THE WORLD BANK

Report on the Observance of Standards and Codes (ROSC)

Corporate Governance

Corporate Governance Country Assessment

Togo

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Overview of the Corporate Governance ROSC Program

WHAT IS CORPORATE GOVERNANCE?

Corporate governance refers to the structures and processes for the direction and control of companies. Corporate governance concerns the relationships among the management, Board of Directors, controlling shareholders, minority shareholders and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital.

The *OECD Principles of Corporate Governance* provide the framework for the work of the World Bank Group in this area, identifying the key practical issues: the rights and equitable treatment of shareholders and other financial stakeholders, the role of non-financial stakeholders, disclosure and transparency, and the responsibilities of the Board of Directors.

WHY IS CORPORATE GOVERNANCE IMPORTANT?

For emerging market countries, improving corporate governance can serve a number of important public policy objectives. Good corporate governance reduces emerging market vulnerability to financial crises, reinforces property rights, reduces transaction costs and the cost of capital, and leads to capital market development. Weak corporate governance frameworks reduce investor confidence, and can discourage outside investment. Also, as pension funds continue to invest more in equity markets, good corporate governance is crucial for preserving retirement savings. Over the past several years, the importance of corporate governance has been highlighted by an increasing body of academic research.

Studies have shown that good corporate governance practices have led to significant increases in economic value added (EVA) of firms, higher productivity, and lower risk of systemic financial failures for countries.

THE CORPORATE GOVERNANCE ROSC ASSESSMENTS

Corporate governance has been adopted as one of twelve core best-practice standards by the international financial community. The World Bank is the assessor for the application of the OECD Principles of Corporate Governance. Its assessments are part of the World Bank and International Monetary Fund (IMF) program on Reports on the Observance of Standards and Codes (ROSC).

The goal of the ROSC initiative is to identify weaknesses that may contribute to a country's economic and financial vulnerability. Each Corporate Governance ROSC assessment reviews the legal and regulatory framework, as well as practices and compliance of listed firms, and assesses the framework relative to an internationally accepted benchmark.

- Corporate governance frameworks are benchmarked against the OECD Principles of Corporate Governance.
- Country participation in the assessment process, and the publication of the final report, are voluntary.
- The assessments focus on the corporate governance of companies listed on stock exchanges. At the request of policymakers, the ROSCs can also include special policy focuses on specific sectors (for example, banks, other financial institutions, or state-owned enterprises).
- The assessments are standardized and systematic, and include policy recommendations. In response, many countries have initiated legal, regulatory and institutional corporate governance reforms.
- Assessments can be updated to measure progress over time.

By the end of June 2010, 71 assessments had been completed in 59 countries around the world.

Executive Summary

This report assesses Togo's corporate governance policy framework for all public limited companies[1] (private, state-owned and banks). It provides investors with a benchmark to measure corporate governance in Togo.

Achievements and Key Obstacles:

The awareness of modern corporate governance principles is in its early stages of development. Most companies practice a basic form of corporate governance, in which boards are weak and provide little independent oversight, and many board members do not understand their role and responsibilities. Transparency is low. Corporate governance in state-owned enterprises (SOEs) and banks (SOBs) is in urgent need of attention. The recent step of allowing private sector representatives to serve on the boards of SOEs is a positive development. The government is launching a significant privatization and restructuring effort, under the World Bank-supported Financial Sector and Governance Project. Private sector banks have also started to adopt good practices.

Next Steps:

The report presents a number of policy recommendations to launch a process of corporate governance reform. Given that most large companies are state-owned or controlled, the principle challenge is to build a corporate governance culture in the SOEs / SOBs. Reform should be driven by the desire of the government to act as an effective owner of some of its most important institutions, improve company performance by setting explicit goals, inject private sector business disciplines into the companies and empower their owners to monitor performance and take action when necessary. Governance reform should be seen as a cost effective approach that is distinct from past forms of public enterprise reform and is complementary to financial and operational restructuring.

The report recommends several complementary steps:

- To demonstrate commitment to reform, the government should consider replacing those directors and officers that were associated with previous financial failures at state-owned institutions.
- The public and private sector should launch a series of workshops and seminars to build awareness of the importance of good corporate governance, with support from international partners.
- The government should develop an overall strategy for the reform of the governance of the state-owned enterprises and financial institutions, and should consider corporate governance improvement programs for key state-owned institutions that will remain in state control.
- The relevant institutions should support legal and regulatory reform at the UEMOA / community level, and institutional reform in the private sector.

[1] « Public limited company » is the translation of the Société Anonyme

Acknowledgements

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Messrs. /Mmes.: Joseph Baah-Dwomoh, Yvette Dan-Houngbo, Guillemette Jaffrin and Roman Zyla provided advice and comments.

Table of Contents

Country assessment: TOGO

The purpose of this ROSC assessment of corporate governance in Togo is to help improve corporate governance in the country by assessing law and practice, suggesting reforms, and supporting the country in its effort to implement changes for better corporate governance.

Corporate governance refers to the structures and processes for the direction and control of companies. Corporate governance concerns the relationships among the management, board of directors, controlling shareholders, minority shareholders and other stakeholders. This definition focuses on company performance and shareholder value.

The OECD Principles of Corporate Governance provide the framework for the corporate governance ROSC, identifying the key practical issues: the rights and equitable treatment of shareholders and other financial stakeholders, the role of non-financial stakeholders, disclosure and transparency, and the responsibilities of the board of directors.

Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital. Poor corporate governance limits access to capital and can lead to underperformance.

For emerging market countries, improving corporate governance can serve a number of important public policy objectives. Good corporate governance reduces emerging market vulnerability to financial crises, reinforces property rights, reduces transaction costs and the cost of capital, and leads to capital market development. Weak corporate governance frameworks reduce investor confidence, and can discourage outside investment. In SOEs, good corporate governance could improve performance and social service, and lessen impact on State budget.

Due to the small market size for listed securities in Togo, the scope of the present report is broadened to include a corporate governance assessment of non-listed public limited companies, state-owned enterprises (SOEs), as well as private and state-owned banks (SOBs).

Market profile

Underperforming SOEs and the global crisis threaten Togo's recent economic rebound

Togo is a low income country, with an estimated Gross National Income (GNI) per capita of US$ 380 and a gross domestic product (GDP) of US$2.1 billion in 2004. Togo currently ranks 163rd out of 181 in the Doing Business Report. Years of political and economic instability, as well as poor performance of Togo's SOEs and SOBs, contributed to the poor economic performance in the 1990s and early 2000s.

The formation in late 2007 of a reform-minded government of national unity and improved macroeconomic management has enabled a rebound in economic growth in 2006 and 2007. Real GDP grew by about four percent in 2006, while GNI per capita increased from US$270 in 2000 to US$350 in 2006. However, the ongoing food crisis and current global financial crisis has impacted Togo. Moreover, Togo relies heavily on the production of commodities (phosphates, cotton, cocoa, and coffee), all of which have been organized around SOEs that have been underperforming for years. Most SOEs and SOBs suffer from over-

employment, under-investment, and underdeveloped corporate governance structures.

The largest companies are owned by multinationals and by the State

Togo is thought to have 2,000 public limited companies, of which there are approximately ten with the necessary size (over 500 employees) and resources to list on the regional stock market, the BRVM[2]. However, these are virtually all owned by regional or multinational companies that are listed in their home markets and with their own group structures, policies, and procedures. The remaining public limited companies are either state-owned banks (SOBs), state-owned enterprises (SOEs) or small and medium-sized family owned enterprises with fewer than 150 employees. No Togolese company has listed shares on the BRVM[3]. Three companies have issued bonds on the regional stock exchange.

Institutional investors are largely absent in Togo

There is no discernible equity culture in Togo and few individuals invest their savings in the local or foreign stock markets. The *Société de Gestion et Intermediation* (*SGI*), the only brokerage firm in Togo, has approximately 3,800 brokerage accounts.

Togo's financial sector is dominated by private and State-owned banks

Togo's financial sector is dominated by private and State-owned banks[4]. Over 50 percent of the banking sector is facing difficulties, with commercial banks failing to meet prudential norms and suffering from significant levels of non-performing loans (NPLs) and negative equity. The critical condition of banks in Togo is largely due to large loan exposures to the main SOEs, weak management, and poor corporate governance. The government is launching a significant privatization and restructuring effort, under the World Bank-supported Financial Sector and Governance Project[5].

The basic legal framework is in place in Togo, but has not kept pace with some recent developments in corporate governance

Togo's legal system is based on the French civil law tradition. Company and securities laws are set at the community level, not at the national level. The UEMOA has adopted the OHADA legal framework (Organization for Harmonization of Business Laws in Africa). In Togo, the main statute that governs companies is the Uniform OHADA Act on company law (*Acte Uniforme de OHADA relatif au droit des sociétés commerciales et du Groupement d'intérêt économique*, or AUSCGIE), adopted in 1997.

The basic legal framework is in place in Togo. Because the law has not been updated since 1997, it has not kept pace with recent developments in corporate governance (in France and elsewhere).

The SOEs are governed by the AUSCGIE but specific provisions in the national law 90-26 also apply.[6]

[2] Togo is part of the West African Monetary and Economic Union (États Membres de l'Union Économique et Monétaire de l'Afrique de l'Ouest - UEMOA). The UEMOA countries share a common securities regulator (The Conseil Régional de l'Épargne Publique et des Marchés Financiers, or CREPMF) and stock exchange (the Bourse Régionale des Valeurs Mobilières, or BRVM). The BRVM is based in Abidjan, and has 25 listed companies. BRVM had a market capitalization of CFA 3,474.5 billion (USD 7.1 billion) at the end of 2008.

[3] This is largely due to listing requirements too onerous for most public limited companies in Togo. In particular, to list on the first tier, a company shall have a C.F.A. 500 million of capital and five years of audited financial statements. To list on the second tier, its capital should be at least C.F.A. 200 million and two years of audited financial statements are required

[4] For a detailed review of the financial sector in Togo, see *World Bank Financial Sector Review*, 2006

[5] The project will support the Government's banking restructuring strategy and will result in new investors in Banque Togolaise pour le Commerce et l 'Industrie (BTCI), Banque Internationale pour l 'Afiique (BIA), Union Togolaise de Banque (UTB) as well as Banque Togolaise de Developpement (BTD).

[6] Loi n. 90-26 du 4 Décembre 1990, portant réforme du cadre institutionnel et juridique des entreprises publiques.

There are some local initiatives to improve corporate governance

While the awareness of modern corporate governance principles is in its early stages of development, some local and regional institutions have taken the initiative to help companies improve their governance. The *Conference des Directeurs Financiers et Contrôleurs de Gestion* of the UEMOA region adopted in 2005 a voluntary chart of good corporate governance. Its influence and application by companies is unclear. This statement of good practice has though been used as a benchmark to develop the African Index of Good Governance in the region, tool to evaluate companies in a regional corporate governance contest launched in 2006[7].

A model code of ethics has also been drafted by the Employers Association (*Le Conseil National de Patronat*) for its members. Ecobank Transnational Incorporated (ETI) has published its own code of ethics for the whole Ecobank Group, including Ecobank Togo (a private bank). Ecobank has also introduced an audit committee in line with the governance policies and procedures of their international parents, as has some other private banks.

Key findings

Legal and regulatory framework

The following sections highlight the principle-by-principle assessment of Togo's compliance with the OECD Principles of Corporate Governance.

Investor protection

Basic shareholder rights are respected

Basic shareholders rights are in place in Togo. Shareholder registration and recordkeeping for public limited companies is secure. However, information about those companies is not always available. Banks and companies pay approved dividend, however, not always in a timely manner. Shareholders can ask questions during the annual general meetings (AGM) and write questions to the chairman twice a year. Also, they have the exclusive power to amend the articles of association or issue new shares.

Shareholders may not receive adequate notice about shareholder meetings

The AGM must be held within six months of the end of the financial year, and with at least 15 days notice. The notice is more often published in a journal of legal announcement (*Journal Officiel)* than directly sent to shareholders. Thus, not all the shareholders are well informed. Moreover, the notice only contains the date, place (most of the time company's headquarter), time, agenda, and type of meeting. It does not include any copy of the financial statements or other relevant documents. Such documents are available at the company's headquarter 15 days before the AGM. Items can be placed on the agenda by a certain number of shareholders depending on the capital of the company (e.g. representing five percent of the capital when the capital is less than C.F.A 1 billion).

The principle of equitable treatment of shareholders is not

The law provides that each share allows one vote. However, it allows the articles of association to limit the access to the AGM to shareholders owing at least ten shares. Furthermore, the law allows companies not to treat all shareholders

[7] The first edition of the contest was in 2007. In 2009, ten companies (four from Togo ones and six from Benin) were registered for the contest[7].

necessarily respected.

equally regarding their voting rights. Specifically, shareholders who hold shares for more than two years may be granted two votes per shares while the other shareholders are granted one single vote. Shareholders may also face voting caps[8] and limited voting rights, which may weaken shareholder voice.

Some important shareholder powers can be delegated to the board

Shareholders are provided the rights to participate in key company decisions such as election and removal of directors, and approval of dividends, amendments to the company charter and capital increase. However, they do not necessarily have the power to authorize large transactions on corporate assets.

The law requires board members to disclose conflicts of interest, but is t weak regarding review and approval of related party transactions

The law requires all board members to disclose conflicts of interest to the board, and the board is required to disclose them to shareholders at the following AGM. The auditor prepares a summary report to assist shareholders. However, the definition of conflicts of interest does not cover all forms of self dealing or transaction types, and excludes "ordinary transactions concluded under normal conditions". In general, these rules do not appear to explicitly cover related party transactions in which the related party is a controlling shareholder of both counterparties. In addition, they do not allow shareholders to approve large related party transactions before they take place.

Shareholders protection during takeovers is relatively weak.

Rules on takeovers are weak. The acquiring shareholder does not need to extend a tender offer or mandatory bid to other shareholders upon crossing specified ownership thresholds. In practice, control changes are rare.

Rules on ownership disclosure are inconsistent

Ownership disclosure is only required in listed companies. Shareholders who cross, alone or in concert, the threshold of 10, 20, 33, 50 and 66.66 percent should report so to the BRVM, the listed company, and to the public. On the other hand, the CREPMF Regulations require such a disclosure to the CREPMF and to the public where shareholders own ten percent of the shares and for all extra two percent they acquire thereafter. In practice, many companies do not have a website and do not disclose their ownership.

Disclosure

The accounting standards applicable are not appropriate for large SOEs and banks

Public limited companies, including SOEs, are required to use the West African Accounting Standards (SYSCOA). Although they are considered basic, those standards are appropriate for the large majority of SMEs in Togo. Banks, in turn, are required to follow standards imposed by the UEMOA banking law, which are not consistent with International Financial Reporting Standards (IFRS).

All companies are required to be audited by qualified auditors, although there are some concerns about auditor independence

All public limited companies, including SOEs and SOBs are required to be audited. The audit profession is well regulated and auditors are also legally accountable towards shareholders. Yet, improvement is needed to increase external auditors' independence. For instance, except in SOEs, their mandates are renewable perpetually.

There are no formal auditing standards. However, some auditors claim to follow International Standards on Auditing (ISA) as promulgated by the International

[8] Voting caps" is a process to limit the extent to which controlling shareholders can exercise their voting rights. For instance, it can be provided in the articles of association that whatever the number of shares a shareholders has, s/he cannot use more of two percent of the voting right rights.

Federation of Accountants (IFAC). ONECCA (the association of auditors in Togo) is applying for an IFAC membership.

Whistleblowers are not protected

Companies are not required or encouraged to adopt whistleblower protections and they generally do not in practice. When employees report any wrongdoing, they do it anonymously because no protection is offered and they could be fired for doing so.

Company oversight and the board

Companies are not required or encouraged to have independent directors

Companies in Togo have one-tier boards, with a minimum of three and a maximum of 12 members. Most boards can be described as "shareholder boards" and as such board decisions are made in the interest of shareholder groups (or the relevant ministries in the case of SOEs) rather than in the interest of the bank or company itself. Companies are neither required nor encouraged to appoint or elect independent directors. Moreover, the law requires that a minimum of 2/3 of board members be shareholders. In SOEs not wholly-owned by the State, all directors must be shareholders.

Fiduciary-type duties are relatively weak in theory, and absent in practice

Directors owe a duty to the company and to third parties to obey the law and applicable regulations, as well as the company articles. There is a general duty of care. Officers must act as "a good father" towards the company. However, the limit of five board seats as set-out in the company law is not always respected and as such many directors have difficulty finding the time to properly prepare for board meetings. There is no general duty for board members to act in the interests of the company and all shareholders (i.e. a duty of loyalty).

Some responsibilities of the board of directors are relatively well-defined…

The law defines some of the board's responsibilities.

- The board is responsible for hiring and firing management, defining company objectives, management guidelines and management oversight, and setting remuneration.
- The board is responsible for authorizing any possible conflicts of interest.
- The board oversees the preparation and the audit of annual financial statements. Neither the directors nor managers need to certify the financial statements.

Boards of directors are not accountable for their actions

Despite provisions in the law setting shareholders' right to hold directors accountable, it appears that no action has been taken against management or directors in Togo. Board members have not been held accountable for their actions (or inaction) on the boards of banks and companies, in particular government officials for their roles on the boards of SOEs and SOBs that have been said to be inefficient and loss-making for years on end. Furthermore, some of those directors have been appointed in other SOEs or SOBs. Some directors of liquidated SOEs have also been appointed in the new SOEs of the same sector, created after their previous company was liquidated.

Corporate governance practice in Togo

The largest public interest entities are

The World Bank commissioned a corporate governance survey of ten leading companies in February 2009.[9] The survey was followed up with several

[9] World Bank Survey on Corporate Governance Practice in the ten leading SOEs and Banks in Togo, March 2009.

state owned or under State control.

interviews. A summary of the survey results is presented in Annex 2 to this report.

The companies surveyed represent most of the largest Togolese "public interest entities". Five of the surveyed companies were banks, including three state-owned and two majority private banks (including Ecobank Togo). Banque Togolaise de Dévelopement is owned at 43 percent by the State, and 55 percent by other state-owned institutions and companies. The other five companies surveyed were either wholly-owned by the State or under its majority control.[10] Two of the companies surveyed are infrastructure service providers (CEET and TDE).

Boards of the surveyed companies are dominated by government representatives.

Boards are elected and removed by shareholders but the nomination process is opaque. In SOEs wholly-owned by the State, Directors are generally representatives of the government. Directors do not appear to be appointed on the basis of their knowledge or skill – the surveyed companies reported that Director qualifications were only taken into account by 50 percent of the companies. Interviews suggested that the nominations of many board members of SOEs are mostly based on politics. There are no regulations or best practice recommendations that give the board any clarity or input into the Director nomination process.

Some companies now have stakeholder representatives on the board

In few companies, the representatives of stakeholders are also appointed. For instance, in Port Autonome de Lomé, three out of 11 directors represent the countries using the Port (Burkina Faso, Niger, and Mali) without being shareholders. In SALT, a few directors come also from the private sector. Also, some SOBs have appointed directors from the private sector. Banque Internationale pour l'Afrique Togo (BIA) has three directors from the private sector. However, it appears that this phenomenon is only true for banks that should be privatized in the future.

In SOEs under the majority control of the State, there is no supervisory council but an AGM. Representatives of the State in the AGM are appointed by the Minister of Finance. The AGM appoints the board and sets directors' remuneration. Only shareholders can be appointed directors. A State entity, shareholder of the SOE, can be appointed as director. In that case, the entity will have to nominate one or several individuals to represent it.[11]

[10] The 10 companies in the survey included Postes du Togo, UTB, CEET, PAL, TdE, BTD, BTCI, SALT, BPEC, and Ecobank Togo.
[11] §57 Loi 90-26.

Board Composition in Togo

Company	Directors	Executive Directors[12]	Non-Execs[13]	Of which: Independent[14]	Gov. Reps.	Ownership
Postes du Togo	7	0	7	0	7	100% SOE
UTB	4	0	4	0	4	100% SOE
CEET	8	6	7	1	7	100% SOE
PAL	12	?	?	3	?	100% SOE
TdE	7	?	?	?	?	100% SOE
BTD	9	1	8	3	1	43% state 55% other state entities
BTCI	No board*					85% SOE
SALT	7	?	7	?	5	65% SOE
BPEC	6	1	5	1	1	68% private
Ecobank Togo	5	1	4	4	1	95%private 5% CNSS

* Operating under "*administration provisoire"* without a board because of its financial difficulties.

Source: World Bank Survey on Corporate Governance Practice in the ten leading SOEs and Banks in Togo, March 2009.

Board members do not appear to understand their duties

Board members do not understand their duties. Because of the appointment of government officials, many directors have limited business experience. There also appears to be a lack of relevant training for board members in their capacities as directors. Institutes providing director training do not exist in Togo.[15]

Boards do not fulfill all of the functions assigned by good practice – for example, they do not appear to play an important role in setting company strategy.

Boards do not elaborate strategies or business plans but focus on approving the budget. They often meet three times a year. The first time is to approve the year's budget. During a second meeting directors approve the accounts vis-à-vis the old budget. The board meets then for a third time to conduct a mid-term review of the budget.

According to the survey, the company's strategy is not presented to the board in 40 percent of the cases.

Boards do not appear to manage conflicts of interest or have a say in related party transactions

Boards do not appear to manage conflicts of interest. For example, in half of the companies surveyed, the board did not approve related parties transactions. Companies and banks are neither required nor encouraged to adopt Codes of Ethics. The employers association (Patronat) is in the process of drafting a voluntary code for its members. Save for Ecobank, the other banks or companies have not published their code of ethics, and most interlocutors thought that few companies or banks actually had ethics codes.

[12] ED: Executive directors
[13] NED: Non-executive directors
[14] ID: Independent directors. The notion of independent director is not formally defined in Togo. Some companies reports, however, existence of independent directors in their board.
[15] Togolese directors can be trained at the Senegalese Institute of Directors (L'Institut Sénégalais des Administrateurs). However, Togolese companies have not participated to date because of their high cost (including travel expenses).

The practice of filling boards with government representatives appears to limit the objectivity of boards

As noted in the table above, boards are dominated by shareholders (typically government) representatives, which can deprive the company of necessary alternative perspective and skill sets. There are few executive directors -- in line with traditional practice in France, the two private companies in the survey report one executive director on the board (presumably the general director).

Although there is no legal concept of an "independent" director, many companies in the survey reported independent directors on the board. 60 percent of the companies claim to have at least one independent director. In average, a company has three independent directors. However, the definition of independence used is not always in line with good practice.

The positions of chairman (*Président)* and the CEO (*Directeur Général/ general director*) are often separated in big companies.

Boards do not meet very often, causing observers to question their role.

The board meets three or four times a year in 50 percent of the companies. Two boards meet nine times and two meet at least once a month. The Ecobank Togo board only meets three times per year. However, this situation can be accounted for by the fact that most strategic issues are decided at the international level.

Board members appear attend most meetings

80 to 100 percent of the directors attend the meetings in 70 percent of the companies.

Other weaknesses are related to board remuneration

There does not appear to be any link between performance and remuneration.

The board decides the remuneration for the chairman and the general director. The general meeting of shareholders (AGM) approves the remuneration of all other board members (executive and not executive directors). In most companies, there does not appear to be any defined remuneration policy. Remuneration is not generally aligned with the long-term interests of the company and rarely based on performance (only one company surveyed reported linking remuneration to performance).

In SOEs, civil servant, including senior government officials, appointed as directors in SOEs and SOBs are allowed to keep their board fees, which can substantially exceed their government salaries.

Remuneration of executive and non-executive directors is disclosed in the annual report in only 30 percent of the companies.

Board committees and other elements of good practice are new to Togo

Only one company in the survey (Ecobank) reported the establishment of three committees of the board to assist with specific board tasks: governance, audit and compliance, and risk (*see Ecobank box, below*). One bank not in the survey (BIA) has credit and risk committees of the board.

The board's ability to oversee internal controls and financial reporting is limited by problems in the internal audit function

Nine companies out of 10 have an internal audit function. However, the internal auditor reports to the board in only one company. S/he reports to the general director in 60 percent of the companies. In BIA, the internal auditor reports to the general director but presents a report to the board twice a year.

Only Ecobank has an audit committee to manage the board's role in financial reporting and internal controls.

Ecobank Togo: Setting the Standard

Corporate governance reformers can look to Ecobank Togo to see that many aspects of good practice can be implemented in Togo. Ecobank Togo follows the same principles of good corporate governance as its parent, Ecobank Transnational Incorporated (ETI), based in Lomé, Togo. ETI has a corporate governance charter and a code of conduct for directors that are also applicable to Ecobank Togo. In the annual report of Ecobank Togo, the board report discloses the compliance of the company with some of the corporate governance standards.

The board includes executive, non-executive, and independent directors. It is always composed of a majority of non-executive directors. The company has also adopted a definition of independent directors following the IFC principles and methodology of corporate governance. The board meets only three times a year but the strategy is defined at the group level. Standard evaluation tools have been adopted to assess the performance of the board and its directors individually.

Ecobank Togo has created three board committees.

- The governance committee (e.g., ensures implementation of policies, good corporate governance, relationship between shareholders and the company, advises on nomination of executive and non-executive directors).
- The audit and compliance committee (e.g., oversees internal control and audit activities, assure compliance with relevant laws, regulations and standards).
- The risk committee (e.g., participates in the determination of policies for the approval of credit, sets and manages credit approval for management, reviews compliance with banks regulation and supervisory authorities).

The Chairman and the CEO are separate positions. However, the Chairman sits on all three board committees, potentially limiting their ability to take “objective" decisions.

With the exception of a few privately-owned banks, disclosure practices are extremely weak

Transparency is a major concern in Togo. Except in a few privately-owned banks, disclosure practices are extremely weak. A few SOEs or SOBs disclose their financial information, and the quality of financial information of private sector companies is considered under developed. Most companies and banks do not meet internationally acceptable non-financial disclosure requirements, in particular with respect to the disclosure of company objectives, ownership structures, remuneration policies, related party transactions, foreseeable risk factors, stakeholder engagement and corporate governance structures and policies.

All the companies in the survey reported that they prepare an annual report, but only 70 percent publish it.

Ownership of SOEs is vested in a “supervisory council”

In SOEs wholly owned by the State, the role of the shareholders meeting is generally played by a supervisory council. Each supervisory council appoints the board and set directors’ remuneration. These councils are composed of several ministers with interest in the company, including the Minister of Finance and the Minister of Commerce, the sector Minister / Ministre de Tutelle. The law does not provide any delegation process – in practice, many of the same Ministers sit on every supervisory council. Because of their ministerial duties and the large number of councils, many observers report that they do not have enough time to be effective in this responsibility.

A member of the supervisory council cannot sit in the board of the same company. The law does not provide more details about the nomination process.

This system would appear to result in considerable non-commercial interference from Ministries in the affairs of the companies. In other countries, this has resulted in conflicting goals and poor performance of SOEs.

Key corporate governance enforcement institutions lack resources and authority

The key institutions that are mandated to oversee companies and their governance in Togo do not yet play a major role.

- The SOEs should be overseen by the *Cour des Comptes* which has been created. Judges were appointed in June 2009 but the date the court will be effective is unknown The Commercial Register *(Registre du Commerce)* has no authority over governance matters, and is not a source of redress to shareholders.
- The banking commission has real authority and has taken important pecuniary and other actions against banks. However, follow-up enforcement action has not produced the desired results given the current state of the Togolese banking sector. The banking commission's onsite inspections are considered to be too irregular (only once every two years for some banks). Moreover, enforcement through the banking commission is not always effective for SOBs due to the necessity to seek the approval from the national governments to proceed with enforcement actions. Also, only the Minister of Finances has the ultimate ability to grant and withdraw banking licenses.
- Of note is that the regional central bank (BCEAO), which also has an inspection power, has an ownership stake in at least one bank, and has nominated directors to serve on banks, which clearly poses a real conflict of interest in terms of conducting an independent supervision.
- The securities regulator (CREPMF) is not very active in Togo as none of the Togolese companies has listed shares on the BRVM (only three companies have listed bonds). Overall, the CREPMF has limited authority over listed companies, is resource constrained, and appears to have undertaken no enforcement actions against listed companies in the region.
- Togo does not have commercial courts but some judges with a commercial – yet not comprehensive – training seat in the civil court. The enforcement of contracts and court system is considered a major issue hindering private sector development. Togo ranks 151 out of 181 in the "Enforcement of Contracts" indicator in the Doing Business report. This was confirmed by all interlocutors, from both public and private sector. The head of the Constitutional Court of Togo publicly accused Togo's judges of systematic corruption. In addition, court decisions are not published.

Recommendations

Good corporate governance will help ensure that companies use their resources more efficiently. It is an important prerequisite for attracting the patient capital needed for sustained long-term economic growth.

The following policy recommendations discussed below:

- Take immediate steps to increase accountability and raise awareness.

- Build awareness of the importance of good corporate governance.
- Reform the governance of the state-owned enterprises and financial institutions.
- Develop corporate governance improvement programs for key state-owned institutions.
- Launch institutional reform to support reform in the private sector.
- Support legal and regulatory reform at the UEMOA / community level.

Recommendation 1: Immediate steps to increase accountability and raise awareness

The government should take steps to immediately send a signal on the importance of corporate governance issues. This includes:

- Building on recent steps and appointing additional expert board members to the boards of the key SOEs. These could include (a) members of the private sector, (b) foreign experts (possibly from international companies in similar industries). The appointment of these new board members should be accompanied by the drafting of Draft a code of conduct for SOEs board members, especially to address conflicts of interest.
- Amend law 90-26 to allow AGM (when it exists) complete flexibility on SOEs board members appointment.
- Replacing board members associated with poor management leading to financial losses in the past, either at the same company or other state-owned companies.

Recommendation 2: Build awareness of the importance of good corporate governance

Changes to the legal and regulatory framework, and institutions enforcing good corporate governance in Togo will have little meaningful impact unless the owners, directors, and managers buy in to the business case for good corporate governance.

The government, working with international donor partners, should support awareness raising events (roundtables, seminars, and publications), in partnership with local Togolese institutions. Awareness raising events on corporate governance will target a broad audience, focusing on corporate directors and officers of Togo's principle companies, but also include investors, journalists, judges, and government officials. The topics under discussion during these events would focus on broader corporate governance themes, most notably on the definition of and the business case for good corporate governance, family business governance, and good board practices.

Recommendation 3:

Reform the governance of the state-owned enterprises and financial institutions

In the past, SOEs and state-owned banks in Togo were unprofitable and a significant drain on the national budget. More important than financial performance is the ability of the key SOEs to deliver essential services to the public. Many of the companies that remain in the portfolio (CEET, TdE) provide crucial infrastructure services.

The reform of corporate governance of SOEs should be driven by the desire of the government to be able to act as an effective owner of some of its most important institutions. The interlocking goals of reform should be to:

- **Improve company performanc**e by setting explicit goals, injecting private sector business disciplines into the companies and empowering their owners to monitor performance and take action when necessary. Confused accountabilities and underperforming boards obfuscate such

outcomes.

- **Reduce political interference** in companies by insulating companies with more professional owners.
- **Reduce risks and costs to the government budget**. Under-performing SOEs place the Government at risk – reputational, political and fiscal. Governance reform should help impose hard budget constraints on companies, increase their autonomy, and eventually allow companies to borrow directly from the private sector rather than from government.
- **Increase trust between management, boards, owners, Parliament, and citizens,** by increasing transparency and building a business culture in the companies and the ownership entities.
- **Reduce risks to government officials**. Sitting on a board can be beneficial for government officials, because they can earn board fees, and have a direct impact on the management of the company. However, personal responsibility can be very risky if the company performs poorly, and can be damaging to an official's career.
- **Do all this in a cost-effective manner.** Governance reform should be seen as a cost effective approach that is distinct from past forms of public enterprise reform that required large amounts of investments and "restructuring' of the company.

Medium-term: create a small unit to assist and professionalize the administrative ministries and the supervisory councils

The key bodies that exercise the ownership rights of the government over the SOBs and SOEs are the supervisory councils. However, these supervisory councils are composed of Ministers, who (as in other countries) are busy with their other responsibilities.

As a first step, it is proposed that a small unit in the Ministry of Finance be created to assist the councils in their work, for the entire portfolio of companies. The basic mission of the unit would be:

- Act as an information clearinghouse, and collect all reports and information produced by the companies.
- Build a (small) list of private sector candidates who can serve as directors on the boards.
- Monitor the performance of boards.
- Monitor the performance of companies, and encourage the adoption of consistent key performance indicators across the different sectors.
- Participate in international events on corporate governance, and develop a standard set of corporate governance policies to be implemented in the SOE portfolio.

The development of new corporate governance standards is a key part of the reform

Through a corporate governance Code or Policy, the government (with the assistance of the new unit) should introduce new corporate governance policies and procedures. (These would be introduced through legislation, as necessary). Based on our review of corporate governance practice in Togo, elements of policy could include the following:

- Set a goal of building boards composed of experienced directors with private sector orientation.
- Require formal training of board members in companies where it has

participation.

- Require public disclosure of an annual report, including a full set of audited financial statements.
- Clearly re-state that directors owe their loyalty to the company and all shareholders, and discuss how to balance this against duties to the institution that may have appointed them.
- Allow minority shareholders to nominate representatives to the board, and should encourage a transparent nomination process.
- Enumerate the responsibilities of board members (in line with the OECD Principles), and distinguish the responsibilities of the board from management.
- Develop a concept of independence, and encourage companies to add independent experts as full board members.
- Create board committees.

Longer-term: consider the creation of an autonomous body that can act as the owner of SOEs and assume more of the ownership functions of the state

In the long term, the ownership function could be centralized, and made more autonomous, along the lines of the Agence de Participation de l'État in France.[16] This would help the state to better fulfill its ownership and oversight function, and further define government define policy for the SOEs.

Recommendation 4:

Develop corporate governance improvement programs for key state-owned institutions

In concert with the development of a larger strategy for SOE / SFI governance reform, individual Ministries and companies should launch a program of corporate governance improvement programs at the company level. These programs would assess the bank or company's governance framework and practices, including a review of its internal documents, structures and processes, and then benchmarking these against a peer group, as well as national and internationally recognized best practices.

These types of interventions have proven to be very useful in both private and public-sector companies around the world. They are less necessary in companies and banks that will be privatized.

Recommendation 5:

Institutional reform to support reform in the private sector

Build capacity in the audit profession. ONECCA should be encouraged in its process of implementing a system of audit oversight and quality control. This includes improving continuous education and remuneration, and encouraging ONECCA in standard setting role. An accounting and auditing ROSC and subsequent country action plan is recommended to launch this process.

The internal audit profession also needs to be strengthened.

Strengthen the courts. As in many countries, the judicial system in Togo is relatively unprepared to adjudicate complex disputes between and among

[16] The Government Shareholding Agency (*Agence des Participations de l'État*) in France is situated within the French Ministry of Finances. It represents the State as a shareholder and coordinates with other ministries As such, the Agency is concerned with important corporate governance issues, including accounting and auditing, as well as strategic issues related to specific sectors.

companies and shareholders. Judges should be provided with specialized training in the area of shareholder and commercial disputes.

Comprehensive reform is needed for the Registre du Commerce (Commercial Register). The Registre du Commerce requires assistance to modernize its systems and procedures for filing and documentation, which will contribute to overall levels of transparency (and shareholder and creditor rights), and the implementation and enforcement of the Company Act. The Commercial Register should be able and willing to demand that delinquent companies make proper fillings, and should have the resources, capacity and political independence needed for its mission.

Recommendation 6:

Legal and regulatory reform at the UEMOA / community level

Many aspects of the corporate governance framework are set at the regional / community level; reform over the long term will require further discussion at the level of UEMOA and OHADA.

BRVM and CREPMF. BRVM and CREPMF play a major role in the corporate governance of listed companies. Possible next steps to improve corporate governance could include:

- The creation of a Code of Corporate Governance for listed companies.
- Enhanced disclosure requirements (in line with the non-financial disclosure requirements of the OECD Principles);
- Active enforcement of the quality (as well as the timeliness) of financial statements;
- Greater use of company and BRVM websites to disseminate information.

Legal reform. Longer-term, moves toward compliance with the OECD Principles of Corporate Governance will require reform to the OHADA Uniform Act on Commercial Companies. A basic set of recommended revisions to the law are presented in Annex 1. These recommended revisions correspond to weaknesses identified in the principle-by-principle review. These changes refer only to joint-stock companies (*sociétés anonymes)* and not necessarily to other company forms.

Summary of Observance of OECD Corporate Governance Principles

	Principle Center	FI	BI	PI	NI	NA
I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK						
IA	Overall corporate governance framework			x		
IB	Legal framework enforceable /transparent			x		
IC	Clear division of regulatory responsibilities		x			
ID	Regulatory authority, integrity, resources			x		
II. THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS						
IIA	Basic shareholder rights					
IIA 1	Secure methods of ownership registration		x			
IIA 2	Convey or transfer shares		x			
IIA 3	Obtain relevant and material company information	x				
IIA 4	Participate and vote in general shareholder meetings			x		
IIA 5	Elect and remove board members of the board		x			
IIA 6	Share in profits of the corporation		x			
IIB	Rights to part in fundamental decisions					
IIB I	Amendments to statutes, or articles of incorporation	x				
IIB 2	Authorization of additional shares		x			
IIB 3	Extraordinary transactions, including sales of major corporate assets	x				
IIC	Shareholders GMS rights					
IIC 1	Sufficient and timely information at the general meeting			x		
IIC 2	Opportunity to ask the board questions at the general meeting			x		
IIC 3	Effective shareholder participation in key governance decisions			x		
IIC 4	Availability to vote both in person or in absentia			x		
IID	Disproportionate control disclosure			x		
IIE	Control arrangements allowed to function					
IIE 1	Transparent and fair rules governing acquisition of corporate control				x	
IIE 2	Anti-take-over devices			x		
IIF	Exercise of ownership rights facilitated					
IIF 1	Disclosure of corporate governance and voting policies by inst. investors				x	
IIF 2	Disclosure of management of material conflicts of interest by inst. investors				x	
IIG	Shareholders allowed to consult each other	x				
III. EQUITABLE TREATMENT OF SHAREHOLDERS						
IIIA	All shareholders should be treated equally					
IIIA 1	Equality, fairness and disclosure of rights within and between share classes			x		
IIIA 2	Minority protection from controlling shareholder abuse; minority redress			x		
IIIA 3	Custodian voting by instruction from beneficial owners				x	
IIIA 4	Obstacles to cross border voting should be eliminated			x		
IIIA 5	Equitable treatment of all shareholders at GMs			x		
IIIB	Prohibit insider trading			x		
IIIC	Board/Mgrs. disclose interests			x		
IV. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE						
IVA	Legal rights of stakeholders respected			x		
IVB	Redress for violation of rights			x		

	Principle Center	FI	BI	PI	NI	NA
IVC	Performance-enhancing mechanisms			x		
IVD	Access to information					X
IVE	"Whistleblower" protection				x	
IVF	Creditor rights law and enforcement			x		
V. DISCLOSURE AND TRANSPARENCY						
VA	Disclosure standards					
VA 1	Financial and operating results of the company			x		
VA 2	Company objectives			x		
VA 3	Major share ownership and voting rights			x		
VA 4	Remuneration policy for board and key executives			x		
VA 5	Related party transactions			x		
VA 6	Foreseeable risk factors				x	
VA 7	Issues regarding employees and other stakeholders				x	
VA 8	Governance structures and policies				x	
VB	Standards of accounting & audit			x		
VC	Independent audit annually			x		
VD	External auditors should be accountable	x				
VE	Fair & timely dissemination			x		
VF	Research conflicts of interests					X
VI. RESPONSIBILITIES OF THE BOARD						
VIA	Acts with due diligence, care				x	
VIB	Treat all shareholders fairly				x	
VIC	Apply high ethical standards				x	
VID	The board should fulfill certain key functions					
VID 1	Board oversight of general corporate strategy and major decisions				x	
VID 2	Monitoring effectiveness of company governance practices				x	
VID 3	Selecting/compensating/monitoring/replacing key executives				x	
VID 4	Aligning executive and board pay				x	
VID 5	Transparent board nomination/election process				x	
VID 6	Oversight of insider conflicts of interest			x		
VID 7	Oversight of accounting and financial reporting systems				x	
VID 8	Overseeing disclosure and communications processes				x	
VIE	Exercise objective judgment					
VIE 1	Independent judgment				x	
VIE 2	Clear and transparent rules on board committees				x	
VIE 3	Board commitment to responsibilities				x	
VIF	Access to information				x	

Note: FI=Fully Implemented; BI=Broadly Implemented; PI=Partially Implemented; NI=Not Implemented; NA=Not Applicable

Principle - By - Principle Review of Corporate Governance

This section assesses compliance with each of the OECD Principles of Corporate Governance. Please see Methodology for Assessing the Implementation of the OECD Principles on Corporate Governance for full details.[17]

Section I: Ensuring The Basis For An Effective Corporate Governance Framework

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

Principle IA: The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets.

Assessment*: *Partially Implemented

Economic development. Years of political and economic instability, as well as poor performance of Togo's SOEs and SOBs, contributed to the poor economic performance in the 1990s and early 2000s. The formation in late 2007 of a reform-minded government of national unity and improved macroeconomic management has enabled a rebound in economic growth in 2006 and 2007. Real GDP grew by about four percent in 2006, while GNI per capita increased from US$270 in 2000 to US$350 in 2006. However, the ongoing food crisis and current global financial crisis has impacted Togo. Moreover, Togo relies heavily on subsistence agriculture (cotton, cocoa, and coffee), commerce, and the phosphate industry, all of which have been organized around SOEs that have been underperforming for years.

Capital market. Togo is part of the West African Monetary and Economic Union (UEMOA). Its capital market is at an early stage of development. No banks or companies have stocks publicly listed on the regional stock exchange (*The Bourse Régionales des Valeurs mobilières*, BRVM) based in Abidjan. Only three companies have issued bonds on the BRVM. This is largely due to listing requirements too onerous for most public limited companies in Togo, in particular the necessity for C.F.A. 500 million of capital and five years of audited financial statements for listings on the first tier, or C.F.A. 200 million and two years of audited financial statements for companies to list on the second tier.

Togo has approximately 2,000 public limited companies, of which there are approximately ten with the necessary size (over 500 employees) and resources to list on the BRVM. However, these are virtually all owned by regional or multinational companies those themselves are listed in their home markets, and with their own group structures, policies, and procedures. The remaining public limited companies are either State-owned enterprises (SOEs) (three have more than 500 employees)[18], or small and medium-sized family owned enterprises with fewer than 150 employees. The ownership is usually concentrated in the hands of family-members.

Banks. Financial sector in Togo represents 51 percent of the GDP in 2006. Togo's financial sector is dominated by private and State-owned banks. However, over 50 percent of the banking sector is in disarray, with commercial banks failing to meet prudential norms and hence suffering from significant levels of non-performing loans (NPLs) and negative equity. [19] The critical condition of banks in Togo is largely due to large loan exposures to the main SOEs. The government is considering the privatization of its SOBs and this process should be encouraged. Any pre-privatization restructuring of these

[17] Principles are **Fully Implemented** if the OECD Principle is fully implemented in all material respects with respect to all of the applicable Essential Criteria. Where the Essential Criteria refer to standards (i.e. practices that should be required, encouraged or, conversely, prohibited or discouraged), all material aspects of the standards are present. Where the Essential Criteria refer to corporate governance practices, the relevant practices are widespread. Where the Essential Criteria refer to enforcement mechanisms, there are adequate, effective enforcement mechanisms. Where the Essential Criteria refer to remedies, there are adequate, effective and accessible remedies. A **Broadly Implemented** assessment is likely appropriate where one or more of the applicable Essential Criteria are less than fully implemented in all material respects. A **Partly Implemented** assessment is appropriate when (1) one or more core elements of the standards described in a minority of the applicable Essential Criteria are missing, but the other applicable Essential Criteria are fully or broadly implemented in all material respects (including those aspects of the Essential Criteria relating to corporate governance practices, enforcement mechanisms and remedies); and (2) the core elements of the standards described in all of the applicable Essential Criteria are present, but incentives and/or disciplinary forces are not operating effectively to encourage at least a significant minority of market participants to adopt the recommended practices; or the core elements of the standards described in all of the applicable Essential Criteria are present, but implementation levels are low because some or all of the standards are new, it is too early to expect high levels of implementation and it appears that the reason for low implementation levels is the newness of the standards (rather than other factors, such as low incentives to adopt the standards). A **Not Implemented** assessment likely is appropriate where there are major shortcomings. A **Not Applicable** assessment is appropriate where an OECD Principle (or one of the Essential Criteria) does not apply due to structural, legal or institutional features (e.g. institutional investors acting in a fiduciary capacity may not exist).

[18] World Bank Survey on Corporate Governance Practice in the ten leading SOEs and Banks in Togo, March 2009

[19] World Bank Financial Sector Review, 2006.

banks should focus on corporate governance reforms.

Institutional investors. A few individuals invest their savings in the local or foreign stock markets. The *Société de Gestion et Intermédiation* (SGI), the only brokerage firm in Togo, has approximately 3.8 thousand brokerage accounts, 95 percent of them are institutional investors. Togo's insurance companies are not thought to invest in equity. A number of regional funds do exist, such as the GARI Fund (Fund for private investment in West Africa), and while some of these institutional investors are thought to vote, none appear to have or disclose voting policies, their votes, or policies on how they manage or disclose actual voting on conflicts of interest.

Togo's National Center of Social Security does not invest in the market but has taken equity positions in a number of SOEs and SOBs, and has both voted at general assemblies and assigned individuals to serve as directors on their investee companies' boards. However, these directors have clearly not had any effect on the corporate governance practices of the investee companies.

Microfinance. As a result and because banks, facing difficulties, do not easily finance small and medium companies, the microfinance sector is developing in Togo. This sector, overseen by the Ministry of Finances and regulated by an UEMOA law, has experienced rapid growth. The number of loans provided increased over 200 percent from 2000 to 2008.

Overall capital market transparency. The capital market in Togo is quite opaque. Rules on transparency are not enough developed and many companies – essentially SOEs – do not publish their annual report.

Principle IB. The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent and enforceable.

Assessment: Partially Implemented

Corporate legal framework. Togo is a civil law country and has been influenced by the French legal tradition. The country is part of the West African Monetary and Economic Union (*Etats Membres de l'union Economique et Monétaire de l'Afrique de l'Ouest –UEMOA*) which has adopted the OHADA (Organization for Harmonization of Business Laws in Africa) legal framework. The company, Securities and Banking laws are then set at the regional level, not at the national one.

Companies are governed by the Uniform OHADA Act on company laws (*Acte uniforme de l'OHADA relative au Droit des Societies Commerciales et du Groupement d'Intéret Economique, or* AUSCGIE) adopted in 1997. State-owned enterprises (SOEs) also fall under the AUSCGIE and under the Law 90-26 of 1990 and Decree 91-197 of 1997 for specific provisions related to SOEs.

Company types. The large-company form in Togo is the *Société Anonyme* (Public limited Company). To create a public limited company, a minimum capital of CFA 10 million is necessary and no limit in terms of the number of members is required (AUSCGIE, §387). To issue securities to the public, those companies must have a minimum capital of CFA 100 million (AUSCGIE, §58, 824). All commercial SOEs and banks are created under this form, and are thus covered by standard company law.

Securities law framework. AUSCGIE contains certain basic securities law provisions. Further legislation governing listed companies is contained in the *Règlement Général de la Bourse Régionale des Valeurs Mobilières* (BRVM (stock Exchange) listing rules). All of them are not published. Listed companies are under the regulation of the securities markets regulator, the *Conseil Régional de l'Epargne Publique et des Marchés Financiers* (CREPMF). The CREPMF's regulations on its website are out of date. The new ones (issued in 2004) are not published. Furthermore, some of the BRVM listing rules are inconsistent with the CREPMF ones.

Listing rules. Listed firms are governed by the regulations of the BRVM. There are two listing tiers.

Banking law framework. The Central Bank of West African States (BCEAO) issues regulations for banks, which are then supervised by the banking commission.

Codes of Corporate Governance. Corporate governance reform is in its early stages in Togo, and no Codes or Charters have yet been adopted

Legal Clarity. Togo's legal and regulatory framework for SOEs, privately-owned companies and banks is relatively strong, clear, and coherent. However, there are a number of inconsistencies and some contradictions between the regional and national legal and regulatory frameworks. For example, State-owned banks (SOBs) are required to follow the company and banking laws on the one hand, and the SOE Law 90-26, on the other hand, which have some inconsistent dispositions. For instance, external auditors in SOEs have to be approved by the Minister of Finances. In banks, they have to be approved by the banking commission. It is then assumed that external auditors for SOBs are to be approved by both the Minister of Finances and the banking commission but the law does not provide where conflicts exist between the two authorities. Also, a new national law limiting the external auditors' mandates to three years renewable only once in SOEs. This is inconsistent with the AUSCGIE provisions offering them a six-year mandate perpetually renewable. Furthermore, the CREPMF Regulations and the BRVM Instruction II-C contain inconsistent provisions on disclosure.

Consistency of application. The AUSCGIE provisions are not always complied with. However, SOEs tend to follow the specific provisions of Law 90-26. Furthermore, the accounting standards, although they are not internationally recognized,

are simple and thus followed by most companies.

Legal Harmonization. A department of the Ministry of Justice is tasked with harmonizing Togo's legal and regulatory framework with that of OHADA. However, this department is not active. In addition, a regional initiative to update the OHADA framework is currently being launched.

Principle IC. The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.

Assessment*: *Broadly Implemented

Securities regulator. The securities market regulator is the CREPMF. Its mission is to protect investor in the UEMOA. CREPMF is an independent legal body empowered by the UEMOA member-states, is autonomous in its decision-making, and reports to the UEMOA Council of Finance Ministers. Its decision-making organs are the Commission (*Collège du Conseil Régional*) and the Executive Committee. The Commission has 12 members, including the Governor of the BCEAO (Central Bank), the President of the UEMOA Commission, and ten non-permanent members, including eight representatives of the member-states, a magistrate and a chartered accountant. The Commission members are nominated by the UEMOA Council of Finance Ministers for a period of three years, renewable once. The President of CREPMF is selected by the UEMOA Council of Finance Ministers from among the eight representatives of the member-states, on a rotating basis, for a term of three years, renewable once. The Executive Committee is composed of the President of CREPMF, the BCEAO Governor, and two other members elected among the persons nominated by the UEMOA Council of Finance Ministers. The term of the Executive Director (Secrétaire Général) is five years, renewable once.

CREPMF organizes and controls the securities market, as well as market institutions and participants, including the BRVM, the central depository (DC/BR, *Dépositaire Central/Banque de Règlement*), brokers, dealers, asset managers, investment funds, and investment advisors. CREPMF has regulatory and control powers, and can issue regulations, instructions clarifying its regulations, and specific decisions on disciplinary measures. CREPMF also has investigative rights and administrative judgment / decision-making rights.[20] It can sanction by imposing warnings, reprimands, fines, temporary or permanent suspension of activities, suspension or removal of management of market participants, suspension of license, exclusion from the professional lists maintained by CREPMF, and can adjudicate disputes and complaints.[21] It has full access to the books and documents of its regulated entities.[22] CREPMF can follow up on all complaints concerning investor rights or the operation of capital markets. However, there have been no significant sanctions against listed companies by CREPMF. CREPMF does not publish enforcement statistics in its annual report, but its decisions and sanctions imposed are published on its website *www.crepmf.org*.

The CREPMF President can summon the accused party under investigation. The proceedings can be internally administered, or channeled via the competent judiciary organs of the member-states.[23] Appeal is to the UEMOA Court or the national courts of each member-state.[24] No cases have been appealed in practice so far.

Monetary sanctions are warranted in cases of market manipulation, usage of insider information, dissemination of false information, and usage of investor funds for personal gain. The amount of the fine is decided by CREPMF according to the seriousness of the transgression.[25]

Stock exchanges. The BRVM is a corporation registered in Cote d'Ivoire. All brokers are automatically BRVM shareholders. Its board of directors is composed of 12 members. The BRVM is represented by a branch in each member-state. Its mission includes assisting local market participants (issuers, investors, and brokers), ensuring the dissemination of market information, promoting financial markets, and representing BRVM and DC/BR in front of the national authorities.

BRVM can impose sanctions on brokers in case of actions against the interest of the financial market, and can suspend their operations temporarily.[26] There do not appear to have been any enforcement actions taken against issuers.

Two staff in the BRVM market operations department conduct electronic quasi-real-time market surveillance, and must inform the CREPMF immediately of any potential infractions noted, alerting and possibly staying operations of the broker concerned.[27] Automatic alerts are relatively frequent. CREPMF is connected to the trading system of BRVM, and has its

[20] §22 de l'annexe portant composition, organisation, fonctionnement et attributions du CREPMF. CREPMF can issue regulations, instructions clarifying its regulations, and specific decisions on disciplinary measures.

[21] The latter conditional on the granting of such CREPMF powers by the national laws of each country-member or by default by the adoption of a Regulation by the UEMOA Commission. Current adoption is unclear.

22 §23, 25 de l'annexe portant composition, organisation, fonctionnement et attributions du CREPMF. CREPMF has full investigative powers, including the right to subpoena and question non-regulated entities (§36-50).

[23] §39-50 de l'annexe portant composition, organisation, fonctionnement et attributions du CREPMF.

[24] §49 de l'annexe portant composition, organisation, fonctionnement et attributions du CREPMF. By law, sanctions are enforced and fines collected, pending appeal.

[25] §35 de l'annexe portant composition, organisation, fonctionnement et attributions du CREPMF.

[26] §5 du Règlement Général de la BRVM.

[27] In fact, surveillance is done after hours each day, not in real time. An automatic alert is generated if at least 1000 securities are involved

own surveillance system as well. It conducts monthly surveillance of deviations and infractions.

Banking regulator. The banking sector is regulated by the *Banque Centrale des Etats de l'Afrique de l'Ouest* (BCEAO). It sets the regulations for banks and oversees them. Although it has a regulatory function, the BCEAO own 20 percent of the shares in one of the Togolese banks, which represents an important conflict of interests.

Banks are also supervised on a supra-national level by the UEMOA banking commission. Both institutions have an oversight power, which can lead to conflicts. However, in practice, the banking commission is the only one who tends to have an active role in overseeing banks. It has significant enforcement powers and uses them while the BCEAO issues rules.

Clear division of regulatory responsibility. The securities market regulator, CREPMF (*Conseil Régional de l'Epargne Publique et des Marchés Financiers*) does have the legal powers to sanction but it is quite passive in Togo since no companies have listed shares. Consequently, there is little overlap in the country between the CREPMF and the banking commission.

Regulatory cooperation. There does not appear to be any Memorandum of Understanding between the different regulators present in the country.

Principle ID. Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfill their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.

Assessment*: *Partially Implemented

Supervisory authority. Listed companies are regulated by the CREPMF. A few companies have listed bonds but none of the companies registered in Togo has listed shares. Thus, due to the small market size of listed securities, the CREPMF is not active in Togo. Its authority and efficiency in the country are not easy to evaluate.

The banking commission has the power to submit its views to the Ministry of Economy and Finances, who is the only one able to grant or withdraw licenses to a bank to operate (§7 to 9 Banking Law). The banking commission also makes off-site and on-site inspection and takes administrative and disciplinary measures when banks and financial institutions do not comply with the regulation.

The banking commission conducts in practice one on-site investigation every two years in every bank. However, when members of the commissions have reasonable doubts that further investigation is needed in a specific bank, they will investigate it more often.

Supervisory resources. The banking commission is composed of the Governor of the BCEAO (who is also the President of the Commission), a representative of each UEMOA country, and 8 members nominated by the UEMOA's council of ministers. The banking commission also has a permanent Secretariat composed of BCEAO officers.

The members' remuneration is decided by the President of the commission and subject to the attendance to the meetings.

Reputation of supervisory bodies. The supervision of the banking sector by the banking commission is considered to be professional. Yet more effective enforcement vis-à-vis SOBs is wanting, although the banking commission has already taken action against a few private banks.

Regulatory efficiency. The banking commission has real authority and has taken important pecuniary and other actions against banks. However, follow-up enforcement action has clearly not produced the desired results given the current state of the Togolese banking sector. In addition, the on-site inspections are too irregular. This is apparently not due to a lack of resources but more to the fact that the banking commission does not have offices and staff in Togo. Banks are to send the commission a report every three months for a more regular oversight. Furthermore, the banking commission reports to the minister of finances, which has the power to grant but also withdraw licenses for banks. A conflict of interest may then appear when the banking commission reports SOBs' wrongdoing.

Enforcement through the banking commission was thought to be rendered ineffective due to the necessity to seek the approval from the national governments to proceed with enforcement actions. Of note is that the regional central bank has an ownership stake in at least one bank, and has nominated directors to serve on banks, which clearly poses a real conflict of interest in terms of conducting an independent supervision.

Courts. Togo does not have commercial courts but some judges with a commercial – yet not comprehensive – training seat in the civil court. A training program for judges is currently being implemented by the EU and needs to receive government's urgent and undivided attention.

The enforcement of contracts and court system is considered a major issue hindering private sector development. Togo ranks 151 out of 181 in the "Enforcement of Contracts" indicator in the Doing Business report. This was confirmed by all

in a suspect movement. A price differential of 7.5% relative to the previous day's close price causes automatic listing suspension pending further analysis.

interlocutors, both public and private sector. The head of the Constitutional Court of Togo publicly accused Togo's judges of systematic corruption in an open letter that was published in a major newspaper in December 2008. In addition, court decisions are not published.

The Chamber of Commerce of Lomé has created an alternative dispute resolution mechanism, which remains unused.

Company Registrar. All business entities must register at the Commercial Register, filing their legal address, within a month of their creation (the procedure involves a notary public by law).[28] The Commercial Register is part of the Ministry of Justice and represented within each Regional Tribunal (Court). The companies file their articles of association, as well as information on the company form, initial capital, members or shareholders, managers and directors. This information is re-filed annually, or upon a significant change. The information filed is public, at the cost of copying and stamp duty.[29] The Commercial Register does not have enforcement powers over Company Law. According to market participants, the files are not usually up-to-date, due to the lack of effective enforcement, due to resource constraints and the lack of a computerized system.

Section II: The Rights of Shareholders and Key Ownership Functions

The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

Principle IIA: The corporate governance framework should protect shareholders' rights. Basic shareholder rights include the right to:

Principle IIA1: Secure methods of ownership registration

Assessment*: *Broadly Implemented

Secure methods of ownership registration. Shares can be bearer or registered[30]. Legal evidence of share ownership for bearer shares is the physical title certificate, and for registered shares – the inscription in the company share registry.

Share registration for listed companies is based on the French depository system. The ownership records of listed companies are transferred into the shareholder record-keeping system of the Central Depository (*Dépositaire Central/Banque de Règlement* - DC/BR), which maintains accounts for each member of the DC/BR. Evidence of ownership is the account statement of the owner's brokerage firm (§764 AUSCGIE).

In practice, Togolese companies do not have any listed shares; however, some have listed bonds. No problems with the current framework (for listed or non-listed companies) have been reported.

Principle IIA 2: Convey or transfer shares

Assessment: Broadly Implemented

Clearing and settlement framework. The Central Depository (*Dépositaire Central/Banque de Règlement* - DC/BR) is a private entity, and carries out depositary, clearing, and settlement functions for securities listed on the BRVM. It holds listed securities in dematerialized form. Clearing and settlement is DVP, in T+5. The DC/BR is moving to T+3, which is reasonable in emerging markets.

Restrictions on share transfer. Listed shares are freely transferable. For non-listed companies, the law stipulates that they are freely transferable, unless the articles of association provide otherwise. The articles may allow limited transferability in companies with 100 percent registered shares, and the limitation can involve board or shareholder approval.[31] Shareholder agreements that limit share transferability in non-listed companies are common. Furthermore, even when the agreement does not exist, shares are not freely transferable due to an absence of a liquid market for shares.

For banks, where shareholder acquires or sell shares and as a consequence a person alone or in concert, directly or indirectly, obtains the control of the company or the majority of the shares, such transaction on the shares has to be approved by the Minister of Finances (§29 Banking Law).

Principle IIA 3: Obtain relevant and material company information on a timely and regular basis

Assessment: Implemented

[28] §27 de l'Acte Uniforme relatif au Droit Commercial Générale applicable depuis le 1er janvier 1998.
[29] §19 de l'Acte Uniforme relatif au droit commercial Générale applicable depuis le 1er janvier 1998.
[30] Registered shares are registered in the company on the name of the beneficial owner. If the shares are sold, the name and address of the new owner will be registered (§745 AUSCGIE).
[31] §765 AUSCGIE. The prospective transferor recluses himself from the vote and for quorum purposes, from both AGM and (if a director) board decisions.

Availability of information (charter, financial statements, minutes, capital structure). Companies[32] are required to register basic company information with Commercial Register, including articles of association, capital structure, and names of key company directors and officers. Compliance is thought to be relatively high but companies seem not to keep their information up-to-date (some interlocutors though mention the opposite).

Companies are required to keep a share registry of their nominal shares and this information is generally open and accessible to shareholders. Shareholders and their representatives can also consult certain company documents at the corporate headquarters 15 days prior to the annual general meeting of shareholders (AGM), including the financial statements, the audit and board reports, a list of board members and shareholders, and the inventory of company assets. Consultation is free, however, a fee (the amount is not specified in the law) is required to obtain copies (§525, 526 AUSCGIE).

Shareholders also have the rights to AGM minutes and attendance for the prior three years, as well as the right to ask written questions to the chairman of the board and the general director, twice a year (§158, 526 AUSCGIE).

Principle IIA 4: Participate and vote in general meetings

Assessment: Partially Implemented

Voting rights. Shareholders of all classes of shares can attend the AGM, but preferred shares without voting right can only vote in special meetings on decisions related to their rights (§53, 125, 126, 549, 555 AUSCGIE). Also, the OHADA company law allows companies not to treat all shareholders equally regarding their voting rights. The articles of association may grant two votes per share to shareholders holding shares for more than two years, while shareholders holding shares for less than two years are granted one single vote per share. Also, in case of an increase of capital, shareholders owning double voting rights on their existing shares may be granted the same rights on the newly issued shares (§544). Shareholders may also face voting caps and limited voting rights, which may weaken shareholder voice (§543).

Furthermore, the articles of association may require a minimum number of shares, which shall not be more than ten, for entitlement to attend AGM. However, several shareholders may come together to obtain the minimum number of shares provided for by the articles of association and be represented by one of them (§548 AUSCGIE).

In practice, where attendance to the AGM is not restricted, shareholders – including minority ones – attend and vote. However, minority shareholders are not organized and thus do not coordinate voting.

Redress. Knowingly preventing a shareholder from attending and voting in a meeting is a criminal offence (§892 AUSCGIE).

Principle IIA 5: Elect and remove board members of the board

Assessment: Broadly Implemented

Election. Directors are elected and can be removed by shareholders during the AGM (§419, 433 AUSCGIE). At least 2/3 of the directors should be chosen among the shareholders.

In SOEs wholly owned by the State, directors are appointed by the supervisory council, composed of ministers and playing the role of an AGM (§14 Law 90-26).

Cumulative voting/proportional representation. The articles of association could provide for special arrangements of board elections, but no class of shares could be deprived of its right to be represented on the board. In practice, cumulative voting[33] is not used.

Principle IIA 6: Share in profits of the corporation

Assessment: Broadly Implemented

Clear legal framework. The AGM approves the distribution of dividends, based on a board proposal (§53, 546 AUSCGIE). There is no minimum mandatory dividend. Dividends distributed can exceed current year's profits, and must be paid out within nine months of the end of the financial year, which is a very long time (§143, 144, 145, 146 AUSCGIE). Preferred shares

[32] "Companies" means here all public limited companies, including State-owned enterprises (SOEs), Stat-owned banks (SOBs), and private banks, unless it is otherwise mentioned.

[33] Cumulative voting is a process to strengthen the ability of minority shareholders to elect directors. It allows minority shareholders to cast all their votes for one candidate. Suppose that a publicly traded company has two shareholders, one holding 80 percent of the vote and the other one 20 percent. Five directors need to be elected. Usually, each shareholder must vote separately for each director. The majority shareholder will get all five seats, as s/he will always outvote the minority shareholder by 80:20. Cumulative voting would allow the minority shareholder to cast all his/her votes (five times 20 percent) for one board member, thereby allowing his/her chosen candidate to win that seat.

may have a preference in dividend distribution, larger dividends, or cumulative dividends (§755 AUSCGIE). In practice, banks and companies generally pay approved dividends in a timely manner.

One-tenth of net profits must be allocated to a "legal reserve", until it accumulates up to 20 percent of the company's registered capital (§546 AUSCGIE). In practice, companies comply with this provision.

Principle IIB. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:

Principle IIB 1: Amendments to statutes, or articles of incorporation or similar governing company documents

Assessment*: *Implemented

Change to basic governing documents. Amending the articles of association is one of the exclusive powers of the extraordinary shareholder meeting (EGM) (§551 AUSCGIE)[34]. The decision is taken by an EGM with a 2/3 majority vote. The EGM is valid only when at least the shareholders owning half of the shares are present or represented.

Shareholder challenges. Provision allowing other entities to take this decision of the company is considered null and void by the judges (§551 AUSCGIE).

Principle IIB 2: Authorization of additional shares

Assessment*: *Broadly Implemented

Issuing share capital. Issuing new shares is decided at an EGM with a 2/3 majority vote, following a proposal of the board. Only shareholders can vote to increase capital. The EGM can delegate to the board the power to decide on the timetable and method of implementation of the EGM's decision. An external auditor opinion is required on the terms of the capital increase as well as any waivers of pre-emptive rights. Once the capital increase is authorized by the EGM, the board has a too long period of three years to implement the transaction (§564, 565, 568, 571, 591 AUSCGIE).

Shareholder challenges. Any stipulation providing this power to another person or entity is considered null and void by the judge (§569 AUSCGIE).

Principle IIB 3: Extraordinary transactions, including sales of major corporate assets

Assessment*: *Partially Implemented

***Sales of major corporate assets*.** The sale of major assets is not explicitly subject to shareholder or board approval, and the decision can be taken by management without a limitation on the amount of the transaction, although civil law tends to prevent it.[35]

Mergers and other transformations are approved by the EGM (§671 AUSCGIE). Shareholder agreements that stipulate which transactions require approval are common and could lead to potential abuses by SOEs.

In banks, extraordinary transactions such as mergers, acquisitions or sale of more than 20 percent of their assets should also be approved by the Minister of Finances (§29, 30 Banking Law).

Principle IIC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:

Principle IIC 1: Sufficient and timely information on date, location, agenda and issues to be decided at the general meeting

Assessment: Partially Implemented

[34] The articles of association shall contain the following information: company form, name, office, nature of activities, duration of existence, names and contributions of each contributor in kind, any special benefits and the shareholders enjoying them, the amount of the registered capital; the number and value of shares issued, stating, where necessary, the various classes of shares; the provisions relating to the distribution of profits, the constitution of reserves and the distribution of the bonus after liquidation; the rules governing the functioning of the company; the chosen method of administration and management (board or general director), and a list of management / board members (for corporate board members, the business name, the amount of capital and the form of corporate bodies); provisions relating to the composition, functioning and powers of the organs of the company any restrictions of the free transferability of shares.

[35] In civil law systems, courts have developed case law under which the sale of major assets has to be approved by the EGM whenever it has an impact on the company's ability to implement its purpose as drafted in the articles of association. Under case law, this usually prevents sale of all or core assets without prior approval by the EGM. For other major transactions, shareholders usually provide limits to the boards' power in the articles of association. However, these regulations and case law are typically not sufficient for protecting shareholders.

Meeting deadline. The board must call the AGM within six months of the end of the financial year (§548 AUSCGIE). If the board refuses to call the meeting, the AGM can be called by the auditor. The court can also call an AGM if requested by ten percent of the shareholders. Ten percent of a class of shares can call a meeting of that class of shares (referred to as a "special meeting") (§516 AUSCGIE).

Non-listed companies where all shares are registered can use registered mail or hand delivery to inform shareholders of the AGM.

A 15-day notice shall be either inserted in the journal of legal announcement or sent to the shareholders by registered letter or hand-delivered with notification of receipt. Notice for second and further calls must be made at least six days prior to the AGM date (§518 AUSCGIE). In practice, 70 percent of the companies comply with the deadline but prefer publishing the announcement in the press rather than sending personal invitation to every shareholder: approximately 40 percent of the companies send an actual mail to the shareholders.[36]

Meeting notice content. The notice is to include the date, place, time, agenda, and type of the meeting (ordinary, extraordinary or special). When bearer shares are used, the date and place where those need to be registered in order to attend the meeting is also mentioned in the notice.[37] Listed companies either mail shareholders the proxy forms, or must identify in the notice the place and conditions under which the forms may be obtained (§831 AUSCGIE).

The AGM must be held in the country where the corporate headquarters is located (AUSCGIE §517). In practice, this provision is respected although some rare companies choose a remote location to avoid shareholder participation.

The notice does not contain any copy of the financial statement or other relevant documents. However, the company must make available to shareholders 15 days prior to the meeting, at corporate headquarters: financial statements, a list of directors, auditor report, board report, explanatory statements of resolutions proposed (as needed), the list of shareholders, the aggregate remuneration of the five or ten best-paid employees (including executive director), and the asset inventory of the company.[38] Available details on nominated directors include their professional profile and activities in the past five years (§523,525 AUSCGIE). In practice, those details are not always provided.

Redress. Any meeting irregularly called shall be cancelled. However, the legal action for cancellation is not applicable where all the shareholders were present or represented. Furthermore, knowingly preventing a shareholder from attending a meeting is a criminal offence (§519, 892 AUSCGIE).

Principle IIC 2: Opportunity to ask the board questions at the general meeting

Assessment: Partially Implemented

Shareholder questions. Shareholders are accorded the right to ask questions during the AGM as long as they are related to a point on the agenda. They can also, twice a year, ask written questions to the board chairman or the general director.[39] In practice, some shareholders make use of this right.

Forcing items onto the agenda. Matters not listed on the agenda are not heard at the AGM, except some matters such as the removal and replacement of directors or managers (§522 AUSCGIE). Agendas cannot be changed on second or third calls of the same meeting (§524 AUSCGIE). Items can be forced on the agenda, at least ten days prior to the AGM, by shareholders holding five percent of capital (if that amount is CFA 1 billion or less), or 3 percent (if the amount is between CFA 1 billion and CFA 2 billion), or 0.5 percent of capital (where the amount is above CFA 2 billion) (§520, 521 AUSCGIE). In practice, shareholders barely use this right. Only a few shareholders play an active role in shaping the agenda due to the presence of large block-holders in most companies.

Principle IIC 3: Effective shareholder participation in key governance decision including board and key executive remuneration policy

Assessment: Partially Implemented

Facilitation of shareholder participation. The nomination process for board members is opaque. The AUSCGIE requires that at least 2/3 of the directors be shareholders. In practice most of them are shareholders, against good practice. Controlling shareholders have a large influence over the election of directors and management and rarely, if ever, are shareholders provided with detailed information on board members before their election.

[36] World Bank Survey on Corporate Governance Practice in the ten leading SOEs and Banks in Togo, March 2009
[37] §519 AUSCGIE. Registration takes place at least 5 days before the AGM (§541).
[38] §525 AUSCGIE. With regard to meetings other than the annual ordinary general meeting, the right to examine documents shall concern the text of resolutions proposed, the report of the board of directors or of the managing director, as the case may be, and, where necessary, the report of the auditor or the liquidator.
[39] §526 AUSCGIE. The answer is also communicated to the auditor.

Approval of board and key executive remuneration. The board sets the remuneration of its chairman and general director (§467, 490). The AGM approves the remuneration for all other directors. Directors who are also shareholders can vote, which leads to conflict of interest.

All directors can also be employees (§490 AUSCGIE), though non executive directors should not be employees at the same time.

Aside from money paid to them under a contract of employment, directors are only entitled to a fixed annual duty allowance granted by the AGM, as well as exceptional payments for special services, reimbursement of travel and per diem, which need to be reflected in the auditor's report to the AGM (AUSCGIE §430, 431, 432).

In SOEs wholly-owned by the State, the remuneration of all directors is set by the supervisory council (§48 Law 90-26). Board members, who are also civil servants, are allowed to keep this remuneration, against good practice.

In practice, in 40 percent of the companies, remuneration is set by another entity than AGM or supervisory council (for instance by the chairman or the State).[40]

Principle IIC 4: Availability to vote both in person or in abstentia

Assessment: Partially Implemented

Proxy regulation. Shareholders are able to vote in absentia through proxy voting. This is considered to be efficient and shareholders do make use of this right. If the proxy is another shareholder, voting caps[41] will limit the amount of shares he can vote, irrespective of the proxies held. A power of attorney is necessary for the proxy, which need not be notarized (§538 AUSCGIE).

Redress. Any company's provision or decision that prevents shareholder representation by proxy is considered null and void by the judge (§538 AUSCGIE).

Postal and electronic voting. Postal and electronic voting is not expressly mentioned in the law and not carried-out in practice.

Principle IID: Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

Assessment: Partially Implemented

Class of shares. There are two classes of shares: ordinary and preferred. Ordinary shares are entitled to at least one vote by law. Registered shares may receive double votes if held by the same owner for more than two years. (§751, 752 AUSCGIE). Preferred shares are not provided a vote by law, except where their rights are concerned and may enjoy a preference in dividends and liquidation, larger dividends, or cumulative dividends. In practice, preferred shares are rare. Voting caps are allowed by law (§ 751, 752, 753 AUSCGIE).

***Disclosure of group*.** There do not appear to be provisions requiring disclosure of group structure in Togo. Cross-shareholdings and pyramid structures are not common in the country. However, some regional and multinational group structures are presents in Togo.

Disclosure of disproportionate control. There are no specific requirements to disclose any special control structures, or the use of multiple voting shares or voting caps. The articles of association, which are filed with the Company Registrar, should contain information on share classes. Updates and changes to the articles are also published by law. However, the information is not always up to date and it can take several days to obtain the information needed.

Ownership disclosure by companies. The articles of association contain a list of initial shareholders. Companies make available a list of shareholders (for registered shares) at its headquarters but only for 15 days prior to the AGM Bearer share-owners are impossible to identify. For listed companies, the BRVM instruction only requires disclosure by shareholders (§4 BRVR Instruction II-C).

There is no requirement to publish ownership in the annual report.

Ownership disclosure by shareholders. Shareholders are not required to disclose their ownership stake in non-listed companies.

For listed companies, shareholders who cross, alone or in concert, the threshold of ten, 20, 33, 50 and 66.66 percent should report so to the BRVM, the listed company, and to the public (II-C §4, 5, 7 BRVR Instruction II-C).

[40] World Bank Survey on Corporate Governance Practice in the ten leading SOEs and Banks in Togo, March 2009.
[41] "Voting caps" is a process to limit the extent to which controlling shareholders can exercise their voting rights. For instance, it can be provided in the articles of association that whatever the number of shares a shareholders has, s/he cannot use more of two percent of the voting right rights.

The CREPMF Regulations (§181, 182), on the other hand, require such a disclosure to the CREPMF and to the public where shareholders own ten percent of the shares and for all extra two percent they acquire thereafter.

Disclosure of shareholder agreements. Shareholder agreements usually specify the arrangements on board representation, the division of control over the selection of management, and any limitations on transfers of shares. In practice, there do not appear to be many shareholder agreements in Togo. Where they exist, they are not disclosed.

Principle IIE: Markets for corporate control should be allowed to function in an efficient and transparent manner.

Principle IIE 1: Transparent and fair rules and procedures governing acquisition of corporate control

Assessment: Not Implemented

Basic description of market for corporate control. Very basic tender offer and associated disclosure rules are provided in AUSCGIE and CREPMF Regulations. The local corporate control market is inactive, due to the concentrated ownership and the limited size of the market. None of the regulatory provisions appear to have been used in practice.

***Tender rules/mandatory bid rules*.** There are no legal rules on mandatory bids. More specifically, the acquiring shareholder does not need to extend a tender offer or mandatory bid to other shareholders upon crossing specified ownership thresholds. Similarly, squeeze-out[42] and sell-out rights[43] are absent from the company law. The only requirement is a disclosure of ownership to the BRVM and CREPFM where shareholders reach certain thresholds (see IID).

Delisting/going private procedures. Delisting is provided in the BRVM listing rules (LR) (§36). Only an abstract of the LR is published on their website. The full document can be requested to the BRVM but one may need to request it several times and never receive it or wait several weeks before obtaining it.

Abuse to buy-backs/treasury shares. Buy-backs are forbidden, except if the securities are to be cancelled or to be allotted to employees, in which case the decision is AGM-approved (§ 639, 640 AUSCGIE). The external auditor's opinion is required on the buy-back transaction (§ 647 AUSCGIE). Listed companies can buy up to ten percent of their own shares in limited conditions (§180 CREPMF Regulations).

Principle IIE 2: Anti-take-over devices

Assessment: Partially Implemented

Description of anti-takeover devices in use in the market. Shareholder protection during takeovers is relatively weak, though takeovers are usually thought to be "friendly" when they do occur. Due to an inactive merger and acquisition market, minority shareholder abuses are at present not an issue in Togo. Anti takeover devices are not regulated by law, and are not used.

The CREPMF Regulations (§176 to179) provide for the following types of public offers: cash tender offer ("*OPA*") or an exchange tender offer ("*OPE*"). The provisions are very basic and not detailed.

These regulations and the ones related to buy-back or tender offer to withdraw ("*OPR*") are contained in Title 4 of the BRVM listing rules, which are not publicly available.

Duty of loyalty in the event of a take-over. Mergers between two public limited companies require AGM approval, each separately, as well as approval of negatively impacted classes of shares, where relevant. A board report by both companies is disclosed to all shareholders, explaining the effects of the merger, the exchange ratio of shares, and the evaluation methods used. An external audit report on the merger is also required. The merging companies must place in their headquarters for at least 15 days before the merger the following documents: the board and audit report, financial statements, and management reports of the past three years (§ 670, 671, 672, 674 AUSCGIE).

Principle IIF: The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.

Principle IIF 1: Disclosure of corporate governance and voting policies by institutional investors

Assessment: Not Implemented

Blocked shares/record date. The meeting notice specifies, for bearer shares, a record date when shareholders need to

[42] Squeeze-out is a process whereby the large majority of shareholders in a public limited company can force the remaining shareholders to sell them their shares. Majority shareholders give the minority a cash compensation which is at least equal to the stock recent average's price.

[43] Sell-out right each is a process whereby minority shareholders are entitled to request, after a tender offer, that the offeror purchase their shares at a fair price.

register in order to vote at the AGM, but shares are not blocked from trading. Registration of shareholders, shall be done no later than five days before the holding of the general meeting (§541 AUSCGIE).

General obligations to vote/disclosure of voting policy. CREPMF Regulations (§111-125) do lay out the relationships, information, and investor protection rules for investment funds. The National Center of Social Security mainly invests in SOEs and SOBs. A few other institutional investors are present in Togo. Some are regional funds such as the GARI Fund (Fund for private investment in West Africa). They vote in AGM but do not have or disclose their voting policies and their votes. In addition, the only brokerage firm in Togo, the SGI (*Société de Gestion et d'Intermediation*), does not inform beneficial owners about AGM and does not send them proxy.

Principle IIF 2: Disclosure of management of material conflict of interest by institutional investors

Assessment: Not Implemented

Institutional policies on conflict of interest. There is no provision for disclosure of conflicts of interest, or policies of nomination of directors for institutional investors.

Principle IIG: Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.

Assessment*: *Implemented

Rules on shareholder consultation and acting in concert. The law does not allow or prohibit shareholder cooperation in board nomination/election, communication among minority shareholders, or regulation of proxy solicitation.

Acting in concert is possible and implied by the BRVM Instruction II-C §4i "[…] own alone or in concert […]"

Section III: The Equitable treatment of Shareholders

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

Principle IIIA: All shareholders of the same series of a class should be treated equally.

Principle IIIA 1: Equality, fairness and disclosure of rights within and between share classes

Assessment*: *Partially Implemented

Equality within share classes. Shares carry the same rights within each share class (§ 744 AUSCGIE). However, the articles of association may grant two votes per share to the shareholders holding shares for more than two years, while shareholders holding shares for less than two years are granted one single vote per share (§544).

Availability of share class information. For non listed companies, information on share rights is available from the articles of association of the company, at the Commercial Registry but may be long to obtain. For listed companies, information is disclosed in the prospectus.

Approval by the negatively impacted classes of changes in the voting rights. Changes in the rights of a given class require a special meeting and class approval. The owners of at least half of the given class of shares are to be present or represented. The decision is taken by a 2/3 majority (§555 to 557 AUSCGIE).

Principle IIIA 2: Minority protection from controlling shareholder abuse; minority redress

Assessment*: *Partially Implemented

EX ANTE PROTECTIONS

Pre-emptive rights. Shareholders have pre-emptive rights to ensure that their equity stakes are not diluted during capital increases (§573, 757 AUSCGIE). Pre-emptive rights can be waived individually, or by the EGM (§586, 587, 593 to 597, 600 AUSCGIE). In case of an EGM waiver, the decision is voted in the same meeting deciding the increase of capital (same 2/3 majority vote) and the beneficiaries of such a waiver recluse themselves from voting (AUSCGIE §839). The share increase with waived pre-emptive rights must be carried out within three years of the AGM waiving the rights, which is a too long period, and must be at least at the price of any 20 of the past 40 days (§837 AUSCGIE).

Ability to call meeting. Ten percent of a class of shares can also call a meeting of that class of shares (referred to as a "special meeting") (§516 AUSCGIE). The court can call an AGM if requested by ten percent of the shareholders. The AGM can be called by the external auditor in the case of refusal from the board.

Qualified majority. An EGM requires a quorum of at least half of the shares. The majority of at least 2/3 of the vote cast in

EGM is necessary to amend the articles of association; authorize mergers, scissions, transformations and partial contributions of assets; move the headquarter to another city or country; wind up the company prematurely, or extend the duration of its life. Also, the EGM may increase the commitments of shareholders above their initial contributions only with the consent of each of them.

Withdrawal rights. AUSCGIE does not provide for withdrawal rights for dissenting shareholders, following major corporate changes. The BRVM listing rules have a provision on that point but those rules are not public.

EX POST PROTECTION

Ability to overturn meeting decisions. Shareholders can apply to court to cancel a general meeting decision based on improper procedure (§519 AUSCGIE). In addition, there is a provision for "majority abuse" in the law, which however has not been used in practice.[44]

Ability to sue directors. Shareholders have a direct suit against the company for damages. Shareholders can sue directors for breach of duty. A shareholder can initiate a suit against a director or manager only if the harm s/he suffered is distinct from that suffered by the company (§162 AUSCGIE).

One or more shareholders can also request directors and management to file a suit in the name of the company. Following failure to do so, shareholders can file the suit themselves after 30 days. In this case the damages caused to the company, not the shareholder, but the costs are borne by the company as well (§163, 166, 167, 171 AUSCGIE). The shareholders may, where they represent at least one-twentieth of the registered capital, entrust, in their common interest and at their expense, one or more shareholders to represent them (§741 AUSCGIE).

A general meeting decision cannot exonerate company management and board members from liability (§169 AUSCGIE).

Those provisions are applicable for all companies, including SOEs and SOBs. None of them appear to have been used in practice. Shareholders are not always aware of their rights and, when they are, do not trust the court system. Indeed, the court system tends to be inefficient and it can take years for a shareholder litigation to be fully resolved. Judges with commercial training rule those cases but they are not enough qualified.

Redress from regulators. By law, the CREPMF can pursue shareholder complaints. The CREPMF President can summon the accused party under investigation. The proceedings can be internally administered, or channeled via the competent judiciary organs of the member-states.[45] Appeal is made to the UEMOA Court or the national courts of each member-state.[46]However, this redress is not used as there are no listed companies in Togo.

For banks, there does not appear to be any provision allowing shareholders to seek redress through the banking commission.

Principle IIIA 3: Custodian voting by instruction from beneficial owners

Assessment*: *Not Implemented

Rights of beneficial owners. Custodians are not regulated to provide shareholders with information concerning their options in the use of their voting rights. Similarly, there are no regulations on custodian voting on beneficial owner instructions. In practice, an interview with a specific custodian suggests that they do not inform the beneficial owners about the AGM and do not send them any proxy form to vote for them. Beneficial owners can only be informed of the notice on the BRVM website. Custodians, however, inform beneficial owners about dividends.

Principle IIIA 4: Obstacle to cross border voting should be eliminated

Assessment*: *Partially Implemented

There is no specific reference on cross-border voting in the OHADA law. All shareholders should be treated equally so meeting notice for foreign investors has to be issued at the same time as for domestic ones. Foreign investors may not be aware of the AGM where the notice is only published in the Official Journal (*Journal Officiel (JO)*). They can vote in person or by proxy.

Principle IIIA 5: Equitable treatment of all shareholders at GMs

[44] §130 AUSCGIE: "Joint decisions may be annulled for undue use of the majority powers and may commit the partners who voted for them vis-à-vis the minority shareholders. There shall be undue use of the majority powers when the majority shareholders vote in favor of a decision which serves solely their interests, goes contrary to the interests of the minority shareholders, and cannot be justified in terms of the company's interests." The law provides a similar « minority abuse article ».

[45] §39-50 *de l'annexe portant composition, organisation, fonctionnement et attributions du CREPMF* (Annex CREPMF)

[46] §49 Annex CREPFM. By law, sanctions are enforced and fines collected, pending appeal.

Assessment*: *Partially Implemented

Procedures to facilitate voting (electronic and postal voting systems). Votes can be cast personally or by proxy. Neither postal nor electronic voting is permitted in Togo.

Equitable treatment of shareholders at meetings. Shareholders of a same class shall have the same rights. However, shareholders owning their shares for more than two year may have a double voting right. Shareholders may also face voting caps, which may weaken shareholder voice (§543,544 AUSCGIE).

Disclosure of voting results. The minutes of the AGM and EGM for the last three years are available for shareholders at the company' headquarter (§526 AUSCGIE).

Principle IIIB: Insider trading and abusive self-dealing should be prohibited.

Assessment*: *Partially Implemented

Basic insider trading rules. AUSCGIE contains no prohibitions against insider trading. However, the CREPMF regulations (§183-188) prohibits insider trading unless the insider thinks, in good faith, that the information is public or benefits of an automatic plan of investment of dividends or of purchase of shares. An insider is defined as a person into the possession of privileged information about the shares. Insiders are also companies in the same group of the issuer, custodians, or investment funds. Administrative and criminal sanctions are provided (§34-37 Annex CREPFM).

Insider trading disclosure. Every shareholder owning more than ten percent of a class of shares shall disclose his ownership to the CREPFM unless this ownership results from a public tender offer. Also, the same disclosure is required for those shareholders every time they increase their ownership by two percent (§181-182 CREPFM Regulations).

Directors of listed companies must convert their and their family's shares into registered shares within a month of assuming the position (this includes directors representing corporate bodies) (§830 AUSCGIE).

Disclosure of other types of self-dealing. Directors must declare at a meeting of directors their direct or indirect interest in a contract with the company, unless the agreement concerns ordinary transactions concluded under normal conditions (§438-439 AUSCGIE).

Principle IIIC: Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

Assessment*: *Partially Implemented

Conflict of interest rules and use of business opportunities. Conflicts of interest are defined in AUSGIE (§438).[47] The definition does not cover all forms of self dealing or transaction types, and excludes "ordinary transactions concluded under normal conditions". In general, these rules do not appear to explicitly cover related party transactions in which the related party is a controlling shareholder of both counterparties.

All conflicts, as defined in the law, must be disclosed to the board and are subject to the prior authorization of the board. The party must recluse himself from voting at the board meeting (§438-440 AUSCGIE).

The board must submit these conflicts to the following AGM for ex-post approval. In addition, the board must also inform the external auditor of all authorized conflicts within one month of their conclusion, and the external auditor must prepare a special report to assist the AGM in evaluating the transactions. [48] The external auditor is obliged to denounce to the AGM any non-compliance with these rules (§441 AUSCGIE).

Related parties are liable for any harm suffered by the company as a result of a related party transaction which has not been AGM-approved. Related party transactions (RPTs) which have caused harm to the company will be cancelled (§443,

[47] §438 AUSCGIE. Conflicts of interest are defined as "all agreements between a public limited company and any of its directors, general directors or assistant general directors", as well as "agreements indirectly involving a director or general director or assistant general director, or in which he deals with the company through a third party", and "agreements between a company and an enterprise or a corporate body where one of the directors or a general director or an assistant general director of the company is owner of the enterprise or a partner indefinitely liable, manager, director, managing director, assistant managing director, general director or assistant general director of the contracting corporate body.

[48] §440 AUSCGIE. The report shall contain a list of agreements submitted for the approval of the ordinary general meeting, the name of the directors concerned, the nature and object of the agreements, their essential terms notably an indication of the price or rates in force, rebates or commissions granted, securities provided and, where necessary, any other information that would enable shareholders assess the interest in concluding the agreements examined. It shall also make mention of the quantity of supplies delivered and services rendered, as well as the sums of money paid or received during the fiscal year, in implementation of the agreements referred to in the third paragraph of this article. The report must be submitted at least 15 days prior to the AGM (§442).

444, 446 AUSCGIE).

Companies are not allowed to make loans to directors unless the director is a corporate body or the company is in the business of making loans (AUSCGIE §450). In banks, only limited loans are allowed to directors and major shareholders. They indeed can only borrow amount representing a percentage of the bank's assets set by the BCEAO. Moreover, those loans are to be unanimously approved by the board and disclosed in the auditors' report at the AGM (Banking Law §35).

In addition, where within a period of two years following its registration, the company buys property belonging to a shareholder for more than 5,000,000 (five million) CFA francs, the external auditor must draw up a report on the value of the property. Shareholders must approve the transaction at the next AGM (§547 AUSGIE).

The unethical use of business opportunities by directors does not appear to be covered by the law.

Board responsibility for managing conflict of interest. The transaction subject to agreement shall be approved by the board. The director involved in the transaction should not take part of the vote (§438 AUSCGIE). Audit committees composed of independent directors are not required by law while they could help the board independently manage the conflicts of interest. Only a few banks in Togo have created them.

Section IV: The Role of Stakeholders in Corporate Governance

The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

Principle IVA: The rights of stakeholders that are established by law or through mutual agreements are to be respected.

Assessment*: *Partially Implemented

Stakeholder participation in corporate governance. The participation of stakeholders in corporate governance is not regulated. However, the new SOTOCO – an SOE – has appointed two individuals representing the cotton farmers to serve on the board of directors. Similarly, the Port of Lomé (SOE) has three representatives from its neighboring countries, Niger, Mali, and Burkina Faso, on its board to make sure interests of those countries in the Port are taken into account.
The legal and regulatory framework does recognize work councils within companies, which serve as a communications channel between employees and management, and these are thought to work well in practice. Togo's legal framework also recognizes labor unions, which exist in Togo.

Corporate social responsibility and Code for stakeholders. Employee rights in the area of health, safety and work environment are well regulated (a new labor law was drafted in 2006) but not always respected. SOEs and private companies have the same duties to stakeholders but most of the SOEs do not disclose this fact in their annual report.

Employers association (*Conseil National du Patronat du Togo*) drafted a voluntary code of ethics for its members in 2007. An entire section deals with the relationship between the company and the different stakeholders. However, this Code is still a draft and the principles suggested are not complied with.

Yet, in a process not related to the Employers' Code, many banks have adopted Codes or principles of ethics and 30 percent of the SOEs claim to have internal policies to improve ethic.[49]

Principle IVB: Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

Assessment*: *Partially Implemented

Redress mechanisms available to stakeholders. Employees can go to court when their rights are infringed. Also, creditors can protect their rights per bankruptcy and debt collection rules. However, stakeholders suffer from the inefficient court system due to an insufficient judge training and sometime corruption.

Principle IVC. Performance-enhancing mechanisms for employee participation should be permitted to develop.

Assessment: Partially Implemented

Performance enhancing mechanisms are typically limited to year-end bonuses or a 14th month salary, which are tied to short and not long-term performance indicators.

The AUSCGIE (§640) provides that corporations may issue shares to employees by buying them back from the market. However, in practice, this mechanism is not common. In addition, the regional chart of good corporate governance

[49] World Bank Survey on Corporate Governance Practice in the ten leading SOEd and Banks in Togo, March 2009.

encourages mechanisms to develop employee participation (§V 3).

Only Ecobank is known to offer employees stock option plans for Ecobank's holding company, Ecobank Transnational Incorporated (ETI).

Principle IVD: Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

Assessment*: *Not Applicable

This principle is rated as "Not Applicable" because (per the OECD Methodology) stakeholders in Togo do not directly participate in the corporate governance process. There are no special rights for stakeholder access to information. Stakeholders are hampered by the overall level of company transparency.

Principle IVE: Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.

Assessment*: *Not Implemented

Whistleblower rules. Companies are not required to adopt whistleblower protections and they generally do not do it. When employees report any wrongdoing, they do it anonymously because no protection is offered and they could be fired for doing so. The regional chart of good corporate governance suggests that whistleblowers should be protected (§V 5).

Principle IVF: The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

Assessment: Partially Implemented

Effectiveness of bankruptcy, security/collateral, and debt collection/enforcement codes. Creditors can protect their rights through collateral arrangements, although judicial proceedings can be long and riddled with uncertainty which limits their effectiveness. When capital falls below 50 percent of registered capital, the board, or the chairman, shall, within four months after the approval of the account showing the losses, call an EGM to take a decision as to whether or not the company should be wound up prematurely. If the winding up is not decided and the capital has not been reconstituted up to the value at least equal to half of the registered capital, the company shall reduce its capital by an amount at least equal to the amount of the losses (§664, 665 AUSCGIE).

In the Law 90-26 (§33), a similar procedure is in place for SOEs when the capital falls below 75 percent of the registered capital. In that case, the board calls an EGM or the supervisory council (when the State is the only shareholder) to decide whether or not the company continue to operate or not. However, the law 90-26 does not require reducing the capital when the company is not wound up but AUSCGIE applies in absence of specific provision for SOEs.

Creditors have the right to recall all outstanding debts from merging borrowers (§680 AUSCGIE). Creditors cannot block dividend distributions, but can file for bankruptcy in which case the bankruptcy administrator has adequate powers in this regard.

Creditor rights (though not specifically reviewed for this assessment) are considered to be relatively weak in international comparisons. A variety of standard measures developed by the World Bank for 181 countries compare Togo to its regional neighbors and the OECD average. In these comparisons legal rights are somewhat stronger than in other countries in the region, but access to credit information and the coverage of credit registries is considerably weaker. See Doing Business 2009 at www.doingbusiness.org

Creditor Rights Indicator	Togo	Regional Average	OECD Average
Legal Rights Index (out of a possible 10)	3	4.5	6.8
Credit Information Index	1	1.4	4.8
Public credit registry coverage (borrowers per 1000 adults)	2.6	2.5	8.4
Private credit registry coverage (borrowers per 1000 adults)	0	4.8	58.4

Section V: Disclosure and Transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

Principle VA: Disclosure should include, but not be limited to, material information on:

Principle VA1: Financial and operating results of the company

Assessment: Partially Implemented

Overview of Financial Reporting. Listed companies have a variety of disclosure obligations. They must publish, in a paper of legal announcements, within four months of the financial year-end and more than 15 days before the AGM, the unaudited consolidated summary financial statements (balance-sheet, profit and loss account, statement of uses and sources, proposed dividends). Within 45 days after the AGM, listed firms must publish the approved audited consolidated summary financial statements, bearing the report of the external auditors, and the approved dividend.[50] Publication is made in a journal of legal announcement (*Le Journal Officiel de la République Togolaise (JO)).* Listed companies shall also disclose audited statement to the CREPMF (§31 CREPMF Regulations). Electronic filing has not been implemented.

Per the West African Accounting Standards (SYSCOA), an annual report contains a balance sheet, an income statement, a cash flow statement, a statement of changes in equity, notes to the financial statements, an audit report, and a board report. The law does not specify what the board report should contain. The regional chart of good corporate governance, however, suggests that the report include, *inter alia*, strategy and goals of the company, financial performance (§VI A 1).

Listed companies also publish in the JO, within four months of the first half of the financial year, a semi-annual progress report certified for authenticity by the auditor.[51] They also have to publish their quarterly revenue and profit projections.

Unlisted companies that are controlled at 50 percent or more by a listed firm, whose assets exceed CFA 200 million, or market capital of CFA 80 million, must publish within 45 days of the AGM audited financial statements in a the JO (§853 AUSCGIE).

Unlisted public limited companies – including SOEs – must file financial statements with the Commercial Register (including balance sheet, income statements, statement of sources and uses), as soon as they have been approved by the AGM (§269 AUSCGIE). Public disclosure in the JO is not required for SOEs while they pursue a public interest.

Banks file within six months of the end of the financial year (by June 30) their audited consolidated financials with BCEAO and the banking commission, and publish them in the *JO*. Periodic financial statements (monthly, quarterly, and semi-annual) are also filed with the banking commission but public disclosure is not required (§39 to 41 Banking Law).

In practice, with the exception of a few privately-owned banks, disclosure practices are extremely weak. None of the SOEs or SOBs disclose their financial information.

Consolidation. The West African Accounting Standards (SYSCOA) require the filing of consolidated financial statements. Groups are not common in Togo.

Management discussion and analysis. Boards of listed companies must prepare semiannual progress reports, including a description of the company's operations and a forecast of the development of the operations for the remainder of the year. Any important events which happened during the just-ended half year shall also be included in the report. The company must prepare a board report before the annual meeting, which may discuss company objectives (§525 AUSCGIE).

Oversight, sanctions and remedies. The sanctions for non-compliance are disciplinary, administrative, fines, and judicial. In practice, no action appears to be taken in the event of non-compliance.

Principle VA 2: Company objectives

Assessment: Partially Implemented

In listed companies, the board may prepare a report where it may discuss company objectives. Other companies, including banks, are not required to disclose their objectives. However, nine companies claims to disclose them in their annual report.[52]

Principle VA 3: Major share ownership and voting rights

Assessment: Partially Implemented

Periodic disclosure of significant ownership. Every change in the ownership of any company should be mentioned in the Commercial Register but the information is not always up-to-date.

The shareholder register is made available to shareholders 15 days prior to the AGM, at company headquarters. Also, at

[50] §847, 848 AUSCGIE. If the statements are identical, a notice referring to the first publication is sufficient.
[51] §849,851 AUSCGIE: The half-yearly progress report contains information on turnover and income, describes the company's operations during this period, and provides a forecast of the development of the operations up to the close of the fiscal year. Any important events which happened during the just-ended half year are also included in the report.
[52] World Bank Survey on Corporate Governance Practice in the ten leading SOEs and Banks in Togo, March 2009.

AGM, an attendance list with the ownership and the voting rights of every present or represented member shall be provided (§532 AUSCGIE).

Regulatory agency access to ownership information in a timely manner. For listed companies every shareholder owning ten percent of the shares shall disclose his or her ownership to the company, the CREPMF, and to the public. Such disclosure is also required for all extra two percent he acquires thereafter (§181, 182 CREPFM Regulations).

Principle VA 4: Remuneration policy for board and key executives, and information about directors

Assessment : Partially Implemented

Material information about directors (qualification, selection, independence). For their elections as directors, the professional profile and activities in the past five years of each candidate shall be presented to the shareholders (§523 AUSCGIE).

Board member disclosure of holdings and transactions in company securities. As with other shareholders, board members owning shares shall disclose to the CREPMF and the public their ownership in listed companies when, alone or in concert, they hold ten percent of the company's shares. Such disclosure is also required for all extra two percent they acquire thereafter (§181, 182 CREPFM Regulations).

This disclosure is not required in non listed companies. However, in every company, the list of all the shareholders shall be available at the register of the company at least 15 days before the AGM (§ 525 AUSCGIE).

Full disclosure of remuneration and remuneration policy. The disclosure of board remuneration is only partial. The aggregate remuneration of the five or ten highest-paid managers/ board members is available at the company headquarters 15 days before the AGM. Although they are not required by law, 30 percent of the companies also disclose such information in their annual report.[53]

Principle VA 5: Related party transactions

Assessment: Partially Implemented

Ex-ante disclosure of material related transactions. Directors shall disclose their related party transactions (RPTs) to the board that is to authorize them. The director involved in the transaction is not allowed to vote (AUSCGIE §440).

Periodic disclosure of related party transactions. RPTs authorized by the board are presented post-ante to the AGM for approval, and reflected in the external auditor's report, which is annexed to the annual report of the company, and available 15 days before the AGM at the headquarter of the company (§440, 442 AUSCGIE).

Principle VA 6: Foreseeable risk factors

Assessment: Not Implemented

Companies, including banks and SOEs, are not required to disclose a detailed risk analysis. A board report is to be attached to the annual report, whose content is not detailed in any way by the law (§525 AUSCGIE).

Principle VA 7: Issues regarding employees and other stakeholders

Assessment: Not Implemented

Disclosure of stakeholder issues. There are no rules for disclosure of employee and stakeholder issues.

Principle VA 8: Governance structures and policies

Assessment: Not Implemented

Disclosure of corporate governance report (including structure and operation of board). A board report shall be attached to the annual report but the content is not detailed by the law. There are no requirements for disclosure of governance structures and policies. In practice, only a private bank (Ecobank) discloses its governance structure.

Principle VB: Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure.

Assessment*: *Partially Implemented

[53] World Bank Survey on Corporate Governance Practice in the ten leading SOEd and Banks in Togo, March 2009.

Quality of accounting standards. Public limited companies – including SOEs – are required to use the West African Accounting Standards (SYSCOA) developed in the mid-1990s under BCEAO, and adopted in identical form in the OHADA states. Those standards, although very different from the International Financial Reporting Standard (IRFS) and considered basic, are appropriate for the large majority of companies in Togo, many of which are SMEs.

Banks in turn are required to follow standards imposed by the UEMOA banking law, which also does not follow the IFRS. However, the banking commission is in a process to discuss the application of the IFRS (banking commission, Annual Report 2007).

Enforcement of compliance. The external auditor is responsible for monitoring compliance with financial reporting standards. Financial reporting by the banking sector is extensively regulated by the BCEAO and the banking commission. Market participants state that most financial reporting are of poor quality and external auditors certify a few financial statements only.

Principle VC: An annual audit should be conducted by an independent, competent and qualified, auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

Assessment*: *Partially Implemented

Audit requirements. All public limited companies, including private banks, as well as SOEs and SOBs are legally required to be audited. Private companies have one auditor. Banks and SOEs have at least one auditor. Listed companies shall have at least 2 auditors (§694, 702 AUSCGIE, §34 Law 90-26, §40 banking Law).

Auditor qualifications. External auditors need to be part of the association of external auditors (ONECCA: *Ordre National des Experts Comptables et des Comptables agréés du Togo*). ONECCA, created in 2001, requires that external auditors have a recognized certified public accountant degree, be Togo citizens (or from one of the UEMOA countries), have not been convicted for a crime with the interdiction to run companies, be able to exercise his/her civil rights, have good morality, and have a tax residence in Togo (§10 Law 2001-001 *Portant creation de l'ONECCA au Togo*). A person having a recognized accountant degree (but not a certified public accountant degree) can also be an auditor if s/he meets the same criteria and has completed a three-year internship with an ONECCA member (§15 Law 2001-001). Also, auditors receive a mandatory continuing professional education (§32). It is said in Togo that, given their qualifications, external auditors would have more incentive to provide a very good work if their remuneration was higher.

Some of those auditors, members of ONECCA, are chosen by the Ministry of Finances to oversee SOEs' financial statement. Only those on the list of the Ministry are allowed to audit SOEs (§35 Law 90-26).

To audit a bank, ONECCA's members have also to be approved by the banking commission (§28 *Annexe à la Convention portant création de la commission bancaire de l'union monétaire ouest africaine*).

Auditor independence. The Law 2001-001 requires that auditors be independent. An auditor is forbidden to exercise any professional activity that could weaken his independence. For example, s/he cannot be employee (except of another auditor or an audit company members of ONECCA), civil servant, or even be his/her self-employer (except as an auditor) (§26-28 Law 2001-001). This also implies that an auditor cannot provide non-audit services to their audit clients and in practice, they respect those requirements.

In SOEs, external auditors are also forbidden to be related (by blood or marriage) to directors of the company, or to be the spouse of any employee of the company or of any person forbidden by a court or by law to manage a company or to be a director (§37 Law 90-26).

External auditors have a six-year mandate, while good practice recommends only one year. In Togo, the mandate is perpetually renewable in a same company (§704 AUSCGIE). In some companies, the same person or firm has been auditing the company for over 20 or even 40 years.

According to the law 90-26 (§36) auditor's mandate in SOEs is three years. A new rule (a 2006 *arrêté ministeriel* applicable in 2008) limits the number of renewal to only one, which is better to preserve auditor independence.

A new text is also being drafted to limit renewal in banks.

Audit quality assurance/enforcement. ONECCA is implementing a quality control system which will be evaluated by peers. However, a lack of resources – especially for training – is delaying the project.

The *Cour des Comptes* is supposed to enforce ethic but this court is not working since judges, newly appointed have not started to work yet.

A disciplinary council, part of ONECCA, can take action against external auditor for their wrongdoings. The disciplinary council has the power to forbid the auditor to exercise his activity as an auditor (§53-55 Law 2001-001). An appeal is possible to the National Disciplinary committee, composed of one counselor appointed by the President of the *Court des Comptes*, a professional judge appointed by the Minister of Justice, one civil servant from a financial department and appointed by the Minister of Finances, and two members of ONECCA elected by its AGM. Then another appeal is possible to the Supreme Court.

Audit standards development. Although the accounting standards (SYSCOA) are regional (UEMOA), auditing standards are developed nationally. Togo has not yet developed audit rules but it seems that auditors tend to follow the International Standards of Auditing (ISA) as promulgated by the International Federation of Accountants (IFAC). In addition, ONECCA is currently in the process of applying for IFAC membership, which would provide the association with more credibility as a professional self-regulatory organization.

Principle VD: External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.

Assessment: ***Implemented***

Auditor accountability. The external auditor is appointed by the AGM, for a term of six years.[54] Shareholders holding ten percent of the shares, the board, the AGM, and the public prosecutor, can bring an action before the court for the dismissal of the external auditor in case of misconduct (§731 AUSCGIE). Auditors must inform the board of directors or the general director of irregularities discovered (§715 AUSCGIE). The auditor shall report to the very next general meeting on the irregularities and inaccuracies he discovered in the performance of his task. In addition, s/he shall disclose to the public prosecutor's office any offence he discovers in the performance of his task, without committing himself by such disclosure.[55] The auditor must be present at the AGM meetings (§721 AUSCGIE).

Auditor liability. By law, auditors are liable for fraud and negligence (§725 AUSCGIE). The auditor is not liable for offences committed by the board or management, unless s/he is aware of those offences and fails to report them to the AGM (§726 AUSCGIE). There is no practice of shareholder suits against auditors.

Auditor insurance. There do not appear to be any requirements for auditor to take professional insurance.

Principle VE: Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

Assessment: Partially Implemented

Material facts. Listed companies must continuously disclose all material information (§1 BRVM Instruction II-C). Materiality is defined as "all information that will considerably affect the price".[56] The disclosure is immediate. The press release is deposited with the BRVM; however, need not be pre-vetted (§6, 7 BRVM Instruction II-C).

Anyone who undertakes an operation that is likely to affect a listed company's price in a significant way must issue a press release to the public.[57]

Easy accessibility of disclosed information. Corporate information is disseminated exclusively via newspaper publication, as well as making it available at company headquarters. Only listed companies are required to publish their annual reports. While not required to do so 70 percent of banks and SOEs claim to publish their annual report.[58] Publication on company websites is not typical.

Furthermore, outside investors do not have access to the documentation available at company headquarters; only to the information as published in the *JO*. Shareholders do not have access to minutes of board meetings, or board attendance, but can access the AGM minutes (§525,526 AUSCGIE).

The overall level of transparency is low, especially for SOEs.

Principle VF: The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by analysts, brokers, rating agencies and others, that is relevant to decisions by investors, free from material conflicts of interest that might compromise the integrity of their analysis or advice.

Assessment*: *Not Applicable

Disclosure of conflicts of interest by analysts, brokers, rating agencies, etc. There are currently no rating agencies, and one known broker in Togo. Conflicts of interest of securities analysts, investment banks, brokers, rating agencies and others are not regulated or disclosed.

[54] §703, 704 AUSCGIE. By §546, the AGM appoints the auditor and also approves the auditor report.
[55] §716 AUSCGIE. The auditor as well as his assistants shall, subject to the provisions of Article 716 of this Uniform Act, be bound to professional secrecy regarding the facts, acts and information they have knowledge of in the performance of their duties (§716).
[56] §2 BRVM Instruction II-C. In case of doubt over the materiality of the informant, the issuer is advised to consult with BRVM (§3). §4 provides 18 specific examples of the most frequently encountered material facts and situations requiring disclosure.
[57] §126-129 CREPMF Regulations .
[58] World Bank Survey on Corporate Governance Practice in the ten leading SOEs and Banks in Togo, March 2009.

Section VI: The Responsibilities of the Board

The 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.

Principle VIA: Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

Assessment: Not Implemented

Basic description of board. Togo has a one-tier board system. Boards can have a minimum of three and a maximum of 12 members, for a mandate of up to six years (§416, 420 AUSCGIE). Companies comply with this requirement and most of them have between five and ten directors.[59] Two-third of the board members at least shall be shareholders (§417 AUSCGIE), while good practice dictates that directors do not need to be shareholder. The law allows private companies with less than three shareholders to dispense with the board of directors. Boards of listed companies must have a board with at least three and maximum 15 members (§828, 829 AUSCGIE).

In SOEs, boards are composed of three to 12 members elected among the shareholders when the company is not wholly-owned. Directors are elected for a mandate of up to four years renewable. Directors who represent the State cannot be renewed more than two times (Law 90-26 §14).

The law separately regulates companies where the board chairman is also the general director and those where the functions are separated. In practice, the latter arrangement is more common in Togo, though a few SOEs do not separate the two functions.

In general, there are no requirements for independent directors or for representation of the minority shareholders; there are no "fit and proper" qualification requirements for directors, even for banks.

There are no nationality restrictions for board membership. Yet, in Banks, directors should be Togolese or citizens of a country member of the UEMOA. However, waivers can be granted. Banks directors also need to have a clean criminal record and no bankruptcy history (unless the firm was rehabilitated). Banks need to file the list of managers and directors with BCEAO and update it upon changes (Banking Law §14, 15).

A corporate body may be appointed director, which can act to limit individual responsibility and duties to the company[60], while directors should be accountable for their wrongdoings.

"Duty of care" and "Duty of loyalty". Directors owe a duty to the company and to third parties to obey the law and applicable regulations, as well as the articles of association (§740 AUSCGIE). There is a general duty of care; officers must act as "a good father" towards the company. In practice, directors of most SOEs and SOBs are not thought to follow their duty of care to the company. The limit of five board seats as set-out in the company law (§425 AUSCGIE) is not respected by many directors and as such they have difficulty finding the time to properly prepare for board meetings.
There is no general duty for board members to act in the interests of the company and all shareholders (i.e. a duty of loyalty). Directors should avoid conflicts of interests. However, a number of directors are known to sit on boards of competing companies, e.g. in the banking sector.

Some specific ad-hoc duties are set out by the law: management and directors are liable for false or insufficient disclosure when raising new capital (§905 AUSCGIE), and for irregularities related to share issuance, especially handing out share certificates before full payment, and for failure to assure pre-emptive rights to all shareholders or present false or misleading information at the AGM where the pre-emptive rights are being waived (§893, 894, 895 AUSCGIE). Management and directors are liable for failure to file with the Commercial Register for dissolution when capital falls below registered capital (§901 AUSCGIE).

Effective enforcement. In the event that shareholders feel that directors are not following their duties, legal actions can be taken. However, no legal action has been taken against management or directors. Enforcement is rendered ineffective due to an inefficient court system. In particular, government officials have never been held accountable for their roles on the boards of SOEs and SOBs that have been said to be inefficient and loss-making for years on end.

Principle VIB: Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.

Assessment: Not Implemented

Board "duty of loyalty" / duty to treat all shareholders fairly. There is no specific provision in the law for directors to treat

[59] World Bank Survey on Corporate Governance Practice in the ten leading SOEs and Banks in Togo, March 2009.
[60] §421 AUSCGIE. The representative of the corporation is subject to the same duties and liabilities as other directors.

shareholders fairly. However, the regional chart of good corporate governance encourages this behavior (§VII B). In practice, most boards are described as "shareholder boards" and as such board decisions are made in the interest of shareholder groups (or the relevant ministries in the case of SOEs) rather than in the interest of the bank or company itself as good practice would dictate.

Principle VIC: The board should apply high ethical standards. It should take into account the interests of stakeholders.

Assessment: Not Implemented

Development of company codes of ethics. Companies and banks are neither required nor encouraged to adopt codes of ethics. Except Ecobank, no bank or company has published its code of ethics. Moreover, only a few companies or banks actually had ethics codes. The Employer Association (*Le Patronat*) drafted a model ethics Code for its members in 2007. Companies are said to have agreed to voluntarily adopt and implement this Code. Today, however, the Code is still a draft form and the principles suggested are not complied with.

Board and interests of stakeholders. There do not appear to be any provisions requiring the board to take stakeholders interests into account.

Principle VID: The board should fulfill certain key functions, including:

Principle VID 1: Board oversight of general corporate strategy and major decisions

Assessment: Not Implemented

Central and strategic role played by boards. According to the law, "the board of directors shall have the widest powers to act in all circumstances on behalf of the company…The board of directors shall … define the company's objectives and guidelines for its administration". The board is, in theory, responsible for defining company objectives and management guidelines and management oversight, in line with good practice (§435 AUSCGIE). However, boards generally focus on approving the budget and do not generally approve strategies and business plans. Boards in fact typically meet three times per year, the first board meeting takes place in December to approve the year's budget, a second meeting takes place in April to approve the accounts vis-à-vis the old budget, and the board meets for a third time in September to conduct a mid-term review of the budget. Most board discussions are said to be focused on monthly and annual budget targets, for example, tons of commodities exported, rather than key strategic initiatives and risks to these respective sectors. Some companies are able to communicate broad vision statements but in many wholly-owned SOEs, the strategy is decided by the supervisory council, i.e. the State, not the management. Yet, the new SOTOCO is in the process of drafting its first formal business plan, which would set a positive example.

The boards of banks, moreover, spend a significant amount of their time approving individual credits, rather than delegating the credit function to a management level credit committee and focusing on establishing a robust risk policy and appetite.

Principle VID 2: Monitoring effectiveness of company governance practices

Assessment: Not Implemented

Board oversight of legal compliance. There are no regulations or best practice recommendations that give the board explicit responsibility to oversee legal compliance.

Board oversight of code compliance. Except for SOEs, regulations regarding companies are set at a regional level. Thus, Togo has not yet developed a Code of Corporate Governance.

Board self-evaluation. Boards are neither required by law nor encouraged to evaluate their performance and they do not do it in practice.

Principle VID 3: Selecting/compensating/monitoring/replacing key executives

Assessment: Not Implemented

Board oversight of selecting and replacing key executives. According to the law, "the board of directors shall … control, on a permanent basis, the management" (§435 AUSCGIE).

The board appoints, remunerates, and removes the general director. The law specifically states that if the board chairman is also serving as general director, the board will also set his or her remuneration, which can be composed of employee salary, a fixed annual duty allowance granted by the AGM, exceptional payments for special services, and reimbursement of travel and per diem, which need to be reflected in the auditor's report to the AGM (§467). The general director who is not a director will only be remunerated per his employment contract (§490).

In practice, once hired, the board does not generally serve as an effective counterbalance to the general director, and there is little supervision and guidance. There have even been a few cases in which the companies hired headhunters to properly

search for a new general director. However, by most accounts, general directors are typically chosen in an opaque manner.

Principle VID 4: Aligning executive and board pay with long term company and shareholder interests

Assessment: Not Implemented

Develop and disclose remuneration policy. The AGM decides the compensation for all board members (executive and non executive directors), except for the chairman and general director. Directors can be employees; however, aside from money paid to them under a contract of employment, directors are only entitled to a fixed annual duty allowance granted by the AGM, as well as exceptional payments for special services, reimbursement of travel and per diem, which need to be reflected in the auditor's report to the AGM (§430, 431, 432, 482, 490 AUSCGIE). In practice, executive and board pay is not generally aligned with the long-term interests of the company. In only one out of ten companies, the remuneration is aligned with the company's performance.[61] In SOEs, most of the board members are from the different ministries. While good practice recommends civil servant not to keep their remuneration as board members, in Togo it is considered as payment of extra hours. The amount of the remuneration is set to create an incentive to sit in boards. Consequently the remuneration received by such directors may double their salary.

Oversight by non-executives. In practice the most important shareholders are also directors. They thus decide on their allowance, while they should not be allowed to vote on that specific point. The law does not require the creation of a remuneration committee which could oversee the amount of the remunerations granted.

Principle VID 5: Transparent board nomination/election process

Assessment: Not Implemented

Clear and transparent board nomination process. The board nomination process in Togo is opaque. The AGM shall approve the nomination. Specific qualifications for directors are not required either in the company law or the banking law.

In SOEs wholly-owned by the State, the supervisory council nominates the directors. The nomination process of civil servants to the boards of SOEs and SOBs is particularly opaque. A number of board members do not have relevant competencies vis-à-vis the companies they are serving on, in particular with respect to experience of managing companies. In particular senior government officials frequently jump back and forth between minister posts and senior positions within large SOEs and SOBs. Also, board members have not been held accountable for their actions (or inaction) on the boards of banks and companies, in particular government officials for their roles on the boards of SOEs and SOBs that have been said to be inefficient and loss-making for years: those same persons keep being nominated in other boards.

Yet, the new government has started to nominate private sector representatives and competent people to the boards of some SOEs, in line with good practice.

In banks, board members are not subject to "fit and proper" criteria, as in most jurisdictions.

Effective shareholder participation in board nomination process. Board nominations are typically made by the board, and are approved by the AGM (AUSCGIE §419, 485, 433, 550). However, in practice, the major shareholders are board members.

Disclosure of nomination procedures. There do not appear to be any requirements for the disclosure of board nomination process.

Principle VID 6: Oversight of insider conflicts of interest, including misuse of company assets and abuse in RPTs

Assessment: Partially Implemented

Board oversight of related party transactions. All conflicts of interests must be disclosed to the board and are subject to the prior authorization of the board, unless it is an ordinary transaction under normal conditions. The board is responsible for oversight, and must report all violations of these rules to the AGM (§438-440 AUSCGIE). In practice, board's oversight over conflicts of interests is weak in Togo. Board approves RPTs in only 50 percent of the companies.[62]

Principle VID 7: Oversight of accounting and financial reporting systems, including independent audit and control systems

Assessment: Not Implemented

Board oversight of financial reporting. The board is responsible for the preparation of the annual financial statements

[61] World Bank Survey on Corporate Governance Practice in the ten leading SOEs and Banks in Togo, March 2009.
[62] World Bank Survey on Corporate Governance Practice in the ten leading SOEs and Banks in Togo, March 2009.

(§435 AUSCGIE). It does not need to certify them. This is the role of the external auditors.

Board oversight of internal controls. The internal audit function insofar as one consistently reports to the general director and not the board or its independent audit committee as called for by good practice. Those committees composed of independent directors are not required by law and, in practice, a few companies have created them. In only some companies the internal auditors report to the board.

Internal audit function exists in all companies surveyed or is being implemented. However, only two banks claim that their internal audit function is independent.[63] Their processes, as a whole (i.e. for SOEs, SOBs and privately owned banks, as well as public limited companies) are generally considered ineffective because they are understaffed, the heads of internal audit departments do not have appropriate qualification, and report to the general director and not to the board. Finally the internal audit and internal control functions are frequently combined in one and the same department, which poses an inherent conflict in that the internal audit is mandated to check the efficiency of the internal controls, which it is unable to do if the same individuals are responsible for same. Few banks and companies have robust internal control structures. Internal auditors trainings exist but are in Abidjan and expensive. Only a few companies afford them.

Board oversight of external auditors. Companies have external auditors but they also do not report to the board but to the general director.

Principle VID 8: Overseeing disclosure and communications processes

Assessment: Not Implemented

Board oversight of disclosure process. There are no regulations or best practice recommendations that give the board any responsibility over the disclosure process. In practice, not a single board reports having a disclosure policy.

Principle VIE: The board should be able to exercise objective independent judgment on corporate affairs.

Principle VIE 1: Board should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and non-financial reporting, the review of related party transactions, nomination of the board members and key executives, and board remuneration.

Assessment: Not Implemented

Director independence requirement. The law neither requires nor defines independence of directors. Moreover, the law requires that at least two-third of board members be shareholders. Greatest impediments to independence on the boards of SOEs and SOBs are that directors are government officials and allowed to keep their board fees, which are thought to be substantial. Some government officials are able to double their salary through board appointments (§417 AUSCGIE). Nevertheless, 50 percent of the surveyed companies[64] declare having at least one independent director without defining the notion, i.e. one bank considers as independent directors its retired employees.

Separation of Chairman / CEO. The separation of the chairman and general director is not required by law. Moreover, the law separately regulates companies where the board chairman is also the general director and where the functions are separated. AUSCGIE provides for nomination, mandates, attributions, remuneration for each function, when they are separated or not.

Company disclosure of independence. As the law does not provide for independent director, there are no provisions for disclosure of independence.

Independence oversight of key board tasks including:

- ***Financial reporting.*** The law does not provide for independent audit committee to oversee the financial reporting.
- ***Related Party Transactions.*** The board authorizes related party transaction. Directors involved in the transaction do not vote. The chart of good corporate governance encourages board oversight of RPTs (§VII D 6).
- ***Board and executive nomination.*** The board nominates its chairman and general director (§462, 477, 485 AUSCGIE). Companies are neither required nor encouraged to create nomination committee composed of independent directors to oversee the nomination of key executive. However, the regional chart of good corporate governance encourages the board to set a clear and transparent nomination process (§VII D 5).
- ***Board and executive remuneration.*** The board set the chairman and general director' remunerations (§467, 482, 490 AUSCGIE). Companies are neither required nor encouraged to create a remuneration committee composed of independent directors to oversee the remuneration of key executives. However, the regional chart of good

[63] World Bank Survey on Corporate Governance Practice in the ten leading SOEs and Banks in Togo, March 2009.
[64] World Bank Survey on Corporate Governance Practice in the ten leading SOEs and Banks in Togo, March 2009.

corporate governance encourages the board to align directors' remuneration with long-term interests of the company and its shareholders (§VII D 4).

Principle VIE 2: Clear and transparent rules on board committees

Assessment: Not Implemented

Requirement and experience with committees of the board. Audit committees are not required by law.

Disclosure of mandate, compositions, and working procedures of important committees. Board committees are not common. The board may delegate board powers to a sub-group of its members (§437 AUSCGIE). Some boards have done so by splitting their boards into members with technical and financial expertise, in a manner similar to committee structure chosen in companies in many countries; however, these structures remained informal and are the exception rather than the rule. A notable exception to this rule is BIA and Ecobank, which have formed an audit and compliance, risk, and corporate governance committees. It is not clear whether the few banks or companies that do have board committees have formalized procedures; they are not publicly disclosed as good practice would dictate.

Principle VIE 3: Board commitment to responsibilities

Assessment: Not Implemented

Company disclosure of board member activity. The law does not prescribe a frequency of board meetings, instead allowing boards to meet "as frequently as needed". However, if the board has not met for two months, it can be convened by a third of its members who will also provide the agenda (§453 AUSCGIE). In practice, boards meet at least twice a year and often three times around budget dates. They generally meet in December to approve the year's budget, a second meeting takes place in April to approve the accounts vis-à-vis the old budget, and a third one in September to conduct a mid-term review of the budget.

A director can serve on a maximum of five boards AUSCGIE (§425). A board chairman (whether or not he is also the general director) cannot hold the position of general director in more than two other companies (§464, 479 AUSCGIE). The minutes include board attendance records (§458, 459 AUSCGIE) but they are not publicly available and shareholders do not have access to them.

Requirements for initials and on-going training. There is currently no institute of directors or any institution providing formal director training in Togo.

Principle VIF: In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.

Assessment: Not Implemented

Board access to information. The law does not confer special information rights to individual board members. In practice, board members have uneven access to information.

Free access to qualified advisors. Individual board members do not have access to professional advice by law. However, the board, as an entity can seek for advice.

Annex 1: Suggested Reforms at the Regional level

Reforms at the regional level are needed to improve the OHADA Uniform Act on Commercial Companies (AUSCGIE) and the UEMOA laws and regulations; and thus to enhance corporate governance in Togolese companies.

1) ***Reforms to the OHADA Uniform Act on Commercial Companies***

Moves toward compliance with the OECD Principles of Corporate Governance will require reform to the OHADA Uniform Act on Commercial Companies (AUSCGIE). The following recommendations are suggested for all public limited companies (including SOEs and SOBs):

- ***Large transactions should be pre-approved by shareholders.*** The OECD Principles explicitly recommend that sales of major corporate assets should be subject to shareholder approval.
- ***Remove requirements for shareholders to own a minimum number of shares*** to attend an AGM.
- ***Remove all provisions allowing companies not to treat all the shareholders within the same class of shares equally.***
- ***Require that companies issue new shares in a reasonable time period*** after authorizing the increase of capital.
- ***Increase the meeting notice period to at least 21 days***, and specify formal polls to count votes at the demand of a relatively small number of shareholders. Require that meeting notices contains more information, such as financial statements and other relevant documents.
- ***Require that companies pay dividends in a short time period*** after their approval.
- ***Introduce international good practice for disclosure and approval of related party transactions (RPT)***:
- ***Improve certain other aspects of the disclosure regime.*** Company articles of association should be included in list of materials that shareholders are able by law to obtain from the company. Companies should also be required to provide information on share rights, including any special share classes, voting caps, or any special capital structures.
- ***Reform provisions governing the board of directors:***
    - Remuneration should also be disclosed.
    - Clarify and strengthen the duties of directors in the law, particularly the duty of loyalty to all shareholders.
    - Remove any shareholder requirements to be a board member, and should consider removing the ability of corporate bodies to be board members (because this dilutes the responsibility of individual board members).
    - Board members should have explicit rights to all company information, and should be able to directly hire outside experts at company expense.
    - Directors who are also shareholders should not be able to vote for their own remuneration during the AGM.

2) Reforms to the banking law and related regulations under the UEMOA

The banking law and banking commission are critical for good corporate governance in Togolese banks.

- ***Banking commission should have express authority and sole responsibility*** for enforcing laws and regulations.

- ***Banking Law should be amended to include fit and proper criteria for board*** members and remove the citizenship condition.
- ***Banking Law should be amended or new regulation drafted*** clarifying roles and responsibilities of the principal control bodies, in particular the risk management, internal control, compliance, internal audit, and external audit functions.

3) Reforms to the securities regulations under the UEMOA

BRVM and CREPMF play a major role in the corporate governance of listed companies. Possible next steps to improve corporate governance could include:

- ***Harmonization of the CREPMF regulations and BRVM listing rules***, and publication of updated texts on their respective websites. More broadly, the BRVM website should be used to disseminate all information useful for investors.
- ***Enhanced disclosure requirements*** (in line with the non-financial disclosure requirements of the OECD Principles).
- ***BRVM listing rules / CREPMF regulations should explicitly require immediate disclosure*** to the public of a medium or large-sized related party transaction, including the details of the conflicts of interest.
- ***Active enforcement of the quality*** (as well as the timeliness) of financial statements.
- ***Strengthened provisions on tender offers and buyback***: transactions should occur at a transparent price and under fair conditions to protect minority shareholders.
- ***Strengthen provisions on insider trading*** (in line with the ISCD Principles).

Annex 2: Survey of Corporate Governance in Togo

The World Bank has commissioned a corporate governance survey of ten companies in Togo. Five of the surveyed companies were banks, including three state-owned and two majority private banks (including Ecobank Togo). Banque Togolaise de Développement is owned at 43 percent by the State, and 55 percent by other state-owned institutions and companies. The other five companies surveyed were either wholly-owned by the State or under its majority control.[65] One of the company (BTCI) has a temporary specific statute. This bank is operating under "*administration provisoire"* without a board because of its financial difficulties.

Those companies have been chosen because of their leading role in the Togolese economy and their affiliation to different sectors of the industry in Togo. The companies were cooperative even though all the questions have not been answered. Below are some selected answers from the survey.

A quelle grande catégorie du secteur industriel la société appartient- elle?

	N	%
Transport	2	20%
Energie électrique	1	10%
Eau potable	1	10%
Banque	5	50%
Secteur Postal	1	10%
	10	100%

Nombre total des membres du Conseil d'Administration

	N	%
11 - 12	1	10%
6 - 10	6	60%
3 - 5	2	20%
- de 3	0	0%
N/A	1	10%
Total	10	100%

Nombre d'administrateurs indépendants

	N	%
Pas de réponse	2	20%
6 – 10	1	10%
4 – 5	1	10%
1 – 3	4	40%
0	1	10%
NA	1	10%
	10	100%

[65] The 10 companies in the survey included Postes du Togo, UTB, CEET, PAL, TdE, BTD, BTCI, SALT, BPEC, and Ecobank Togo.

Combien de fois le conseil s'est - il réuni au cours de l'année écoulée?

	N	%
Pas de réponse	1	10%
16 - 20 sessions	1	10%
11 -15 sessions	1	10%
6 - 10 sessions	2	20%
1 - 5 sessions	5	50%
0 session	0	0%
	10	100%

Combien de membres en moyenne ont généralement participé aux réunions du conseil d'administration au cours de l'année écoulée?

	N	%
Pas de réponse	3	30%
80% - 100%	7	70%
60% - 80%	0	0%
40% - 60%	0	0%
20% - 40%	0	0%
	10	100%

La rémunération/évaluation de la performance des dirigeants et des employés de la société sont-ils presents aux members du conseil d'administration?

	N	%
Oui	5	50%
Non	5	50%
Total	10	100%

La stratégie de la société est-elle présentée au conseil d'administration?

	N	%
Oui	6	60%
Non	4	40%
Total	10	100%

Les administrateurs sont-ils nommes après une évaluation de leurs compétences?

	N	%
Oui	5	50%
Non	3	30%
Non Renseigné	2	20%
	10	100%

Qui décide de la rémunération des membres du conseil?

	N	%
Le Conseil de Surveillance	2	20%
Le Président du Conseil	2	20%
Etat	1	10%
L'Assemblée Générale	4	40%
Non renseigné	1	10%
	10	100%

A quoi est liée la rémunération des administrateurs non dirigeants?

	N	%
Jeton de présence	1	10%
La performance	1	10%
Non renseigné	2	20%
Présence au Conseil	5	50%
N/A	1	10%
	10	100%

A quoi est liée la rémunération des administrateurs dirigeants?

	N	%
Participation aux réunions	1	10%
La performance	1	10%
Au nombre de sessions	1	10%
Convention	1	10%
Non renseigné	3	30%
N/A	3	30%
	10	100%

Le conseil d'Administration approuve-t-il des opérations entre parties apparentées (conventions réglementées)

	N	%
Oui	5	50%
Non	3	30%
Non renseigné	2	20%
	10	100%

Existe-il une fonction d'audit interne au sein de la société

	N	%
Oui	9	90%
Non	1	10%
Non renseigné	0	0%
	10	100%

L'audit interne est-il indépendant?

	N	%
Oui	2	20%
Non	0	0%
Non Renseigné	8	80%
	10	100%

A qui reporte- t- il?

Au Conseil d'Administration

	N	%
Oui	1	10%
Non	6	60%
Non Renseigné	2	20%
N/A	1	10%
	10	100%

Au Directeur Général

	N	%
Oui	6	60%
Non	1	10%
Non Renseigné	2	20%
N/A	1	10%
	10	100%

La société prépare- t- elle un rapport annuel?

	N	%
Oui	10	100%
Non	0	0%
	10	100%

La société publie - t- elle un rapport annuel et le met-elle à la disposition des actionnaires, des parties prenantes, des organes législatifs, des autres organismes étatiques et du grand public?

	N	%
Oui	6	60%
Non	0	0%
Non Renseigné	4	40%
	10	100%

Les Informations ci-après sont-elles publiées dans le rapport annuel?

Etats financiers

	N	%
Oui	10	100%
Non	0	0%
	10	100%

Politiques suivies en matière de comptabilité et de mode de présentation

	N	%
Oui	10	100%
Non	0	0%
	10	100%

Objectifs généraux et spécifiques de la société

	N	%
Oui	9	90%
Non	0	0%
Non Renseigné	1	10%
	10	100%

Respect, le cas échéant, d'un code de gouvernement d'entreprise

	N	%
Oui	5	50%
Non	4	40%
Non Renseigné	1	10%
	10	100%

Informations concernant les membres du conseil d'administration

Nom des membres du conseil d'administration

	N	**%**
Oui	7	70%
Non	2	20%
Non Renseigné	1	10%
	10	100%

Titres professionnels des membres du CA

	N	**%**
Oui	6	60%
Non	3	30%
Non Renseigné	1	10%
	10	100%

Salaire/rémunération des membres du CA

	N	**%**
Oui	4	40%
Non	5	50%
Non Renseigné	1	10%
	10	100%

Informations concernant les membres de la direction générale

Noms des membres de la direction générale

	N	**%**
Oui	6	60%
Non	3	30%
Non Renseigné	1	10%
	10	100%

Titres professionnels des membres de la direction générale

	N	%
Oui	6	60%
Non	3	30%
Non Renseigné	1	10%
	10	100%

Salaire/rémunération des membres de la direction générale

	N	%
Oui	3	30%
Non	6	60%
Non Renseigné	1	10%
	10	100%

Rapport et opinion des auditeurs externes

	N	%
Oui	8	80%
Non	0	0%
Non Renseigné	2	20%
	10	100%

Structure du capital / noms des principaux actionnaires

	N	%
Oui	7	70%
Non	0	0%
Non Renseigné	3	30%
	10	100%

Opérations importantes et présentant un intérêt pour les parties apparentées.

	N	%
Oui	5	50%
Non	2	20%
Non Renseigné	3	30%
	10	100%

Comment les actionnaires sont-ils informés des assemblées générales?

	N	%
Parution dans journal seulement	3	30%
Courrier seulement	3	30%
Journal et courrier	2	20%
Non Renseigné	2	20%
	10	100%

Togo Terms/Acronyms

AGM: Annual general meeting of shareholders

AUSCGIE: Acte Uniforme de OHADA relatif au droit des sociétés commerciales et du Groupement d'Intérêt Economique / OHADA Uniform Act for commercial companies.

BCEAO: Banque Centrale des Etats d'Afrique de l'Ouest / Central Bank of West African Countries

BIA: Banque Internationale pour l'Afrique

BRVM: Bourse Régionale des Valeurs Mobilières / Stock Exchange

BTCI: Banque Togolaise pour le Commerce et l'Industrie

BTD: Banque Togolaise de Développement

CEET: Compagnie Energie Electrique du Togo

CEO: Chief Executive Officer

CREPMF: Conseil Régional de l'épargne publique et des marchés financiers / Securities regulator)

Cumulative voting: Cumulative voting allows minority shareholders to cast all their votes for one candidate. Suppose that a publicly traded company has two shareholders, one holding 80 percent of the votes and another with 20 percent. Five directors need to be elected. Without a cumulative voting rule, each shareholder must vote separately for each director. The majority shareholder will get all five seats, as s/he will always outvote the minority shareholder by 80:20. Cumulative voting would allow the minority shareholder to cast all his/her votes (five times 20 percent) for one board member, thereby allowing his/her chosen candidate to win that seat.

DC/BR: Dépositaire Central/Banque de Règlement/Central Depository

EGM: Extraordinary general meeting of shareholders

ETI: Ecobank Transnational Incorporated

EU: European Union

GDP: Gross Domestic Product

GNI: Gross National Income

IFAC: International Federation of Accountants

IFC: International Finance Corporation

IFRS: International Financial Reporting Standards

IOSCO: International Organization of Securities Commissions

ISA: International Standards on Auditing

JO: Journal Officiel / Journal of Legal Announcement

LR: Listing Rules

NPL: Non-performing Loan

NSCT: Nouvelle Société Cotonnière du Togo

OADHA: Organisation pour l'Harmonisation en Afrique du Droit des Affaires / Organization for Harmonization of Business Law in Africa

OECD: Organization for Economic Co-operation and Development

ONECCA: Ordre National des Experts Comptables et des Comptables Agrées (Auditors Association)

Pre-emptive rights: Pre-emptive rights give existing shareholders a chance to purchase shares of a new issue before it is offered to others. These rights protect shareholders from dilution of value and control when new shares are issued.

Proportional representation: Proportional representation gives shareholders with a certain fixed percentage of shares the right to appoint a board member.

ROSC: Report on the Observance of Standards and Codes

RPT: Related party transaction.

SALT: Société Aéroportuaire de Lomé Tokoin

SGI: Société de Gestion et Intermediation, broker / custodian members of the BRVM and the DC/BR.

Shareholder agreement: An agreement between shareholders on the administration of the company, shareholder agreements typically covers rights of first refusal and other restrictions on share transfers, approval of related-party transactions, and director nominations.

SME: Small and Medium Enterprise

SOB: State-owned bank

SOE: State-owned enterprise

SOTOCO: Société Togolaise de Coton

Squeeze-out right: The squeeze-out right (sometimes called a "freeze-out") is the right of a majority shareholder in a company to compel the minority shareholders to sell their shares to him. The sell-out right is the mirror image of the squeeze-out right: a minority shareholder may compel the majority shareholder to purchase his shares.

SYSCOA: Système comptable Ouest Africain / West African Accounting Standards

TdE: Togolaise des Eaux

UEMOA: Union Economique et Monétaire de l'Afrique de l'Ouest / West African monetary and Economic Union.

Withdrawal rights: Withdrawal rights (referred to in some jurisdictions as the "oppressed minority," "appraisal" or "buy-out" remedy) give shareholders the right to have the company buy their shares upon the occurrence of certain fundamental changes in the company.

This report is one in a series of corporate governance country assessments carried out under the Reports on the Observance of Standards and Codes (ROSC) program. The corporate governance ROSC assessments examine the legal and regulatory framework, enforcement activities, and private sector business practices and compliance, and benchmark the practices and compliance of listed firms against the OECD Principles of Corporate Governance.

The assessments:

- use a consistent methodology for assessing national corporate governance practices
- provide a benchmark by which countries can evaluate themselves and gauge progress in corporate governance reforms
- strengthen the ownership of reform in the assessed countries by promoting productive interaction among issuers, investors, regulators and public decision makers
- provide the basis for a policy dialogue which will result in the implementation of policy recommendations

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