Policies and practices for the board in ASEAN economies

A background note prepared for the
OECD-Asia Roundtable on Corporate Governance

11-12 October 2023

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1 Introduction

This background note aims to inform the discussions at the ***OECD-Asia Roundtable on Corporate Governance*** on the responsibilities of boards. Particularly, it serves as a reference to the session discussing policies and practices for the board in ASEAN economies. It is based on OECD's recent publications, including *Corporate Finance and Corporate Governance in ASEAN Economies* (OECD, 2023[1]) and *OECD Corporate Governance Factbook 2023* (hereafter the "*Factbook*") (OECD, 2023[2]). The note mainly covers the ASEAN jurisdictions, particularly including Cambodia, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam. It also describes overall trends in the 49 jurisdictions surveyed[1] in the Factbook as a reference point.

The note is structured in two sections. Section 1 discusses the landscape of board responsibilities to reflect recent trends in capital markets in ASEAN economies and globally. Rapid changes and major challenges in recent years have led to a need for further consideration of the board issues in addition to basic and traditional concepts concerning the board. The section aims to provide an overview of the board responsibilities that are referred to in the *G20/OECD Principles of Corporate Governance (*hereafter the *"Principles")* (OECD, 2023[3]).

Section 2 provides an overview of the regulatory frameworks in ASEAN economies on key issues related the to board, including the ones that were the subject of the review of the *Principles*. In particular, it will discuss the requirements and recommendations in ASEAN jurisdictions on: board independence; board-level committees, board nomination and election; diversity on boards and in senior management, and; the board responsibilities for sustainability matters.

[1] Indonesia, Malaysia, and Singapore are among the surveyed jurisdictions.

2 The role of the board in today's capital markets

As one of the key corporate governance actors, the board is chiefly responsible for guiding corporate strategy and monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the corporation. Another important board responsibility is to oversee the risk management system and mechanisms designed to ensure that the corporation obeys applicable laws (OECD, 2023[3]). The *G20/OECD Principles of Corporate Governance*, in its Principle V, state "[t]he corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders."

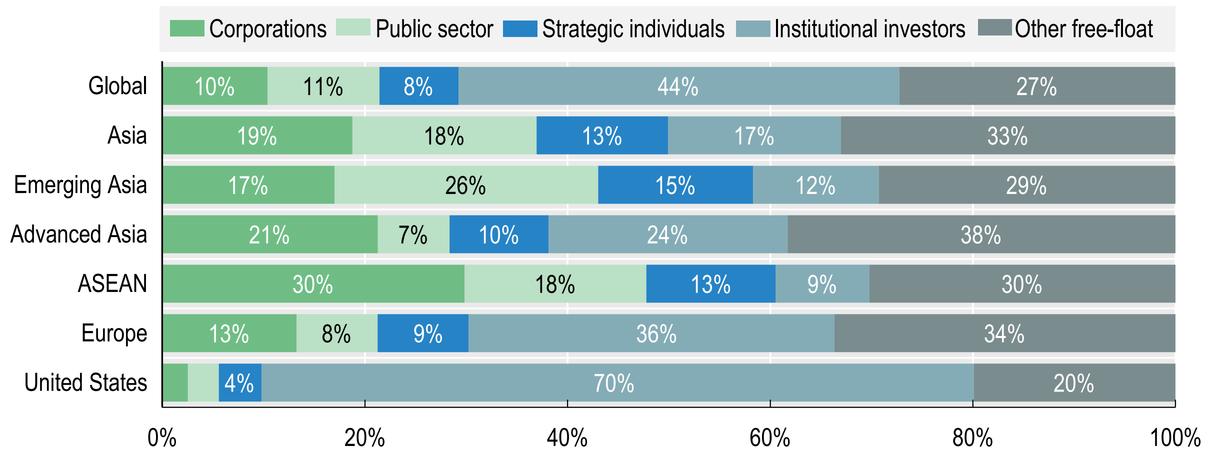
To ensure accountability of board members and executives, regulatory frameworks are based on a fundamental concept of corporations: the separation of ownership and management. With a long history since Barle and Means (1932[4]), it leads to an issue on how to ensure that the board members and executives fulfil their key functions as a fiduciary on behalf of the company and its shareholders while avoiding abuse of their power. The *Principles* provide various tools to address the agency problem, such as specifying the duty of care and the duty of loyalty of board members (V.A), clarifying a shareholder right to elect and remove members of the board (II.A), ensuring management frameworks on related party transactions (II.F) as well as monitoring by the external auditors and by investors through disclosure of information that is material to investors' decisions and assessment of a company's value (IV).

In addition to these general aspects, the ownership structure of listed companies in different jurisdictions may need to be taken into consideration to discuss appropriate regulatory frameworks on board responsibilities. In the ASEAN region, corporations are the largest owners of public equity, reflecting the prominent existence of company group structures. In 2022, 30% of the listed equity was owned by corporations, compared to 19% in Asia and 10% at the global level (Figure 1.1). The often predominant role played by company groups in capital markets creates new challenges for policy makers to ensure sound market incentives for capital formation and effective capital allocation. In relation to the board, the revised *Principles* address this issue by ensuring boards' access to key information about the activities of its subsidiaries to manage group-wide risks and implement group-wide objectives, in cases when a publicly traded company is the parent of a group (V.F). The revisions also seek to improve disclosure of related party transactions by better identifying all related parties in complex group structures and addressing potential conflicts of interest (IV.A.7).

Furthermore, in many cases in ASEAN markets, ownership and management in some companies are not separated. Family businesses play an important role in Asian jurisdictions (OECD, 2022[6]). When a founder family and their family members own a controlling equity stake in a company, it can reduce the agency problem through higher incentives to monitor the management closely. Still, corporate governance frameworks should ensure that minority shareholders and bondholders are protected from abusive actions, as stipulated in II.G and VI.D.6 of the *Principles*. On the other hand, when a founder and their family members control the company with smaller/no shareholding, they may have access to sensitive information, disproportionately influence the direction of the company, or extract financial benefits from it without a legitimate authority. In the context of company groups, these dominant "owners" may take advantage of complex group structures and exacerbate the misallocation of human, financial, and

management resources (OECD, 2022[6]). This leads to the importance of disclosure of beneficial owners (IV.A.3 of the *Principles*) as well as controlling persons.

Figure 1.1. Investor holdings, as of end-2022



Source: OECD (2023[5]), OECD Capital Market Series dataset, FactSet, Refinitiv, Bloomberg.

As companies have been facing rapid changes and major challenges in recent years, such as climate change and digitalisation, the scope and complexity of the issues that boards are expected to manage are increasing. It is essential that the board is able to exercise objective independent judgement to ensure proper monitoring of the management while balancing demands on the corporation (Principle V.E) with wider scope and complexity. By using safe harbours for management and board member actions, such as the business judgement rule, protecting board members and management against litigation, if they made a business decision diligently, with procedural due care, on a duly informed basis and without any conflicts of interest, will better enable them to assume the risk of a decision that is expected to benefit the company but which could eventually be unsuccessful (Principle V.A.1). To improve the work of the board and allow for a deeper focus on those specific issues, the use of board committees could be an option (Principle V.E.2).

More specifically, investors are increasingly considering how companies assess, identify and manage material climate change and other sustainability risks and opportunities. The *Principles* clarify that boards must adequately consider material sustainability risks and opportunities when fulfilling their key functions in reviewing, monitoring and guiding governance practices, disclosure, strategy, risk management and internal control systems (VI.C).[2] They also provide additional provisions on remuneration, including the use of sustainability indicators in executive remuneration (IV.A.6). When making business decisions in the interest of the company's long-term success and performance in the interest of its shareholders, board members also should take account of the interest of stakeholders (V.A). Furthermore, the increased use of digital technologies in corporate governance practices and supervision requires the management of digital security risks (V.D.2).

[2] For more details of board responsibilities for the governance of companies in Asian economies, see "*Sustainability Policies and Practices for Corporate Governance in Asia"* (OECD, 2023[5]).

3 Regulatory frameworks for boards in ASEAN economies

Corporate government frameworks include various mechanisms to ensure for the board to fulfil its functions. Board independence is essential for the board to exercise objective judgements. Board committees might support the board for a deeper focus on specific areas. To have sufficient functions for the managing and supervising role, the board members with appropriate qualifications and diverse views should be appointed through a transparent nomination and election process. Investors' increased attention to sustainability matters requires the board to consider risks and opportunities in relation to those issues.

3.1. Board independence

To ensure proper monitoring of managerial performance while balancing demands on the corporation with wider scope and complexity, it is essential that the board is able to exercise objective independent judgement. The *Principles* list the frequently used criteria of the definitions of independence, stating "the absence of relationships with the company, its group and its management, the external auditor of the company and substantial shareholders, as well as the absence of remuneration, directly or indirectly, from the company or its group other than directorship fees" (V.E).

The *Principles* also refer to ensuring the board's independence from controlling shareholders. This is a particularly important point in ASEAN jurisdictions, due to high levels of concentrated ownership and the strong presence of company group structures. The role of independent directors in controlled companies is different than in companies with dispersed ownership structures, since the nature of the agency problem is different (i.e. in controlled companies the vertical agency problem between ownership and management is less common and the horizontal agency problem involving controlling and minority shareholders greater) (OECD, 2023[2]).

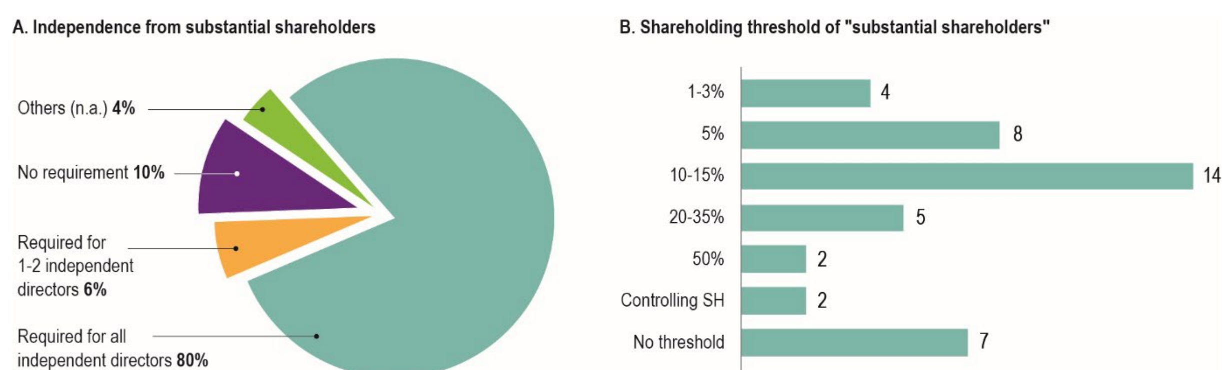
In jurisdictions with one-tier board systems, the objectivity of the board and its independence from management may be strengthened by the separation of the role of the chief executive officer (CEO) and the board chair. The *Principles* refer to the separation as good practice, because "it can help to achieve an appropriate balance of power, increase accountability and improve the board's capacity for decision making independent of management" (V.E). Globally, 13 of 38 jurisdictions with one-tier board systems require and 15 such jurisdictions recommend the separation of the functions of board chair and CEO in "comply or explain" codes (OECD, 2023[2]).

In the ASEAN region, the separation the CEO and the board chair is required in **Viet Nam** and recommended in **Malaysia**, the **Philippines**, **Singapore** and **Thailand** (Table 1). **Singapore** encourages the separation of the two functions through an incentive mechanism by requiring a majority of independent directors to be recommended for companies if the chair is not independent. In **Indonesia,** this separation occurs due to its use of a two-tier board system that does not allow for management to serve on the supervisory board.

Independence from substantial shareholders is also a key factor in the definition of independence of the board member, but national approaches vary considerably. Globally, while the large majority of the 49

jurisdictions covered in the Factbook include in the definitions of independent directors requirements or recommendations that they be independent of substantial shareholders (86%), the threshold for substantial shareholding ranges from 2% to 50%, with 10-15% the most common share (in 14 jurisdictions)(OECD (2023[2]), Figure 2.1). Shareholding thresholds of "substantial" for assessing independence also vary across in the ASEAN jurisdictions, from 1% in **Cambodia**, **Thailand** and **Viet Nam** to 20% in **Indonesia** (Table 1). Regulations in several jurisdictions also include the absence of a family relationship with the current board members, executives, or major shareholders (e.g., **Singapore**[3]).

Figure 2.1. Requirements for the independence of directors and their independence from substantial shareholders



Note: Based on data from 49 jurisdictions. These figures show the number of jurisdictions and percentages in each category.
Source: OECD (2023[2]).

Setting minimum numbers or ratios of independent directors is common across jurisdictions. In **Indonesia's** two-tier board system, there are requirements on the minimum number and ratio of independent members of the Board of Commissioners that serve as the supervisory board. In cases where the supervisory board members are two persons, one of them should be an independent member. In the event that the Board of Commissioners has more than two members, at least 30% of them should be independent. [4] **Viet Nam** also differentiates the minimum number of independent board members depending on the board size: a company should have at least one independent director if the board consists of one to five members, and at least two and three for the board size of six to eight and nine to eleven members respectively. The most common mandatory requirement among the 49 jurisdictions around the world is for two to three board members (or at least 30% of the board) to be independent, while the most common voluntary recommendation is for boards to be composed of at least 50% of independent directors (OECD, 2023[2]).

The factors in the definition of independence also include the maximum tenure for a director to still be considered independent and the effect at the expiration of the term. The maximum term of office ranging from 9 to 12 years is set in all seven ASEAN jurisdictions, which can be compared to the global situation in which setting the term is less common, where 28 out of 49 jurisdictions have such requirements or recommendations, ranging from 5 to 15 years (OECD, 2023[2]).

The details of the maximum tenure for a director and whether, at the expiration of tenure, the director is still regarded as independent, vary across the ASEAN countries. In **Indonesia**, the maximum term of office for independent supervisory board members, called commissioners, is two periods of the board term (maximum of five years for each period). Independent commissioners can be appointed for more than two periods as long as they explain why they consider themselves independent at the general shareholder

[3] Mainboard Rule 210(5)(d)(ii) and Catalist Rule 406(3)(d)(ii).
[4] Article 20(2) and (3) of OJK Regulation 33/POJK.04/2014.

meeting.[5] In **Viet Nam**, the maximum tenure of 10 years is set by governmental regulation while the code recommends 9 years. [6] In **Thailand** and the **Philippines**, the maximum term of nine years is recommended by the codes.[7]

A number of jurisdictions have strengthened requirements and recommendations for maximum term limits. The framework in **Malaysia** could be characterised as having two layers, consisting of the listing rule and the recommendation by the Malaysian Code on Corporate Governance. Under the listing rules, a director shall not serve as an independent director in a listed company or its related corporations for a cumulative period of more than 12 years. In addition, a company should disclose in the notice of the annual general meeting a statement justifying the nomination of an individual as an independent director, and explaining why there is no other eligible candidate, if such an individual had cumulatively served as an independent director of the company or any one or more of its related corporations for more than 12 years before and observed the requisite 3-year cooling off period (Bursa Malaysia, 2022[7]). Prior to the effective date, listed companies with an independent director of more than 20 years ("affected long-serving IDs") were strongly encouraged to expedite the replacement or re-designation of such directors as soon as possible before 1 June 2023. Furthermore, the Malaysian Code on Corporate Governance recommends that the tenure of an independent director should not exceed a cumulative term of nine years.[8] Upon completion of the nine years, an independent director may continue to serve on the board as a non-independent director. If the board continues to retain the independent director after the ninth year, the board should seek annual shareholders' approval through a two-tier voting process.

Singapore is another jurisdiction which has revised the regulation on this issue recently. Under the new regime effective from 11 January 2023, the SGX Listing Rules require independent directors to be subject to a nine-year tenure limit. Independent directors who have served beyond such limit must be redesignated as non-independent at the next annual general meeting of the issuer, with effect from the annual general meeting held for the financial year ending on or after 31 December 2023. (SGX, 2022[8]).

Table 1. Board independence requirements for listed companies

	Tiers	Board independence requirements		Key factors in the definition of independence			
		Separation of the CEO and Chair of the board (as applicable to 1-tier boards)	Minimum number or ratio of independent directors	Maximum term of office & effect at the expiration of term[1]		Independence from "substantial shareholders"	
						Requirement	Shareholding threshold of "substantial" for assessing independence
Cambodia	1	-	1/5	9	-	Yes	1%
Indonesia	2	-	[30%]	10[2]	[Explain]	[Yes]	[20%]
Malaysia	1	Recommended	1/3 or 2	[12][3] (9)[4]	No independence Explain – re-designate as a non-independent director or adopt two-tier voting process	Yes (major shareholder)	10% or more of total number of voting shares in the corp.; or 5% or more of number of voting shares where such person is largest sh of corp.

[5] Article 25 of OJK Regulation 33/POJK.04/2014.
[6] 154(2) of Enterprise Law 2020.
[7] For Thailand, Principle 3.2.5 of the Corporate Governance Code 2017. For the Philippines, Recommendation 5.3, Code of Corporate Governance for Publicly Listed Companies (CG Code for PLCs, 2016).
[8] Practice 5.3 of the Malaysian Code on Corporate Governance [as of 28 April 2021].

Philippines	1	Recommended	20% (1/3)	(9)	Explain	Yes	2%[5]
Singapore[6]	1	Recommended	(Majority) [1/3]	[9]	[No independence]	(Yes)	5%
Thailand	1	Recommended	1/3 or 3	(9)	Explain	Yes	1%[7]
Viet Nam	1+2	Required	1 if board size is 1-5 members; 2 if board size is 6-8; 3 if board size is 9-11. (1/3)	10[8] (9)	Explain	Yes	1%

Key: [ ] = requirement by the listing rule; ( ) = recommendation by the codes or principles; "-" = absence of a specific requirement or recommendation. For 2-tier boards, separation of the Chair from the CEO is assumed to be required as part of the usual supervisory board/management board structure unless stated otherwise.

Note:

[1]Maximum term of office & effect at the expiration of term refers to the maximum tenure for a director to still be considered independent and if, at the expiration of tenure, the director is still regarded as independent, or needs an explanation regarding her/his independence.

[2]In **Indonesia**, the maximum term of office for independent supervisory board members (called commissioners in Indonesia) is two periods of the board term (with maximum of five years per period). Independent commissioners can be appointed for more than two periods as long as they explain why they consider themselves independent at the General Shareholder Meeting.

[3]In **Malaysia**, the 12-year tenure limit would take effect from 1 June 2023 onwards. Notwithstanding the effective implementation of said requirement, listed companies with independent directors of more than 20 years ("affected long-serving IDs") were strongly encouraged to expedite the replacement or re-designation of such directors as soon as possible before 1 June 2023. Should a company appoint a person who had before cumulatively served as an independent director of the listed issuer or any one or more of its related corporations for more than 12 years and observed the requisite 3-year cooling-off period, the company shall make an announcement to the exchange and provide a statement justifying the appointment of the person as an independent director and explaining why there is no other eligible candidate.

[4] In **Malaysia**, Practice 5.3 of the Malaysian Code on Corporate Governance recommends that the tenure of an independent director should not exceed a cumulative term of nine years. Upon completion of the nine years, an independent director may continue to serve on the board as a non-independent director. If the board continues to retain the independent director after the ninth year, the board should seek annual shareholders' approval through a two-tier voting process. Under the two-tier voting process, shareholders' votes at a general meeting will be cast to - Tier 1: only the Large Shareholder(s) of the company votes; and Tier 2: shareholders other than Large Shareholders votes. The decision for the above resolution is determined based on the vote of Tier 1 and a simple majority of Tier 2. The resolution is deemed successful if both Tier 1 and Tier 2 votes support the resolution. However, the resolution is deemed to be defeated where the vote between the two tiers differs or where Tier 1 voter(s) abstained from voting.

[5]In **the Philippines**, the Code of Corporate Governance for Publicly Listed Companies (Explanation d. of the Recommendation 5.3) states that an independent director refers to a person who is not an owner of more than 2% of the outstanding shares of the covered company, its subsidiaries, associates, affiliates, or related companies.

[6]In **Singapore**, a majority of independent directors is recommended for companies if the Chair is not independent. The SGX Listing Rules previously required the appointment of independent directors who have served beyond nine years to be subject to a two-tier vote requiring approval by the majority of (i) all shareholders; and (ii) all shareholders excluding shareholders who also serve as directors or the CEO and their associates. These rules were amended on 11 January 2023. Under the new regime, the SGX Listing Rules require independent directors to be subject to a nine-year tenure limit. Independent directors who have served beyond such limit must be redesignated as non-independent at the next annual general meeting of the issuer, with effect from the annual general meeting held for the financial year ending on or after 31 December 2023.

[7]In **Thailand**, a board member is considered independent if the person holds shares not exceeding one per cent of the total number of shares with voting rights of the applicant, its parent company, subsidiary company, associate company, major shareholder or controlling person, including shares held by related persons of such independent director.

[8]In **Viet Nam**, the maximum term of office for independent board members is two periods of the five-year board member term, or 10 years.

Source: OECD (2023[1]).

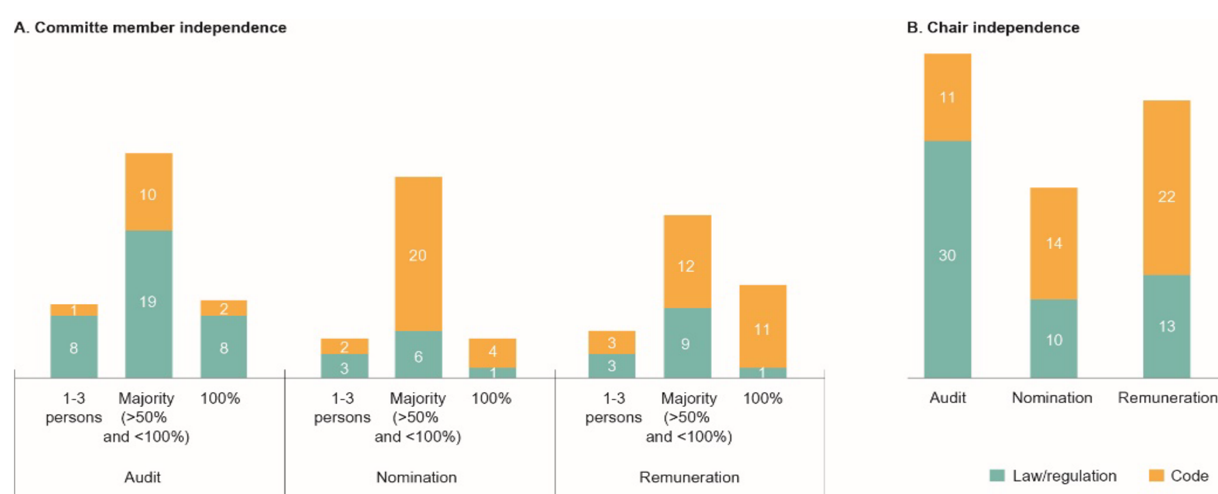
3.2. Board-level committees

Setting up board committees may help and support the work of the board of directors. The *Principles* reflect the growing use of board committees while emphasising flexibility in their establishment. Sub-principle V.E.2 states "[b]oards should consider setting up specialised committees to support the full board in performing its functions, in particular the audit committee – or equivalent body – for overseeing disclosure, internal controls and audit-related matters. Other committees, such as remuneration, nomination or risk

management, may provide support to the board depending upon the company's size, structure, complexity and risk profile." Among the traditional committees, including audit, nomination, and remuneration, audit committees are considered to be particularly important, reflecting their role in overseeing the relationship with the external auditor as well as the effectiveness and integrity of the internal control system.

Globally, 44 out of 49 jurisdictions require the establishment of an audit committee with provisions to promote their independence. Nomination and remuneration committees are not mandatory in most jurisdictions, but most jurisdictions at least recommend that they be established and often that they be comprised wholly or largely of independent directors (OECD (2023[2]), Figure 2.2).

Figure 2.2. Independence of the chair and members of board-level committees



Note: Based on 49 jurisdictions.
Source: OECD (2023[2]).

The majority of the seven ASEAN jurisdictions have requirements or recommendations to set up the three committees with an independent chair and with a specific minimum number or ratio of independent members (Table 2). In **Malaysia**, financial institutions are required to have an independent chair for the audit, nomination and remuneration committees. In **Viet Nam**, when a company has a one-tier board, setting up the audit committee is mandatory. In this case, the company should have (i) at least one-fifth of the board being independent members, (ii) the chair of the audit committee being an independent member and (iii) all other members of the audit committee being non-executive members. In the two-tier board system, where the supervisory board is overseeing the board of directors, there is no requirement to have an independent member in the supervisory board.

While the *Principles* do not provide specific recommendations on how often boards and committees should meet, several jurisdictions have provisions about the minimum frequency of the meeting of the board as well as of audit, nomination and remuneration committees. In **Cambodia**, the board is recommended to hold a regulator meeting at least once every quarter.[9] In **Indonesia**, the required frequency of the meeting is at least once per month for the board of directors and at least once in two months for the Board of Commissioners. The regulation requires the audit committee to meet more frequently (at least once in three months) than the nomination and remuneration committees (at least once in four months). **Thailand** is another jurisdiction with a recommended minimum frequency of meetings, six times per year for the

[9] Article 14 of the Parakas on Corporate Governance for the Listed Companies.

board of directors, four times per year for the audit committees, and twice per year for the nomination and remuneration committees.[10]

Table 2. Board-level committees

	Audit committee			Nomination committee			Remuneration committee		
	Establi-shment	Chair indepe-ndence	Minimum number or ratio of independent members	Establi-shment	Chair indepe-ndence	Minimum number or ratio of independent members	Establi-shment	Chair indepe-ndence	Minimum number or ratio of independent members
Cambodia[1]	L	L	Chair	L	-	-	L	-	-
Indonesia	L	L	100%	L	L	(33%)	L	L	(33%)
Malaysia	R; L (financial institutions)	R; L (financial institutions)	>50%	R; L (financial institutions)	C;L (financial institutions)	>50%	C;L (financial institutions)	L (financial institutions)	>50%
Philippines	C and L	C	>50%	C and L	C	>50%	C	C	>50%
Singapore[2]	L R	 R	>50% (50%)	R	R	(>50%)	R	R	(>50%)
Thailand	L	L	100%	C	C	>50%	C	C	>50%
Viet Nam[3]	L	L	At least the Chair must be independent	C	C	>50%	C	C	>50%

Key: L = requirement by law or regulations; R = requirement by the listing rule; C = recommendation by the codes or principles; ( ) = recommended by the codes or principles; "-" = absence of a specific requirement or recommendation.
Note:
[1] In **Cambodia**, the remuneration and nomination committees shall be chaired by the non-executive director.
[2] In **Singapore**, where a listed company adopts a dual class share structure, the majority of each of the committees, including the respective chairmen, must be independent.
[3] In **Viet Nam**, when a company has a one-tier board, setting up the audit committee is mandatory. In this case, the company should have (i) at least one-fifth of the board being independent members, (ii) the chair of the audit committee being an independent member and (iii) all other members of the audit committee being non-executive members. In the two-tier board system, where the supervisory board is overseeing the board of directors, there is no requirement to have an independent member in the supervisory board.
Source: OECD (2023[1]).

Other jurisdictions aim at ensuring the commitment of the members of the board as well as the committees by setting up minimum attendance ratios and requiring disclosure of the record. In **Singapore**, although there are no specific mandated requirements about the minimum frequency of the meeting of the board, there are provisions requiring directors to attend and actively participate in the board and board committee meetings.[11]

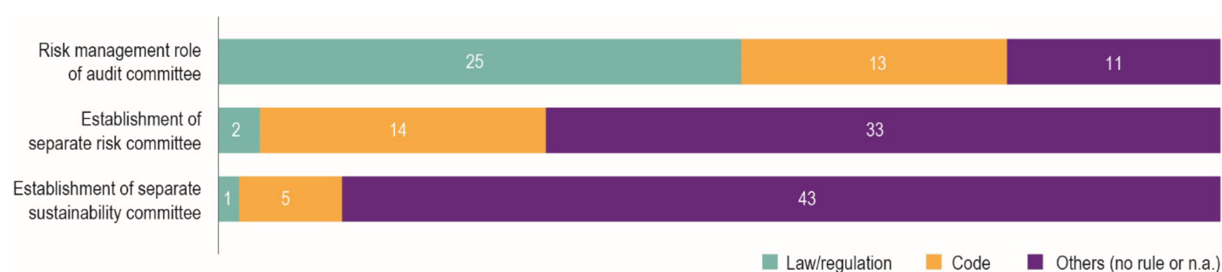
Other committees may be established to advise the board on additional issues. To support the board in its oversight of risk management, some companies have established a risk committee or expanded the role of the audit committee, following regulatory requirements or recommendations on risk management and the evolution of the nature of risks. Other committees include, for example, a sustainability committee to advise the board on environmental and social risks and opportunities, as well as a technology committee on the management of digital security risks and the company's digital transformation. Ad hoc or special committees can also be temporarily set up to respond to specific needs or corporate transactions.

[10] Guideline 3.9.2 of Corporate Governance Code for listed companies 2017, and 2.1 of the Principles of Good Corporate Governance for Listed Companies 2012.
[11] 1.5 of the Code of Corporate Governance 2018.

Some ASEAN jurisdictions have provisions on a separate risk committee (**Malaysia**[12] and **Viet Nam**[13]), while sometimes taking proportionate and flexible approaches into consideration (in **Indonesia**[14] and the **Philippines**[15]). In **Singapore**[16] and **Thailand,**[17] the listing rule allows the board to delegate responsibility for risk governance either to the audit committee or a separate board risk committee. In **Cambodia**, the audit committee is required to review risk management in case there is no risk management committee.[18] **Indonesia** has mandatory provisions for setting up the Information Technology steering committee for all commercial banks and non-bank financial institutions with total assets of more than one trillion rupiah.[19] In the **Philippines**, the board is recommended to establish the corporate governance committee and its function includes overseeing the implementation of the corporate governance framework and the board evaluation.[20]

The roles of the audit committee as further elaborated in the *Principles* also include oversight of the internal audit activities (IV.C) and may include support for the board's oversight of risk management (V.D.2). Globally, a large majority of jurisdictions of 49 jurisdictions now require or recommend board-level committees to play a role in risk management oversight. The *Principles* (V.E.2) point out that "[w]hile risk committees are commonly required for companies in the financial sector, a number of jurisdictions also regulate risk management responsibilities of non-financial companies, requiring or recommending assigning this role to either the audit committee or a dedicated risk committee. The separation of the functions of the audit and risk committees may be valuable given the greater recognition of risks beyond financial risks, to avoid audit committee overload and to allow more time for risk management issues." Taking into account both requirements and recommendations, the audit committee is the preferred choice for risk oversight in 38 jurisdictions, while risk committees are required or recommended in 16 jurisdictions (Figure 2.3).

Figure 2.3. Board-level committee for risk management



Note: Based on 49 jurisdictions.
Source: OECD (2023[2]).

[12] Step Up Practice 10.3 of the Malaysian Code on Corporate Governance 2021 recommends that the board establishes a Risk Management Committee, which comprises a majority of independent directors, to oversee the company's risk management framework and policies.
[13] Principle 4.2 of Viet Nam Corporate Governance Code of Best Practices.
[14] All commercial banks are required to establish the risk management committee (under the Board of Directors), while financing companies with total assets of more than 200 billion rupiah are required to establish the risk monitoring committee (under the Board of Commissioners) (Article 16 of OJK Regulation 18/POJK.03/2016 and Article 28(1)b of OJK Regulation 29/POJK.05/2020).
[15] Recommendation 3.4 of the Code of Corporate Governance for Public Companies and Registered Issuers.
[16] Practice Guidelines 9: Risk Management and Internal Controls in SGX Listing Rules.
[17] Principle 6.1.5 of the Corporate Governance Code for listed companies 2017.
[18] Article 25 of Parakas on Corporate Governance for the Listed Companies.
[19] Article 8(1) of OJK Regulation 4/POJK.05/2021.
[20] Recommendation 3.3 of the Code of Corporate Governance for Public Companies and Registered Issuers.

3.3. Board nomination and election

Electing and removing members of the board is a basic shareholder right (Principle II.A.). Shareholders can generally nominate board members or propose candidates. Some jurisdictions set a minimum shareholding requirement for a shareholder to nominate, usually at the same level as the shareholders' right to place items on the agenda of general meetings (OECD, 2023[2]).

Regarding board elections, globally, a substantial majority of the 49 jurisdictions in the Factbook have established majority voting requirements for board elections (78%, up from 39% in 2015), in most cases for individual candidates (i.e. not for a slate). More than half of the jurisdictions (26) allow cumulative voting for electing members of the board, of which three allow it with limitations. Although a majority of jurisdictions allow cumulative voting, it has not been widely used by companies in jurisdictions where it is optional (OECD, 2023[2]). In the ASEAN region, setting majority voting requirements for board elections is also common. Cumulative voting is mandatory in **Viet Nam**, unless the company's charter can prescribe otherwise.[21] In the **Philippines**, the removal of a director requires a vote of at least two-thirds of the outstanding shares.[22]

Regarding the qualifications of candidates, setting a requirement or recommendation for qualifications for all board members is common, while some jurisdictions set more specific requirements or recommendations for the qualifications of at least some board appointees (e.g. independent directors, audit committee members). While most jurisdictions have established general requirements or recommendations for the qualifications of all board candidates, some jurisdictions give more emphasis to the balance of skills, experience and knowledge of the board, rather than to the qualifications of individual board members (OECD, 2023[2]). For example, in the **Philippines**, the board is recommended to have an appropriate mix of competence and expertise and the board members should remain qualified for their positions individually and collectively, to fulfil their roles in responding to the needs of the organisation on the evolving business environment and strategic direction.[23] Also, **Singapore**'s code states that the board should comprise directors who as a group provide core competencies such as accounting or finance, business or management experience, industry knowledge, strategic planning experience and customer-based experience or knowledge.

Globally, nearly two-thirds of the 49 jurisdictions (32) require or recommend that some of the candidates go through a formal screening process, such as approval by the nomination committee. In most cases, such screening processes are recommended as good practice in national codes (OECD (2023[2]), Table 3). In **Thailand**, the nomination committee should set the nomination criteria and process consistent with the skills matrix approved by the board and ensure that the candidate's profile meets the requirements set out in the skills matrix and nomination criteria. Upon proposal to and approval by the board of a candidate, the candidate is presented to the shareholders' meeting for election and appointment as a director.[24] In **Viet Nam**, the code states that the nomination committee should assist the board in selecting and recommending candidates for election by shareholders and oversee the development and implementation of the formal board nomination process.[25] The code also has recommendations on the establishment of the corporate governance, nomination and remuneration (CGNR) committee and its responsibilities could include identifying individuals qualified to become board members and recommending such individuals to the board for nomination for election.[26]

[21] Article 148 (3) of Law on Enterprises.
[22] Section 27 of the Revised Corporation Code of the Philippines.
[23] Recommendation 1.1 of the Code of Corporate Governance for Public Companies and Registered Issuers.
[24] 3.3.2 of the Corporate Governance Code 2017.
[25] 2.1.5 of Viet Nam Corporate Governance Code of Best Practices.
[26] Principle 4.3 of Viet Nam Corporate Governance Code of Best Practices.

Table 3. Governance of board nomination

Jurisdiction	Information provided to shareholders regarding the candidates for board membership			Requirement or recommendation for board nomination	
	Name of candidate	Qualifications of candidates	Candidate's relationship with the firm	Qualification of candidates [e.g. only for non-executive directors (NED), independent directors (ID) or members of audit committee (AC)]	Formal screening process (e.g. approval by the nomination committee)
Cambodia[1]	-	-	-	L, C	C
Indonesia	L	L	L[2]	L: NED, AC	L
Malaysia	R	R	R	R	R; C
Philippines[3]	-	-	-	C	C
Singapore[4]	R	R	R	R, C	C
Thailand	C	C	-	L	C
Viet Nam	C	C	-	L, C	C

Key: **L** = requirement by law or regulations; **R** = requirement by the listing rules; **C** = recommendation by the codes or principles; "**-**" = absence of a specific requirement or recommendation.
Note:
1. In **Cambodia**, Article 6 of the Parakas on Corporate Governance for the Listed Companies states that shareholders should have the right to receive information related to directors and senior officials as well as information related to shareholder meetings.
2. In **Indonesia**, the information on the relationship of the candidate with the firm is required to oversee the independence of the commissioner.
3. In the **Philippines**, when the shareholder meeting is for the election of directors or trustees, the notice of shareholder meetings should include information on the requirements and procedure for nomination and election (Section 50 of the Revised Corporation Code of the Philippines).
4. In **Singapore**, the SGX Listing Manual provides that any appointment of a director must be announced by the issuer, providing information including the director's name, working experience, relationship with the issuer, shareholding interest in the issuer and other specified information. The Listing Manual requires directors to have appropriate experience and expertise to manage the group's business. A director without prior experience as a director of an issuer must undergo training as prescribed by the Exchange. If the nominating committee is of the view that training is not required as the director has other relevant experience, the basis of their assessment must be disclosed.
Source: OECD (2023[2]).

3.4. Diversity on boards and in senior management

The *Principles*, as revised in 2023, emphasise the importance of ensuring gender and other forms of diversity on boards in senior management. Companies' efforts to enhance diversity of the board could be observed in several aspects of activities of the company, including the disclosure the information about the composition of the board and its members (IV.A.5), board nomination and election processes (V.D.6), talent development and succession planning (V.D.4), and the board evaluation (V.E.4).

In **the Philippines**, the Code recommends that the board has a policy on board diversity. A board diversity policy is not limited to gender diversity. It also includes diversity in age, ethnicity, culture, skills, competence and knowledge. On gender diversity policy, the Code explains that increasing the number of female directors, including female independent directors is a good example.[27] From the perspective of disclosure, **Thailand** has a corporate governance code recommendation that the board explicitly disclose in the company's annual report and on the website its diversity policies and details relating to directors, including directors' age, gender, qualifications, experience, shareholding percentage, years of service as a director and director position in other listed companies.[28] **Malaysia** recommends targets of 30% for women's participation on boards of listed companies, while **Singapore** has introduced the same target with a phasing in by 2030.

[27] Recommendation 1.4 of the Code of Corporate Governance for Publicly Listed Companies (2016).
[28] Guideline 3.1.4 of Corporate Governance Code for listed companies 2017.

The nomination and election of board members are also key stages for improving the diversity of the board. In **Malaysia**, the listing rules[29] require listed companies to disclose in the annual report policy on board composition, the mix of skills, independence and diversity (including gender diversity). Listed companies are also required to appoint at least one woman director on their boards.[30] Additionally, the Malaysian Code on Corporate Governance[31] recommends that appointments of board and senior management are based on objective criteria, merit and with due regard for diversity in skills, experience, age, cultural background and gender. In **Singapore**, it is recommended that the board disclose the channels and criteria used in the search and nomination process for identifying appropriate candidates, and how the board, with its collective skills, experience and diversity, meets the needs of the company.[32]

Talent development and succession planning for the CEO and other key executives are also long-term strategic tools to enhance diversity. In **Malaysia**, the Malaysian Code on Corporate Governance[33] emphasises the quality of gender diversity policies for both the board and senior management. The guidance stresses the need for concrete action plans, numerical targets and mechanisms to track performance against established targets. In **Singapore**, it is recommended that the nomination committee make recommendations to the board on the review of succession planning for directors, in particular for the chair and the CEO, as well as key management personnel.[34]

Finally, board and committee evaluations provide an opportunity to improve board practices and the performance of its members. Principles V.E.4 of the *Principles* states "Boards should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences." In **Singapore**, the Practice Guidance on the Code of Corporate Governance[35] encourages the nominating committee to decide how the board's performance may be evaluated and proposes objective performance criteria and to consider the board's composition (balance of skills, experience, independence, knowledge of the company, and diversity).

3.5. Board responsibilities for sustainability matters

In fulfilling its functions in monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the corporation, the board responsibilities may naturally include taking sustainability risks and opportunities into consideration, in particular if they could affect the company's value, even if the regulatory framework does not specify them explicitly. The revised Principles clarified, in VI.C, that the board must consider material sustainability risks and opportunities, including with respect to climate-related physical and transition risks.

Many jurisdictions have at least some provisions that clearly articulate the board responsibilities on sustainability matters. In **Indonesia**, financial services institutions are required to prepare a sustainable finance action plan which should be arranged by the board of directors and approved by the Board of Commissioners.[36] More generally, financial services providers, issuers, and public companies are required to implement sustainable finance in their business activities by using principles of responsible investment, sustainable business strategies and practices, and social and environmental risk management among

[29] Paragraph 15.08A(3)(a) of Bursa Malaysia Main Market Listing Requirements.
[30] Paragraph 15.02 (1)(b) of Bursa Malaysia Main Market Listing Requirements.
[31] Practice 5.5 of the Malaysian Code on Corporate Governance [as at 28 April 2021].
[32] Practice Guidance 4, Practice Guidelines on the Code of Corporate Governance.
[33] Guidance 5.10 of the Malaysian Code on Corporate Governance [as at 28 April 2021].
[34] 4.1 (a) of Guidelines on Corporate Governance.
[35] Practice Guidance 5.
[36] Articles 4(1) and 4(4) of OJK Regulation 51/POJK.03/2017.

others.[37] It could be argued that the board is expected to take a lead role in drafting and implementing these principles.

In **Malaysia**, the Malaysian Code on Corporate Governance sets out best practices and guidance to strengthen board oversight and the integration of sustainability considerations in the strategy and operations of companies (SCM, 2021[9]). Particularly, the Code recommends that the board together with management takes responsibility for the governance of sustainability in the company including setting the company's sustainability strategies, priorities and targets.[38] The board is also recommended to take appropriate actions to ensure that it stays abreast of and understands the sustainability issues relevant to the company and its business, including climate-related risks and opportunities.[39]

In several jurisdictions, the board responsibilities are approached from the point of view of disclosure requirements and recommendations. In **the Philippines**, listed companies are recommended to disclose the board's oversight of climate-related risks and opportunities; the risks and opportunities that the organisation has identified over the short-, medium-, and long-term; the processes for identifying and assessing the related risks; and the metrics used in assessing in line with the companies' strategy and risk management processes (SECP, 2019[10]). In **Singapore**, the mandatory sustainability report should include "a statement of the Board that it has considered sustainability issues in the issuer's business and strategy, determined the material ESG factors and overseen the management and monitoring of the material ESG factors." Companies are also required to "describe the roles of the Board and the management in the governance of sustainability issues" (SGX, 2021[11])). In **Viet Nam**, companies are required to disclose the assessments by the board of directors of the company's operations, including the assessment related to environmental and social responsibilities, while specifying the risks probably affecting the production and business operations or the realisation of the company's objectives, including environmental risks.[40] **Cambodia** has recommendations on sustainability disclosure while it only refers to the financial sector (OECD, 2023[5]).

In **Thailand**, the Corporate Governance Code refers to the board responsibilities for environmental and social issues mainly from the perspectives of innovation and responsible business. For example, Principle 5.1 of the Code states "[t]he board should prioritise and promote innovation that creates value for the company and its shareholders together with benefits for its customers, other stakeholders, society, and the environment, in support of sustainable growth of the company." Here, the Code recommends the board to consider not only financial profits for shareholders but also benefits for its stakeholders, the society and the environment.

[37] Articles 2(1) and 2(2) of OJK Regulation 51/POJK.03/2017.

[38] Practice 4.1 of the Malaysian Code on Corporate Governance [as at 28 April 2021].

[39] Practice 4.3 of the Malaysian Code on Corporate Governance [as at 28 April 2021].

[40] Articles I.5. and IV.1. of Appendix IV of Circular 96/2020/TT-BTC.

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