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2008 Review of the implementation status of corporate governance disclosures: an examination of reporting practices among large enterprises in 10 emerging markets

Report by the UNCTAD secretariat

Executive summary

The first part of the present report provides an overview of recent developments in corporate governance disclosure. The second part of the report presents the results of the 2008 review of the implementation status of corporate governance disclosure. This review examines the disclosure practices of 100 emerging market enterprises made up of the top ten enterprises from the top ten UN member States, by index weighting, found in the MSCI Emerging Markets Index. The ten countries whose enterprises are included in this study are: Brazil, China, India, Indonesia, Israel, the Republic of Korea, Malaysia, Mexico, the Russian Federation, and South Africa. Data on enterprises from the United Kingdom and the United States is also included for comparative purposes.

The main findings of this study show that on average, the selected top ten enterprises from each market are reporting more than half the items in the ISAR benchmark of good practices in corporate governance disclosure. Further analysis indicates that some subject areas, such as auditing issues, are significantly less reported than other areas, such as financial transparency.

This study also examines the compliance of enterprises with disclosure rules in their home markets. The findings indicate that while enterprises are, on average, more likely to disclose information if it is required, significant gaps in compliance still exist. The study concludes that good disclosure rules are necessary but not sufficient: such rules must be reinforced by mechanisms to ensure compliance.

* ISAR documents were previously issued under the symbol TD/B/COM.2/ISAR/...

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Introduction

1. Corporate governance has been a key area of work for the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) since 1989 (E/C.10/AC.3/1989/6). Since the twenty-first session of ISAR, the group of experts has requested an annual review of the implementation status of corporate governance disclosure. Annual reviews were presented at the twenty-first, twenty-second, twenty-third and twenty-fourth sessions of ISAR. At the twenty-fourth session, ISAR considered the document 2007 Review of the Implementation Status of Corporate Governance Disclosures: An Inventory of Disclosure Requirements in 25 Emerging Markets (TD/B/COM.2/ISAR/CRP.6, hereafter the “2007 Review”).

2. UNCTAD’s studies on this subject use as a benchmark ISAR’s conclusions on corporate governance disclosure found in the 2006 UNCTAD publication *Guidance on Good Practices in Corporate Governance Disclosure* (UNCTAD/ITE/TEB/2006/3). This 2008 Review complements the data presented in the 2007 Review. While the 2007 Review examined the corporate governance disclosure requirements of government and stock exchange regulations, this 2008 Review looks at the actual reporting practices of enterprises, based on their public reports, in 10 of the largest economies studied in the 2007 Review. Thus, while the 2007 Review studied what publicly listed enterprises were required to report, this present study is an examination of what enterprises are actually reporting. This line of enquiry is expected to provide policymakers and other interested parties an indication both of what enterprises are reporting and the compliance of enterprises with corporate disclosure rules and regulations.

3. The objectives of this Review are to (a) provide a brief overview of recent developments in corporate governance since the twenty-fourth session of ISAR; and (b) present and analyse the results of the 2008 review of corporate governance disclosure practices. The overview of recent developments is provided in chapter I, which examines significant developments in the area of corporate governance disclosure. Chapter II presents the findings of the 2008 Review, along with detailed analysis.

4. The findings of the 2008 Review show that on average, the enterprises in the study are disclosing more than half the items in the ISAR benchmark of good practices in corporate governance disclosure. Further analysis indicates that, while required disclosure items are reported more frequently than non-required disclosure items, there are still significant gaps in compliance among enterprises vis-à-vis the reporting requirements of their home markets.

I. Overview of recent developments in corporate governance disclosure

5. Over the 2007/08 ISAR intersession period, corporate governance (CG) disclosure requirements continued to be strengthened in countries around the globe. In the United States, new disclosure rules related to the area of risk management have been proposed and in Europe, a number of CG disclosure changes made by the European Commission in recent years have been put to the test as they come into implementation in European Union member States. In emerging economies, trends continue in the area of strengthening of CG disclosure requirements as these countries further integrate into an increasingly competitive global economy.

6. Shareholders and other stakeholders remain concerned about disclosures and corporate governance controls in the area of executive compensation. Mounting evidence suggests that complex pay packages reward executives regardless of whether they perform well or poorly, draining shareholder value. Regulators are trying to address this by requiring greater transparency in executive compensation, while shareholders are seeking “say on pay,” or retrospective approval of pay packages.

A. Emerging markets

1. Brazil

7. At the October 2007 Meeting of the Latin American Corporate Governance Roundtable, the Organization for Economic Cooperation and Development (OECD) issued a report on the Code of Best Practice, first published by the Brazilian Institute of Corporate Governance in 1999, with subsequent editions released in 2001 and 2004. Market players were accustomed to dealing with hard law and regulations, so voluntary adoption of best practice was novel and adoption of the Code developed slowly over time, according to the report.¹ The 2000 launch of the Novo Mercado by the Bovespa stock exchange, with its focus on transparency, was one of many factors that drove uptake. A new edition of the Code is expected to be released in 2008.

2. China and Hong Kong (China)

8. Both China and Hong Kong (China), have adopted the “comply or explain” corporate governance model practiced in the United Kingdom, which calls for abiding by CG guidelines or describing the reasoning behind deviations. Hong Kong (China) has a longer history as a financial centre, allowing more time for its rules to develop than the China Securities Regulation Commission (CSRC) Code. The latest Hong Kong (China) Code, released in January 2005, requires publication of a corporate governance report containing “comply or explain” disclosures; failure to issue such a report constitutes a breach of the listing rules.² According to a RiskMetrics report comparing CG between China and Hong Kong (China), the CSRC regulations are not as developed, though the report does note “some improvements have been made following the release of the “Regulations on Information Disclosure of Listed Companies” by the CSRC in December 2006.”³

9. The RiskMetrics report argues that enforcement of these rules faces challenges in both China and Hong Kong (China). The Asian Corporate Governance Association (ACGA) supports this view in its *CG Watch 2007* report saying, “Enforcement powers of both the main securities commission and the stock exchange [in Hong Kong (China)] are insufficient.” The report gives Hong Kong (China) an aggregate score of 67 on a 100-point scale, while China scores 45, against an average of 52 for all countries in the ACGA study.⁴ According to the ACGA report, enforcement and disciplinary

¹ Viegas L (2007). Country Report: Voluntary Corporate Governance Code in Brazil, OECD. 10 October. <http://www.oecd.org/dataoecd/4/47/39741021.pdf>

² Ibid.

³ *Corporate Governance in Greater China: What to Expect When Investing in China vs. Hong Kong (China)*. RiskMetrics Group, April 2008. http://www.riskmetrics.com/pdf/Corporate_Governance_HK_China_Final.pdf. See also: *Regulations on Information Disclosure of Listed Companies*. China Securities Regulatory Commission, 30 January 2007. <http://211.154.210.238/en/jsp/detail.jsp?inford=1183523778100&type=CMS.STD&path=ROOT%3EEN%3ELaws+and+Regulations%3ECommission+Regulations>.

⁴ Gill A and Allen J (2007). *CG Watch 2007: Corporate governance in Asia*, CLSA Asia-Pacific Markets and Asian Corporate Governance Association, 17 September.

proceedings experience lengthy delays in both regions. In China, regulators lack resources for proper enforcement, according to *CG Watch 2007*. As in Japan, China lacks voting by poll, and the influence of the market investors is “extremely limited,” according to the ACGA report.⁵

3. India

10. In his 2008 book *Billions of Entrepreneurs: How China and India Are Reshaping Their Future and Yours*, Harvard Business Professor Tarun Khanna opines that Indian companies demonstrate better corporate governance than Chinese companies. He characterizes the Indian marketplace as “noisy,” in part because Indian companies are accountable to shareholders *and* stakeholders.⁶ India also has a “vibrant” business media in which “no opinion is forbidden to be expressed” and “information is noisy and unbiased,” according to Khana.⁷

11. With an aggregate score of 83.6 per cent, India tops a January 2008 Florida International University study of corporate governance in eight Asian countries that aggregates findings of several World Bank studies.⁸ While India places in the “observed” category on almost all CG elements, including “Access to Information,” the country places in the lower category of “largely observed” for “Disclosure Standards.”⁹ In February 2008, the IFC Global Corporate Governance Forum announced a research project surveying 500 publicly traded companies in India to identify opportunities to improve corporate governance practice.¹⁰

4. The Middle East and North Africa

12. In July 2008, the Hawkamah Institute for Corporate Governance and the International Finance Corporation (IFC) released a report on corporate governance in the Middle East and North Africa (MENA). The report, based on a survey of 1,044 banks and listed companies from 11 countries across the MENA region, found over three quarters of banks (76 per cent) and over two-thirds of listed companies (67 per cent) citing corporate governance as important (or very important) for their businesses. Despite the fact that many of the respondents value CG reform, many did not have the required understanding to implement the necessary changes, according to the report.¹¹

13. The dialogue on corporate governance in the region is moving from more general CG issues “to specific issues related to the composition and the role of the board in implementing transparency and disclosure,” according to H.E. Dr. Mahmoud Mohieldin, Minister of Investment for the Arab Republic of Egypt.¹² He made this comment at the Second Annual International Conference on Corporate Governance hosted by the Egyptian Institute of Directors (EIoD) in June 2008. The Minister stressed the importance of

⁵ Ibid.

⁶ Holstein W (2008). Corporate governance in China and India. *BusinessWeek*, 6 March. http://www.businessweek.com/managing/content/mar2008/ca2008036_282896.htm.

⁷ Ibid.

⁸ McGee R (2008). *Corporate Governance in Asia: Eight Case Studies*. Working paper. January. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1081954.

⁹ Ibid.

¹⁰ International Finance Corporation. (2008) IFC Global Corporate Governance Forum Partners with SEBI and NISM to Promote Awareness of Governance Reform in India. 22 February. <http://www.ifc.org/ifcext/media.nsf/content/SelectedPressRelease?OpenDocument&UNID=BDD7D32AC0397E9D852573F70057DBB7>.

¹¹ Hawkamah Institute for Corporate Governance and International Finance Corporation. (2008) “Hawkamah/IFC Report Highlights Growing Awareness of Corporate Governance. 14 July. http://www.hawkamah.org/news_and_views/archive/2008/41.html.

¹² Good corporate governance key to accessing finance. UNCTAD. <http://www.unctad.org/isar>.

building capacity to implement CG best practice exemplified by institute's training of about 1,000 executives.¹³

5. Pakistan

14. In March 2002, the Securities and Exchange Commission of Pakistan (SECP) issued the Code of Corporate Governance. In June 2005, the World Bank released an assessment that found Pakistan making "significant strides in improving corporate governance over the last few years." However, the report also identified a number of shortcomings, and recommended the SECP build its enforcement capacity to improve compliance with the code, particularly around disclosure and reporting.¹⁴

15. In 2006, the IFC launched the Pakistan Corporate Governance Project. In late 2006 through early 2007, the project surveyed 111 Pakistani companies on their implementation of the code, as well as their attitudes toward it. The project also held two roundtables on CG in Pakistan in July 2007 that informed the resulting report conveying survey results. The survey found 98 per cent of surveyed companies complying with the code, but 89 per cent said they did so simply because it's mandatory.¹⁵

6. Russian Federation

16. According to RiskMetrics analyst Aneta McCoy, standards of corporate governance in the Russian Federation have improved dramatically since the 2002 introduction of a voluntary CG code.¹⁶ RiskMetrics, a corporate governance rating and proxy services firm, observes that listed companies in the Russian Federation disclose more information and are much more responsive to investor requests than they used to be. However, the RiskMetrics analyst notes a number of lingering challenges, including the lack of a sufficient number of independent directors on company boards.

17. In addition to the code driving improvements, so too does the quest for capital in the global marketplace, which places a premium on strong CG. For example, the European Bank for Reconstruction and Development (EBRD), a major lender to Russian Federation companies, attaches strong corporate governance conditions to its loans. "The more Russian Federation companies seek access to international capital markets, the more they realize that transparency and corporate governance are sine qua non conditions demanded by investors," said EBRD spokesman Richard Wallis.¹⁷ Injecting further momentum into improvements is the October 2008 meeting of the Russian Corporate Governance Roundtable. Established by the OECD in June 1999, the roundtable last met in June 2005.¹⁸

¹³ Ibid.

¹⁴ *Report on the Observance of Standards and Codes (ROSC) Corporate Governance: Country Assessment – Pakistan*, June 2005. http://www.worldbank.org/ifa/rosc_cg_pak.pdf.

¹⁵ *A Survey of Corporate Governance Practices in Pakistan 2007*. International Finance Corporation, Securities and Exchange Commission of Pakistan, Pakistan Institute of Corporate Governance, Association of Certified Chartered Accountants Pakistan, 2007. [http://www.ifc.org/ifcext/mena.nsf/AttachmentsByTitle/ASurveyofCGPracticesinPakistan2007/\\$FILE/A+SURVEY+O+F+CORPORATE+GOVERNANCE+PRACTICES+IN+PAKISTAN.pdf](http://www.ifc.org/ifcext/mena.nsf/AttachmentsByTitle/ASurveyofCGPracticesinPakistan2007/$FILE/A+SURVEY+O+F+CORPORATE+GOVERNANCE+PRACTICES+IN+PAKISTAN.pdf).

¹⁶ Ethical Corporation, "Strategy & Management: Russia – Fitting ethics into economic expansion," September 2008. http://www.ethicalcorp.com/content_print.asp?ContentID=6062.

¹⁷ Ibid.

¹⁸ OECD, "The Russian Corporate Governance Roundtable." http://www.oecd.org/document/11/0,3343,en_2649_34813_2351179_1_1_1_1,00.html.

7. South Africa

18. King I (1994) and King II (2002), the codes on corporate governance in South Africa named after the chair of the drafting committee, Mervyn King, set useful examples for CG best practice globally. A third King Committee is currently drafting a third iteration of the codes, and King III, originally scheduled for release in late 2007, is now slated for issuance in January 2009.¹⁹ From a disclosure perspective, the new code will break new ground by including a chapter on “Stakeholder Relationship Management,” since stakeholder relations hinges on disclosure and access to information.²⁰

19. “Respondents were not very keen to adopt other corporate governance improvements that are not considered mandatory by the Code of Corporate Governance but are advocated by the OECD Principles of Corporate Governance.” Indeed, about half of surveyed companies responded that they did not have a corporate governance improvement plan (55 per cent), had not implemented a formal remuneration system for executives (53 per cent), had not established conflict of interest and related-party transactions administration procedures (54 per cent), and had not introduced independent non-executive directors to the board of directors or established general shareholder meeting procedures (50 per cent). While almost all respondents (92 per cent) considered CG practice important (or very important), 14 per cent “did not see any benefit in adopting such practices.”²¹

B. Developed markets

1. United States

20. In a July 2008 research report, Marc Siegel of RiskMetrics Group cited the example of Merck to illustrate anomalies in how companies report loss contingencies. Siegel pointed out that on page 39 of Merck’s Third Quarter 2007 10-Q, filed on November 1, 2008, the company noted that it “cannot reasonably estimate the possible loss or range of loss with respect to the *Vioxx* Lawsuits,” referring to litigation on its painkiller linked to heart attacks. “The Company has not established any reserves for any potential liability relating to the *Vioxx* Lawsuits or the *Vioxx* Investigations,” it continued. A week later, the company announced a \$4.85 billion settlement of the lawsuits.²²

21. “Well, you have to think they had some idea of how much this was going to cost them a week before they offered a \$4.85 billion settlement,” said Sanford Lewis of the Investor Environmental Health Network, a coalition of shareholder activists focused on product toxicity.²³ Lewis cited this example in discussing strengths and shortcomings of the June 2008 “FASB Exposure Draft on *Disclosure of Certain Loss Contingencies*” proposing new rules.²⁴ According to Lewis, companies routinely claim they “cannot estimate” possible losses, so he applauds the proposed rule for requiring companies to

¹⁹ Naidoo S (2007) SA faces corporate governance crunch. *Business Times*. 17 June.

<http://www.iodsa.co.za/downloads/sunday%20times.pdf>.

²⁰ Steyn B (2008) King Report III on Corporate Governance institutionalises Stakeholder Relationship Management. *PR Conversations*. 24 August. <http://www.prconversations.com/?p=466>.

²¹ Ibid.

²² Siegel M (2008) *Accounting for Contingencies -- When Are Financial Statement Users Entitled to Information?* RiskMetrics Group, 7 July. “Similar situations occurred at Northrop Grumman (NOC) and Xerox Corporation.”

²³ Baue B (2008) Sunshine is the Best Disinfectant: Shareholder Activists Promote Corporate Transparency. *SocialFunds.com*, 23 July. <http://www.socialfunds.com/news/article.cgi/2533.html> Disclosure: Bill Baue collaborated with Sanford Lewis in producing Corporate Watchdog Radio from 2005 through 2007, and co-wrote two reports with him in 2008.

²⁴ FASB Issues Exposure Draft on *Disclosure of Certain Loss Contingencies*. Financial Accounting Standards Board, 5 June 2008. <http://www.fasb.org/news/nr060508.shtml>

“disclose the amount of claims that are against them, or what they view as the worst-case scenario.”²⁵

22. However, Lewis identified a number of shortcomings in the proposed rules and made recommendations on addressing them. FASB proposes requiring companies to disclose severe liabilities that may be remote and develop over time – but only if the issue would be resolved within a year. “[I]f investors are going to have a complete picture, there ought to be disclosure regardless of when the issue will resolve,” Lewis opined, and recommended removing the one-year limit given that many complex liabilities, such as asbestos or tobacco, develop over a longer time horizon.²⁶

23. FASB also proposed allowing companies to withhold information deemed “prejudicial” by its lawyers, in other words, if the information could be used against the company in a lawsuit. A misalignment of interests arises however, as investors are typically interested in the disclosure of potential risks that may lead to litigation liability for a company, while company lawyers are typically interested in keeping such risks confidential because disclosure itself may lead to lawsuits. “[I]f you’re an investor in these companies you need a full picture painted of the risks the company is taking – and therefore it shouldn’t be an option to conceal the information,” Lewis said. He recommended removing the prejudicial exemption, or circumscribing it, clearly describing “the very limited circumstances” in which company lawyers can use it.²⁷

2. European Union

24. In May 2003, the European Commission unveiled its Action Plan to enhance corporate governance in the European Union (EU).²⁸ In February 2008, the IFC Global Corporate Governance Forum released a study surveying the EU approach to corporate governance, including disclosure mandates. The IFC paper identifies the example of Article 41 of the 2007 Directive on Company Law, Accounting and Auditing Rules requires “public interest entities” (essentially listed companies, credit institutions and insurance companies) to have audit committees that include at least one member who is independent and competent in accounting and/or auditing by June 2008.²⁹

25. By September 2008, listed companies must have complied with the amended Fourth and Seventh Accounting Directives by publishing a discrete corporate governance statement, either in their annual report or separately. The 2006 amendments also require companies to describe the main features of their internal control and risk management systems in relation to financial reporting, provide information on the composition and operation of the board, and determine the procedures of shareholders’ meetings and how shareholders’ rights are to be exercised.³⁰

26. Also in Europe, the French bank Société Générale announced in January 2008, that a rogue trader had mounted 4.9 billion euros (or \$7.2 billion) in trading losses.³¹ Société Générale addressed the situation promptly, disclosing

²⁵ *Op. cit.* 15.

²⁶ *Op. cit.* 15.

²⁷ *Op. cit.* 15.

²⁸ *Modernizing Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward*. European Commission, May 2003. http://ec.europa.eu/internal_market/company/modern/index_en.htm.

²⁹ *The EU Approach to Corporate Governance: Essentials and Recent Developments*, International Finance Corporation Global Corporate Governance Forum, February 2008.

[http://www.gcgf.org/ifcext/cgf.nsf/AttachmentsByTitle/EU+Approach+to+CG/\\$FILE/IFC_EUApproach_Final.pdf](http://www.gcgf.org/ifcext/cgf.nsf/AttachmentsByTitle/EU+Approach+to+CG/$FILE/IFC_EUApproach_Final.pdf).

³⁰ *Ibid.*

³¹ Bloomberg, “Societe Generale Reports EU 4.9 Billion Trading Loss,” 24 January 2008. <http://www.bloomberg.com/apps/news?pid=20601087&sid=a.qZ3gOMOxhE&refer=home>

it and selling the problem investments at a significant discount, accounting for its big losses. However, the bank raised questions among accounting and reporting experts in March 2008 when it claimed these January 2008 losses against the bank's 2007 earnings.³² The company explained that it was invoking the "true and fair" provision of International Accounting Standards Board (IASB) rules allowing exceptions in certain circumstances, and its auditors approved the move. Some accounting experts, however, disagreed with this interpretation of the rules. "There is nothing true about reporting a loss in 2007 when it clearly occurred in 2008," said John Smith, a member of the IASB. "This raises a question as to just how creative they are in interpreting accounting rules in other areas."³³

3. Australia

27. Australian companies improved their corporate governance disclosure in their 2007 annual reports, according to a June 2008 Australian Securities Exchange (ASX) analysis. The report surveyed compliance with ASX's 10 "Principles of Good Corporate Governance" encompassing 28 "Best Practice Recommendations," first released in March 2003 (and revised in August 2007 for implementation in 2008.) For example, Principle 10 calls for recognizing the legitimate interests of stakeholders, and the associated recommendation asks companies to "establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders."³⁴

28. The analysis, the fourth annual assessment, found "slightly higher" levels of adoption of the recommendations in 2007 than in previous years, and "significantly higher" than the first year of review. For all entities reviewed (listed companies and listed trusts), the number of recommendations with overall reporting levels over 80 per cent increased from 23 of 28 recommendations in 2006 to 26 of 28 in 2007. ASX attributed the continuing improvement in CG disclosure to better understanding of and more familiarity with the Principles and Recommendations, as well as ASX's monitoring of compliance.³⁵

4. Japan

29. In May 2008, the Asian Corporate Governance Association (ACGA) produced a report which identified a number of idiosyncrasies in Japan's corporate governance regime that impede companies from achieving internationally recognized best practice. "While a number of leading companies in Japan have made strides in corporate governance in recent years, we submit that the system of governance in most listed companies is not meeting the needs of stakeholders or the nation at large," according to the ACGA report. "Improved corporate governance is not a panacea for the problems of Japan's stock markets or economy, but it will be an essential element in the rebuilding of confidence. It is in Japan's national interest, therefore, to converge towards global best practice in corporate governance – and this trend will become more important as the government seeks to turn Tokyo into a leading international financial centre."³⁶

³² See note 40 on page 247 of the Société Générale 2007 annual report. New York Times, "Loophole Lets Bank Rewrite the Calendar," 7 March 2008. <http://www.nytimes.com/2008/03/07/business/07norris.html>.

³³ Ibid.

³⁴ Australian Securities Exchange, *Analysis of Corporate Governance Disclosures in 2007 Annual Reports*, 18 June 2008. http://www.asx.com.au/about/pdf/analysis_of_cg_in_2007_annual_reports.pdf

³⁵ Ibid.

³⁶ Allen J, Connors M, Krutikov A (2008). *White Paper on Corporate Governance in Japan*, Asian Corporate Governance Association, May. http://www.acga-asia.org/public/files/Japan%20WP_%20May2008.pdf.

30. One such idiosyncrasy is the clustering of annual general meetings (AGMs) in June, an issue addressed in UNCTAD's 2007 review. The majority of AGMs happen in the third week of June, impeding shareholder attendance. Exacerbating this problem is the short notice in issuing proxy ballots (a mere two weeks before AGMs) creating a rush in proxy voting.³⁷

31. RiskMetrics Group's Director of International Research in Japan, Marc Goldstein, noted that the 2008 Japanese proxy season pitted shareholder activists against companies for the second straight year, with companies using "every weapon in their arsenal" to fight back, according to Goldstein.³⁸ "Perhaps the most notable weapon in managements' arsenals is the all-out effort to attract management-friendly shareholders from among the ranks of companies' lenders and business partners," Goldstein said, referring to the practice of cross-shareholding, or reciprocal stock ownership between companies. "Cross-shareholding rates rose in 2007/08, the second consecutive increase after 15 straight years of decline, and news reports indicate that the increase is continuing in 2008-09."³⁹

32. Goldstein contended that cross-shareholding resulted in a "drop in latent profits amount[ing] to several hundred billion yen," citing data from the Nikkei newspaper indicating that "the unrealized gains on shares held by Japan's listed companies plunged 47 per cent in the 2007/08 fiscal year."⁴⁰ Nevertheless, companies continue the practice which, critics charge, results in reinforcing management power while weakening the relative power of shareholders. Criticism of corporate governance practices at Japanese companies extends to a number of other issues. According to the ACGA report, Japanese companies typically do not conduct proxy voting by poll, nor do they publish "clear and detailed vote results that state the total number of votes for and against each resolution, and any abstentions."⁴¹ "We believe that voting by poll and the immediate publication of results would significantly enhance the quality and transparency of shareholder meetings in Japan and the reputation of companies for good governance," says the ACGA report. "Given the considerable increase in foreign ownership of Japanese shares in recent years, and the subsequent rise of cross-border voting, we believe that the common practice of not fully voting by poll and not disclosing AGM results is disrespectful to these shareholders. It is also disrespectful to domestic investors who take the trouble to vote their shares."⁴²

C. Subprime mortgage market crisis

33. In July 2008, the United States Securities and Exchange Commission released an examination of shortcomings in disclosure to investors by credit rating agencies in their ratings of financial institutions involved in the subprime mortgage market meltdown that triggered the global credit crisis. The report found a lack of documentation of committee actions and decisions. For example, one rating agency rarely documented the vote tallies of rating committee votes despite being a required item in the rating committee memorandum or addendum. The report also reprints e-mail exchanges

³⁷ Ibid.

³⁸ Goldstein M (2008). Global Roundup. *Risk & Governance Weekly*. RiskMetrics Group, 10 July. http://www.issproxy.com/governance_weekly/2008/148.html.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ *Op. cit.* 27.

⁴² *Op. cit.* 27.

between rating company analysts expressing concern over shortcomings in the rating of subprime deals.⁴³

34. “One analyst expressed concern that her firm’s model did not capture ‘half’ of [a particular] deal’s risk, but that ‘it could be structured by cows and we would rate it,’” the SEC report stated.⁴⁴ While disclosure of such opinions would give investors a much more accurate understanding of the real risks of AAA-rated investments that subsequently went bankrupt, it took a probe to reveal this information.

35. An April 2008 white paper by the Subprime Working Group at the United States-based law firm Gibson, Dunn and Crutcher notes that investors are also filing lawsuits holding companies accountable for withholding information on subprime investments. The paper identified a number of “theories of liability” for disclosure shortcomings that lawsuits were already advancing in court, including false financial statements, misleading disclosures regarding loan practices, undisclosed risk of subprime market collapse, and undisclosed sell-off of subprime securities. “Although these theories will be hotly contested by defendants in these cases, they are representative of the sweeping nature of the civil litigation claims being advanced,” stated the Gibson, Dunn and Crutcher lawyers, who represented some of these defendants.⁴⁵

36. Yale Center for Corporate Governance Programme Director Stephen Davis and Investor Responsibility Research Center Institute Director Jon Lukomnik point out that investors are also filing shareholder resolutions asking companies to disclose further information on their accountability for the subprime debacle. For example, some ask credit rating agencies such as Moody’s and Standard and Poor’s to address perceived conflicts of interest. “These are steps in the right direction, but we have long maintained that the single biggest conflict in the credit markets today is that ratings are paid for by the issuers of debt, rather than the users of the ratings,” stated Davis and Lukomnik.⁴⁶

37. The second fix Davis and Lukomnik suggest is for executive compensation based on illusory financial gains to be returned. To support the idea, they quote renowned economist Paul Krugman: “Executives are lavishly rewarded if the companies they run seem successful... But if the excess turns out to have been an illusion – well, they still get to keep the money... Not only is this grossly unfair, it encourages bad risk-taking, and sometimes fraud.”⁴⁷ So when companies restate earnings, executive pay must likewise be recalculated based on the true earnings.

⁴³ Staff of the Office of Compliance Inspections and Examinations, Division of Trading and Markets and Office of Economic Analysis, United States Securities and Exchange Commission, *The Summary Report of Issues Identified in the Commission Staff’s Examinations of Select Credit Rating Agencies*, July 2008.

<http://www.sec.gov/news/studies/2008/craexamination070808.pdf>.

⁴⁴ Ibid. E-mail No. 1: Analytical Staff to Analytical Staff (Apr. 5, 2007, 3:56 PM). In another e-mail, an analytical manager in the same rating agency’s CDO group wrote to a senior analytical manager that the rating agencies continue to create an “even bigger monster – the CDO market. Let’s hope we are all wealthy and retired by the time this house of cards falters.” E-mail No. 2: Analytical Manager to Senior Analytical Manager (Dec. 15, 2006, 8:31 PM).”

⁴⁵ *Subprime-Related Securities Litigation: Where Do We Go From Here?* Subprime Working Group, Gibson, Dunn & Crutcher, 1 April 2008 <http://www.gibsondunn.com/Publications/Pages/Subprime-RelatedSecuritiesLitigation.aspx>.

⁴⁶ Davis S and Lukomnik J (2007). How the Sub-prime Mess Hits Governance. *Compliance Week*. 11 December. Davis and Lukomnik also co-authored *The New Capitalists: How Citizen Investors Are Reshaping The Corporate Agenda*, Harvard Business School Press, 2006.

http://www.complianceweek.com/index.cfm?fuseaction=article.viewArticle&article_ID=3815.

⁴⁷ Krugman P. Banks Gone Wild. *New York Times*. November 23, 2007.

<http://www.nytimes.com/2007/11/23/opinion/23krugman.html?hp>.

38. RiskMetrics Group evaluated the governance structures of 11 financial institutions, including six that became targets for potential vote-no campaigns by pension funds. The report surveyed investors, a substantial majority of whom said that improved disclosure would have been effective in helping investors evaluate risk exposure. Among the range of corporate governance factors related to the subprime meltdown, surveyed investors were most concerned about lack of transparency (38 per cent), followed by poor pay practices encouraging short-term performance (29 per cent).⁴⁸

D. Executive compensation and environmental risks

1. Executive compensation

39. In July 2006, the United States Securities and Exchange Commission (SEC) adopted new rules on executive compensation disclosure, introducing a new “Compensation Discussion and Analysis” (CD&A) requirement to “put into perspective for investors the numbers and narrative that follow it.”⁴⁹ A year and a quarter later, the commission issued a report assessing 350 first-year CD&As.⁵⁰ “We saw a great deal of detail this year, but what was missing was a discussion of how and why those philosophies and processes resulted in the numbers the company presented in its tabular disclosure,” said SEC Division of Corporate Finance Director John White in a speech on the day of the report’s release. “Far too often, meaningful analysis is missing – this is the biggest shortcoming of the first-year disclosures. Stated simply – Where’s the analysis?”⁵¹

40. The SEC report also urged companies to use plain English in explaining executive compensation arrangements – a specific requirement of the new rules that wasn’t followed very well, according to the report. In a letter to SEC Chair Christopher Cox two weeks earlier, Council of Institutional Investors Executive Director Ann Yerger pointed out that CD&A statements ran over 6,000 words and “readability metrics” studies found them extraordinarily difficult to read, according to a 2007 Mercer Human Resource Consulting study. “Lengthy CD&As filled with jargon and legalese obfuscate the key analysis of executive compensation philosophies and practices that allow investors to make informed decisions,” Yerger said.⁵²

41. Shareholders are taking this a step further by seeking not only disclosure, but also approval of executive compensation packages. As of August 2008, a majority of voting shareholders supported the measure at 10 United States-based companies, up from 8 in 2007, according to RiskMetrics, which covers proxy voting at over 38,000 companies worldwide.⁵³ As well, 9 companies

⁴⁸ “RiskMetrics Group Studies Find an Increase in Shareholder Activism and Litigation as a Result of the Credit Crisis: Weak Risk Management Practices Seen as Key Cause of the Mortgage Meltdown and Subsequent Rise in Subprime-Related Lawsuits,” RiskMetrics Group, 9 April 2008. http://www.issproxy.com/pdf/CgandCreditCrisis20080409_PR.pdf.

⁴⁹ “SEC Votes to Adopt Changes to Disclosure Requirements Concerning Executive Compensation and Related Matters,” United States Securities and Exchange Commission, 26 July 2006. <http://www.sec.gov/news/press/2006/2006-123.htm>.

⁵⁰ *Staff Observations in the Review of Executive Compensation Disclosure*, United States Securities and Exchange Commission Division of Corporation Finance, 9 October 2007.

<http://www.sec.gov/divisions/corpfin/guidance/execcompdisclosure.htm>.

⁵¹ White J (2007). “Where’s the Analysis?” U.S. Securities and Exchange Commission, Tackling Your 2008 Compensation Disclosures: The 2nd Annual Proxy Disclosure Conference, San Francisco, California, 9 October 2007. <http://www.sec.gov/news/speech/2007/spch100907jww.htm>.

⁵² Yerger A (2007). Council of Institutional Investors, Letter to United States Securities and Exchange Chair Christopher Cox *RE: Compensation disclosure compliance review process; Shareowner perspective on improving the Compensation Discussion and Analysis (CD&A)*, 27 September 2007.

⁵³ Walton L (2008). ‘Say on Pay’ Gets Ninth Majority. *Risk & Governance Weekly*, RiskMetrics Group, 20 June. http://www.issproxy.com/governance_weekly/2008/128.html, and L. Reed Walton, *Risk & Governance Weekly* “Tenth Majority for ‘Say on Pay,’” August 2008. http://www.issproxy.com/governance_weekly/2008/165.html.

had committed to implement say on pay.⁵⁴ In its own proxy, RiskMetrics management goes even further with three pay-related proposals, asking shareholders whether they approve its compensation philosophy, how it was applied in 2007 and how the company plans to apply it in 2008.⁵⁵ This gives a glimpse of the diversity of solutions being proposed.

2. Environmental disclosure

42. The case for more robust disclosure of environmental risks dates back more than a decade. For example, a 1998 United States Environmental Protection Agency study documented significant under-disclosure of corporate environmental liabilities. Specifically, 74 per cent of companies failed to comply with SEC regulations governing the disclosure of environment-related legal proceedings that could result in sanctions exceeding \$100,000.⁵⁶ In August 2002, the Rose Foundation for Communities and the Environment filed a petition with the SEC proposing a new rule to govern corporate disclosure of environmental liabilities.⁵⁷

43. A coalition of state treasurers, investors and NGOs coordinated by Ceres and the Environmental Defense Fund, submitted a petition asking the SEC to require companies to disclose their climate-related risks in securities filings. The coalition simultaneously sent a letter asking the SEC Division of Corporation Finance to enforce existing law applying to climate disclosures.⁵⁸

44. “Recent scientific, legal and regulatory developments make it unavoidably clear that the risks and opportunities many corporations face in connection with climate change fall squarely within the category of material information that is required to be analyzed and disclosed in many corporate filings,” say the petitioners. “Yet corporate disclosures of the risks and opportunities created by climate change lag behind these developments, and investors are left with little or in some cases no useful information about corporate exposure to these risks.”⁵⁹

45. States and voluntary initiatives are taking a leading role on this issue. In April 2008, the California Public Employees Retirement System (CalPERS) added environmental disclosure to its guidelines for proxy voting and corporate engagement, the *Global Principles of Accountable Corporate Governance*.⁶⁰ The new disclosure guidelines are based in part on the *Global Framework for Climate Risk Disclosure*, which CalPERS helped develop and release in October 2006 as part of the Climate Risk Disclosure Initiative, a collaboration with other investors and organizations around the world.⁶¹

46. CalPERS also endorsed the California Senate Bill 1550 that would require the California Controller, in consultation with the investment

⁵⁴ Ibid.

⁵⁵ Tomoeh Murakami Tse, ‘Say-on-Pay’ Movement Loses Steam. *Washington Post*, 6 May 2008.

<http://www.washingtonpost.com/wp-dyn/content/article/2008/05/05/AR2008050502470.html>.

⁵⁶ Baue W. “SEC Urged to Strengthen Rules Governing Corporate Disclosure of Environmental Risks,” *SocialFunds.com*, August 21, 2002. <http://www.socialfunds.com/news/article.cgi/article911.html> EPA report entitled *Guidance on Distributing the Notice of SEC Registrants’ Duty to Disclose Environmental Legal Proceedings in EPA Enforcement Actions*.

⁵⁷ Ibid.

⁵⁸ Rheannon F (2007). “Investors, States, and Activists Petition Securities and Exchange Commission To Mandate Climate Risk Disclosure. *SocialFunds.com*, 8 October 2007. <http://www.socialfunds.com/news/article.cgi/2388.html>.

⁵⁹ *Petition for Interpretive Guidance on Climate Risk Disclosure*. Ceres, Environmental Defense Fund, et al, 18 September 2007. <http://www.incr.com/NETCOMMUNITY/Document.Doc?id=187>.

⁶⁰ “CalPERS Expands Environmental, Diversity Corporate Governance Guidelines - Supports State Legislation on Climate Change. California Public Employees Retirement System, 21 April 2008.

<http://www.calpers.ca.gov/index.jsp?bc=/about/press/pr-2008/apr/environmental-diversity-guidelines.xml>.

⁶¹ *Global Framework for Climate Risk Disclosure*, Climate Risk Disclosure Initiative, October 2006.

<http://www.calpers-governance.org/alert/initiatives/global-framework.asp>.

community, to develop a climate change disclosure standard for use by listed companies doing business in California. In May 2008, the California Senate passed the bill, and it went to the California Assembly for consideration.⁶²

47. The Carbon Disclosure Project has also stepped into the fray to request voluntary climate risk transparency from companies around the world. The project has grown from 35 institutional investors managing \$4.5 trillion asking the world's 500 biggest companies for information on their greenhouse gas emissions in 2003 to 385 investors managing \$57 trillion asking 3,000 companies about their carbon emissions in 2008.⁶³

48. Alongside the growing recognition of climate risk, investors and others are acknowledging the risks of toxic chemicals in products and manufacturing processes. In April 2008, the Investor Environmental Health Network released a report entitled *Toxic Stock Syndrome*, examining how companies fail to report toxicity risks in the securities filings.⁶⁴ The report spotlighted how toy companies neglected to inform investors of the dangers of lead paint in toys, despite ample evidence of a growing trend in product recalls since the early 2000s. Also discussed are the impacts of European toxics regulations on United States-based companies that go largely undisclosed in their securities filings.

E. Chapter conclusion

49. Disclosure plays a pivotal role as corporate governance gains relevance, functioning as the window into company operations. Global trends lead toward greater disclosure of corporate governance practices, responding to market disruptions such as the subprime market collapse and resulting credit crisis on the one hand, and attracting investors by enhancing access to information on the other hand. In a globalizing economy, country markets competing for increasingly mobile pools of capital can benefit from strong assurances of good practices in corporate governance disclosure.

II. Status of implementation of good practices in corporate governance disclosure

A. Background and methodology

1. ISAR benchmark

50. The purpose of this study is to evaluate the level of implementation of good practices in corporate governance disclosure highlighted in the 2006 UNCTAD publication *Guidance on Good Practices in Corporate Governance Disclosure* (based on the ISAR document TD/B/COM.2/ISAR/30). This 2006 UNCTAD guidance forms a benchmark (hereafter the "ISAR benchmark") of 53 disclosure items on corporate governance. This benchmark was used in earlier ISAR studies on this subject in 2005, 2006 and 2007, as well as in country case studies of Egypt and China (both in 2007). The complete set of 53 disclosure items are grouped into five broad categories, or subject areas, of corporate governance disclosure, and are presented and analysed by category in section B below. These categories are:

⁶² "Investors Praise California Senate Leaders for Passing Historic Climate Disclosure Bill," Ceres, 22 May 2008. <http://www.ceres.org/NETCOMMUNITY/Page.aspx?pid=905&srcid=705>.

⁶³ *CDP Chronology*, Carbon Disclosure Project, <http://www.cdproject.net/cdpchronology.asp> (accessed 15 August 2008).

⁶⁴ Sanford Lewis et al., *Toxic Stock Syndrome: How Corporate Financial Reports Fail to Apprise Investors of the Risks of Product Recalls and Toxic Liabilities*, April 2008. <http://iehn.org/publications.reports.toxicstock.php>. Disclosure: Bill Baue contributed two case studies to this report.

- (a) Financial transparency;
- (b) Board and management structure and process;
- (c) Ownership structure and exercise of control rights;
- (d) Corporate responsibility and compliance; and
- (e) Auditing.

2. Sample studied

51. The present study uses the ISAR benchmark to measure the disclosure practices of 100 leading enterprises from 10 emerging markets. The sample used in this study is comprised of 10 of the top enterprises⁶⁵ from each of the top 10 most heavily weighted United Nations member States found in the Emerging Markets Index produced by Morgan Stanley Capital International (hereafter the “MSCI EM Index”).⁶⁶ The current MSCI EM Index tracks more than 900 publicly listed enterprises, which account for roughly 85 per cent of the market capitalization of 25 emerging markets.⁶⁷ Table 1 below provides a list of the economies included in the MSCI EM Index.

Table 1. The 25 economies included in the MSCI EM Index

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

52. The top 10 United Nations member States, by index weighting, within the MSCI EM Index are listed in table 2 below, along with their total index weighting. In addition, table 2 shows the weighting of the top 10 enterprises selected for this study. The top 10 enterprises from each country account for between 45 per cent and 84 per cent of their respective country’s index weighting. These enterprises were selected due to their economic significance within their home countries, and as samples of leading companies in each country. As a group, the 100 enterprises from emerging markets represent 46.5 per cent of the market capitalization of the entire MSCI EM Index. Thus, as a group, this sample represents a large portion of the investable universe of emerging market enterprises. Additionally, as indicated in figure 1 below, the selected enterprises represent a diversified range of industrial sectors.

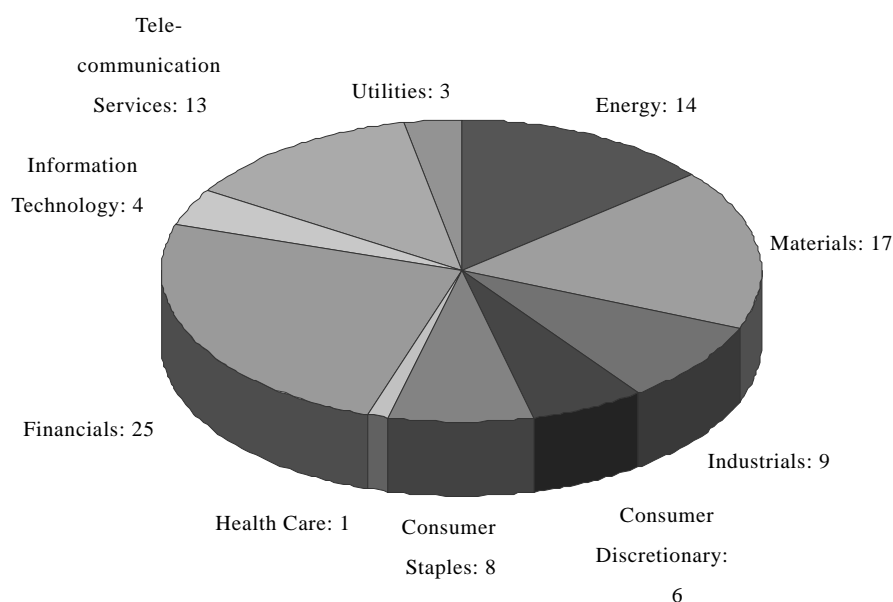
⁶⁵ Note that in some countries, some of the top 10 enterprises by index weighting, were related enterprises. This study sought to avoid reviewing the reporting practices of different entities within the same industrial conglomerate, and for this reason the “selected top 10” described in this paper may not correspond exactly with the top 10 by index weighting for each country; in some cases the selected top 10 enterprises consists of 10 enterprises selected from among the top 15 largest enterprises by index weighting.

⁶⁶ MSCI is a commercial provider of financial information, including equity indices tracking publicly listed enterprises around the world. The MSCI EM Index is considered by institutional investors to be the industry standard to gauge emerging markets performance, and is an important tool for facilitating foreign portfolio investment to developing countries and countries with economies in transition.

⁶⁷ All MSCI EM Index data used in this study is based on the index as of 12 March 2008.

Table 2. Top 10 United Nations member States included in the MSCI EM Index, by index weighting⁶⁸

Country	Index weighting of country (per cent)	Number of companies from this country in the index	Selected top 10 companies as per cent of country weighting	Selected top 10 companies as per cent of index total market capitalization
Brazil	14.9	72	50	7.5
China	14.2	112	56	8.0
Republic of Korea	13.2	114	45	6.0
Russian Federation	10.0	32	82	8.2
India	7.2	67	52	3.7
South Africa	6.7	50	63	4.2
Mexico	4.8	28	84	4.0
Israel	2.4	32	84	2.0
Malaysia	2.4	57	59	1.4
Indonesia	1.7	22	83	1.4
Total	77.4			46.5

Figure 1. Sample of 100 emerging market enterprises by sector⁶⁹
(number of companies)

53. The 100 emerging market enterprises described above form the core sample and primary focus of this study. To provide some context and comparison to developed market practices, a secondary sample was created of 10 leading enterprises, each from two of the largest financial markets in the world: the United Kingdom and the United States. These secondary samples were created by taking the top 10 enterprises by index weighting from the Standard & Poor's 500 index (for the United States) and the FTSE 100 (for the United Kingdom). A complete list of enterprises included in the study is found in annex I.

⁶⁸ This study focuses on the disclosure practices of United Nations member States; if all markets had been included then Taiwan Province of China, which makes up 11.3 per cent of the MSCI EM Index, would have been part of this top ten sample.

⁶⁹ Based on Global Industry Classification Standard (GICS) as of 29 August 2008. Source: www.mscibarra.com.

54. In total, the review considered 6,360 individual data points. This is comprised of the 53 disclosures in the ISAR benchmark multiplied by the 120 enterprises that make up both the primary and secondary samples.

3. Research questions

55. The primary research question applied to the sample enterprises was: How many of the items comprising the ISAR benchmark of corporate governance disclosures are reported by each of the enterprises? To answer this question, the study examined a range of publicly available corporate reports including: annual reports, corporate governance reports, corporate responsibility reports, exchange filings, and other information available from financial databases and company websites.⁷⁰ These reports were then compared with the 53 items in the ISAR benchmark to gauge what, within the benchmark, these enterprises were disclosing. The main findings of this research question are presented in section B below. An analysis of these reporting practices by market is also presented in section C below.

56. An additional research question applied to the sample enterprises was: How do the actual reporting practices of the selected enterprises compare with the reporting requirements of their home countries? To answer this question, the main findings of the review of disclosures were compared with the inventory of disclosure requirements that was the subject of UNCTAD 2007 review of corporate governance disclosure (TD/B/COM.2/ISAR/CRP.6). The main findings of this research question are presented in section D below, as well as in annex II.

B. Disclosure practices of 100 emerging market enterprises

57. Table 3 below displays the results of the study, giving the number of enterprises disclosing each item from the sample of 100 emerging market enterprises. The information is presented within each of the five broad categories discussed in section A above. This grouping of the disclosure items allows readers to draw their own conclusions based on the importance they assign to a particular category or subject area and, within that category, a particular disclosure item. It also facilitates the analysis that follows on the relative level of disclosure within each category. The categories are presented in order of highest to lowest average rate of disclosure, and within each category, the disclosure items are presented in order from most often disclosed to least often disclosed. It is again noted that the findings below make no indication of the quality of disclosure found among the enterprises, only whether or not some disclosure exists for each of the disclosure items listed below.

⁷⁰ Wherever possible, the enterprises in the study were contacted to allow them to review the preliminary findings of their reporting; a number of replies were received and their comments and suggestions were incorporated into this study. In total, 93 of the 100 enterprises were contacted, and 19 of these replied. The replies ranged from brief to detailed, involving both written and telephone communication. This engagement with the enterprises provided additional information and in some cases highlighted one or more disclosure items that had not previously been identified. Seven of the 100 enterprises were not contacted due to a lack of contact information, faulty contact information, or unanswered telephone calls. As the study consists of a review of publicly available information, it is not necessary to speak with each company to carry out the study; however, the effort was made in order to engage enterprises in a dialogue on this subject, and to obtain additional insights where available.

Table 3. Information disclosed by 100 emerging market enterprises
(Number of enterprises disclosing this item)

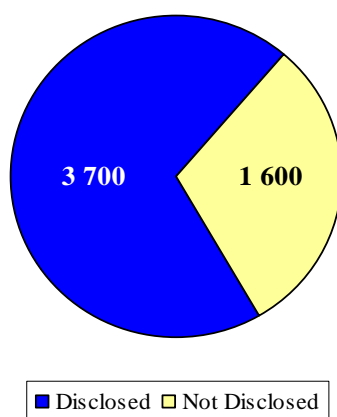
Disclosure items by category	No. of enterprises (max = 100)
Financial transparency	
Financial and operating results	100
Company objectives	100
Nature, type and elements of related-party transactions	94
Critical accounting estimates	88
Board's responsibilities regarding financial communications	85
Disclosure practices on related party transactions where control exists	78
Impact of alternative accounting decisions	76
Rules and procedure governing extraordinary transactions	59
The decision making process for approving transactions with related parties	53
Board and management structure and process	
Composition of board of directors (executives and non-executives)	99
Governance structures, such as committees and other mechanisms to prevent conflict of interest	96
Role and functions of the board of directors	93
Composition and function of governance committee structures	92
Risk management objectives, system and activities	88
Duration of directors' contracts	87
Qualifications and biographical information on board members	86
Number of outside board and management position directorships held by the directors	85
Types and duties of outside board and management positions	84
Independence of the board of directors	82
"Checks and balances" mechanisms	78
Determination and composition of directors' remuneration	76
Material interests of members of the board and management	69
Performance evaluation process	66
Availability and use of advisorship facility during reporting period	59
Existence of procedure(s) for addressing conflicts of interest among board members	54
Existence of plan of succession	51
Professional development and training activities	43
Compensation policy for senior executives departing the firm as a result of a merger or acquisition	3
Ownership structure and exercise of control rights	
Ownership structure	87
Availability and accessibility of meeting agenda	84
Control structure	78
Control and corresponding equity stake	74
Process for holding annual general meetings	68
Changes in shareholdings	68
Rules and procedures governing the acquisition of corporate control in capital markets.	67
Control rights	63
Anti-takeover measures	10
Corporate responsibility and compliance	
Policy and performance in connection with environmental and social responsibility	86
Mechanisms protecting the rights of other stakeholders in business	81
A code of ethics for all company employees	74
Impact of environmental and social responsibility policies on the firm's sustainability	63
The role of employees in corporate governance	61
A code of ethics for the board and waivers to the ethics code	49
Policy on "whistle blower" protection for all employees	45
Auditing	
Internal control systems	86
Process for interaction with internal auditors	76
Process for appointment of external auditors	76
Process for interaction with external auditors	73
Board confidence in independence and integrity of external auditors	57
Auditors' involvement in non-audit work and the fees paid to the auditors	55

Disclosure items by category	No. of enterprises (max = 100)
Duration of current auditors	45
Process for appointment of internal auditors / Scope of work and responsibilities	40
Rotation of audit partners	10

General Overview

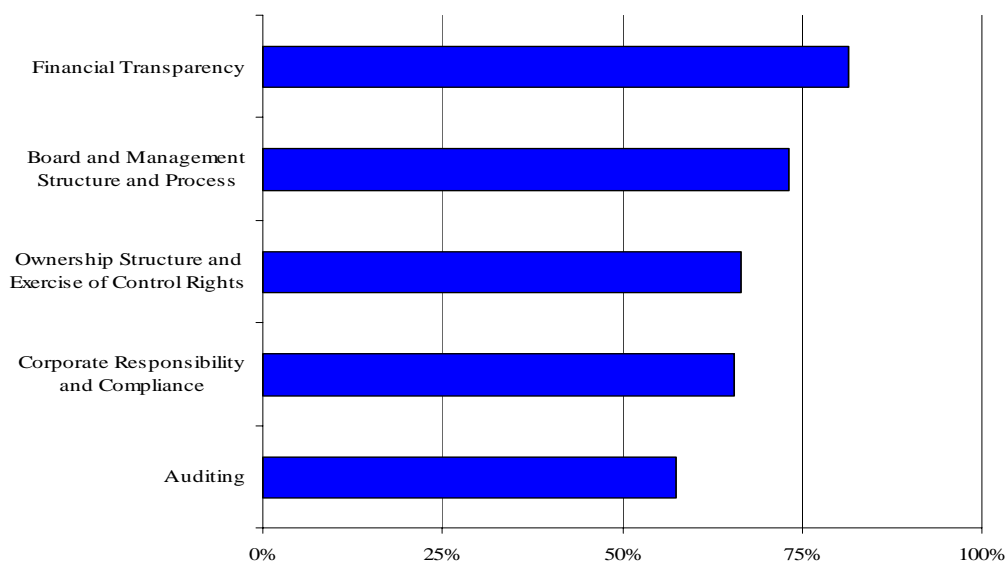
58. In total, table 3 above summarizes 5,300 individual data points (53 disclosure items multiplied by 100 emerging market enterprises). As depicted in figure 2 below, 70 per cent of the of individual disclosure items in the ISAR benchmark were reported by the sample group of 100 emerging market enterprises (i.e. 3,700 out of 5,300 possible disclosures). This suggests that, generally, the enterprises studied are providing a substantial amount of information regarding their corporate governance practices.

Figure 2. Disclosure of ISAR benchmark items for 100 emerging market enterprises
(total number of disclosure items = 5 300)



59. Examining disclosure practices by subject category, the main findings of the 2008 Review are largely consistent with earlier reviews conducted in 2006 and 2005. As shown in figure 3 below, the category of financial transparency is subject to the highest level of disclosure while the category of auditing is subject to the lowest.

Figure 3. Overview of disclosure practices by category
(average rate of disclosure by category)



60. The average disclosure rate for the 100 emerging market enterprises fell below 50 per cent for 8 of the 53 disclosure items, which can be seen in table 4 below. While these eight items were not concentrated in any one category (one item was in the category financial transparency, three were in auditing, two in corporate responsibility and compliance, and two in board and management structure and process) six of these eight were also among the 10 least prevalent disclosure items reported by low- and middle-income countries in the 2006 Review (see table 4, note (b)). And four of the eight were among the least required disclosure items for MSCI EM Index markets (see table 4, note (d)). The disclosure item with the lowest rate of disclosure in the entire study was “compensation policy for senior executives departing the firm as a result of merger and acquisition”. This item was disclosed by only three of the 100 emerging market enterprises studied.

Table 4. Most prevalent and least prevalent disclosure items
(number of enterprises disclosing this item)

Top 10 most prevalent disclosure items reported by 100 emerging market enterprises	No. of enterprises reporting	Bottom 10 least prevalent disclosure items reported by 100 emerging market enterprises	No. of enterprises reporting
Financial and operating results ^{(a) (c)}	100	The decision-making process for approving transactions with related parties	53
Company objectives ^(a)	100	Existence of plan of succession	51
Composition of board of directors (executives and non-executives) ^{(a) (c)}	99	A code of ethics for the board and waivers to the ethics code ^(d)	49
Governance structures, such as committees and other mechanisms to prevent conflict of interest ^(c)	96	Duration of current auditors ^{(b) (d)}	45
Nature, type and elements of related-party transactions ^(a)	94	Policy on “whistle blower” protection for all employees ^{(b) (d)}	45
Role and functions of the board of directors ^(c)	93	Professional development and training activities ^(b)	43
Composition and function of governance committee structures	92	Process for appointment of internal auditors and scope of work and responsibilities	40
Critical accounting estimates	88	Anti-takeover measures ^(b)	10
Risk management objectives, system and activities ^(a)	88	Rotation of audit partners ^(b)	10
Ownership structure ^{(a) (c)}	87	Compensation policy for senior executives departing the firm as a result of a merger or acquisition ^{(b) (d)}	3

^(a) Disclosure item also appears among the top 10 most prevalent disclosure items reported by enterprises from low- and middle-income countries in the 2006 Review.

^(b) Disclosure item also appears among the bottom 10 least prevalent disclosure items reported by enterprises from low- and middle-income countries in the 2006 Review.

^(c) Disclosure item also appears among the top 10 most prevalent disclosure items required among the 25 markets comprising the MSCI EM Index, as indicated in the 2007 Review.

^(d) Disclosure item also appears among the bottom 10 least prevalent disclosure items reported by enterprises from low- and middle-income countries in the 2006 Review.

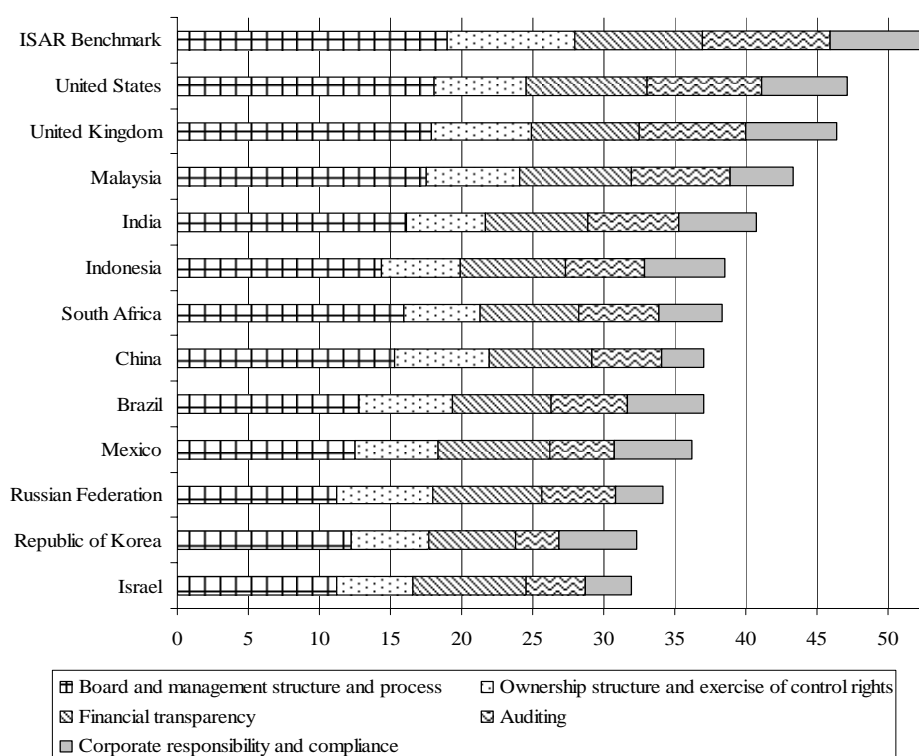
61. Of the 10 most prevalent disclosure items, five are in the category of board and management structure and process, four are in financial transparency, and one was in ownership structure and exercise of control rights. Six of these top 10 most prevalent disclosure items were also among

the top 10 most prevalent items found among enterprises from low and middle income countries in the 2006 Review (see table 4, note (a)). It is also notable that five of the top 10 most commonly disclosed items were also among the most required disclosure items for MSCI EM Index markets (see table 4, note (c)). Indeed, there is an apparent correlation between market requirements and disclosure rates: none of the most required items appear on the list of least disclosed, and vice versa. Six of the top 10 most commonly reported items are also among the most commonly required, and 4 of the bottom 10 least commonly reported items were also among the least commonly required. This relationship between disclosure requirements and actual disclosure practices is explored in more detail in section D below. Section C provides an overview of disclosure practices for enterprises by market.

C. Company disclosure practices by market

62. Figure 4 presents an overview of the average number of disclosure items reported by each of the selected top 10 enterprises with a breakdown by home market and category of disclosure. Despite the low per-country sample size of 10 enterprises, the position of these enterprises among the largest and most economically significant for each economy makes the analysis nevertheless useful for comparing relative practices between markets. Figure 4 can be seen as an indication of what leading large enterprises in different markets are disclosing about their corporate governance practices. For comparison purposes, figure 4 also includes data on the disclosure practices for top 10 enterprises in two of the largest developed country equity markets: the United Kingdom and the United States.

Figure 4. Average number of disclosure items per top 10 enterprise, by market and category



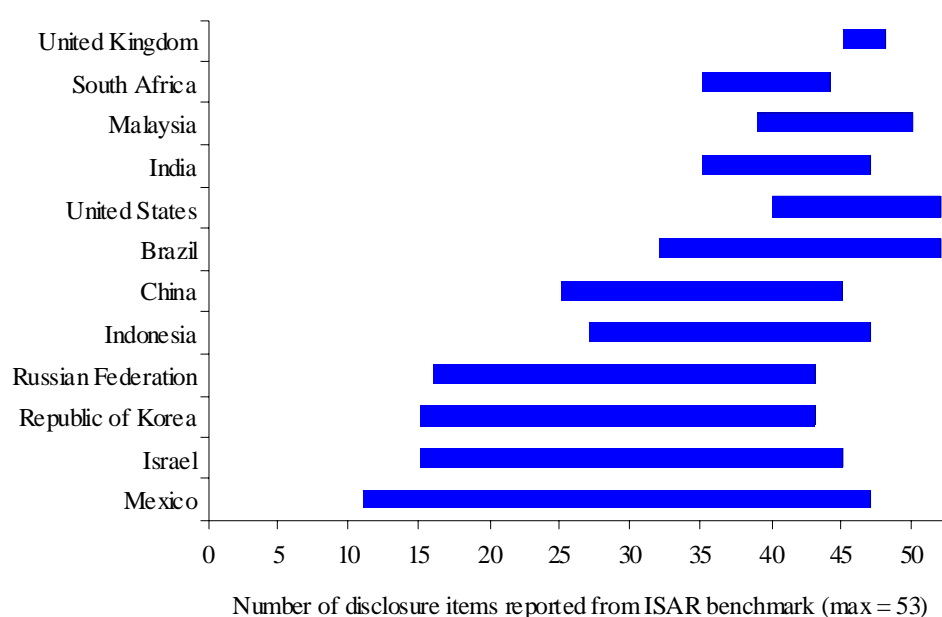
63. This overview of disclosure items suggests that there are relatively good disclosure practices among leading firms in the emerging markets studied. In each market, top 10 enterprises disclosed, on average, more than half the items

in the ISAR benchmark. This analysis also provides a view of differences between reporting for particular subject categories. For example, Chinese and Brazilian top 10 enterprises display the same total level of reporting (an average of 37 items per company), yet show differences in per category reporting (the Brazilian top 10 enterprises tend to report more in the area of corporate responsibility and compliance, while the Chinese top 10 enterprises tend to report more in the area of board and management structure and process).

64. The averages displayed in figure 4 above, however, mask inconsistencies in reporting practices between different top 10 enterprises. Figure 5 below provides an overview of the range of total disclosure items in the ISAR benchmark that were reported by each top 10 enterprise within each market. This analysis suggests a significant degree of difference between the consistency of reports among top 10 enterprises in different markets. The top 10 enterprises from the United Kingdom, for example, display a high degree of consistency in reporting practices: 45 items were reported by the company with the least number of disclosed items from the ISAR benchmark, and 48 items were reported by the company with the most. Likewise, the reports of South African, Malaysian and Indian enterprises are relatively consistent in the amount of information presented. In contrast, enterprises from the Russian Federation, the Republic of Korea, Israel and Mexico demonstrate a relatively high degree of inconsistency between companies in their reporting practices. It is noteworthy, however, that none of the markets in the study show consistently low levels of disclosure; for all markets in the study, at least some enterprises have relatively high rates of disclosure. Higher consistency in reporting practices appears to coincide with higher rates of disclosure. This suggests that high levels of consistency in corporate reports might correspond with higher levels of compliance with national codes and regulations. This issue of compliance is examined in more detail in section D, below.

Figure 5. Consistency in reporting practices: spreading range analysis of disclosure practices for top 10 enterprises, by market

(Length of bar indicates difference between enterprise with the lowest number of disclosure items, and the enterprise with the highest number of disclosure items)

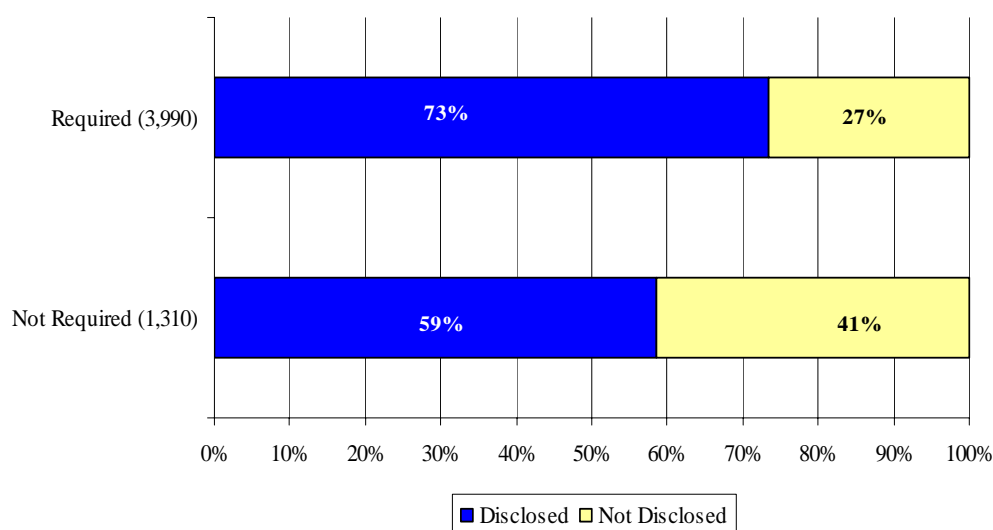


D. Compliance with disclosure requirements

65. This section addresses the issue of compliance with national codes and regulations on corporate governance disclosure by comparing actual reporting practices with the disclosure requirements found in national regulations and listing requirements. The data on national regulations and requirements are taken from the 2007 Review (TD/B/COM.2/ISAR/CRP.6). The main findings of the examination of compliance are presented below, with more detailed findings presented in annex II.

66. The section starts by comparing the disclosure of the required disclosure items versus the non-required disclosure items in the ISAR benchmark. Figure 6 below provides an overview of how disclosure practices differ between the required items and the non-required items. Of the 5,300 disclosure items examined (53 items in the ISAR benchmark multiplied by 100 emerging market enterprises) 3,990 are required by local regulators or stock exchange officials. Figure 6 indicates that required items are subject to a significantly higher rate of disclosure compared to non-required items. This finding supports the generally accepted view that regulations and listing requirements play an important role in ensuring corporate transparency. The relatively high rate of disclosure among non-required items, at nearly 60 per cent, suggests that other influencing factors, including investors and voluntary codes, also play a significant role in promoting corporate governance disclosure.

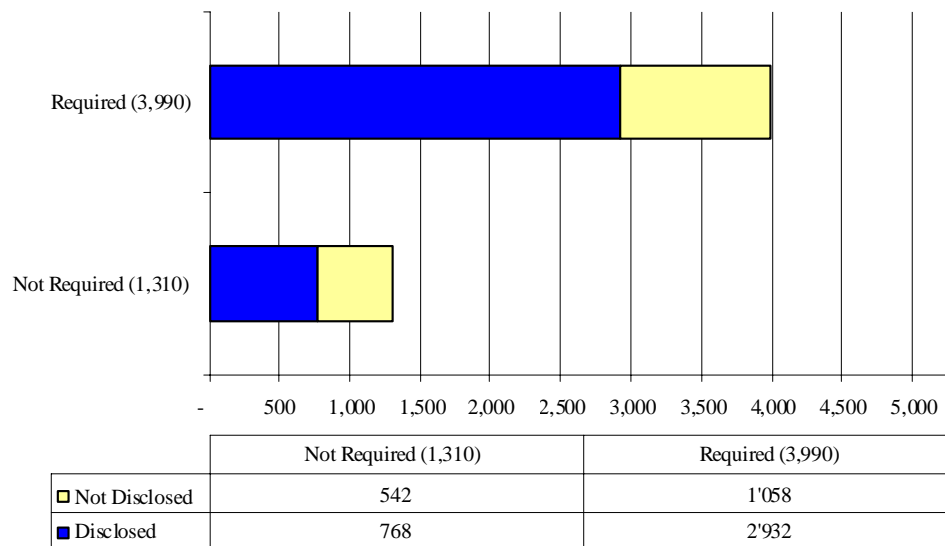
Figure 6. Disclosure compliance for 100 emerging market enterprises: per cent



67. Figure 7 below presents the actual numbers, rather than per cent figures, for the data presented in figure 6 above. The actual figures provide an important sense of the relative number of disclosure items that are required by emerging markets: 75 per cent, or 3,990 of the 5,300 total disclosure items reviewed for emerging market companies were the subject of local requirements. Together, the data presented in these two figures support the

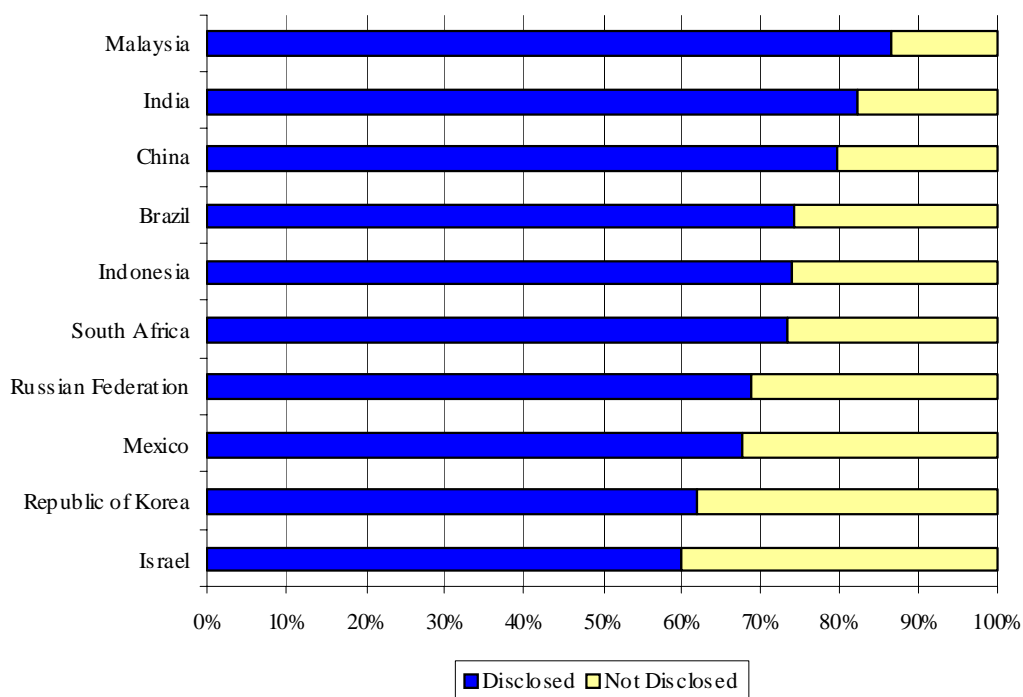
conclusion that most corporate governance disclosure in emerging markets is the subject of local regulation, and that required disclosure items tend to be disclosed at a higher rate than non-required items. This conclusion implies that robust national policies on corporate disclosure can lead to improved corporate transparency.

Figure 7. Disclosure compliance for 100 emerging market enterprises: actual



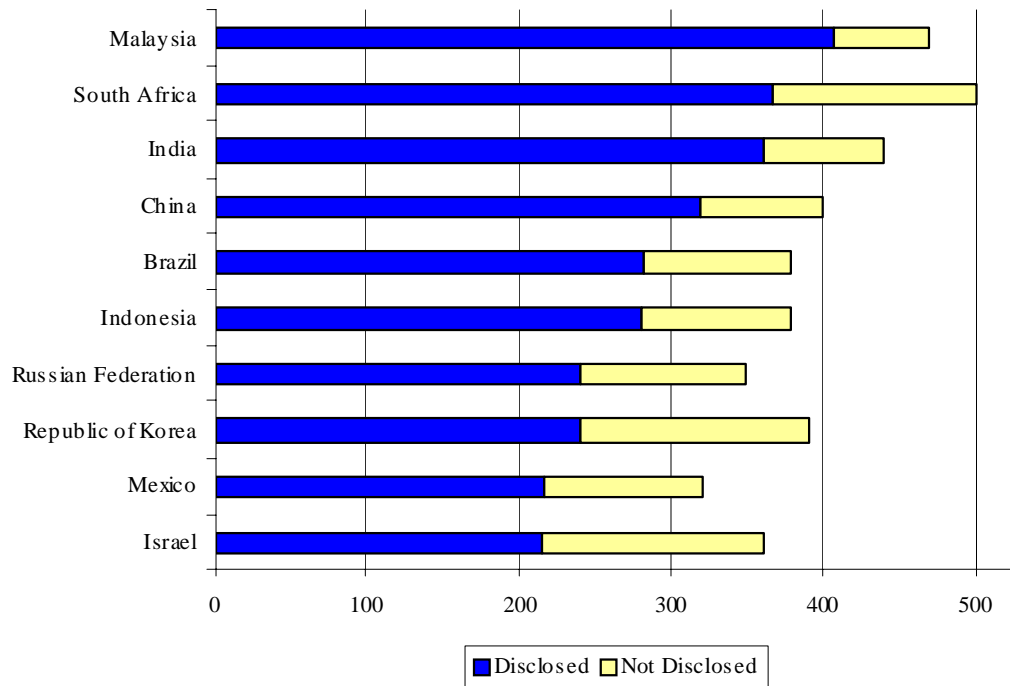
68. While the data has so far supported the conclusion that regulations are widely used and tend to promote stronger reporting, there are nevertheless lingering questions about compliance. Figure 8 below presents an examination of disclosure compliance for top 10 enterprises in each of the emerging markets studied. The markets are ordered by the size of the compliance gap, i.e. the percentage of required disclosure items that were not found among the public reports of the sample companies. A noticeable correlation exists between the compliance gaps in figure 8 below, and the consistency analysis presented in figure 5 above. The four markets with the largest compliance gaps also have the highest levels of inconsistency between the reporting practices of top 10 enterprises. On the other end of the spectrum, four of the five markets with the smallest compliance gaps also have the lowest levels of inconsistency among their top ten enterprises.

Figure 8. Disclosure compliance for top 10 enterprises by market: per cent
(Required disclosure items)



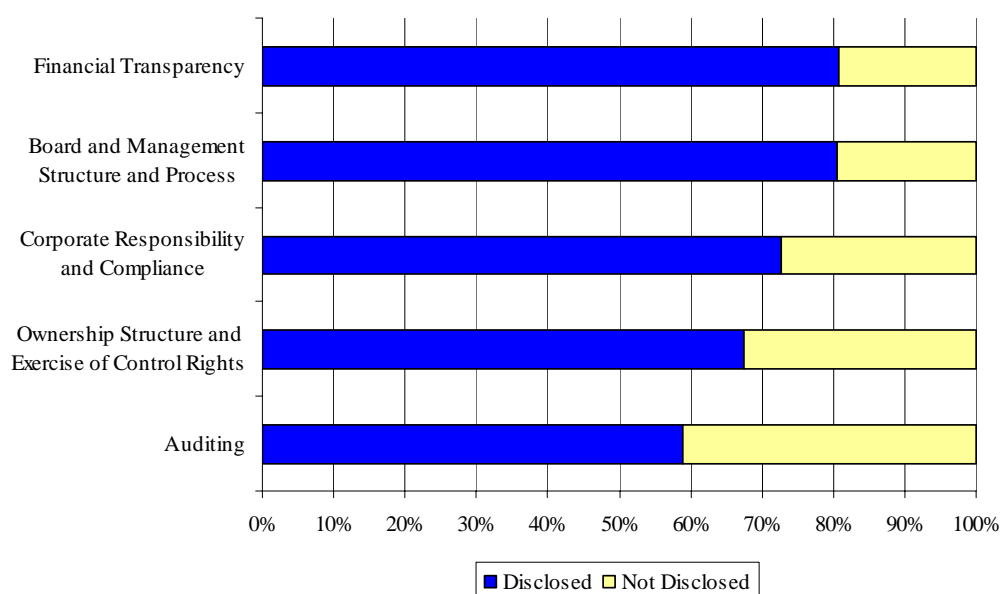
69. The one significant exception to this correlation between compliance and consistency is South Africa. The top 10 enterprises from South Africa have the highest level of consistency in reporting found among any of the emerging market enterprises studied. Yet in figure 8 above, the compliance gap for top South African firms appears comparatively higher than for firms in other markets. As figure 9 below indicates, the difference is caused by the high number of disclosure requirements in South Africa. While the top 10 South African enterprises disclose more information, on average, than most other companies in the study, the number of disclosure requirements in South Africa also exceeds the number of disclosure requirements found in other markets, as measured by the ISAR benchmark.

Figure 9. Disclosure compliance for top 10 enterprises by market: actual
(required disclosure items)



70. An analysis of disclosure compliance by subject is provided in figure 10 below. The strong correlation between figure 10 and figure 3 in section B above suggests that issues of compliance are playing a strong role in the types of information being reported. For example, the category of auditing is, as noted previously, subject to the lowest levels of reporting among the 100 emerging market enterprises in this study as well as for the enterprises from low- and middle-income countries studied in the 2005 and 2006 Reviews. Figure 10 below indicates that more than 40 per cent of the required disclosure items related to auditing issues were not found among the public reports of the enterprises studied. For investors, policymakers and other stakeholders that consider auditing disclosures critical to the overall credibility of corporate reports, this lack of compliance with auditing requirements may be a call to policy makers to consider stronger measures to promote the observance of corporate disclosure regulations.

Figure 10. Disclosure compliance for 100 emerging market enterprises, by subject
(required disclosure items)



III. Conclusions

71. This report focuses on the disclosure practices of 100 leading emerging market enterprises. The sample of 100 enterprises is comprised of selected top 10 enterprises from the economies of the top 10 United Nations member States, by index weighting, found within the MSCI Emerging Markets Index. The leading enterprises of the MSCI EM Index were chosen as the sample for the study due to the economic significance of these enterprises within their economy and the influential role the MSCI EM Index plays in facilitating foreign portfolio investment towards developing economies and economies in transition.

72. The main findings of the 2008 Review show that on average, the selected top 10 enterprises from each market are reporting more than half the items in the ISAR benchmark of good practices in corporate governance disclosure. Further analysis indicates that some subject areas, such as issues related to auditing, are significantly less reported than other areas, such as financial transparency. This finding is consistent with UNCTAD's earlier studies on corporate governance disclosure, which found that disclosure items in the category of auditing remain among the least reported, on average, among enterprises from emerging markets.

73. The 2008 Review also examined the compliance of enterprises with disclosure rules in their home markets. The findings indicate that while enterprises are, on average, more likely to disclose information if it is required by regulators, significant gaps in compliance still exist. Policymakers wishing to improve corporate disclosure practices should consider options for addressing these compliance gaps. Such options should include a mix of both penalties for non-compliance, as well as capacity building measures to raise awareness and provide training on how to produce good quality corporate governance disclosures.

74. While the 2007 Review recognized the relative good quality of disclosure requirements in emerging markets, this 2008 Review has called into question the efficacy of these same disclosure requirements. The apparent

non-compliance among a significant number of enterprises for a significant number of disclosure items highlights the need to further align the actual corporate reporting practices of enterprises with the policy prescriptions of regulators and stock exchange officials.

Annex I. List of enterprises included in the study, by market

Brazil

- AMBEV PN
- BANCO BRADESCO PN
- BANCO ITAU HLDG FIN. PN
- CSN SIDERURGICA NAC'L ON
- GERDAU PN
- PETROBRAS PN
- TELE NORTE LESTE PART.PN
- UNIBANCO UNIT
- USIMINAS PNA
- VALE DO RIO DOCE PNA

China

- CHINA COMMUNIC CONSTRU-H
- CHINA CONSTRUCTION BK H
- CHINA LIFE INSURANCE H
- CHINA MOBILE
- CHINA PETRO & CHEM H
- CHINA SHENHUA ENERGY H
- CNOOC
- ICBC H
- PETROCHINA CO H
- PING AN INSURANCE H

India

- BHARAT HEAVY ELECTRICALS
- HDFC BANK
- HOUSING DEV FINANCE CORP
- ICICI BANK
- INFOSYS TECHNOLOGIES
- ITC
- LARSEN & TOUBRO
- OIL & NATURAL GAS CORP
- RELIANCE COMMUNICATION
- RELIANCE INDUSTRIES

Indonesia

- ASTRA INTERNATIONAL
- BANK CENTRAL ASIA
- BANK MANDIRI
- BANK RAKYAT INDONESIA
- BUMI RESOURCES
- INDOSAT
- INT'L NICKEL INDONESIA
- PERUSAHAAN GAS NEGARA
- TELEKOMUNIKASI INDONESIA
- UNITED TRACTORS

Israel

- BANK HAPOALIM
- BANK LEUMI LE-ISRAEL
- BEZEQ ISRAEL TELECOM.
- CHECK POINT SOFTW.
- ISRAEL CHEMICALS
- ISRAEL CORP
- MA MAKHTESHIM-AGAN IND

- NICE SYSTEMS
- PARTNER COMMUNICATIONS
- TEVA PHARMACEUTICAL IND

Republic of Korea

- HYUNDAI HEAVY INDUSTRIES
- HYUNDAI MOTOR CO
- KEPCO KOREA ELECT. POWER
- KOOKMIN BANK
- KT&G CORP(KOREA TOBACCO)
- LG ELECTRONICS
- POSCO
- SAMSUNG ELECTRONICS CO
- SHINHAN FINANCIAL GROUP
- SHINSEGAE CO

Malaysia

- BUMIPUTRA-COMMERCE HLDGS
- GENTING
- IOI CORP
- KUALA LUMPUR KEPONG
- MALAYAN BANKING
- MISC FGN
- PUBLIC BANK FGN
- SIME DARBY
- TELEKOM MALAYSIA
- TENAGA NASIONAL

Mexico

- AMERICA MOVIL L
- CEMEX CPO
- EMPRESAS ICA
- FEMSA UNIT UBD
- GRUPO FIN BANORTE O
- GRUPO MEXICO B
- GRUPO TELEVISA CPO
- INDUSTRIAS PENOLES CP
- TELEFONOS MEXICO L
- WALMART MEXICO V

Russian Federation

- GAZPROM
- LUKOIL HOLDING
- MOBILE TELESYS
- NORILSK NICKEL
- NOVATEK GDR
- SBERBANK RUSSIA
- SURGUTNEFTEGAZ
- TATNEFT COMMON
- UNIFIED ENERGY
- VIMPELCOM

South Africa

- ANGLO PLATINUM
- ANGLOGOLD ASHANTI
- FIRSTRAND
- GOLD FIELDS
- IMPALA PLATINUM HOLDINGS
- MTN GROUP
- NASPERS N
- REMGRO
- SASOL
- STANDARD BANK GROUP

United Kingdom

- ANGLO AMERICAN
- ASTRA ZENECA
- BARCLAYS
- BP
- GLAXOSMITHKLINE

- HSBC
- RIO TINTO
- ROYAL BANK OF SCOTLAND GROUP
- ROYAL DUTCH SHELL A
- VODAFONE GROUP

United States

- AT&T INC
- BANK OF AMERICA CORP
- CHEVRON CORP
- EXXON MOBIL CORP
- GENERAL ELECTRIC
- INTERNATIONAL BUSINESS MACHINES
- JOHNSON & JOHNSON
- JPMORGAN CHASE & CO
- MICROSOFT CORP
- PROCTER & GAMBLE

Annex II. Disclosure practices of 10 leading enterprises in each of ten emerging markets

Disclosure item	Brazil	China	India	Indonesia	Israel	Republic of Korea	Malaysia	Mexico	Russian Federation	South Africa
	Number of enterprises disclosing this item (max.= 10) Shaded square indicates that the item is required in the company's home market*									
Ownership structure and exercise of control rights										
Ownership structure	9	8	10	9	8	7	10	8	8	10
Process for holding annual general meetings	6	8	6	6	6	8	9	6	10	3
Changes in shareholdings	7	7	8	9	5	7	7	5	6	7
Control structure	9	9	8	6	8	7	10	7	8	6
Control and corresponding equity stake	10	9	5	5	8	8	10	7	8	4
Availability and accessibility of meeting agenda	8	9	9	7	7	9	10	8	8	9
Control rights	7	8	6	4	6	4	5	7	10	6
Rules and procedures governing the acquisition of corporate control in capital markets.	9	8	4	8	5	4	3	8	9	9
Anti-takeover measures	1	1	0	1	1	1	2	2	1	0
Financial transparency										
Financial and operating results	10	10	10	10	10	10	10	10	10	10
Critical accounting estimates	8	9	9	10	10	7	10	8	9	8
Nature, type and elements of related-party transactions	9	9	10	9	9	9	10	10	9	10
Company objectives	10	10	10	10	10	10	10	10	10	10
Impact of alternative accounting decisions	5	7	5	8	10	5	10	9	8	9
Disclosure practices on related party transactions where control exists	6	9	10	8	8	9	9	6	7	6
The decision-making process for approving transactions with related parties	7	4	3	4	9	1	6	9	7	3
Rules and procedure governing extraordinary transactions	4	5	6	5	7	6	4	8	9	5
Board's responsibilities regarding financial communications	10	9	9	10	7	4	10	9	8	9
Auditing										
Process for interaction with internal auditors	9	7	10	8	7	1	10	6	8	10

Disclosure item	Brazil	China	India	Indonesia	Israel	Republic of Korea	Malaysia	Mexico	Russian Federation	South Africa
	Number of enterprises disclosing this item (max.= 10) Shaded square indicates that the item is required in the company's home market*									
Process for interaction with external auditors	7	7	9	9	3	3	10	8	8	9
Process for appointment of external auditors	8	8	10	7	6	6	9	6	9	7
Process for appointment of internal auditors/scope of work and responsibilities	4	2	6	2	7	2	4	1	6	6
Board confidence in independence and integrity of external auditors	8	3	2	7	5	3	8	5	6	10
Internal control systems	10	10	9	10	6	7	10	9	8	7
Duration of current auditors	3	5	9	8	1	4	9	2	3	1
Rotation of audit partners	2	0	0	1	1	1	0	3	0	2
Auditors' involvement in non-audit work and the fees paid to the auditors	3	7	9	4	5	4	9	6	4	4
Corporate responsibility and compliance										
Policy and performance in connection with environmental and social responsibility	10	8	7	8	7	9	9	9	10	9
Impact of environmental and social responsibility policies on the firm's sustainability	7	5	7	8	4	8	8	5	5	6
A code of ethics for the board and waivers to the ethics code	4	2	10	7	4	6	4	8	2	2
A code of ethics for all company employees	9	4	7	8	6	9	7	9	5	10
Policy on "whistle blower" protection for all employees	6	2	8	5	4	4	2	7	1	6
Mechanisms protecting the rights of other stakeholders in business	10	5	9	10	4	10	9	8	7	9
The role of employees in corporate governance	8	4	7	10	4	8	6	8	3	3
Board and management structure and process										
Governance structures, such as committees and other mechanisms to prevent conflict of interest	10	9	10	10	9	10	10	9	9	10
"Checks and balances" mechanisms	10	9	8	10	6	4	10	6	6	9
Composition of board of directors (executives and non-executives)	10	10	10	10	9	10	10	10	10	10

Disclosure item	Brazil	China	India	Indonesia	Israel	Republic of Korea	Malaysia	Mexico	Russian Federation	South Africa
	Number of enterprises disclosing this item (max.= 10) Shaded square indicates that the item is required in the company's home market*									
Composition and function of governance committee structures	10	9	10	10	7	10	9	9	8	10
Role and functions of the board of directors	9	10	9	10	7	10	10	9	10	9
Risk management objectives, system and activities	10	10	9	10	10	5	10	6	8	10
Qualifications and biographical information on board members	8	10	10	10	9	6	10	8	7	8
Types and duties of outside board and management positions	9	10	10	7	9	6	10	8	6	9
Material interests of members of the board and management	3	8	10	7	3	6	10	7	5	10
Existence of plan of succession	4	7	6	6	1	6	9	2	1	9
Duration of director's contracts	10	10	10	10	6	8	10	7	9	7
Compensation policy for senior executives departing the firm as a result of a merger or acquisition	0	1	0	0	1	0	0	0	1	0
Determination and composition of directors' remuneration	3	10	10	10	7	6	10	3	7	10
Independence of the board of directors	7	10	10	4	6	10	10	9	6	10
Number of outside board and management position directorships held by the directors	9	10	10	6	9	7	10	8	6	10
Existence of procedure(s) for addressing conflicts of interest among board members	4	4	9	6	4	4	8	6	5	4
Professional development and training activities	3	2	6	6	2	1	10	2	4	7
Availability and use of advisorship facility during reporting period	6	5	5	5	4	7	10	8	2	7
Performance evaluation process	3	9	9	7	3	6	9	8	2	10

* Disclosure requirement information based on UNCTAD 2007 Review of the Implementation Status of Corporate Governance Disclosure.