Explanatory notes

The aim of the expert survey is to investigate the evolution of/changes in corporate governance structure in a given jurisdiction in the last 20 years. The focus would be on listed companies and as such the primary sources of legal regulations would be:

(1) the listing agreements and stock exchange regulations (in a country with more than one stock exchanges with different regulations please select the exchange with the highest market capitalisation),

(2) company law codes,

(3) corporate governance code (mandatory and/or optional) and

(4) any other commercial law codes.

Please note that the questionnaire is in a general format to accommodate different jurisdictions, there would be certain sui generis variation in your country and if there is any please state so in the comments column I giving as much information as possible. Please provide the relevant section number in column C of the questionnaire and please quote the entire sections of the relevant law/regulation in column I (of both the present 2014 regulation as well as amended regulation between 1994-2014, if any). If electronic copies of the primary sources are available in English please attach them along with your filled up questionnaire.

*Is there central depository for registration of shares?* – the depository has to be centralised i.e. there can be one or more depositories from which shares can be traded across many share markets across the country, check if registration of shares with this central depository is optional or compulsory. Please state in the comments if there are different depositories for different share markets (in case there are more than one share market).

*Are shares held in an electronic dematerialised format ?* check if shares across all classes are mandatorily held in an electronic dematerialised format (please state if some shares like say common equity shares are to be mandatorily held in dematerialised form while others like say preference shares are exempted) or if it is optional across all classes or if there is no provision.

*Are shares of listed companies fully transferable without any restrictions at the discretion of the company?* - Some jurisdiction may have some regulatory restrictions on transfer like lock in period for promoters, restriction on certain classes of shares like preference shares, partially paid up equity shares etc. In majority of such cases these non-transferable shares are not allowed to be traded in the open market (though sometimes trade is allowed in private markets). Therefore to allow uniformity, only those shares which can be traded in open market (like common equity share) need to be fully transferable. Check if shares of listed companies which can be traded in open market are fully transferable or if there are restrictions at the discretion of companies. If there are restrictions on transferability please state if there is a non-binding regulation which calls for full transferability of shares.

*Are foreign nationals treated at par with the citizens of the host country on owning and transferring of shares?* Please check the stock exchange regulation and the company law codes to find if certain restrictions are placed on foreign nationals on owning and transferring of shares if there are restrictions please state them in the legal reference or source column.

*Are foreign institutional investors treated at par with the institutional investors of the host country?* – Please check if there are restrictions on ownership and transfer of shares for foreign institutional investors vis-à-vis institutional investors of the host country. If there are restrictions please state them in the legal reference or source column. Generally there are restrictions placed on bulk ownership in sensitive industries linked with national security etc.

*Are annual reports sent to shareholders and a central registry?* Please check the frequency of reports is it half yearly and/or annual reports and if it is mandatorily sent to shareholders and/or a central registry or if it is optional

Check if it is statutorily mandated that annual report includes at least five of the following: a. balance sheet, b. profit and loss statement, c. cash flow statement, d. statement of changes in ownership equity, e. notes to the financial statements and f. an audit report or if it is recommended under a non-binding code or if there is no recommendation. Please check for each individual component

Check if financial reporting is based on International Financial Reporting Standards (IFRS) and International Standards on Auditing (ISA), please check if it is mandatory under a regulation or recommended under a non-binding code or if there is no recommendation.

*Are any class of shareholders allowed to attend the shareholder's meeting and take part in discussion?* – check if the law explicitly mandates that any class of shareholders are allowed to attend the meeting and take part in discussion or if it is a common practice backed by a non-binding code

*Are proxy votes allowed and authorisation renewed every year by default? –* check if a law mandates that a proxy form to vote on the items on the agenda accompanies notice to the meeting or if shareholders may vote by mail on the items on the agenda, or if it recommended by a non-binding code or is a general practice, or if under law/non-binding regulation/practice absent shareholders vote (or shareholders who have not returned the proxy form/postal ballot) is given to mangers by default.

*Is cross border proxy voting allowed?* – Please check if cross border proxy voting is allowed with/without any restrictions

*Do shareholders approve amount of dividend to be paid?* Check if shareholders can approve amount of dividend to be paid with a simple majority and if it binding or if it is recommended under a non-binding regulation or if board of director decides the amount of dividend to be paid with no shareholder input/approval.

*Supermajority for extraordinary transaction* – please check if it is mandated by rule or statute that 75% or more shareholders need to agree for each of the extraordinary transactions please state if there is a non-binding regulation with a comply or explain architecture or if it is a common practice or if there is no provision. Please check for each individual component

*Does performance related pay form a portion of the executive remuneration?* - Check if under law (thus compulsory) a fixed/variable portion of executive remuneration is performance linked or if it is a common practice (but not backed by law) or recommended under a non-binding corporate governance code

*Does executive remuneration require shareholder approval?* - if shareholder approval is required; check if it is mandatory/binding or advisory

*Are there regulations relating to stock option plans and stock linked pension funds?* Check if there are statutory/mandatory rules relating to stock option plans and stock linked pension funds exist or if there are non-binding code or regulation

*Do golden shares exist?* Golden share would be preference shares which have voting rights 100x or more than its equity. Check if a non-binding code discourages the existence of methods of disproportional control like multiple-voting and nonvoting ordinary shares, pyramid schemes or does not allow firms to set a maximum number of votes per shareholder irrespective of the number of shares owned. Ordinary preference shares are not golden shares

*Promoters -*  Promoters/promoter group would refer to a person or a group of person who have control over the company (irrespective of quantum of their shareholding)

*Are pre-offer and post-offer takeover defenses allowed?* The question on takeover defences is divided into two parts - Pre-offer defences like poison pill, automatic rights issue, golden parachute for executives, staggered board etc. are arranged before a bid is made for the control of the company. On the other hand defences like targeted repurchase bid (coupled with white knight etc.), asset restructuring (crown jewel defence, scorched earth policy etc.), capital restructuring (issue of new shares to existing shareholders), greenmailing are usually set in motion once the takeover bid has already been made and is classified as post-offer takeover defence. Check if pre-offer takeover defences are statutorily banned or if there is a non-binding code which specifically discourages directors from using pre-offer defences or if there is no regulation; Please repeat the same process for post-offer takeover defences as well. Check if there is a non-binding regulation which may encourage or discourage takeover defences.

*Are ADR and GDR voting rights at par with equity?* Check if American Depositary Receipt (ADR) and Global depository receipt (GDR) with voting rights at par equity is allowed, please state if there are some restrictions.

*Proportional representation voting -*  Under this type of voting method shareholders are allowed to vote via single transferable vote or cumulative voting where minority shareholders can cast all of their votes for a single nominee for the board of directors when the company has multiple openings on its board. Check if your jurisdiction follows this system under a compulsory law or if it recommended by an optional regulation or if your jurisdiction follows a different system of voting.

*Questions relating to abusive self-dealing* – Self dealing is defined to be a related party transaction which leads to the practice of transferring money or assets from the company to a dominant corporate owner, manager, or director. An example would be of two companies X and Y, X is a public company and Y is a private company, one of the directors of X is owner of Y, all supply contracts from X is passed onto Y. Check if the company law code or any other regulation in your jurisdiction has laid down norms for these deals especially relating to approval and disclosures. Please check for each individual component.

*Ability to take judicial recourse* – Please check if direct or derivative suits are available for shareholders holding 5% or less share capital. Please state the share capital cutoff (of the number of shareholders) in your jurisdiction for instituting a shareholder action suit.

*Unitary board -*  Please state if there is an option for dual boards and if such an option is mandatory or optional and if it recommended. Also if your jurisdiction allows both dual and unitary boards please state in the comments if your country generally prefers unitary or dual boards.

*Stakeholder* – for our purpose stakeholders are anyone who can affect the company or be affected by the company except for shareholders. They would include creditors, employees, suppliers, customers etc. (the list is not exclusive) Check if stakeholders are allowed to sit in board meetings, or are invited to shareholder’s meetings and if such acts are mandatory under a statute or optional under a recommendatory regulation.