

# Management and Governance Issues Discussion in Vietnam and Asian Pacific Corporate Governance Standards

Trung Van Dinh, PhD <sup>1</sup>, Phan Huy Duong, PhD <sup>2\*</sup>, Nguyen Thi Thuy Huong, PhD <sup>3</sup>,  
To Hien Tha, PhD <sup>4</sup>

<sup>1</sup> *Economic Management Department, Institute of Political Economy, Ho Chi Minh National Academy of Politics Vietnam. Dvtrung.vn@gmail.com*

<sup>2</sup> *Dai Nam University, Vietnam. Duongph50@gmail.com*

<sup>3</sup> *Faculty of Foreign Language, Academy of Finance, Vietnam. nguyenthuyhuong@gmail.com*

<sup>4</sup> *Associate Professor, Political Economic Department, Le Quy Don Technical University, Hanoi, Vietnam. Thath.th@mta.edu.vn*

**Abstract:** This paper mainly concentrates on empirical research for findings in Management and Governance Issues Discussion in Vietnam and Asian Pacific Corporate Governance Standards.

First, it comes up with findings on corporate governance subjects in the post-crisis and post-scandal time. It found out that companies in these periods have certain corporate governance issues such as how to better organize an information disclosure system.

Second, this paper provides with a short summary of evaluation of current corporate governance principles in these four countries which can enable corporations to seek and to compare to their current codes.

Last but not least, Vietnam SSC also informed set of documents was developed with technical support from the International Finance Corporation, a member of the World Bank Group, and the support of the Swiss State Department of Economic Affairs (SECO), and includes the following criteria: standards higher than the minimum legal requirements, encouraging businesses to move towards international best practices.

Keywords: governance, management, standards, stock market.

## 1. INTRODUCTION

According to mof.gov.vn, August 13, 2019, at the City Stock Exchange. Ho Chi Minh City, the State Securities Commission (SSC) for the first time announced the Code of Corporate Governance Principles according to Best Practices for Vietnamese public companies. The Principles were launched with the goal of promoting capital markets and sustainable economic development, providing a series of recommendations on best corporate governance practices according to the OECD, with a focus on companies. masses in Vietnam.

This set of documents was developed with technical support from the International Finance Corporation, a member of the World Bank Group, and the support of the Swiss State Department of Economic Affairs (SECO), and includes the following criteria: standards higher than the minimum legal requirements, encouraging businesses to move towards international best practices.

The subsequent sessions are organized as following. First (1<sup>st</sup>) session is a literature review for some of corporate governance researches with impacts from corporate scandals, market manipulation and financial crisis. Second (2<sup>nd</sup>) session is built with three (3) main themes of theories such as: corporate governance and financial crisis, corporate scandals and market manipulation. Next, (3<sup>rd</sup>), session is covered with a summary of methodology used in empirical results. The fourth (4<sup>th</sup>) session is focusing on main findings of this paper which include four (4) key findings on: a) Corporate governance issues after financial crisis, corporate scandals and market manipulation; b) Ways of

Manipulation during Corporate Scandals; c) Actions to Prevent or Control Negative Market Manipulation; and lastly; d) Construction of a set of Limited Common Asian Pacific Corporate Governance standards. And last 5<sup>th</sup> session turns to our conclusion and recommendations to relevant organizations.

Then, continuously, a reference and web resources are introduced for further research and analysis. At last, there are exhibit session which covers some summary of this paper's analysis and comparison.

## **2. RESEARCH LITERATURE REVIEW**

Many researches so far are done in the corporate governance area. From the EU approach to corporate governance from IFC (2008), it shows that corporate governance is necessary for not only state-owned enterprises (SOEs) but also important for private sector to growth. In 2002, EU also issues the Code of Best practices and the 2006 Directive requires that each listed company should publish an annual corporate governance statement to what extent the company can comply with that code. Among its key principles is the separation of roles between the CEO and the Chairman as it stated "The Chairman and CEO roles should be separate and the CEO should not immediately become Chairman of either a unitary or a supervisory board". However, just few same works are performed in the Asian Pacific region up to now.

Li Wei An (2008) in a research of corporate governance said it is urgent matter to seek which governance model is more suitable for the governance environment where Chinese listed companies survive.

The corporate governance model has an effect, both negative and positive, on the market and profits manipulation for particular company. Lambert, Caroline., and Sponem, Samuel., (2010) research in France with a conclusion that management controllers play an important role in profit manipulation and the shareholder pressure influence the nature of the management controller's task such as reporting and budgetary control. Allen, Franklin., Litov, Libomir., and Mei, Jianping., (2004) found strong evidence that large investors and corporate insiders possess market power which allowed to manipulate prices.

Therefore, after several financial crises, in 1997-1998 and in 2007-2009, and many corporate scandal cases, including different types of manipulation, it is necessary for performing more researches and reviewing of relevant corporate governance theories. U.S. House (2002) confirms in Enron case that there is a failure of the board in their fiduciary duties to shareholders. Though Zhang, Yi., (2006) states that other corporate governance characteristics such as board size, board independence and institutional ownership are not related to the probability of the firm committing fraud, we need to do further research on corporate governance issues taking place after financial crisis and during corporate scandals time for additional details and recommendation. As Kirkpatrick, Grant., (2009) pointed out that even OECD corporate governance, short-called CG, principles needed to be review in key areas, including board composition and competencies, remuneration issues, etc., after the financial crisis.

## **3. THEORY OF CORPORATE GOVERNANCE, SCANDAL AND MARKET MANIPULATION**

### **Theory of corporate governance and financial crisis**

Corporate governance is a scientific term understood in various ways. It is understood as laws, rules, corporate charter and policies which reflect the relationship between the corporation and its stakeholders, shareholders, creditors, boards, committee, employee and customers and the relationship between ownership and performance. In short word, corporate governance is a set of processes, customs, policies, rules directing and controlling an organization. Li Wei An (2008) stated corporate governance evaluation is designed to make a rating and judgment of governance structures and mechanisms. On the other hand, Allen, Franklin., and Gale, Douglas., (2002) identify that Good corporate governance in US and UK means firms pursuing the shareholders' interests while it involves pursuing the interests of all company's stakeholders including customers and employee as well as shareholders, in Japan, France and Germany.

After the crisis, ADB indicate that one of the roots of Asian financial crisis is the failure of corporate governance. Therefore, it is necessary to re-evaluate the corporate governance structures and mechanisms in the post-crisis and post-scandal periods. ADB also offers the ten core principles of corporate governance which aims to help investors and stakeholders to be armed with corporate governance standards, tools and skills which help them to classify businesses which comply superficially and those which have perfect commitment. OECD (2004) in the same post-

crisis research stream, use Western legal and ethic concepts in which it indicated that corporate governance forms part of a wider macroeconomic environment where institutional structures and frameworks play a major role. Grant Kirkpatrick (2009) states in the OECD CG report that the financial crisis, for example 2007-2009, can be an important factor to failures of the CG system and the OECD CG principles need to be reviewed. Also, the risk management system failed in many cases with errors in CG procedures rather than in the computed models. Therefore, OECD principles which are revised from the original 1999 Code of corporate governance, so far, has a wide effects on both OECD and non-OECD countries during and after financial crisis time.

#### **4. RESEARCH METHODOLOGY**

We perform a qualitative analysis on each group then build general standards for corporate governance in each separate group. These standards represent common understanding and principles in each group.

#### **5. EMPIRICAL FINDINGS**

##### **A- Findings on Corporate governance issues after financial crisis, corporate scandals and market manipulation**

First of all, we found out that the internal and external committee audit showed disadvantages and weak points during the audit process which lead to rooms for managers using manipulation tools to create an unreal financial picture of scandal companies. The reasons might be including: there still exists an insufficient information system or database which contribute to ineffective business decision making in those companies.

We can point it out another CG, corporate governance, issue. That is, the appraisal of following code of ethics of the company and industry in specific markets is not done with full of responsibility or is done just on the business surface. Or in another words, there still lacks of the appraisal of the role of the legal or compliance division in the company which contributes to the bad results on the corporate performance and scandals.

##### **B- Findings on Ways of Manipulation during Corporate Scandals**

Several Manipulation Techniques found out during corporate scandals involve, but not limit to:

###### **B.1 – The manipulation techniques in the income statement:**

The use of unusual contracts to inflate the company's revenues with a hope to trigger the company's stock price is done successfully by corporation such as *ELan* in the fiscal year 2001 (leading to its collapse later). Another example is Xerox during the fiscal periods 1997-2000.

Besides, the second manipulation technique used is the negative manipulation of expenses of the company by decreasing its expenses to get a high nominal profit. *Worldcom*, Inc., has an under-reporting expenses and capitalizing its balance sheet. The amount of \$3,8b cash is recognized as capital expense, instead of operating expense in the fiscal year 2002.

###### **B.2 - The manipulation techniques in both the income statement and balance sheet:**

The technique is used by the large energy company, *Enron*, in the year 2001, which is the hiding of its debt and therefore help to increase its profit of about \$1 billion. Or the manipulation trick is done by a Texas co., *Waste management Co.*,

In which its nominal profits is manipulated or inflated by extending depreciation time of property and equipment in the year 2002.

##### **C- Vietnam CG standards**

###### **According to mof.gov.vn**

The document includes 10 principles with detailed recommendations on best practices, focusing on addressing priority issues in implementing corporate governance of Vietnamese businesses. Among them, there are 6 principles focusing on the functioning of the board of directors, this is an area that requires further improvement in many domestic enterprises; The remaining four principles include areas such as control environment, information disclosure and transparency, shareholder rights and relations with stakeholders. The Principles also include provisions related to

responsible business, such as promoting gender diversity and encouraging a stronger focus on environmental and social issues on boards.

Although this Code of Conduct is primarily intended to guide good governance practices for public and listed companies in Vietnam, other businesses can also apply the Code of Conduct as a benchmark for corporate governance practices. good corporate governance practices.

The SSC hopes that this document will help Vietnam integrate with ASEAN markets, which have long had similar sets of principles. The State Securities Commission will work with the Hanoi Stock Exchange and the City Stock Exchange. Ho Chi Minh strives to promote the application of good corporate governance practices and monitor the voluntary application of this Code of Conduct by businesses to make appropriate assessments and adjustments.

Many countries in Asian Pacific regions including: Japan, Korea, Philippines, and Australia have made advancements in their corporate governance standards and regulations in recent decade.

#### D- Findings on Construction of a Limited Common Asian Pacific Corporate Governance standards

These findings will be shown in a detailed analysis of a model indicated in the later sessions.

**Table D.0 – Japan Corporate Governance general standards (a short summary evaluation)**

| Subjects or parties                    | Main quality factors                           | Sub quality factors                            | Responsibilities                               | Objectives                                     | Note  |
|--|--|--|--|--|---|
| Audit committee                        | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | Refer to Internal Auditor part                 | <u>Not mentioned clearly in the Japan Code</u> | The Co. chose either auditor or committees system |
| Nomination committee                   | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | The Co. chose either auditor or committees system |
| Compensation or Remuneration committee | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | The Co. chose either auditor or committees system |
| CEO                                    | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> |   |
| The Chair                              | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> |   |
| CEO and The Chair relationship         | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> |   |
| Corporate Secretary                    | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> |   |
| Compliance officer                     | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u> |   |

| Subjects or parties    | Main quality factors   | Sub quality factors                            | Responsibilities  | Objectives   | Note   |
|------------------------|--|--|---|--|--|
| Board of Directors     | <u>Not mentioned clearly in the Japan Code</u>   | <u>Not mentioned clearly in the Japan Code</u> | Appoint the management;<br>Supervise,<br>Evaluate Management;<br>Prevent the occurrence conflicts of interest b.t The Co. and management;<br>Develop a mutual monitoring system | Maximizing corporate value;<br>Make judgments compliance with Laws and Regulations and accuracy of business operation conditions |  |
| Executive director     | <u>Not mentioned clearly in the Japan Code</u>   | <u>Not mentioned clearly in the Japan Code</u> | Involved in the Management part   | Involved in the Management part  |  |
| Non-executive director | <u>Not mentioned clearly in the Japan Code</u>   | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u>  | <u>Not mentioned clearly in the Japan Code</u>   |  |
| Independent director   | <u>Not mentioned clearly in the Japan Code</u>   | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u>  | <u>Not mentioned clearly in the Japan Code</u>   |  |
| CFO                    | <u>Not mentioned clearly in the Japan Code</u>   | <u>Not mentioned clearly in the Japan Code</u> | <u>Not mentioned clearly in the Japan Code</u>  | <u>Not mentioned clearly in the Japan Code</u>   |  |
| Management team        | Representative directors and executive officers, representative executives and executives; or person involved in management of the co. | <u>Not mentioned clearly in the Japan Code</u> | Organize the Board of Directors, Auditors, Board of Company Auditors suitable;  | Accurately and efficiently executing business  |  |
| Supervisory board      | Auditors, Board of Directors, other groups as the Management supervisory board   | <u>Not mentioned clearly in the Japan Code</u> | Refer to the relevant parts of Supervisory body   | Refer to the relevant parts of Supervisory body  | Not mention the Supervisors to the Board, but do mention the supervisory to Management |
| Internal control       | <u>Not mentioned clearly in the Japan Code</u>   | <u>Not mentioned clearly in the Japan Code</u> | Develop and improve internal system   | To secure the accuracy and promptness of disclosure  |  |

| Subjects or parties                   | Main quality factors   | Sub quality factors  | Responsibilities   | Objectives  | Note |
|---------------------------------------|--|--|--|---|------|
| Internal audit                        | <u>Not mentioned clearly in the Japan Code</u>   | Depth knowledge of finance/accounting                                  | Supervise , Evaluate Management;   | Maximizing corporate value; Make judgments compliance with Laws and Regulations and accuracy of business operation conditions |      |
| External audit                        | Highly independent outside auditors  | Depth knowledge of finance/accounting (as be understood from the Code) | Coordinate with the internal audit and internal control division                       | <u>Not mentioned clearly in the Japan Code</u>  |      |
| Disclosure and transparency           | Timely and accurate  | <u>Not mentioned clearly in the Japan Code</u>                         | Enhance quantitative data on financial and operating results; qualitative information; | Periodic, interval, reliable, and comparable information to shareholders  |      |
| Shareholders and Minority Stockholder | <u>Not mentioned clearly in the Japan Code</u>   | <u>Not mentioned clearly in the Japan Code</u>                         | Elect the directors and auditors   | <u>Not mentioned clearly in the Japan Code</u>  |      |
| Note                                  | The underlined part is describing some more works needed to be done for relevant subjects and parties. |  |  |   |      |

(source: DTNH et al, 2012)

### Korea's Corporate Governance standards analysis:

After The Report from World Bank in 2003 on Observance and (ROSC) show that corporate governance practices in Korea need to improve in a few areas such as: accounting and auditing practices in accordance to international standards and greater transparency of business practices, in 2009 the Korean government announce the amendment to the current commercial code. However, it is still developed with foundation on the Korea Code of Best Practice 2003. Therefore, to make a sound comparison between it and the other Codes, we still keep some main contents in the 2003 Korean Code.

Among advantages of the Act with the Amendment, Regarding to corporate governance issues, every listed company should have at least one (1) statutory auditor, who is not the outside/external auditor and any large listed company should have an audit committee. This regulation enhances the importance of the internal audit role, though it does not mention clearly internal or external, in listed SMES and large corporation.

In the stream of developing the internal system, one special point is made in the mentioning of the inspector and his/her roles in the company, which is not in the Japan or Philippines Codes.

## 6. CONCLUSION

In efforts to prevent and control the above analyzed corporate governance issues after crisis, scandals and negative manipulation, each country in this research paper is on the way to modify and revised their suitable Code of Corporate Governance and achieve important and different levels of corporate governance system, structure, mechanisms and positions.

In consideration of corporate governance issues analyzed in the previous sessions, we proposed the main and sub quality factors in this paper **a set of general corporate governance standards** in a limited Asian Pacific model with selected countries. It has some implications for further research and proper recommendations to relevant government and organizations.

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**Appendix and Exhibit**

**Exhibit 1 – Building a Well-Being Business**

(Source: Ip, P. K.: 2009, ‘Developing a Concept of Workplace Well-Being for Greater China’, Social Indicator Research 91)

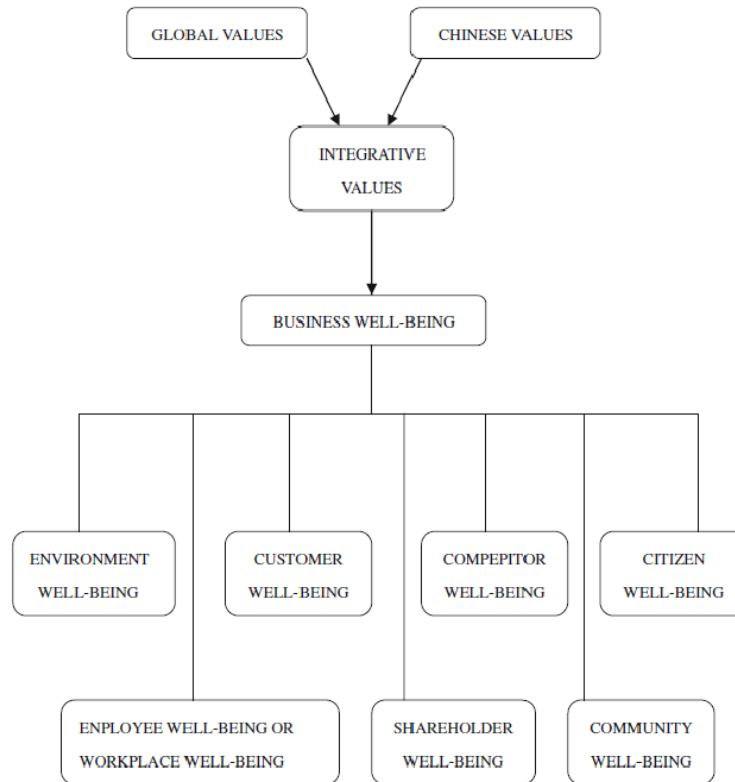


Exhibit 2 – Evaluation of Korea Code of Best practice 2003 and Amendment 2009 (DTNH et al, 2012)

| Subjects or parties                    | Main quality factors                              | Sub quality factors                           | Responsibilities  | Objectives  | Note   |
|--|---|---|---|---|--|
| Audit committee                        | At least 3 board members and mostly from outside; |   | Appraise internal auditor; Audit business conducts of directors and management; Confirm quality of financial reports;<br><i>more refer to internal audit part</i> | Ultimately maximize co.'s value                                     | Advised to set up and required for large co., accordance to Korea Code |
| Nomination committee                   | The majority comprised of outside directors       | An outside director be the Chair of Committee | Recognize qualified inside directors; Identified independent outside directors with appropriate expertise   | <u>Not mentioned clearly</u>  | Advised to set up and required for large co., accordance to Korea Code |
| Compensation or Remuneration committee | Entirely comprised of outside directors           | Independence from management being evaluated  | Review and evaluate performance against management goals; set appropriate compensation levels   | <u>Not mentioned clearly</u> , but can understand from their duties | Advised to set up and required for large co., accordance to Korea Code |



| Subjects or parties               | Main quality factors  | Sub quality factors  | Responsibilities  | Objectives  | Note   |
|-----------------------------------|---|--|---|---|--|
| CEO                               | <u>Not mentioned clearly</u>  | <u>Not mentioned clearly</u>   | With CFO, certify important information in financial reports and accurate statements and material used for financial statements reviewed by audit committee   | <u>Not mentioned clearly</u>  | Korean code pay attention to a so-called representative director |
| The Chair                         | <u>Not mentioned clearly</u>  | <u>Not mentioned clearly</u>   | <u>Not mentioned clearly</u>  | <u>Not mentioned clearly</u>  |  |
| CEO and The Chair relationship    | <u>Not mentioned clearly</u>  | <u>Not mentioned clearly</u>   | <u>Not mentioned clearly</u>  | <u>Not mentioned clearly</u>  |  |
| Corporate Secretary               | <u>Not mentioned clearly</u>  | <u>Not mentioned clearly</u>   | Not mentioned clearly, but can understand from the operation of the Board   | <u>Not mentioned clearly</u>  |  |
| Compliance officer                | <u>Not mentioned clearly</u>  | <u>Not mentioned clearly</u>   | <u>Not mentioned clearly</u>  | <u>Not mentioned clearly</u>  | Some time understood as "person in charge"                       |
| Board of Directors                | Required for every listed co, either inside or outside or any other director not engaged in regular activities; Fairly, Prudence and faithfulness | Outside directors not less than ¼ directors; Loyalty; not exercise duties for their own benefit or that of 3 <sup>rd</sup> parties | Set business goals and objectives; appointment and dismissal of management /supervisor; approval of business plans, M&A, projects and large CAPEX; supervision of financial reporting, risk management and control system | Operation should efficiently and rationally, and be governed by regulations with their rights and responsibilities; Meeting minutes should be recorded/stored on tape and be detailed; Seek results in best interests of co. and shareholders | At least 3 outside directors for large co.                       |
| Executive/Representative director | Elected by a board resolution among board directors   | Allow jointly or individually representative directors   | Be responsible for implementation of resolutions of board and shareholders  | In accordance to shareholder's resolutions  | Called representative director in the Korean code                |
| Non-executive director            | <u>Not mentioned clearly</u>  | <u>Not mentioned clearly</u>   | <u>Not mentioned clearly</u>  | <u>Not mentioned clearly</u>  |  |

| Subjects or parties          | Main quality factors                                     | Sub quality factors  | Responsibilities   | Objectives   | Note   |
|------------------------------|--|--|--|--|--|
| Independent director         | <u>Not mentioned clearly</u>                             | <u>Not mentioned clearly</u>   | <u>Not mentioned clearly</u>   | <u>Not mentioned clearly</u>   |  |
| CFO                          | <u>Not mentioned clearly</u>                             | <u>Not mentioned clearly</u>   | With CEO, certify important information in financial reports and accurate statements and material used for financial statements reviewed by audit committee  | <u>Not mentioned clearly</u>   |  |
| Management team              | Directors as head of management                          | <u>Not mentioned clearly</u>   | <u>Not mentioned clearly</u>   | <u>Not mentioned clearly</u>   |  |
| Supervisory for the board    | <u>Not mentioned clearly</u>                             | <u>Not mentioned clearly</u>   | <u>Not mentioned clearly</u>   | <u>Not mentioned clearly</u>   |  |
| Supervisory for the managers | Refer to the board of directors                          | Refer to the board of directors                                      | Refer to the board of directors with detailed roles  | Refer to the board of directors  |  |
| Internal control             | Appropriate safeguards among various units               | Designed by management but evaluated by auditors                     | Can understand through the statutory auditor/committee   | Not mentioned clearly, but can understand as the existence and efficacy of management system of protecting co.'s asset | Evaluated by internal audit/committee;                             |
| Internal or statutory audit  | Independent from management and controlling shareholders | Knowledge in auditing; devote sufficient time and effort to the task | May require directors to make report on business operation; supervise and audit whether director discharge their duties; express opinion and sign board's meeting minutes; audit legitimacy of business conducts of directors and management; review major changes in accounting standard adequacy; Evaluate external auditors' auditing | Perform auditing faithfully  | At least one (1) for listed SMEs, as understand from The Amendment |
| External audit               | Independent from management                              | Knowledge in auditing; devote  | Attend general shareholder's meeting and answer; check any   | <u>Not mentioned clearly</u>   | Should not be employed auditors if the co.                         |

| Subjects or parties                   | Main quality factors  | Sub quality factors                            | Responsibilities   | Objectives  | Note                                     |
|---------------------------------------|---|--|--|---|--|
|                                       | and controlling shareholders, as understood from the Code   | sufficient time and effort to the task         | conflicts b.t audit results and information disclosed and demand correction; report to internal auditor/committee  |   | has audit committee, as in the 2003 Code |
| Disclosure and transparency           | Supervised by the Board of Directors; details on annual report; designate a person in charge  | Make appropriate forecasting for annual report | Details of key auditing activities should be disclosed   | Faithfully disclose information in timely and honest manner;  |  |
| Shareholders and Minority Stockholder | Resolutions at general meeting should be made through transparent, fair proceeding  | Prior notice on meeting time, place and agenda | Basic rights; Right to appoint and dismiss audit committee members; minority ones might have rights to appointment of inspector and request convocation of shareholder's meeting | The co. ensure shareholders' opinion reflected at the general meeting; Influencing Shareholders act in the best interests of the co.; |  |
| Note                                  | The underlined part is describing some more works needed to be done for relevant subjects and parties. Its 2003 structure also involves additional recommendation to government and organizations |  |  |   |  |

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