitalization of the entire country. Periodic reviews of leading companies, combined with moderate fines for noncompliance, could send a signal to companies that regulators take disclosure seriously. Rewarding and highlighting of good practices could also be an incentive.

Policy makers should also work on promoting responsible investment and active ownership by investors. Investors must play an active role as market participants and communicate with the companies in which they invest, especially as regards disclosure practices. There is an ongoing need for strengthening awareness among both company directors and investors about the obligations and benefits of corporate governance disclosure and the need to strengthen disclosure in certain areas.

CHAPTER I: REGULATORY REQUIREMENTS AND COMPANY PRACTICES

A. Introduction

This chapter provides a statistical analysis of regulatory requirements and corporate practices related to corporate governance disclosure in more than twenty emerging markets. These regulatory requirements and corporate disclosure practices are compared against each other and against UNCTAD's *ISAR benchmark*: a list of 52 specific corporate governance disclosure items¹ which has been used by UNCTAD as an international benchmark in a series of national and international studies on governance disclosure.²

Understanding what corporate governance disclosures are required, how requirements vary from country to country, and how requirements ultimately influence firm-level disclosure, is important for clarifying the regulatory environment and helping policy makers better define regulatory agendas.

Following the presentation of statistics in section B, section C analyzes the corporate governance disclosure requirements of regulators and stock exchanges in 25 emerging markets, and compares their requirements to each other, as well as to requirements in the three largest markets in the world (Japan, the United Kingdom and the United States).

The sample of 25 markets is drawn from the *MSCI Emerging Markets Index* produced by Morgan Stanley Capital International (MSCI EM Index). Annex I.B provides a list of the 25 markets included in the MSCI EM Index in 2007 at the start of UNCTAD's multi-year research programme on this subject.

The analysis applied to this group of markets is:

- Which of the corporate governance disclosure items recommended by the UNCTAD *ISAR benchmark* are required to be reported by enterprises listed on the major stock exchanges of each of the 25 markets studied; and
- How do emerging markets compare with each other and with more developed markets?

¹ One benchmark item was removed from the 2008 and 2009 studies. Prior UNCTAD studies included 53 items. A disclosure on "Practices on related party transactions where control exists" (previously Item 15) was removed because of substantive overlap with another item "Nature, type and elements of related-party transactions" (Item 12). The items in this report have been renumbered accordingly, giving a total of 52 items. The ISAR benchmark is subject to periodic review and change.

² This publication presents the results of UNCTAD research on disclosure regulations over the period 2007 to 2010 that resulted in a number of separate UNCTAD documents (TD/B/COM.2/ISAR/CRP.6, TD/B/C.II/ISAR/CRP.8 and TD/B/C.II/ISAR/CRP.9). This report presents a summary overview of the main results of these studies (see annex I.A).

The framework for analysis throughout this chapter is provided by grouping the 52 disclosure items³ in the UNCTAD *ISAR benchmark* into five broad subject categories:

1. Financial Transparency;
2. Board and Management Structure and Process;
3. Ownership Structure and Exercise of Control Rights;
4. Corporate Responsibility and Compliance; and
5. Auditing.

Regulatory practices vary significantly internationally, with some markets relying primarily on regulatory instruments and others relying on stock exchange listing rules. Laws and regulatory instruments were examined as well as the listing requirements of the major stock exchange(s). The specific sources that form the basis of the examination are contained in annex III.⁴

It is important to note that this research measures the *existence* of regulations related to a particular disclosure item; it does not measure the *quality* of disclosure. Note also that the research presents an inventory of *mandatory* corporate governance disclosures; it does not take into account voluntary rules or codes. The exclusion of voluntary codes does not discount their value. Rather, they are excluded in an effort to better understand the role of law and ‘hard’ requirements, and the role that public policy makers, regulators and stock exchanges play in influencing corporate governance disclosure. Chapter II provides in-depth analysis on different models of corporate governance rule making and explains what is considered ‘mandatory’ in this analysis.

The analysis conducted in section C on regulation is complemented in section D where the *ISAR benchmark* is used to evaluate company disclosure practices. Section E compares the findings on regulatory requirements and company disclosure practices to provide an assessment of the level of compliance from country to country.

The analysis of corporate disclosures (sections D and E), examines 188 companies from 22 emerging markets.⁵ The companies included in this sample are highly representative of the MSCI EM Index as a whole and of the population of the largest companies within each market. The 10 largest⁶ enterprises were selected from each country. In 5 countries, the selected enterprises represented 100% of the MSCI EM Index weighting. In an additional 10 countries they represent between 80% and 100% of the index weighting. In the remaining 10 countries, the companies represented between 45% and 77% of the country’s MSCI EM Index weighting. For a more detailed analysis of the enterprises and the range of industrial sectors represented see annex I.C.

³ For a list of the 52 specific disclosure items that form the UNCTAD *ISAR benchmark*, see annex II.

⁴ While every effort was made to be thorough in this research, the report cannot claim to have uncovered all applicable laws and regulations. Furthermore, the results of this report represent a snapshot in time and should be seen as such; subsequent regulatory developments could have led to significant changes in the current regulatory environment.

⁵ The markets are the same ones listed in table A1.1 with the exception of Jordan, Pakistan and Taiwan Province of China. See annex I.C for details.

⁶ By MSCI EM Index weighting; see annex I. Where countries had less than 10 enterprises in the index, all of the enterprises for that country were included in the study.

To provide some context and comparison to developed market practices, a supplementary sample was created of the 10 leading enterprises in Japan, the United Kingdom and the United States.⁷ These developed countries have the largest equity markets in the world.

A complete list of enterprises included in the study is found in annex IV. In total, this analysis of corporate disclosure considers over 10,000 individual data points.⁸

The first part of the analysis applied to the sample enterprises considered: how many of the items in the UNCTAD *ISAR benchmark* are reported by each of the enterprises? This analysis was conducted by examining a range of publicly available corporate reports including: annual reports, corporate governance reports, corporate responsibility reports, exchange filings, and other information available from financial databases (e.g. Thompson, Reuters, and Bloomberg) and company websites.⁹ These reports were then compared with the 52 items in the UNCTAD *ISAR benchmark* to gauge what, within the benchmark, these enterprises were disclosing.

The second aspect of the analysis considered: how do the actual reporting practices of the selected enterprises compare with the mandatory reporting requirements of their home countries? To answer this question, the main findings of the review of company disclosure practices were compared with the disclosure requirements previously analyzed in section C. The main findings of this analysis are presented in section E of this chapter with further details presented in annex V.

B. Statistical overview

This section provides an overview of the main findings regarding corporate governance requirements and company practices (Table I.1). Listed next to each corporate governance disclosure item in the UNCTAD *ISAR benchmark* is the per cent of 25 emerging markets¹⁰ requiring disclosure of the item, as well as the per cent of 188 emerging market enterprises that actually disclose the item. The five categories are ordered by highest average number of required disclosures. Further, within each category, the disclosure items are presented in order from most often required to least often required.

⁷ This supplementary sample is comprised of 10 of the largest enterprises by market capitalization from the Nikkei 225 (for Japan), and the top 10 enterprises by index weighting from the Standard & Poor's 500 index (for the United States) and the FTSE 100 (for the United Kingdom). The 10 selected enterprises from the Nikkei 225 were chosen from among the top 11 enterprises in that index to avoid reviewing an enterprise that is a subsidiary of another member of the list.

⁸ Data points: 52 disclosures in the *ISAR benchmark* for each of the 218 enterprises in the primary and secondary samples.

⁹ As this report is a review of publicly available information, contacting companies directly was not required. However, when questions of interpretation arose, every effort was made to allow enterprises to clarify their disclosures. In addition, all of the enterprises in the study were contacted to allow them to review the preliminary findings for their company and ensure the accuracy of those findings. Feedback was received from a number of enterprises and their comments and suggestions were incorporated into the final results.

¹⁰ See table AI.1 for the list of markets.

Table I.1. Disclosure requirements and practices in emerging markets

Inventory of disclosure requirements in 25 emerging markets
and summary of reporting practices for 188 enterprises from 22 emerging markets

(Percentage)

Disclosure Item	% of markets requiring item (n = 25)	% of enterprises disclosing item (n = 188)
Ownership Structure and Exercise of Control Rights	<i>Average:</i> 96	69
Changes in shareholdings	100	64
Control and corresponding equity stake	100	78
Control rights	100	74
Ownership structure	100	91
Process for holding annual general meetings	100	75
Availability and accessibility of meeting agenda	96	86
Control structure	96	86
Rules and procedures governing the acquisition of corporate control in capital markets.	92	53
Anti-Takeover measures	84	18
Financial Transparency	<i>Average:</i> 85	81
Financial and operating results	100	100
Board's responsibilities regarding financial communications	92	79
Company objectives	92	99
Nature, type and elements of related-party transactions	92	94
The decision making process for approving transactions with related parties	92	52
Rules and procedure governing extraordinary transactions	80	59
Critical accounting estimates	72	91
Impact of alternative accounting decisions	56	78
Auditing	<i>Average:</i> 74	61
Process for appointment of external auditors	92	81
Internal control systems	84	86
Process for interaction with external auditors	84	74

Disclosure Item	% of markets requiring item (n = 25)	% of enterprises disclosing item (n = 188)
Process for appointment of internal auditors / Scope of work and responsibilities	76	56
Process for interaction with internal auditors	76	79
Board confidence in independence and integrity of external auditors	72	44
Auditors` involvement in non-audit work and the fees paid to the auditors	64	55
Duration of current auditors	60	58
Rotation of audit partners	60	19
Board and Management Structure and Process	<i>Average:</i> 71	74
Composition of board of directors (executives and non-executives)	96	99
Governance structures, such as committees and other mechanisms to prevent conflict of interest	96	93
Role and functions of the board of directors	96	91
Determination and composition of directors` remuneration	92	81
Material interests of members of the board and management	88	69
Composition and function of governance committee structures	84	91
Qualifications and biographical information on board members	80	85
“Checks and balances” mechanisms	76	85
Duration of director's contracts	72	86
Independence of the board of directors	72	79
Risk management objectives, system and activities	68	91
Existence of plan of succession	64	57
Number of outside board and management position directorships held by the directors	64	83
Existence of procedure(s) for addressing conflicts of interest among board members	60	62
Types and duties of outside board and management positions	60	82
Professional development and training activities	56	40
Availability and use of advisorship facility during reporting period	48	58

Disclosure Item	% of markets requiring item (n = 25)	% of enterprises disclosing item (n = 188)
Performance evaluation process	44	64
Compensation policy for senior executives departing the firm as a result of a merger or acquisition	24	7
Corporate Responsibility and Compliance	<i>Average:</i> 36	61
Mechanisms protecting the rights of other stakeholders in business	60	79
Policy and performance in connection with environmental and social responsibility	56	91
A Code of Ethics for the Board and waivers to the ethics code	40	49
A Code of Ethics for all company employees	36	69
The role of employees in corporate governance	28	39
Impact of environmental and social responsibility policies on the firm's sustainability	24	61
Policy on "whistle blower" protection for all employees	8	41

C. Analysis of disclosure requirements

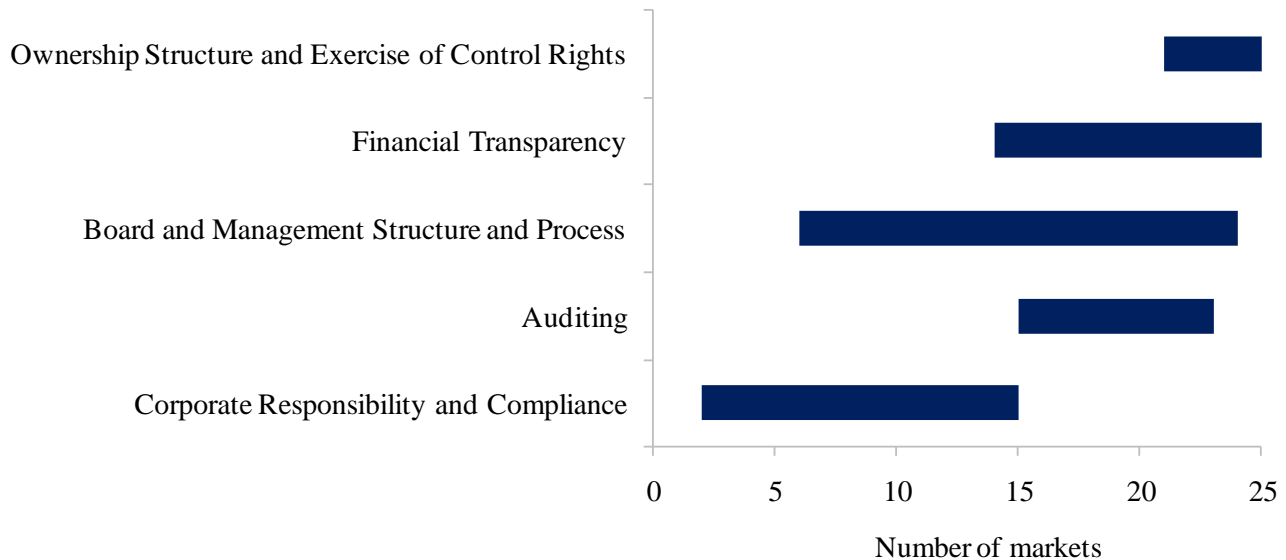
The greatest degree of consistency (and the least degree of variance or variability) among mandatory disclosures is within the *Ownership Structure and Exercise of Control Rights* category (Figure I.1). Also noteworthy is the great variability in the *Board and Management Structure and Process* category. This variability may be explained by the difficulty in pinpointing precisely which specific disclosure items are good indicators of the quality of a board. Another explanation could be related to the different issues facing single-tier and two-tier boards.¹¹ Single-tier boards are considered by some to face greater challenges maintaining independence and may, as a consequence, require more mandatory information on executive and non-executive directors.

¹¹ A single-tier board is composed of executive and non-executive directors and differs from the two-tier system where the term "board" can denote the management board, whose members have executive responsibilities, and the supervisory board, whose members are responsible for the monitoring and supervision of the company's management. See UNCTAD (2006). *Guidance on Good Practices in Corporate Governance Disclosure*, 11-12.

Figure I.1. Disclosure requirements vary greatly by category and market

Maximum and minimum number of markets requiring disclosure of items in each category

(Start of line indicates minimum number of markets requiring an item in this category, end of line indicates maximum number of markets requiring an item in this category)



Finally, there is a significant difference between each of the prior categories and the disclosure required in the *Corporate Responsibility and Compliance* category. Mandatory disclosure in this category is relatively low as a group and for all items. This may be explained by the relative novelty of many environmental and social issues within the broader field of corporate governance. However, this is an area that is currently expanding in many developed markets and can be expected in coming years to be the subject of mandatory disclosure requirements in all markets.¹² Already this analysis shows that among the *Corporate Responsibility and Compliance* items in the UNCTAD *ISAR benchmark*, environmental disclosure, specifically “Policy and performance in connection with environmental and social responsibility” is one of the most frequently disclosed items.

Nevertheless as a whole category corporate responsibility and the role of stakeholders and the environment are less subject to mandatory disclosure compared to other categories. Almost all of the items in the category *Corporate Responsibility and Compliance* fall into the group of least required items (Table I.2). “Policy on ‘whistle blower’ protection for all employees” stands out as the least required disclosure item overall, required in only 2 markets (or 8% of markets surveyed).

It is important to note however, as indicated by the averages for this category (table I.1) that even though corporate responsibility items are the least required, and the least reported, the reporting far exceeds the requirements. There is a large surplus of reporting in this area, indicating that regulations are trailing actual practices. This can be contrasted with the category averages in the category of *Auditing*, which reveal a large deficit of reporting.

¹² For a review of trends in this area, see “Sustainable Stock Exchanges: Real Obstacles, Real Opportunities”. Discussion paper prepared for the Sustainable Stock Exchanges 2010 Global Dialogue, an event co-hosted by UNCTAD, UN Global Compact and the Principles for Responsible Investment (PRI). http://www.responsibleresearch.com/Responsible_Research___Sustainable_Stock_Exchanges_2010.pdf

Table I.2. Corporate responsibility issues least required

(Number and percentage of markets requiring this item)

Bottom 10 least prevalent disclosure items required among 25 emerging markets	No. of markets (max = 25)	% of markets
Policy and performance in connection with environmental and social responsibility	14	56
Professional development and training activities	14	56
Availability and use of advisorship facility during reporting period	12	48
Performance evaluation process	11	44
A code of ethics for the board and waivers to the ethics code	10	40
A code of ethics for all company employees	9	36
The role of employees in corporate governance	7	28
Compensation policy for senior executives departing the firm as a result of a merger or acquisition	6	24
Impact of environmental and social responsibility policies on the firm's sustainability	6	24
Policy on "whistle blower" protection for all employees	2	8

Striking are the number of items from the *Board and Management Structure and Process* category that are among the least required disclosures with board performance evaluation processes, the use of advisorship facilities, and professional development and training for board members all falling into the list of least prevalent disclosure items. These items may not be considered by regulators to be material, or may be considered to be of an operational nature, and thus left to the discretion of the enterprise to disclose or not.

Also noteworthy is the low frequency of required disclosure with respect to the item "Compensation policy for senior executives departing the firm as a result of a merger or acquisition". This item is commonly required in the most developed financial markets. Its relative infrequency within this sample may be an indication of the level of merger and acquisition activity or of different attitudes towards explicit disclosures of executive compensation in emerging markets.

A gap analysis of the data reveals areas of strong international consensus on which items should be required (Table I.3). For example, disclosure of items in the *Ownership Structure and Exercise of Control Rights* category can be seen to be largely mandatory everywhere. These findings can help policy makers to decide what items should be required in their country based on international best practices.

However, policy makers should be careful to avoid seeing items that are not commonly required as being unimportant. For example the area of *Corporate Responsibility and Compliance* is the subject of the fewest requirements, yet many of the items in this category relate to strategic issues of systemic stability (e.g. whistle blower protection) or long term sustainable development (e.g. impact of environmental and social responsibility policies).

The comparison shows that one emerging market (South Africa) has mandatory disclosures that are equivalent to the UNCTAD *ISAR benchmark* and exceeds two of the three developed country markets. It also demonstrates that the majority of emerging markets require disclosure of most of the items in the UNCTAD *ISAR benchmark*. Twenty one markets (84%) require disclosure of 30 or more items, and 10 markets (40%) require disclosure of 40 or more items. Only four markets (16%) require disclosure of less than 30 items.

The large number of mandatory disclosure requirements in the United Kingdom and United States could be explained by the size and development of their equity markets. However, a greater reliance on disclosure-based regulation may also be linked to their legal systems. The relatively lesser use of disclosure in civil law countries may reflect a greater reliance on merit-based (or substantive) regulation, i.e. the desired substantive outcome is required by law (but not necessarily enforced through disclosure) versus disclosure based regulation, (which focuses less on the substantive outcome but on transparency to the financial markets). Mandatory disclosure is most prevalent in the United Kingdom and the United States (both common law countries) and in South Africa (a bi-juridical mix of civil law and common law).

D. Analysis of company disclosure practices

The averages in the far right column of table I.1 above (see section I.B) summarize 9,776 individual data points in the form of individual company disclosures. In total, 70% of the disclosure items in the UNCTAD *ISAR benchmark* were disclosed by the sample group of 188 emerging market enterprises (6,882 out of 9,776 possible disclosures). This suggests that corporate governance disclosures along the lines suggested by the UNCTAD *ISAR benchmark* are, indeed, a common element of corporate reporting.

The *Financial Transparency* category has the highest average level of disclosure, followed by the *Board and Management Structure and Process* category and the *Ownership Structure and Exercise of Control Rights* category. *Auditing* and *Corporate Responsibility and Compliance* disclosures are, on average, less prevalent than other categories of disclosure.

Among the ten most prevalent disclosure items, the preponderance of disclosures (5 items) is made in the category of *Board and Management Structure and Process* followed by the category of *Financial Transparency* (4 items). Only one item appears from the *Ownership Structure and Exercise of Control Rights* and the *Corporate Responsibility and Compliance* categories. The only category in which there is no item among the ten most prevalent disclosures is *Auditing*.

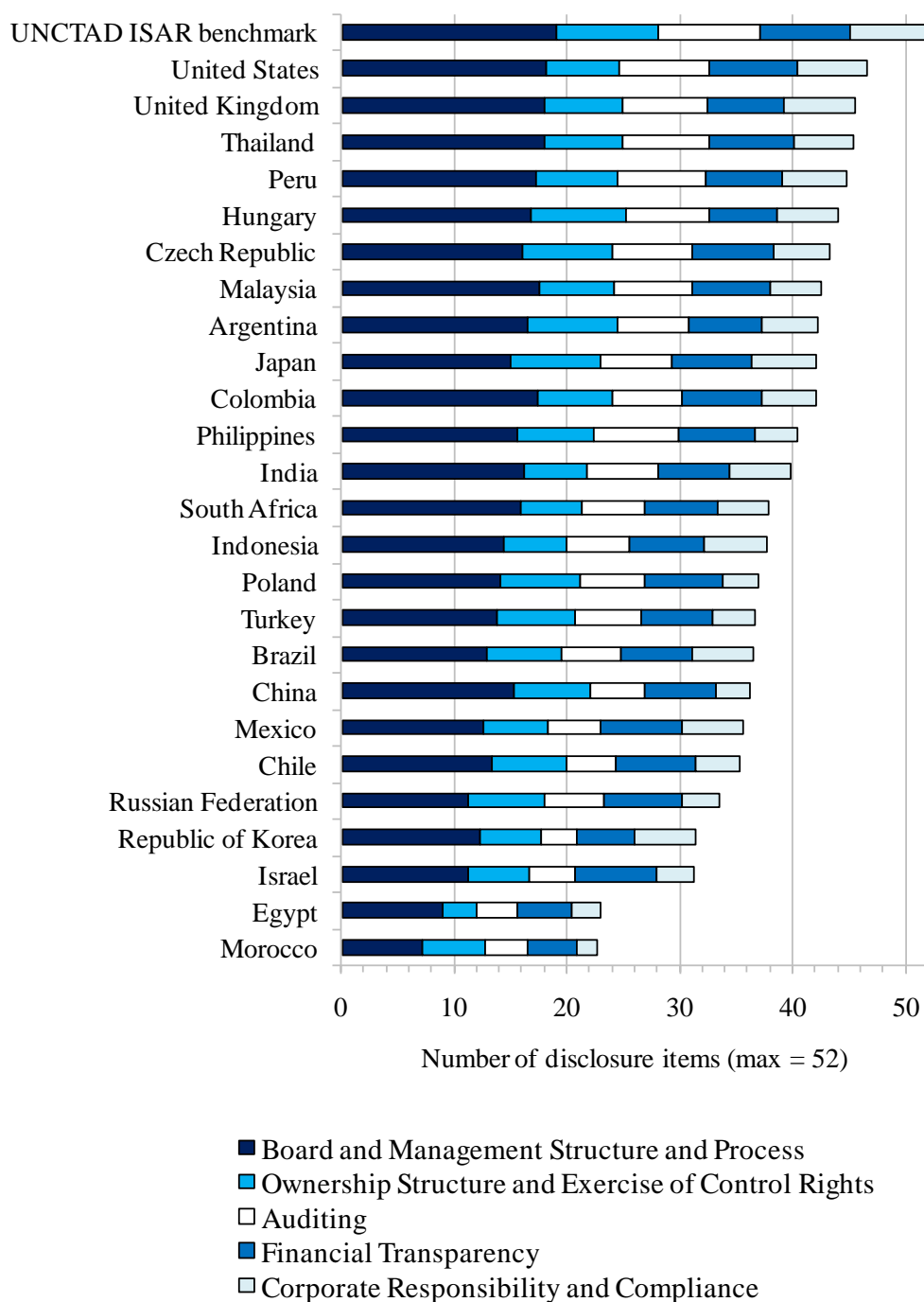
As touched on in section C, somewhat surprising is the relatively high frequency of disclosure of the item “Policy and performance in connection with environmental and social responsibility”, since disclosure and requirements in the *Corporate Responsibility and Compliance* category tend to be weak. This item is found among both the most commonly disclosed items, as well as among the least frequently required items. As noted above this indicates a disclosure surplus, i.e. corporate disclosure that exceeds regulatory requirements. This may reflect the role of

other factors in driving disclosure, such as the demand for information from shareholders and other stakeholders. The relationship between disclosure requirements and actual disclosure practices is explored in more detail in section E below.

Among the ten least prevalent disclosures, least common are the categories of *Auditing* and *Corporate Responsibility and Compliance* (with 3 items each). It is also noteworthy that three of the ten least disclosed items relate to takeover activities. These types of disclosures are more likely to be found in developed markets with more pronounced merger and takeover activity.

An analysis of the average number of items disclosed by a large enterprise within a particular market provides a view of differences between reporting for particular categories (Figure I.2). For example, the Brazilian, Chinese, Polish and Turkish enterprises display almost the same total level of reporting, yet show differences in category reporting: the Brazilian and Turkish enterprises tend to report more in the area of *Corporate Responsibility and Compliance*, while the Chinese report more on *Board and Management Structure and Process* and Polish enterprises tend to report more in the category of *Financial Transparency*.

For comparison purposes, data on the disclosure practices for the 10 largest enterprises in Japan the United Kingdom and the United States has also been included in the analysis. Large companies in the United Kingdom and the United States, two of the world's most highly developed markets, make on average the highest number of disclosures (46). The great preponderance of companies make between 35 and 45 disclosures, with a smaller group of companies in five (5) countries making below 35. This suggests that, on average, companies disclose about 35 items or two thirds of the UNCTAD *ISAR benchmark* in the preponderance of countries.

Figure I.2. Comparison of company disclosure practices by market(Average number of disclosures per top 10 company per country)^a

^a Note: Some sampled countries include less than 10 enterprises per country, these were Argentina, Colombia, Czech Republic, Hungary, Morocco and Peru. See annex I.C for complete details.

An analysis of the range of frequency (or the variability) of disclosure of particular items suggests a high degree of variability among enterprises in different markets (Figure I.3). This can be a reflection of the different stages of development of different companies in each market regarding the content of their corporate governance disclosures. Significant differences in variability within a country can also

be the result of foreign listings, wherein some companies in a market are making disclosures based on the rules of another market where they are also listed.

Figure I.3. Higher consistency coincides with higher disclosure levels

Variability in corporate reporting practices: range spread analysis

(Length of the bar indicates difference between the company disclosing the lowest number of items and the company disclosing the highest number of items)



The United Kingdom shows the lowest degree of variability in disclosure. In the United Kingdom, the minimum number of disclosures by any company was 44 and the highest number was 47 resulting in a range spread of only 3 disclosures. Likewise, enterprises in the Czech Republic, Hungary, Japan, Peru, and Thailand tend to be consistent in the number of items they disclose. In contrast, enterprises from Chile, Egypt, Israel, Korea, and Morocco demonstrate a high degree of variability in their reporting practices.

It is noteworthy that the best enterprises in all of the markets have high rates of disclosure (over 35 items). In Mexico, for example, the lowest number of disclosures by a company was only 11 but the highest number was 46, only one less than the highest number of disclosures in the United Kingdom. Lesser variability and higher consistency in reporting coincides with higher disclosure levels and also appears to be an indicator of compliance with national codes and regulations. The issue of compliance is examined in more detail in section E, below. Lesser variability within a market also makes it easier to make a general assessment of the quality of corporate disclosure within the market.

E. Compliance with disclosure requirements

This section focuses on the issue of compliance comparing actual corporate reporting practices with the disclosure requirements found in national regulations and listing requirements described in the prior sections. Of the 9,776 disclosure items examined,¹⁴ 7,294 are required by local regulators or stock exchange officials and 2,482 are not required (Figure I.4).¹⁵ Most corporate governance disclosure in emerging markets is subject to mandatory requirements though voluntary reporting is also prevalent.

It is no surprise that mandatory items are subject to a higher rate of disclosure compared to voluntary items (75% compared to 58%). More striking is the level of non-compliance with mandatory disclosure requirements which lies at 25%.

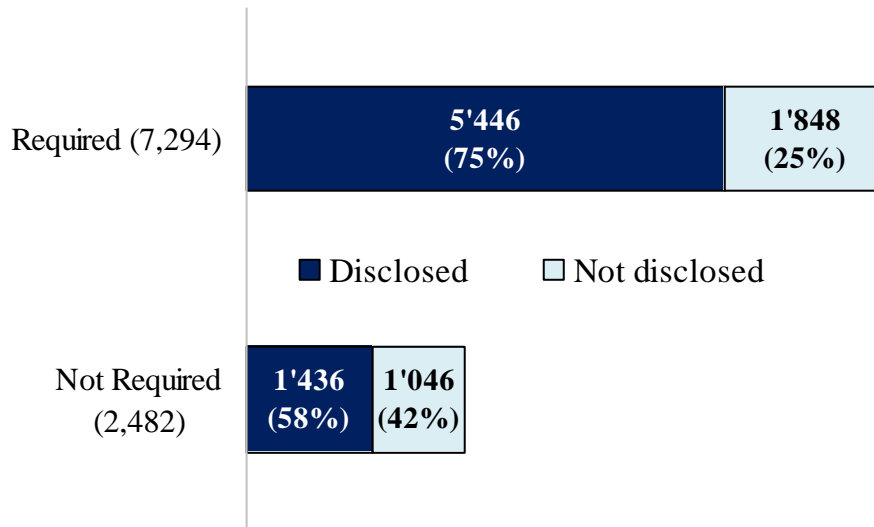
Predictably, not required (or voluntary) disclosures are less frequent than mandatory disclosures. However, the 58% disclosure rate of not required items is considerable and is not so far removed from mandatory disclosure. Factors that may encourage this relatively high rate of voluntary disclosure include investor demand, voluntary codes, and the desire of companies to present a more accurate picture of their governance. The rise of corporate responsibility reporting, which currently exceeds regulatory requirements by a wide margin, is also a significant factor in the relatively high rate of voluntary disclosures. Finally, the practice of foreign listings can also play a role: companies may disclose information that is considered voluntary in their home market, but is required in a foreign market.

¹⁴ 52 items in the UNCTAD *ISAR benchmark* multiplied by 188 emerging market enterprises.

¹⁵ Note: 2008 and 2009 company data was compared against the 2009 compliance regulations (refer table I.4).

Figure I.4. A 25% compliance gap with mandatory requirements

Disclosure compliance for 188 emerging market enterprises



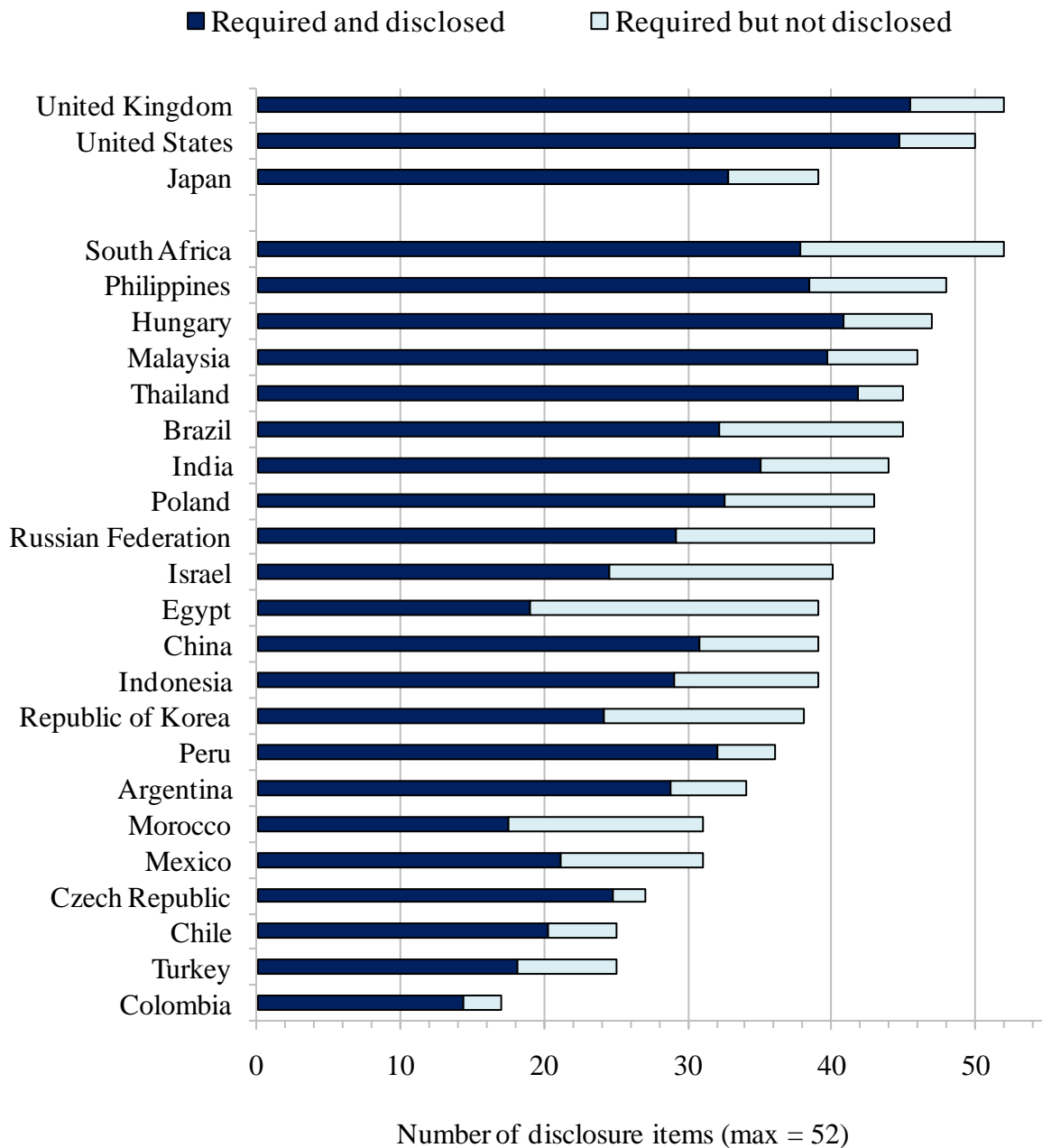
A significant number of emerging markets have compliance levels that are equal to or higher than compliance levels in the most developed markets (figure I.5). However, high compliance does not necessarily indicate more corporate governance disclosure. Some countries with a higher compliance rate require significantly less disclosure than other countries. The data sheds no light on how these markets are able to achieve such high levels of compliance, nor the reasons why some markets have below-average compliance. An examination of what factors influence compliance would be a fruitful area for future study.

Figure I.5. A high compliance rate does not necessarily indicate more CG disclosure

Average compliance with mandatory disclosure requirements by market

Data from Japan, the United Kingdom and the United States provided for comparison

(Average of required disclosure items – disclosed and not disclosed)

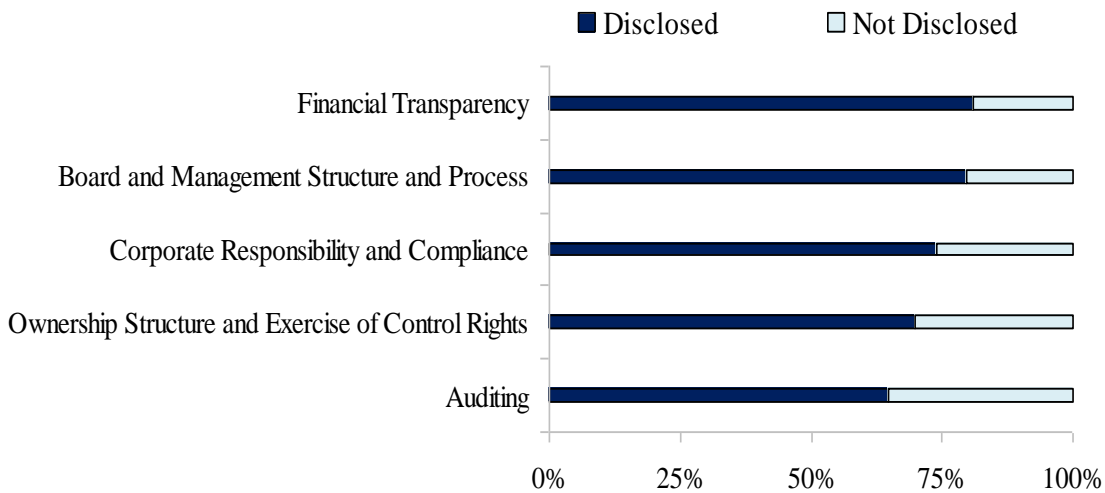


An analysis of compliance by disclosure category shows the category of *Auditing* is subject to the lowest level of reporting among the 188 emerging markets enterprises and the largest disclosure gap: more than 30% of the required disclosure items related to auditing issues were not found among the public reports of the enterprises studied (Figure I.6). For investors, policymakers, auditors and stakeholders that consider auditing disclosures critical to the overall credibility of corporate reports, this lack of compliance with auditing requirements should be a cause for concern and

may be a call for stronger measures to promote the observance of corporate disclosure regulations. Certainly, further examination of the relative weakness of audit related disclosure is called for.

Figure I.6. Auditing category suffers from the largest disclosure gap

Disclosure compliance for 188 emerging market enterprises: by category
(Required disclosure items only)



F. Conclusion

Corporate governance disclosure along the lines recommended by the UNCTAD *ISAR benchmark* is a common element of corporate reporting among companies in emerging markets (with 70% of the UNCTAD *ISAR benchmark* items disclosed by the 188 sampled enterprises). The majority of requirements are mandatory; however voluntary reporting is also prevalent. Not surprisingly though mandatory items do have a higher rate of disclosure compared with voluntary items.

Nevertheless the level of non-compliance of mandatory requirements at 25%, is striking, and calls for the attention of policy makers and oversight bodies. Poor disclosure performance and compliance in the critical category of *Auditing*, in particular, highlights the difference between the adoption and implementation of disclosure rules. Large compliance gaps, if left to persist, have the potential to seriously impact the credibility of corporate reporting in the eyes of stakeholders, and undermine the ability of investors and regulators alike to safeguard against risk of corporate collapse.

Regulators should continue to focus not only on the development and communication of effective regulations but also on efforts to promote compliance. That said, given the multitude of companies and disclosure items, it is practically impossible for regulators to be *solely* responsible for ensuring implementation and compliance. Despite the best efforts of regulatory regimes, markets must rely to a large extent on the internal signals between market participants. Thus the

responsibility for improving compliance is a burden which must be shared by regulators, investors and companies. In particular, investors who wish to see more corporate governance information must demand such information from companies and give feedback to both companies and regulators about failures to disclose required information. In this regard, regulators could consider increasing education programmes aimed not only at companies (about what they should be reporting) but also at investors (about their role in demanding more information and holding companies to account for gaps).

CHAPTER II: MAIN CHALLENGES AND POLICY RECOMMENDATIONS

Regulators in emerging markets face a number of challenges with the design and implementation of corporate governance disclosure regulations. This chapter summarizes some of the main challenges, outlines different models of corporate governance rule making, and provides policy recommendations.

A. The ‘comply or explain’ principle: challenges in application

The ‘comply or explain’ principle is a central element of corporate governance codes and CG disclosure requirements in many countries. It provides useful flexibility in code implementation, however its practical application can lead to complexities and confusion when combined with other factors discussed in this section, such as voluntary codes and overly generalized requirements.

The ‘comply or explain’ principle was first put forward in the Cadbury Code in the United Kingdom as a practical means of establishing a single code of corporate governance whilst avoiding an inflexible ‘one size fits all’ approach. *Cadbury 1992* required that "[L]isted companies... should state in the report and accounts whether they comply with the Code and identify and give reasons for any areas of non-compliance."¹⁶

Since the advent of the Cadbury Code, many countries around the world have adopted the ‘comply or explain’ principle and implemented it as per the original two core elements; these are:

- The code applying the ‘comply or explain’ principle is ‘soft law’, which means it is non-binding and voluntarily implemented. Listed companies are entitled to decide if they adopt the code and the degree of compliance with the code. Deviation from the code does not breach it.
- No matter how listed companies implement the code, or even if they choose not to implement the code, disclosure concerning compliance or non-compliance is *mandatory*, with additional explanation required in the case of non-compliance.

These two core elements can be summed up in the simple equation: *voluntary implementation of the code + mandatory disclosure*. Companies can choose what elements of the code they comply with, but they must explain what they do. This is the essence of the ‘comply or explain’ principles based approach to corporate governance disclosure.

¹⁶ Seidl, David and Paul Sanderson (2009). *Applying 'comply-or-explain': Conformance with codes of corporate governance in the UK and Germany*. Cambridge: Centre for Business Research, University of Cambridge, Working Paper No. 289.

1. ‘Comply or explain’ combined with unclear regulations

A challenge arises from the combination of the ‘comply or explain’ principle with unclear regulations. Such situations can create the appearance of contradictions and generate confusion about whether a code requires mandatory implementation or not.

For example in one country, the rules state that “*The Code should be implemented by all public companies*” which suggests that implementing the code and all its provisions is a mandatory requirement. Yet the same rules go on to say that “*The Code is to be adopted and implemented according to the ‘comply or explain’ principle.*” This second statement generates confusion by creating an apparent contradiction with the first: the ‘comply or explain’ principle is normally associated with voluntary codes and explicitly entails the option of not complying. This leaves the unanswered question: since the option of not complying exists, is implementation of the code mandatory?

2. Transparency and disclosure sections within a ‘comply or explain’ code

Another challenge arises when regulators combine explicit transparency and disclosure rules within a ‘comply or explain’ model. Counter-intuitively, the addition of explicit disclosure guidance within a ‘comply or explain’ code can create confusion. Because in a ‘comply or explain’ code, every provision of the code dealing with corporate governance *mechanisms* is also potentially a provision dealing with *disclosure*, since companies would typically (under best practice) be required to explain their compliance with each provision in the code (what can be called an ‘itemized statement of compliance’). If, however, a section on transparency and disclosure also addresses corporate governance mechanisms covered elsewhere in the code, this can lead to confusion: two parts of the rules covering similar subjects with different implications for disclosure.

In the end a number of questions remain: in such a ‘comply or explain’ based code, is it optional to comply with the transparency section of the code? This would seem to be the case, but is often unclear. Policy makers and regulators could usefully clarify this point by, for example, indicating in the transparency and disclosure section of a code a clear list of mandatory disclosure items, and explaining that the disclosure section itself is not optional.

The next section explores in greater detail various current approaches to the ‘comply or explain’ model (in addition to other models) and some of the frequently observed issues associated with their implementation.

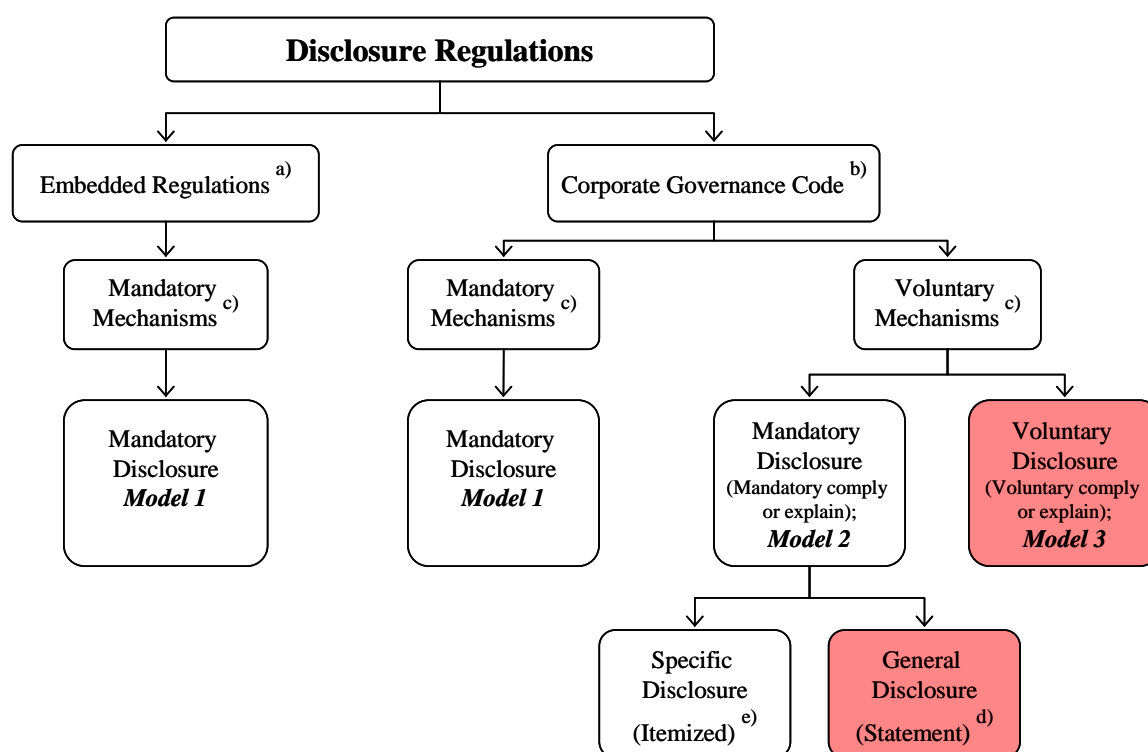
B. Models of mandatory and voluntary disclosure regulation

A number of different models of disclosure regulations have been identified through UNCTAD's multi-year research programme on CG regulations. The issues discussed in this section (illustrated in figure II.1) are based on a distinction between:

- *mechanisms* of corporate governance, i.e. what governance structures companies should have, what rules and procedures they should follow; and
- *disclosure* of corporate governance practices, i.e. what companies should report about what they are doing.

Figure II.1. Models of voluntary and mandatory disclosure regulation

(Shaded boxes indicate inadequate disclosure rules)



- a) Relevant regulations other than CG codes, for example: company law, listing rules, etc.
- b) Includes explicit CG codes as well as resolutions or legal-decisions specific to CG mechanisms and disclosure.
- c) Refers to the enforcement (binding or non-binding) of the CG regulations.
- d) Company discloses compliance with CG code by a general statement, e.g. “I have complied with the code” or “I have not complied with the code” along with relevant reasons.
- e) Company discloses compliance with CG code by providing details of CG mechanisms item by item corresponding with each provision of the code.

Model 1: Mandatory mechanisms + mandatory disclosure

The first model represents conventional command and control rules with obligatory requirements. Regulations other than corporate governance codes typically adopt this approach in stipulating disclosure obligations. However some corporate governance codes also adopt this approach. In this model, a country's corporate governance code is not 'soft law' rather it is 'hard law', i.e. a mandatory regulation like any other government regulation.

Mandatory rules on mechanisms in this case are typically accompanied by mandatory disclosure requirements. Such regulations normally include text such as "The listed companies shall publish/report to the public/disclose... (corporate governance disclosure items)". For example, an article of one country's law states:

(Publishing information on the change in major holdings)

(1) A public company shall be obliged to publish the information contained in the notice on the change in major holdings ...

This is an example of an explicit conventional mandatory disclosure requirement. In this type of regulation, the disclosure is a legal obligation.

Model 2: Voluntary mechanisms + mandatory disclosure ('mandatory comply or explain')

The second model follows the core elements of the 'comply or explain' principle explained above: voluntary rules on practices combined with mandatory disclosure. In this situation, all companies, whether they fully comply with the code or not, are obliged to disclose information about their compliance.

Model 3: Voluntary mechanisms + voluntary disclosure ('voluntary comply or explain')

The third model (figure II.1) involves voluntary rules on mechanisms combined with voluntary disclosure. Some markets use a 'comply or explain' rule that is not applied to every company automatically, rather companies must voluntarily adopt this rule, thus a disclosure obligation is triggered only if and when a listed company decides to adopt the code or some part of the code. The selective nature of this opt-in process makes this type of regulatory regime a voluntary one. The combination of this type of voluntary opt-in process with 'comply or explain' leads to a situation of 'voluntary comply or explain'. Within this model not all companies are subject to the same disclosure obligations, and what disclosure obligations do exist for companies are a product of a voluntary choice by those companies. An example of this model can be found in the following excerpt from one country's corporate governance code:

Article 1...

For companies whose securities are admitted to some of the markets of the Stock Exchange, the obligation of the Code implementation is generated in the case they voluntarily in written (sic) inform the Stock Exchange that they accept its application.

Article 2. The implementation of the Code implies the following obligations for the companies:

- [...]
- To report at least once a year on the corporate governance including information on implementation of the Code recommendations or provide explanations for noncompliance (the rule ‘comply or explain’)

In this example, Article 1 indicates that the obligation of implementation is generated only by voluntary adoption. Article 2 provides for disclosure using the ‘comply or explain’ principle. Thus Article 2 would only apply to companies that voluntarily adopt the code and decide to assume these disclosure requirements.

Regulators should be careful to avoid this model of ‘voluntary comply or explain’. In practice such a disclosure regime translates into ‘comply or explain *or do nothing*’. Effective ‘comply or explain’ regimes are of the type described in model 2 above: voluntary codes coupled with *mandatory* disclosure practices.

C. Disclosure chain: does the information get to the public?

Regardless of the exact model of disclosure regulation used, an important consideration for regulators working in this area is the question of whether or not corporate governance disclosure reaches the public. UNCTAD’s work on corporate reporting focuses on disclosure that is public and available to all current and potential future shareholders, as well as other stakeholders. Some forms of regulation complicate or obstruct the transmission of information to the public. This section highlights four issues to consider in promoting improved access to information.

1. Path: direct vs. indirect

Among the regulations reviewed in this report, the path of disclosing CG information to the public is either direct or indirect. Following the *direct* path, information reported by listed companies is communicated directly to the public (e.g. via a company website or other documents widely accessible to the public). Regulations typically contain text such as “The listed companies shall publish ... (CG information) on their website”. This type of rule is common among the markets around the world.

The *indirect* path is less common but has the same effect of reaching the public. Some markets’ regulations stipulate the listed company shall report the CG information to the regulator or stock exchange and subsequently the regulator or stock exchange is obliged to disclose to the public (e.g. via the website of the regulator or stock exchange).

A problem can arise, however, in the regulations of some countries wherein companies are only required to report CG information to the regulator or stock exchange, and the regulator or stock exchange does not subsequently pass on this information to the public. This situation, while keeping regulators duly informed, does

not allow for informing current and potential investors and other stakeholders. Regulators can remedy this situation by making all company reports available on a website.¹⁷ For their part, companies may wish to improve disclosure by including in their direct communication to shareholders the corporate governance information that has already been prepared for regulatory filings.

2. Recipient

UNCTAD's work on corporate governance disclosure focuses on disclosure to the general public, which includes all current and potential future investors. However, it is not common for regulations among the markets analyzed to clearly state the goal that companies "publish" or "disclose to the public" corporate governance information. Many regulations state instead that companies should "report to shareholders".

For the purpose of this report, regulations that require disclosure to "shareholders" generally, were interpreted as being current as well as potential future shareholders, in essence the general public. However some rules were even more specific using text such as "current shareholders" which would preclude all potential future shareholders and other stakeholders.

Regulators therefore should consider clarifying their rules by using language such as "disclosure to public" rather than "disclosure to shareholder". If one key purpose of corporate reporting is to provide information to potential future investors, i.e. to attract investment, then information must practically be made readily available to everyone.

3. Accessibility of information: passive versus active disclosure

Disclosure requirements can specify the way in which companies disclose information, with implications for the accessibility of that information to the general public and international investors. Regulations can require a more active approach to disclosure meaning that the company takes steps to make the information easily accessible by the public, e.g. via a company website.

Regulations can also permit a more passive approach, allowing the company to make CG information available via less accessible means. For example, the company may be permitted (or required) to keep CG information in its office, at the office of the regulator or another registered office; the information is then made available upon request to visitors of the office where it is stored. In some cases, people seeking access to this information are required to pay a fee. This situation limits the accessibility of information to stakeholders in general and can create a practically insurmountable barrier to accessing such information for international investors. Regulators can improve the accessibility of information by requiring it to be published on company websites, or on the regulator's website.

¹⁷ It is noted that there are some unique reporting requirements that relate to special circumstances that should remain confidential with a regulator. The discussion here refers to common corporate governance information of the type in the UNCTAD *ISAR benchmark* that should be subject to disclosure at regular intervals.

With regards to international investors, the language of disclosure is also an important factor for improving accessibility. As recommended in UNCTAD's *Guidance on Good Practices in Corporate Governance Disclosure*: company information should be made available in the national language (or one of the official languages) of the enterprise *as well as* a common internationally used language.

4. Intermediary

Regulations can contain a variety of intermediaries for corporate governance disclosure, including: mass media; local newspapers in wide circulation; a regulator's official bulletin; public gazette; websites; etc. Each of these intermediaries has implications for accessibility. While specific issues may require specific mediums of communication, in general, regulators should consider the prioritization of the use of websites as the most cost effective means of making information accessible to a wide range of stakeholders, including international investors. A well-organized online repository of public company documents can be of great value to investors, regulators and other stakeholders. One of the best of examples of this is the United States SEC's EDGAR database.

D. Other challenges

1. Implicit disclosure rules

Another issue related to corporate governance disclosure rules is the existence of explicit and implicit disclosure obligations. Explicit disclosure rules are typically simple, clear and direct. While implicit disclosure rules often require the combination of one or more provisions within a code, or the combination of a code with a separate company law that applies mandatory disclosure rules to the code. The vast majority of disclosure rules in most countries (both developing and developed) are explicit. However, implicit rules do persist to a greater or lesser extent in almost all countries, and they can be a source of confusion for enterprises and other stakeholders.

A disclosure requirement can be regarded as *implicit* when it needs to be considered together with other regulation or general principles to determine whether or not a particular issue is subject to mandatory disclosure. There are two main types of implicit disclosure found among regulations around the world:

- i. **Implicit Disclosure I:** *the disclosure requirement could be determined from the consideration of two separate provisions within the same regulation or from different regulations.* For example, one provision may state that the annual report shall be published, but without specifying the specific corporate governance subjects to be included in the report. Meanwhile, another provision may list the detailed items that shall be embodied in the annual report. Thus, the disclosure requirements can be identified by considering these two articles together. Another common example of this kind of implicit disclosure is when a provision sets forth "*Information regarding ... [preceding or following provisions] shall be reported to the public*". In this case, the disclosure obligation becomes applicable to all the subjects covered in those provisions.

- ii. **Implicit Disclosure II:** *the disclosure requirement could be determined from the consideration of a provision and a general principle.* The disclosure obligation incurred from the ‘mandatory comply or explain’ principle, implies that a listed company shall disclose information related to the practices described in the corporate governance code. For example, a provision from a code adopting the ‘mandatory comply or explain’ principle states “*The company should set up an internal control system that guarantees effective reporting and disclosure of information*”. The implied disclosure obligation of this provision is that listed companies must disclose whether they have set up internal control systems and whether the systems fulfil the requirement.

From a legal perspective, the disclosure obligation may be the same for both explicit and implicit requirements. However, implicit requirements, or having requirements embedded throughout many elements of law, may allow room for interpretation and introduce a degree of uncertainty with respect to the requirements. In the worst case, unintentional conflicts can emerge between requirements. Any confusion about disclosure rules can add an extra burden on enterprises trying to meet regulatory requirements and can hamper efforts to promote corporate transparency. Regulators can benefit from using the following guiding principle: the clearer the rules, the better.

Going forward it is anticipated that disclosure requirements will become increasingly more explicit for a number of reasons including the implementation of IFRS (International Financial Reporting Standards) for listed companies which includes direct and explicit disclosure requirements, as well as the increasing use of the ‘comply or explain’ approach coupled with explicit mandatory disclosure rules. For investors, analysts and regulators wishing to better understand the disclosure requirements of markets, legal transparency and more explicit disclosure requirements would appear advantageous.

2. General disclosure statements versus specific itemized disclosure

Another issue is the use of ‘general disclosure statements’ or general statements of compliance with an entire code.¹⁸ Such statements can be as simple as: “*Company X complied with the code of corporate governance.*” The problem with such statements is that they do not contain any detailed, useable information about company specific practices. (As such they are not considered a form of disclosure in UNCTAD’s research).

In contrast to general disclosure statements, some codes require specific itemized disclosure of individual corporate governance subjects. When implementing a ‘comply or explain’ regime, regulators should avoid the use of general statements of compliance, and should instead require itemized statements of compliance.

¹⁸ See in particular paragraph 58 of UNCTAD (2007) *Review of the implementation status of corporate governance disclosures: case study Pakistan* (TD/B/C.II/ISAR/CRP.5).

3. Regulation requiring vague or undefined information

Similar to the issue of general disclosure statements is the situation wherein a regulation requires vague or undefined information. For example, some regulations require that listed companies publish a "corporate governance report" or disclose "material information" on corporate governance without setting forth the content of such reports in any detail, or providing any criteria as to the materiality of information. As a result, disclosure regulations that contain a high-level of generality, or non-precise language, without specific reference to other relevant authoritative sources of reference, in most cases do not, in practice, require any specific information to be disclosed.

E. Conclusion

Complexities in rules and requirements can undermine the ability of companies to apply them. Difficulties accessing company disclosures relating to corporate governance can impinge investor decision making. Therefore establishing clear regulations and disclosure requirements and communicating these effectively is the first step to ensuring CG regulations and requirements are adhered to. The second step is corporate compliance and the third step is facilitating easy access to corporate disclosures for the general public, i.e. potential future investors.

To improve the usefulness of CG disclosures, regulators could avoid requiring vague or overly-generalized information, and work towards clarifying exactly what type of disclosures are required. For example, regulators can integrate within a CG code an annual questionnaire that specifically asks companies about their compliance with elements of the code. Similarly, regulators can issue a comprehensive listing of disclosure requirements to assist enterprises in preparing their reports, and help investors in understanding what information can be expected from companies. Both methods provide enterprises with detailed guidance on specific corporate governance disclosure requirements and would remove any confusion among companies about what they are expected to report, as well as providing an easy reference point for investors and other stakeholders. Regulators could also consider implementing such things as annual disclosure questionnaires or forms via the internet, and presenting the results of such disclosures in an orderly way via a searchable internet database. Such measures can increase the visibility and a further facilitate investor access to corporate governance data.

ANNEXES

Annex I. Methodological notes for chapter I

A. Prior studies

Corporate governance has been a major area of work for the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) since 1989.¹⁹ Since the 21st session of ISAR in 2004, the Group of Experts has requested an annual review of the status of corporate governance disclosure. This report is a consolidation of these multi-year studies and includes all or parts of the data and analysis found in the following annual reviews:

- *2007 Review of the Implementation Status of Corporate Governance Disclosures: An Inventory of Disclosure Requirements in 25 Emerging Markets* (TD/B/COM.2/ISAR/CRP.6)
- *2008 Review of the implementation status of corporate governance disclosures: an examination of reporting practices among large enterprises in 10 emerging markets* (TD/B/C.II/ ISAR/CRP.1)
- *2009 Review of the implementation status of corporate governance disclosures: an examination of reporting practices among large enterprises in 12 emerging markets* (TD/B/C.II/ ISAR/CRP.6)
- *2009 Review of the implementation status of corporate governance disclosures: an inventory of disclosure requirements in 24 emerging markets* (TD/B/C.II/ISAR/CRP.8)
- *2010 Review of the Implementation Status of Corporate Governance Disclosures: An Inventory of Disclosure Requirements in 21 Frontier Markets* (TD/B/C.II/ISAR/CRP.9)

Each of these annual reviews uses UNCTAD's *Guidance on Good Practices in Corporate Governance Disclosure*²⁰ (referred to throughout as the UNCTAD ISAR benchmark) as the benchmark against which to measure practice.

Note that these studies are cross-sectional studies, each of which captures a portion of the broader picture of corporate governance disclosure in emerging markets; they are not longitudinal studies and thus do measure trends over time.

B. Methodological notes for the analysis of mandatory disclosure requirements

The sample

The sample of markets included in the study is drawn from the MSCI Emerging Markets Index produced by Morgan Stanley Capital International (MSCI EM Index).²¹ At the time this multi-year research programme was initiated in 2007, the MSCI EM Index tracked approximately 850 publicly listed enterprises, which

¹⁹ E/C.10/AC.3/1989/6

²⁰ UNCTAD/ITE/ TEB/2006/3

²¹ MSCI is a commercial provider of financial information including equity indices tracking publicly listed enterprises around the world.

accounted for roughly 85% of the market capitalization of 25 emerging markets.²² It remains today among the most widely followed indices among institutional investors to gauge the performance of equity investments in emerging markets. Table AI.1 below provides a list of the 25 markets included in the study.

Table AI.1. The 25 markets included in the study

1. Argentina	14. Republic of Korea
2. Brazil	15. Malaysia
3. Chile	16. Mexico
4. China	17. Morocco
5. China, Taiwan Province of	18. Pakistan
6. Columbia	19. Peru
7. Czech Republic	20. Philippines
8. Egypt	21. Poland
9. Hungary	22. Russian Federation
10. India	23. South Africa
11. Indonesia	24. Thailand
12. Israel	25. Turkey
13. Jordan	

Sources of information

The analysis contained in this section was performed primarily using publicly available documents from the Internet but, in some cases, where publicly available information needed to be supplemented or clarified, direct feedback was solicited from regulators and/or stock exchange officials. All preliminary findings were submitted to regulators or stock exchange authorities in the respective markets for comment. A number of replies were received and comments and suggestions were duly incorporated into the findings.

²² During the time period of the study, beginning in 2007 and ending in 2009, the MSCI EM Index underwent revision resulting in the removal of Argentina, Jordan and Pakistan. Since data had already been collected for the purposes of this study, those countries were included in the analysis presented in chapter I sections B and C. For up to date information on the MSCI EM Index please see: www.msicibarra.com

C. Methodological notes for the analysis of company disclosure practices and compliance

The sample

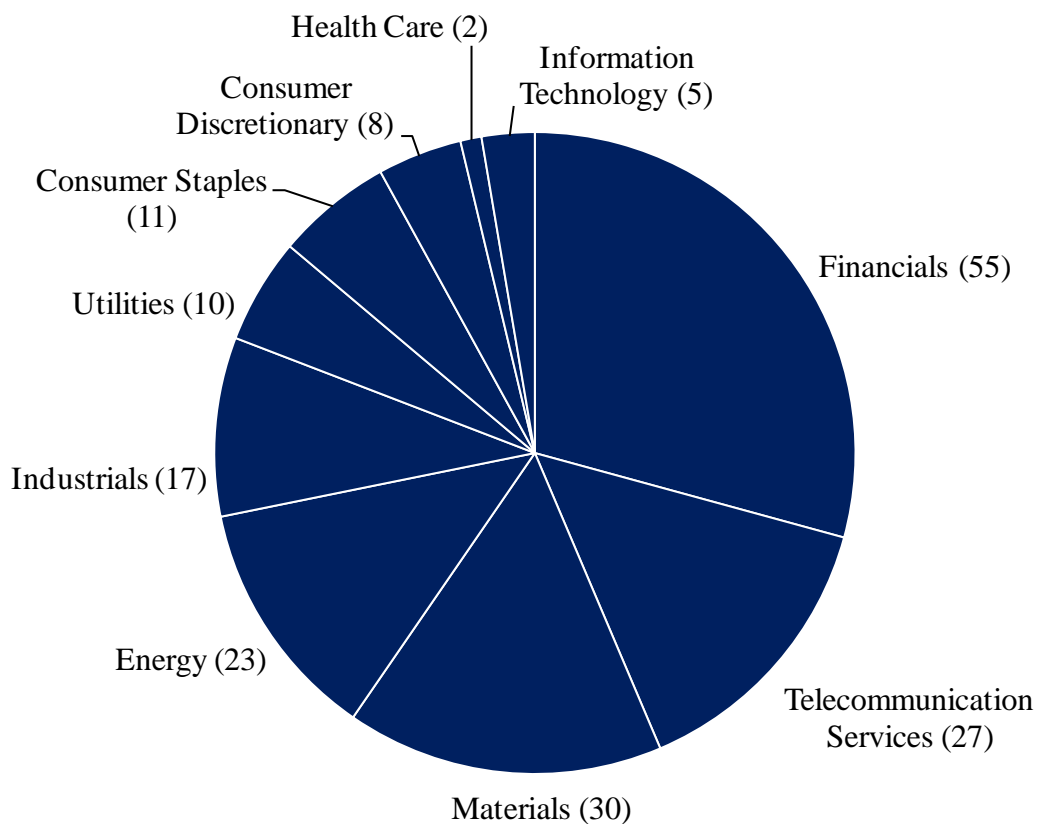
188 companies from 22 emerging markets were examined. The enterprises selected for this chapter were the 10 largest enterprises from each country (by MSCI EM Index weighting). Where countries had less than 10 enterprises in the index (Hungary, Peru, Argentina, Morocco, Czech Republic and Colombia), all of the enterprises for that country were included in the study.

In five countries, the selected enterprises represented 100% of the MSCI Index weighting. In an additional 10 countries the selected enterprises represented between 80% and 100% of the index weighting. In the remaining 10 countries, the companies represented between 45% and 77% of the country's MSCI EM Index weighting. The companies that form part of the study are thus highly representative of the MSCI Index as a whole and of the population of the largest companies within the local market. Additionally, they operate in a diversified range of industrial sectors and represent a broad picture of the economy.

Figure AI.1. A diverse range of industries examined

The 188 emerging market enterprises by sector²³

(Number of companies)



²³ Based on Global Industry Classification Standard (GICS). Source: www.msicibarra.com

The 188 emerging market enterprises described above form the core sample and primary focus of this section's analysis. To provide some context and comparison to developed market practices, a supplementary sample was created of the 10 leading enterprises in Japan the United Kingdom and the United States, three of the largest equity markets in the world. This supplementary sample is comprised of 10 of the largest enterprises by market capitalization from the Nikkei 225 (for Japan), and the top 10 enterprises by index weighting from the Standard & Poor's 500 index (for the United States) and the FTSE 100 (for the United Kingdom).²⁴

A complete list of enterprises included in the study is found in annex IV. In total, the company review considered over 10,000 individual data points.²⁵

Sources of information

The analysis in this section was conducted by examining a range of publicly available corporate reports including: annual reports, corporate governance reports, corporate responsibility reports, exchange filings, and other information available from financial databases (e.g. Thompson, Reuters, and Bloomberg) and company websites.²⁶

²⁴ The 10 selected enterprises from the Nikkei 225 were chosen from among the top 11 enterprises in that index to avoid reviewing an enterprise that is a subsidiary of another member of the list.

²⁵ Data points: 52 disclosures in the *ISAR benchmark* for each of the 218 enterprises in the primary and secondary samples.

²⁶ As this report is a review of publicly available information, contacting companies directly was not required. However, when questions of interpretation arose, every effort was made to allow enterprises to clarify their disclosures. In addition, all of the enterprises in the study were contacted to allow them to review the preliminary findings for their company and ensure the accuracy of those findings. Feedback was received from a number of enterprises and their comments and suggestions were incorporated into the final results.

Annex II. List of disclosure items in the UNCTAD ISAR benchmark

No.	Disclosure Item ²⁷
Ownership Structure and Exercise of Control Rights	
1	Ownership structure
2	Process for holding annual general meetings
3	Changes in shareholdings
4	Control structure
5	Control and corresponding equity stake
6	Availability and accessibility of meeting agenda
7	Control rights
8	Rules and procedures governing the acquisition of corporate control in capital markets.
9	Anti-takeover measures
Financial Transparency	
10	Financial and operating results
11	Critical accounting estimates
12	Nature, type and elements of related-party transactions
13	Company objectives
14	Impact of alternative accounting decisions
15	The decision-making process for approving transactions with related parties
16	Rules and procedures governing extraordinary transactions
17	Board's responsibilities regarding financial communications
Auditing	
18	Process for interaction with internal auditors
19	Process for interaction with external auditors
20	Process for appointment of external auditors
21	Process for appointment of internal auditors/scope of work and responsibilities
22	Board confidence in independence and integrity of external auditors
23	Internal control systems

²⁷ One benchmark item was removed from the 2008 and 2009 studies. Prior UNCTAD studies included 53 items. A disclosure on "Practices on related party transactions where control exists" (previously Item 15) was removed because of substantive overlap with another item "Nature, type and elements of related-party transactions" (Item 12). The items in this report have been renumbered accordingly, giving a total of 52 items. The ISAR benchmark is subject to periodic review and change.

No.	Disclosure Item ²⁷
24	Duration of current auditors
25	Rotation of audit partners
26	Auditors` involvement in non-audit work and the fees paid to the auditors
Corporate Responsibility and Compliance	
27	Policy and performance in connection with environmental and social responsibility
28	Impact of environmental and social responsibility policies on the firm`s sustainability
29	A code of ethics for the board and waivers to the ethics code
30	A code of ethics for all company employees
31	Policy on “whistle blower” protection for all employees
32	Mechanisms protecting the rights of other stakeholders in business
33	The role of employees in corporate governance
Board and Management Structure and Process	
34	Governance structures, such as committees and other mechanisms to prevent conflict of interest
35	“Checks and balances” mechanisms
36	Composition of board of directors (executives and non-executives)
37	Composition and function of governance committee structures
38	Role and functions of the board of directors
39	Risk management objectives, system and activities
40	Qualifications and biographical information on board members
41	Types and duties of outside board and management positions
42	Material interests of members of the board and management
43	Existence of plan of succession
44	Duration of director`s contracts
45	Compensation policy for senior executives departing the firm as a result of a merger or acquisition
46	Determination and composition of directors` remuneration
47	Independence of the board of directors
48	Number of outside board and management position directorships held by the directors
49	Existence of procedure(s) for addressing conflicts of interest among board members
50	Professional development and training activities
51	Availability and use of advisorship facility during reporting period
52	Performance evaluation process

Annex III. List of information sources by market

Argentina

- Stock Exchange Rules ("Reglamento de Cotización");
- National Securities Rules (Normas de la Comisión Nacional de Valores);
- Decree nr. 677/01;
- Corporate Law Nro. 19.500 (Ley de Sociedades Comerciales).

Brazil

- LAW No. 10.303, OF OCTOBER 31, 2001 (Corporate Law);
- Law no. 6.404 of December 15, 1976;
- CMV Instruction No 308 of May 14, 1999;
- CVM Instruction No 358 of January 3, 2002;
- CVM Instruction No 457 of July 13, 2007;
- Corporate Governance Code.

Chile

- Characteristics of the Chilean Stock Market, Bolsa de Comercio de Santiago, 2003;
- Questionnaire of the Santiago Stock Exchange, Serie Institucional N° 3, Bolsa de Comercio de Santiago, 1999;
- Law No. 18,045 (Securities Market Law);
- Law No. 18,046 (Corporations Law).

China

- Rules Governing the Listing of Stocks on Shanghai Stock Exchange (Revised in 2008);
- Provisional Code of Corporate Governance for Securities Companies;
- Securities Law of the People's Republic of China (Revised in 2005);
- Company Law of the People's Republic of China (Revised in 2005).

China, Taiwan Province of

- Corporate Governance Best-Practice Principles for TSEC/GTSM Listed Companies;
- Corporate Governance Best-Practice Principles for TSEC/GTSM Listed Companies;
- Taiwan Stock Exchange Corporation Rules Governing Information Reporting by Listed Companies (amendment in Dec 2008);
- Business Mergers and Acquisitions Law;
- Co., Ltd. Self-Regulatory Rules on Disclosure of Merger and Acquisition Information;
- Company Act.

Columbia

- Código de Comercio;
- Código de mejores prácticas corporativas: Código País.

Czech Republic

- Section III of the Exchange Rules of the Prague Stock Exchange;
- Act on Undertaking on the Capital Market;
- Act on Auditors;
- Commercial Code No. 513/1991 (“Obchodní zákoník”).

Egypt

- Egyptian Code of Corporate Governance (2005);
- Listing Rules of the Cairo Alexandria Stock Exchange;
- Capital Market Law (second edition of 1998);
- Auditing Standards;
- Accounting Standards.

Hungary

- Directive 2004/109/EC of December 15, 2004;
- Regulations of the Budapest Stock Exchange for listing, continued trading and disclosure;
- Corporate Governance Code;
- Act IV of 2006 on Business Associations.

India

- Listing Agreement for Equity, Bombay Stock Exchange;
- Report of the Kumar Mangalam Birla Committee on Corporate Governance;
- Securities and Exchange Board of India Notification.

Indonesia

- Regulation Number I-A Listing Requirements, Jakarta Stock Exchange;
- Regulation Number I-E Concerning the Obligation of Information Submission, Jakarta Stock Exchange;
- Bapepam Rules Number VIII.G.11;
- Bapepam Rules Number VIII.G.2;
- Bapepam Rules Number IX.E.1;
- Bapepam Rules Number IX.E.2;
- Report on the Observance of Standards and Codes (ROSC).

Israel

- Company Law 5759-1999;
- The Securities Law;
- Identifying a principal shareholder in a reporting corporation;
- IFRS.

Japan

- Security Listing Regulations, Tokyo Stock Exchange (TSE);
- Principles of Corporate Governance for Listed Companies, TSE;
- Criteria of Listing, TSE;
- Listing Guides for Foreign Companies, TSE;
- Companies Act;
- Rules on Timely Disclosure of Corporate Information by Issuer of Listed Security and the Like, TSE;
- New Legislative Framework for Investor Protection, Financial Services Agency;
- Law Concerning the Promotion of Business Activities with Environmental Consideration by Specified Corporations, Ministry of the Environment;
- The Whistle Blower Protection Act.

Jordan

- Directives for Listing Securities on the Amman Stock Exchange, 2004;
- The Securities Law, 2002;
- The Companies Law No. 22 of 1997;
- JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

Republic of Korea

- Stock Market Disclosure Regulation, 2007, KRX;
- Stock Market Operational Guidelines on Fair Disclosure, 2007, KRX;
- Stock Market Listing Regulation, 2008, KRX;
- Enforcement Rule of Stock Market Listing Regulation, 2008, KRX;
- Commercial Act, Republic of Korea.

Malaysia

- Listing Requirements for Main Board and Second Board, KLSE;
- Malaysian Code on Corporate Governance, Securities Commission Malaysia.

Mexico

- Ley General de Sociedades Mercantiles;
- Ley del Mercado de valores;
- Code of Best Corporate Practices, 2006, Bolsa Mexicana de Valores (BMV);
- Corporate Governance Code for Mexico, 2002, BMV;
- Code of Professional Ethics of the Mexican Stock Exchange Community, BMV.

Morocco

- General Rules of the Stock Exchange (Casablanca-Bourse);
- Loi N° 17-95 Relative aux Societes Anonymes.

Pakistan

- General Rules of the Karachi Stock Exchange;
- Listing Regulations of the Karachi Stock Exchange;
- Code of Corporate Governance, Securities and Exchange Commission of Pakistan.

Peru

- Reglamento de inscripción y exclusión de valores mobiliarios en la Bolsa de Valores de Lima (Regulation of Inscription and exclusion of values in the Stock Exchange of Lima);
- Ley General de las Sociedades (General Societies Law);
- Reglamento de Hechos de Importancia, Información Reservada y Otras Comunicaciones (Regulation of Important Facts, Reserved Information and Other Communications) o Reglamento de Propiedad Indirecta, Vinculación y Grupos Económicos;
- Reglamento de Propiedad Indirecta, Vinculación y Grupos Económicos (Regulation of Indirect Property, Linkages and Economic Groups);
- Reglamento de Oferta Pública de Adquisición y de Compra de Valores por Exclusión (Regulation of Public Supply of Acquisition and Purchase of Values by Exclusion);
- Reglamento de Información Financiera y Manual para la Preparación de Información Financiera (Regulation of Financial Information and Manual for the Preparation of Financial Information);
- Manual para la Preparación de Memorias Anuales y Normas Comunes para la determinación del contenido de Documentos Informativos (Manual for the Preparation of Annual Reports and Common Norms for the determination of the Intelligence document content).

Philippines

- The Corporation Code of the Philippines;
- Financial Disclosure Checklist (Philippines Securities and Exchange Commission);
- The Securities Regulation Code;
- Philippines Code of Corporate Governance.

Poland

- Commission Recommendation of February 15, 2005;
- Best Practices for Warsaw Stock Exchange Listed Companies, 2007;
- WSE Listing Regulations;
- Act of July 29, 2005 on Public Offerings.

Russian Federation

- Corporate Governance Code;
- Law on Securities Markets;
- Russian Civil Code.

South Africa

- Stock exchange listing rules for the Johannesburg Stock Exchange;
- The King Report III.

Thailand

- Disclosure Manual, 2007, Stock Exchange of Thailand (SET);
- Principles of Good Corporate Governance for Listed Companies, 2006, SET;
- Listed Companies Handbook, 2009;
- Listing of Ordinary Shares or Preferred Shares as Listed Securities, 2001 (Amended in 2009).

Turkey

- Commercial Code;
- Communiqué on Principles Regarding Public Disclosure of Material Events (Capital Markets Board of Turkey);
- Communiqué amending the communiqué regarding independent auditing in capital markets;
- The Capital Markets Law, 2007.

United Kingdom

- Disclosure Rules and Transparency Rules, Finance Service Association (FSA);
- FSA Handbook;
- The City Code on Takeovers and Mergers, The Panel on Takeovers and Mergers;
- Alternative Investment Management;
- The Combined Code on Corporate Governance, 2008.

United States

- Security Act, 1933;
- Listed Companies Manual, NYSE;
- Sarbanes-Oxley Act;
- Standards relating to listed company audit committees;
- Regulation S-K, SEC.

Annex IV. List of enterprises included in the study by market

Argentina

- Banco Macro B
- Petrobras Energia Part B
- Siderar A
- Telecom Argentina B

Brazil

- Ambev PN
- Banco Bradesco PN
- Banco Itau Hldg Fin. PN
- Companhia Siderurgica Nacional
- Gerdau PN
- Petrobras PN
- Tele Norte Leste Part. PN
- Unibanco
- Usiminas PNA
- Vale do Rio Doce PNA

Chile

- Banco Santander Chile
- Cencosud
- CMPC (Empresas)
- Colbun
- Empresas Copec
- Endesa (Chile)
- Enersis
- Entel
- LAN Airlines
- Soquimich B

China

- China Communications CONST-H
- China Construction BK H
- China Life Insurance H
- China Mobile
- China Petro & Chem H
- China Shenhua Energy H
- CNOOC
- ICBC H
- Petrochina Co. H
- Ping An Insurance H

Colombia

- Bancolombia
- Cementos Argos
- Ecopetrol
- Interconexion Electrica
- Suramericana de Inversiones

Czech Republic

- Central European Media
- Ceske energeticke. Zavody (CEZ)
- Komerčni banka
- Telefonica o2 Czech Republic
- Unipetrol

Egypt

- Commercial International Bank
- EFG-Hermes Holding
- Egypt Kuwait Holding
- Egyptian Mobile Services
- El Ezz Steel Rebars
- El Sewedy Cables Holding Co.
- Orascom construction Industries
- Orascom Telecom Holding
- Sidi Kerir Petrochemicals
- Telecom Egypt

Hungary

- Magyar Telekom
- MOL Magyar Olaj-es Gazipari Nyrt.
- OTP bank
- Richter Gedeon

India

- Bharat Heavy Electricals
- HDFC Bank
- Housing Dev Finance Corp
- ICICI Bank
- Infosys Technologies
- ITC
- Larsen & Toubro
- Oil & Natural Gas Corp
- Reliance Communication
- Reliance Industries

Indonesia

- Astra International
- Bank Central Asia
- Bank Mandiri
- Bank Rakyat Indonesia
- Bumi Resources
- Indosat
- Int'l nickel Indonesia
- Perusahaan Gas Negara
- Telekomunikasi Indonesia
- United Tractors

Israel

- Bank Hapoalim
- Bank Leumi le-Israel
- Bezeq Israel Telecom
- Check Point Software
- Israel Chemicals
- Israel Corp
- Makhteshim Agan Industries
- Nice Systems
- Partner Communications
- Teva Pharmaceutical Industries

Japan

- Canon Inc.
- Honda Motor Co., Ltd.
- Mitsubishi Corporation
- Mitsubishi UFJ Financial Group
- Nippon Telegraph & Telephone
- Panasonic Corporation
- Sumitomo Mitsui Financial Group Inc.
- Takeda Pharmaceutical Company Limited
- The Tokyo Electric Power Co Inc
- Toyota Motor Corporation

Republic of Korea

- Hyundai Heavy Industries
- Hyundai Motor Co
- Kepco Korea Electric Power Corp.
- Kookmin Bank
- KT&G Corp (Korea Tobacco)
- LG Electronics
- Posco
- Samsung Electronics Co
- Shinhan Financial Group
- Shinsegae Co

Malaysia

- Bumiputra-Commerce Holdings
- Genting
- IOI Corp
- Kuala Lumpur Kepong
- Malayan Banking
- MISC Fgn
- Public Bank Fgn
- Sime Darby
- Telekom Malaysia
- Tenaga Nasional

Mexico

- America Movil L
- Cemex CPO
- Empresas ICA
- Femsa
- Grupo Financiero Banorte O
- Grupo Mexico B
- Grupo Televisa CPO
- Industrias Penoles
- Telefonos de Mexico
- Wal-mart de Mexico

Morocco

- Attijariwafa Bank
- BMCE Bank
- CGI
- Douja Promotion Groupe Addoha
- Maroc Telecom
- (ONA) Omnium Nord Africain

Peru

- Compania de Minas Buenaventura
- Compania Minera Milpo
- Credicorp
- Southern Copper C

Philippines

- Ayala Corporation
- Ayala Land
- Bank Of Philippine Islands
- The Energy Development Corporation
- Globe Telecom
- Jollibee Foods Corporation
- Manila Electric Company
- Phil Long Distance Telephone
- SM Investments
- SM Prime Holdings

Poland

- Asseco Poland
- Bank Pekao
- Bank Zachodni WBK
- Globe Trade Centre
- KGHM Polska Miedz
- PBG
- PKO Bank Polski
- Polish Oil & Gas
- Polski Koncern Naf Orlen
- TP SA Telekom Polska

Turkey

- Akbank
- Anadolu Efes Biracilik
- Enka Insaat ve Sanayi
- Eregli Demir ve Celik Fabrikalari
- Tupras Turkiye Petrol
- Turk Telekomunikasyon
- Turkcell Iletisim Hizmet
- Turkiye Garanti Bankasi
- Turkiye Is Bankasi
- Yapi ve Kredi Bankasi

Russian Federation

- Gazprom
- Lukoil Holding
- Mobile Telesys
- Norilsk Nickel
- Novatek GDR
- Sberbank Russia
- Surgutneftegaz
- Tatneft
- Unified Energy
- VimpelCom

United Kingdom

- Anglo American
- Astra Zeneca
- Barclays
- BP
- GlaxoSmithKline
- HSBC
- Rio Tinto
- Royal Bank of Scotland Group
- Royal Dutch Shell
- Vodafone Group

South Africa

- Anglo Platinum
- Anglogold Ashanti
- FirstRand
- Gold Fields
- Impala Platinum Holdings
- MTN Group
- Naspers
- Remgro
- Sasol
- Standard Bank Group

United States

- AT&T Inc
- Bank of America Corporation
- Chevron Corporation
- Exxon Mobil Corporation
- General Electric
- International Business Machines (IBM)
- Johnson & Johnson
- JP Morgan Chase & Co
- Microsoft Corporation
- Procter & Gamble

Thailand

- Advanced Info Service
- Bangkok Bank Fgn
- Bank of Ayudhya
- Banpu
- CP ALL PCL
- Kasikornbank Fgn
- PTT
- PTT Exploration & Production
- Siam Cement
- Siam Commercial Bank

Annex V. Number of enterprises that disclose by market

Notes: Each square shows: the number of enterprises disclosing each UNCTAD *ISAR benchmark* item / number of enterprises studied in the market.

Countries are ordered from left to right in order of total number of disclosure items required (maximum to minimum).

Shaded square indicate that the disclosure item is required for listed enterprises in that country.

Disclosure items from the UNCTAD *ISAR benchmark* are numbered 1 through 52. The name of individual disclosure items can be found in annex II.

Disclosure Item	South Africa	Philippines	Hungary	Malaysia	Brazil	Thailand	India	Russian Federation ²⁸	Poland	Israel	Indonesia	China	Egypt	Republic of Korea	Peru	Argentina	Mexico	Morocco	Czech Republic	Turkey	Chile	Colombia
Ownership Structure and Exercise of Control Rights																						
1	10/ 10	10/ 10	4/ 4	10/ 10	9/ 10	10/ 10	10/ 10	8/ 10	10/ 10	8/ 10	9/ 10	8/ 10	6/ 10	7/ 10	4/ 4	4/4	8/ 10	6/ 6	5/ 5	10/ 10	10/10	5/ 5
2	3/ 10	7/ 10	4/ 4	9/ 10	6/ 10	10/ 10	6/ 10	10/ 10	10/ 10	6/ 10	6/ 10	8/ 10	5/ 10	8/ 10	4/ 4	4/4	6/ 10	4/ 6	5/ 5	10/ 10	5/10	5/ 5
3	7/ 10	7/ 10	3/ 4	7/ 10	7/ 10	3/ 10	8/ 10	6/ 10	8/ 10	5/ 10	9/ 10	7/ 10	1/ 10	7/ 10	2/ 4	3/4	5/ 10	2/ 6	3/ 5	8/ 10	9/10	3/ 5
4	6/ 10	10/ 10	4/ 4	10/ 10	9/ 10	10/ 10	8/ 10	8/ 10	10/ 10	8/ 10	6/ 10	9/ 10	5/ 10	7/ 10	4/ 4	4/4	7/ 10	6/ 6	5/ 5	10/ 10	10/ 10	5/ 5
5	4/ 10	9/ 10	4/ 4	10/ 10	10/ 10	10/ 10	5/ 10	8/ 10	9/ 10	8/ 10	5/ 10	9/ 10	3/ 10	8/ 10	4/ 4	4/4	7/ 10	4/ 6	5/ 5	10/ 10	7/ 10	3/ 5
6	9/ 10	10/ 10	4/ 4	10/ 10	8/ 10	10/ 10	9/ 10	8/ 10	10/ 10	7/ 10	7/ 10	9/ 10	5/ 10	9/ 10	4/ 4	4/4	8/ 10	5/ 6	5/ 5	9/ 10	8/ 10	4/ 5
7	6/ 10	10/ 10	4/ 4	5/ 10	7/ 10	10/ 10	6/ 10	10/ 10	9/ 10	6/ 10	4/ 10	8/ 10	3/ 10	4/ 10	4/ 4	4/4	7/ 10	4/ 6	5/ 5	10/ 10	8/ 10	5/ 5
8	9/ 10	2/ 10	4/ 4	3/ 10	9/ 10	4/ 10	4/ 10	9/ 10	4/ 10	5/ 10	8/ 10	8/ 10	1/ 10	4/ 10	2/ 4	2/4	8/ 10	1/ 6	3/ 5	2/ 10	6/ 10	2/ 5
9	0/ 10	2/ 10	3/ 4	2/ 10	1/ 10	3/ 10	0/ 10	1/ 10	1/ 10	1/ 10	1/ 10	1/ 10	1/ 10	1/ 10	1/ 4	3/4	2/ 10	1/ 6	4/ 5	1/ 10	3/ 10	1/ 5

²⁸ In 2009 Item 49 was listed as a required item by the Russian Federation but upon further revision this has been corrected.

Disclosure Item	South Africa	Philippines	Hungary	Malaysia	Brazil	Thailand	India	Russian Federation ²⁸	Poland	Israel	Indonesia	China	Egypt	Republic of Korea	Peru	Argentina	Mexico	Morocco	Czech Republic	Turkey	Chile	Colombia
Financial Transparency																						
10	10/10	10/10	4/4	10/10	10/10	10/10	10/10	10/10	10/10	10/10	10/10	10/10	10/10	10/10	4/4	4/4	10/10	6/6	5/5	10/10	10/10	5/5
11	8/10	10/10	4/4	10/10	8/10	10/10	9/10	9/10	10/10	10/10	10/10	9/10	7/10	7/10	4/4	4/4	8/10	4/6	5/5	10/10	10/10	5/5
12	10/10	10/10	3/4	10/10	9/10	10/10	10/10	9/10	10/10	9/10	9/10	9/10	8/10	9/10	4/4	3/4	10/10	4/6	5/5	10/10	10/10	5/5
13	10/10	10/10	4/4	10/10	10/10	10/10	10/10	10/10	9/10	10/10	10/10	10/10	10/10	10/10	4/4	4/4	10/10	5/6	5/5	10/10	10/10	5/5
14	9/10	10/10	4/4	10/10	5/10	10/10	5/10	8/10	9/10	10/10	8/10	7/10	4/10	5/10	3/4	3/4	9/10	4/6	5/5	7/10	8/10	3/5
15	3/10	7/10	1/4	6/10	7/10	9/10	3/10	7/10	6/10	9/10	4/10	4/10	1/10	1/10	4/4	2/4	9/10	0/6	2/5	1/10	9/10	2/5
16	5/10	1/10	2/4	4/10	4/10	6/10	6/10	9/10	9/10	7/10	5/10	5/10	4/10	6/10	1/4	2/4	8/10	2/6	5/5	10/10	5/10	5/5
17	9/10	10/10	2/4	10/10	10/10	10/10	9/10	8/10	6/10	7/10	10/10	9/10	3/10	4/10	3/4	4/4	9/10	1/6	4/5	6/10	9/10	5/5
Auditing																						
18	10/10	9/10	4/4	10/10	9/10	10/10	10/10	8/10	6/10	7/10	8/10	7/10	7/10	1/10	4/4	3/4	6/10	4/6	5/5	10/10	6/10	5/5
19	9/10	9/10	4/4	10/10	7/10	10/10	9/10	8/10	5/10	3/10	9/10	7/10	6/10	3/10	4/4	3/4	8/10	3/6	5/5	8/10	6/10	3/5
20	7/10	10/10	4/4	9/10	8/10	10/10	10/10	9/10	10/10	6/10	7/10	8/10	5/10	6/10	4/4	3/4	6/10	4/6	5/5	9/10	9/10	4/5
21	6/10	8/10	3/4	4/10	4/10	10/10	6/10	6/10	6/10	7/10	2/10	2/10	6/10	2/10	4/4	4/4	1/10	2/6	5/5	8/10	5/10	5/5
22	10/10	4/10	1/4	8/10	8/10	7/10	2/10	6/10	8/10	5/10	7/10	3/10	1/10	3/10	0/4	1/4	5/10	0/6	0/5	4/10	0/10	0/5
23	7/10	10/10	4/4	10/10	10/10	10/10	9/10	8/10	7/10	6/10	10/10	10/10	6/10	7/10	4/4	4/4	9/10	4/6	5/5	10/10	7/10	5/5
24	1/10	10/10	4/4	9/10	3/10	10/10	9/10	3/10	7/10	1/10	8/10	5/10	4/10	4/10	4/4	3/4	2/10	4/6	3/5	7/10	4/10	4/5
25	2/10	7/10	1/4	0/10	2/10	3/10	0/10	0/10	2/10	1/10	1/10	0/10	2/10	1/10	3/4	1/4	3/10	0/6	2/5	0/10	2/10	3/5
26	4/10	8/10	4/4	9/10	3/10	7/10	9/10	4/10	6/10	5/10	4/10	7/10	0/10	4/10	4/4	3/4	6/10	2/6	5/5	2/10	5/10	2/5

Disclosure Item	South Africa	Philippines	Hungary	Malaysia	Brazil	Thailand	India	Russian Federation ²⁸	Poland	Israel	Indonesia	China	Egypt	Republic of Korea	Peru	Argentina	Mexico	Morocco	Czech Republic	Turkey	Chile	Colombia
Corporate Responsibility and Compliance																						
27	9/10	10/10	4/4	9/10	10/10	10/10	7/10	10/10	9/10	7/10	8/10	8/10	9/10	9/10	4/4	4/4	9/10	5/6	5/5	10/10	10/10	5/5
28	6/10	5/10	4/4	8/10	7/10	7/10	7/10	5/10	7/10	4/10	8/10	5/10	3/10	8/10	3/4	2/4	5/10	2/6	4/5	6/10	5/10	4/5
29	2/10	6/10	2/4	4/10	4/10	10/10	10/10	2/10	2/10	4/10	7/10	2/10	2/10	6/10	4/4	4/4	8/10	1/6	2/5	3/10	5/10	3/5
30	10/10	6/10	3/4	7/10	9/10	10/10	7/10	5/10	4/10	6/10	8/10	4/10	3/10	9/10	4/4	3/4	9/10	1/6	4/5	7/10	6/10	5/5
31	6/10	2/10	2/4	2/10	6/10	6/10	8/10	1/10	2/10	4/10	5/10	2/10	3/10	4/10	4/4	3/4	7/10	0/6	2/5	2/10	4/10	2/5
32	9/10	8/10	3/4	9/10	10/10	10/10	9/10	7/10	4/10	4/10	10/10	5/10	6/10	10/10	4/4	4/4	8/10	2/6	4/5	9/10	8/10	5/5
33	3/10	0/10	4/4	6/10	8/10	0/10	7/10	3/10	3/10	4/10	10/10	4/10	1/10	8/10	0/4	0/4	8/10	0/6	4/5	0/10	0/10	0/5
Board and Management Structure and Process																						
34	10/10	9/10	4/4	10/10	10/10	10/10	10/10	9/10	9/10	9/10	10/10	9/10	6/10	10/10	4/4	4/4	9/10	4/6	5/5	10/10	9/10	5/5
35	9/10	9/10	4/4	10/10	10/10	10/10	8/10	6/10	10/10	6/10	10/10	9/10	6/10	4/10	4/4	4/4	6/10	4/6	5/5	10/10	10/10	5/5
36	10/10	10/10	4/4	10/10	10/10	10/10	10/10	10/10	10/10	9/10	10/10	10/10	9/10	10/10	4/4	4/4	10/10	6/6	5/5	10/10	10/10	5/5
37	10/10	9/10	4/4	9/10	10/10	10/10	10/10	8/10	9/10	7/10	10/10	9/10	6/10	10/10	4/4	4/4	9/10	4/6	5/5	10/10	9/10	5/5
38	9/10	9/10	4/4	10/10	9/10	10/10	9/10	10/10	10/10	7/10	10/10	10/10	5/10	10/10	4/4	4/4	9/10	3/6	5/5	10/10	10/10	5/5
39	10/10	10/10	4/4	10/10	10/10	10/10	9/10	8/10	10/10	10/10	10/10	10/10	8/10	5/10	4/4	4/4	6/10	4/6	5/5	10/10	10/10	5/5
40	8/10	10/10	4/4	10/10	8/10	10/10	10/10	7/10	10/10	9/10	10/10	10/10	8/10	6/10	4/4	3/4	8/10	2/6	5/5	8/10	5/10	5/5
41	9/10	10/10	4/4	10/10	9/10	10/10	10/10	6/10	9/10	9/10	7/10	10/10	8/10	6/10	4/4	3/4	8/10	1/6	4/5	8/10	5/10	5/5
42	10/10	6/10	4/4	10/10	3/10	10/10	10/10	5/10	7/10	3/10	7/10	8/10	0/10	6/10	4/4	4/4	7/10	3/6	4/5	5/10	8/10	5/5
43	9/10	6/10	2/4	9/10	4/10	10/10	6/10	1/10	2/10	1/10	6/10	7/10	4/10	6/10	4/4	4/4	2/10	2/6	4/5	9/10	5/10	5/5

44	7/10	9/10	4/4	10/10	10/10	10/10	10/10	9/10	10/10	6/10	10/10	10/10	3/10	8/10	4/4	4/4	7/10	2/6	5/5	10/10	8/10	5/5
45	0/10	3/10	0/4	0/10	0/10	0/10	0/10	1/10	0/10	1/10	0/10	1/10	0/10	0/10	1/4	1/4	0/10	0/6	5/5	0/10	0/10	0/5
46	10/10	10/10	4/4	10/10	3/10	10/10	10/10	7/10	10/10	7/10	10/10	10/10	4/10	6/10	4/4	4/4	3/10	4/6	5/5	7/10	10/10	5/5
47	10/10	10/10	4/4	10/10	7/10	10/10	10/10	6/10	7/10	6/10	4/10	10/10	5/10	10/10	4/4	4/4	9/10	1/6	2/5	6/10	8/10	5/5
48	10/10	10/10	4/4	10/10	9/10	10/10	10/10	6/10	9/10	9/10	6/10	10/10	8/10	7/10	4/4	3/4	8/10	1/6	4/5	8/10	5/10	5/5
49	4/10	6/10	4/4	8/10	4/10	10/10	9/10	5/10	8/10	4/10	6/10	4/10	2/10	4/10	4/4	3/4	6/10	2/6	4/5	6/10	8/10	5/5
50	7/10	8/10	2/4	10/10	3/10	9/10	6/10	4/10	2/10	2/10	6/10	2/10	1/10	1/10	1/4	2/4	2/10	0/6	1/5	3/10	1/10	2/5
51	7/10	5/10	3/4	10/10	6/10	10/10	5/10	2/10	3/10	4/10	5/10	5/10	3/10	7/10	4/4	4/4	8/10	0/6	3/5	5/10	5/10	5/5
52	10/10	7/10	4/4	9/10	3/10	10/10	9/10	2/10	6/10	3/10	7/10	9/10	3/10	6/10	3/4	3/4	8/10	0/6	4/5	2/10	7/10	5/5
Disclosure Item	South Africa	Philippines	Hungary	Malaysia	Brazil	Thailand	India	Russian Federation²⁸	Poland	Israel	Indonesia	China	Egypt	Republic of Korea	Peru	Argentina	Mexico	Morocco	Czech Republic	Turkey	Chile	Colombia

KEY FINDINGS AND RECOMMENDATIONS OF THE REPORT

- 1) A policy challenge faced in many countries is how to make disclosure based regulation work. The findings of this report indicate a three-fold approach:
 - a. *increase the number of required items;*
 - b. *increase the clarity of disclosure regulations; and*
 - c. *ensure that the information reaches the general public.*
- 2) There are troubling gaps in the disclosure of Audit related issues with some of the key UNCTAD *ISAR benchmark* disclosure items in this category largely missing both in regulation and in company practice. *Given the importance of auditing disclosure in assessing the quality of a company's governance, regulators should consider new disclosure requirements in line with international best practices.*
- 3) More disclosure is almost always welcomed by investors, but there are good arguments for avoiding excessive disclosure: reporting can be costly and not all information is useful information. *Regulators should focus on a core set of mandatory disclosure items.*
- 4) Companies do not always comply with mandatory disclosure rules. In most countries direct enforcement by government of disclosure rules is impractical: there are too many individual disclosure points to check. *Policy makers should consider focusing on a smaller set of leading enterprises, or conducting random reviews. Periodic checks, combined with moderate fines, could send a signal that regulators take disclosure seriously.*
- 5) Regulators cannot do everything; investors must play an active role as market participants and communicate with investee companies about disclosure gaps. *Policy makers should promote responsible investment and active ownership by investors. Investors should be encouraged to engage in dialogue with companies to ensure they meet regulatory requirements and voluntary best practices.*



UNITED NATIONS