

MENA¹ Task Force on Corporate Governance for the Private Equity Industry

Background

One of the underlying triggers of the global financial crisis was the lack of effective implementation of Corporate Governance standards. Both the financial crisis and the economic crisis that followed it have clearly demonstrated that Corporate Governance is an essential part of any strategy for sustainable growth and value creation. This is a truism which affects all industries – whether regulated (such as banking) or unregulated (such as Private Equity (PE)).

In light of the above, the Hawkamah Institute for Corporate Governance has established a MENA Task Force on Corporate Governance for the Private Equity Industry (“the Task Force”). The Task Force’s remit is to assist the PE Industry in the MENA region by developing Corporate Governance Principles and Practice Guidelines.

The objective of this initiative is to encourage PE Firms to appraise (or to re-appraise as the case may be) their corporate governance status and to adopt best practice standards. This will enable the PE Industry to be best placed to navigate the challenges that lie ahead, and to be in strong position when the economic situation improves.

Overview

This initiative will demonstrate not only why corporate governance is significant for the PE Industry – but also how corporate governance can be applied in practice. Preparatory work involved a number of steps – the first of which was to review existing corporate governance literature so that relevant terms of reference could be defined. Research indicates that howsoever called, there are literally hundreds of Codes, Guidelines, Regulations, Papers and Rules already published on Corporate Governance across the globe. Despite this, it has been noted that Corporate Governance Principles are common - across industries – across the world. To make best use of existing work, four prominent documents have been selected from the myriad available – and will be used as the basis for development of the initiative. The documents are as follows:

1. OECD Principles of Corporate Governance
2. EVCA Corporate Governance Guidelines (UK)
3. UN Principles of Responsible Investment
4. PEC Responsible Investment Guidelines (US)

From a review of the literature, seven 'Key Governance Areas' were identified. These seven areas constitute the global Corporate Governance environment – and will form the basis from which the Task Force will formulate certain Corporate Governance Principles. PE Firms that want to adopt or to refine effective corporate governance in their organizations will find these Principles useful.

In this respect, the MENA Task force will formulate Practice Guidelines – which will be specific action points that PE Firms can use as a road map in creating an appropriate Corporate

1 For the purposes of this document, “MENA” should be interpreted to mean: Algeria, Bahrain, Djibouti, Egypt, Gaza, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malta, Morocco, Oman, Palestinian Territories, Qatar, Saudi Arabia, Syria, Tunisia, UAE, West Bank, Yemen

Governance culture within their respective Firm. Each Governance Area will contain specific Guidelines that will indicate what has to be done to satisfy the Principle that describes that Area.

One of the important features of the Guidelines is that they provide a standard by which progress can be measured. In effect, the Guidelines can be used as a standard measure of corporate governance compliance - an unambiguous corporate governance industry benchmark.

The starting point for the work of the Task Force is a Questionnaire – designed to collect data on the current status of Corporate Governance and its application in the Private Equity Industry in the MENA region. The Task Force will in due course engage in discussions, electronically and at dedicated meetings, and will ultimately produce a non-binding Policy Brief, outlining suggested Governance Principles for adoption by the Private Equity Industry.

A distinctive feature of this framework is that it is holistic. Besides PE Firms, the Framework embraces Portfolio Companies and Limited Partners – key players in the PE Industry.

Involvement

The Principles and Guidelines are aspirational in nature – that is to say, they provide objectives to which PE Firms might usefully aspire. That said, it is to be hoped that the Task Force Members in particular and the PE Industry participants in general will voluntarily adhere to the Corporate Governance framework. Adherence means making meaningful efforts on an on-going basis to apply corporate governance Principles progressively within the relevant PE Firm. This is an opportunity for the PE Industry in MENA to contribute to the development of the Corporate Governance standards for the Industry in the region.

As an independent autonomous organization, Hawkamah will assess adherence to the provisions and progress in the development of the Corporate Governance Framework through conducting a survey of a similar nature, on an annual basis.

The Questionnaire

In light of the above approach, this Questionnaire is a first step towards achieving the primary objective of the Task Force.

Being a part of the PE Industry in MENA, your participation in this survey is extremely valuable. Your contribution will be a step towards creating a more robust PE Industry in the MENA region.

General Information and Instructions

1. All the information provided by you will be treated as strictly confidential.
2. For ease of reference, key terms used in this questionnaire are defined in the Glossary at the end.
3. If you have not been formally invited to participate in this survey – but would like to do so, please feel free to contact us.
4. If you wish to make additional comments, please feel free to use the space at the end of the questionnaire.
5. All responses should be sent **electronically to Ms. Lara Arab** (lara.arab@hawkamah.org) by **30 September 2009**, at the latest.

Section A: Basic Information

1.	Name of your Company:	
2.	Name of the Business Group (if your Firm is part of a group):	
3.	Year of Establishment:	
4.	Country of Incorporation:	
5.	No of Employees:	
6.	Country(ies) of Operations:	
7.	US\$ Value of investments in MENA (PE investments by the respondent or the group - as applicable):	
8.	US\$ Value of investments globally (PE investments by the respondent or the group - as applicable):	
9.	Number of Portfolio Companies:	
10.	Approximate No of Limited Partners:	
11.	Key Investment Sectors:	
12.	Contact Person:	
13.	Position:	
14.	Telephone:	
15.	Email:	
16.	Date of Participation:	

Section B: Questions With Respect To Key Governance Areas

Where appropriate, please mark the Yes/No box with a “Y” or “N”. Where the context indicates that it is necessary, please supplement your answer by adding comments in the “Response/Comments box.

I. Basis of Governance Framework			
Questions	Y	N	Response/Comments
1. Is your Firm regulated by any financial services Regulator? If yes, please specify the name of the Regulatory Authority.			
2. Does your Firm have a corporate governance code, or written policies, guidelines or manuals that set out the governance practices of the Firm?			
3. If yes, are your Portfolio Companies encouraged to adopt it?			
4. Are there any codes or international best practice guidelines (pertaining to any functional area) which are voluntarily adhered to by your Firm? If so, please specify.			
5. Is there a specific function or dedicated official at your Firm responsible for regulatory compliance and/or governance?			
6. If yes, is this a regulatory requirement?			
7. Are your Portfolio Companies required to make periodic reports to your Firm on governance and compliance matters?			

II. Conduct of Business			
Questions	Y	N	Response/Comments
1. Is your Firm subject to any legal or regulatory provisions pertaining to the rights of shareholders, in particular and in respect of stakeholders in general?			
2. If yes, please specify the law / regulation.			
3. Does your Firm enter into formal, written management agreements with Portfolio Companies in which the rights and obligations of each party are documented?			
4. Does your Firm have a documented conflict of interest policy?			
5. Does your Firm have a documented Code of Ethics?			
6. Do your Investment Agreements record the rights and obligations of investors (LPs)?			
7. Does your Firm impose any conduct of business norms on Portfolio Companies?			

III. Governance and Management			
Questions	Y	N	Response/Comments
1. Does your Firm have a documented business plan?			
2. Does your Firm have a written policy concerning matters reserved for the Board (e.g. succession planning, governance, risk, key executive positions, appointment, responsibilities, composition and remuneration of the Directors, conflicts of interest, etc?)			
3. How many members are on your Firm's Board currently?			
4. How many times does your Board meet in a 12 month period?			
5. Does your Firm's Board include "non-executive" directors ² ? If yes, how many Non-Executive and Executive members are there? Please specify.			
6. Does your Firm's Board include "independent" directors ³ ? If yes, how many independent and non-independent members are there? Please specify.			
7. Is the Chairman and the CEO two different persons?			
8. Does your Firm have a Board/Company Secretary?			
9. If your Board has a Company Secretary, do his/her responsibilities include organizing the meetings of the Board of Directors?			
10. Does your Firm provide training in corporate governance related matters for Board members?			
11. Does your Board conduct self-evaluations or other reviews of its effectiveness?			
12. Does your Firm have a documented oversight framework?			
13. Has your Firm adopted any value management or performance evaluation techniques (e.g. balanced score card)? If yes, please specify.			

IV. Controls and Accountability			
Questions	Y	N	Response/Comments
1. Does your Firm have a dedicated Risk Management Officer or function?			

² Please refer to the Glossary for description of the term Non-Executive Director

³ Please refer to the Glossary for description of the term Independent Director

2. Does your Firm have an Audit Committee?			
3. Does your Firm have an internal audit function?			
4. Does your Firm undergo an annual external audit?			
5. Does your Firm have procedures to prevent Insider Dealing ⁴ ?			
6. Does your Firm have procedures for Personal Account Transactions?			
7. Does your Firm have procedures to prevent Market Manipulation ⁵ ?			
8. Does your Firm have a policy with regards to Related Party Transactions?			
9. Does your Firm have an internal MIS system for managing the control framework efficiently?			
10. Does your Firm have a MIS system for obtaining requisite information from Portfolio Companies?			

V. Communication			
Questions	Y	N	Response/Comments
1. Does your Firm have a website?			
2. Does your Firm produce an annual review?			
3. If your Firm has a website, and produces an annual review, is it published on your website?			
4. Does your Firm make its Limited Partners aware of the Firm's corporate governance policies and practices?			
5. Does your Firm make the general public aware (e.g. in an annual review or other publication) of its corporate governance policies and practices?			
6. How often does your Firm provide performance reports to its Limited Partners? Please specify.			
7. Does your Firm make the general public aware of its investment decision process?			
8. Does your Firm make the general public aware of its risk management policy?			
9. Does your Firm make the general public aware of who is on the Board (e.g. by publishing summary CVs indicating, at a minimum, any affiliation with the Firm, management and controlling shareholders and other companies on which such persons sit as Board members)?			

4 Please refer to the Glossary for description of the term Insider Dealing

5 Please refer to the Glossary for description of the term Market Manipulation

10. Does your Firm disclose the number of board and committee meetings held during a twelve month period?			
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VI. Corporate Social Responsibility			
Questions	Y	N	Response/Comments
1. Does your Firm have a documented Corporate Social Responsibility (CSR) Policy?			
2. Does your Firm make the Portfolio Companies and Limited Partners aware of its CSR initiatives?			
3. Has your Firm committed to the UNPRI ⁶ ?			
4. Are there any CSR initiatives in progress at your Firm, which are also supported by the Portfolio Companies?			

VII. Value Creation			
Questions	Y	N	Response/Comments
1. Has your Firm adopted a value creation model?			
2. If yes, please describe how your Firm quantifies the value created.			

Thank you for taking the time to complete this Questionnaire. Your assistance in providing this information is very much appreciated. If there is anything else you would like to tell us or if you would like to comment on the survey per se, please use the space provided below to do so. Also, please be kind to tick this Box if you wish to participate as a member of the Task Force.

I wish to participate in the MENA Task Force on Corporate Governance for the Private Equity Industry.

⁶ Please refer to the Glossary for description of the term UNPRI

Glossary of Terms

Corporate Governance⁷: Corporate Governance refers to that blend of law, regulation, and appropriate voluntary private-sector practices which enable the corporation to attract financial and human capital, perform efficiently, and thereby perpetuate itself by generating long-term economic value for its shareholders, while respecting the interests of stakeholders and society as a whole.

The principal characteristics of effective corporate governance are: transparency (disclosure of relevant financial and operational information and internal processes of management oversight and control); protection and enforceability of the rights and prerogatives of all shareholders; and, directors capable of independently approving the corporation's strategy and major business plans and decisions, and of independently hiring management, monitoring management's performance and integrity, and replacing management when necessary.

General Partner (GP): A partner in a private equity management company who has unlimited personal liability for the debts and obligations of the limited partnership and the right to participate in its management.

Independent Director: A member of the board of Directors of a company whose sole relationship with the company is his directorship on the Board

Insider Dealing: Insider trading is the trading of a corporation's stock or other securities (e.g. bonds or stock options) by individuals with potential access to non-public information about the company.

Limited Partner (LP): An investor in a limited partnership (i.e. private equity fund). Compare general partner.

Limited Partnership: The legal structure used by most venture and private equity funds. The partnership is usually a fixed-life investment vehicle, and consists of a general partner (the management Firm, which has unlimited liability) and limited partners (the investors, who have limited liability and are not involved with the day-to-day operations). The general partner receives a management fee and a percentage of the profits. The limited partners receive income, capital gains, and tax benefits. The general partner (management Firm) manages the partnership using policy laid down in a Partnership Agreement. The agreement also covers, terms, fees, structures and other items agreed between the limited partners and the general partner.

Market Manipulation: It is a deliberate attempt to interfere with the free and fair operation of the market and create artificial, false or misleading appearances with respect to the price of, or market for, a security, commodity or currency.

Non-Executive Director: A member of the board of Directors of a company who has no management or executive function within the underlying company.

Private Equity: Private equity provides equity capital to enterprises not quoted on a stock market. Private equity can be used to develop new products and technologies (also called venture capital), to expand working capital, to make acquisitions, or to strengthen a company's balance sheet. It can also resolve ownership and management issues. A succession in family-

⁷ Source: Ira M Millstein; Senior Associate Dean for Corporate Governance; Yale School of Management.

owned companies, or the buyout and buying of a business by experienced managers may be achieved by using private equity funding.

General Partner: A partner in a private equity management company who has unlimited personal liability for the debts and obligations of the limited partnership and the right to participate in its management.

Private Equity Fund: A private equity investment fund is a vehicle for enabling pooled investment by a number of investors in equity and equity-related securities of companies. These are generally private companies whose shares are not quoted on a stock exchange. The fund can take the form of either a company or an unincorporated arrangement such as a Limited Partnership.

Portfolio Company (or Investee Company): The company or entity into which a private equity fund invests directly.

UNPRI: The Principles for Responsible Investment were developed by an international group of institutional investors reflecting the increasing relevance of environmental, social and corporate governance issues to investment practices. The process was convened by the United Nations Secretary-General. (Website: (<http://www.unpri.org/principles/>)).

List of Task Force Members

Please include your firm's name below (including your full contact details) if you wish to participate as a member of the Task Force

1. Hawkamah Institute for Corporate Governance
2. Abraaj Capital Limited
3. Gulf Venture Capital Association (GVCA)
4. Ernst & Young
5. Standard Chartered Bank
6. UNPRI
7. Zawya