Chapter (5)

Evaluation of Yemeni Legislation in the Light of OECD Standards

1-5. Introduction:

Governance in the banking sector refers to monitoring of performance by the Board of Directors and senior management of the bank, and the protection of the rights of shareholders and depositors. In addition, it implies that attention is paid to the relationship of these and external actors, which is determined by the regulatory framework and the powers of the regulatory body. Governance in the banking sector applies to public, private and joint banks. The key elements in the process of governance consist in two groups: the first group represents internal actors, i.e. shareholders, Board of Directors, executive management, supervisors and internal auditors; the second group is represented by external actors, i.e. depositors, deposit insurance fund, the media, and credit rating agencies, as well as the legal, regulatory and supervisory framework. In this regard, the fundamental conditions that must be met to exert effective control over the performance of banks can be summarized in transparency, availability of information, application of International Accounting Standards, and building human capacities through training. But above all, in order to improve the effectiveness of corporate governance in banks, legal, legislative and regulatory frameworks must be in place.

Yemen has a small economy, dominated by informal businesses and sole proprietorships. Governance considerations in such an environment mainly apply to the small number of very large entities, principally joint stock companies, public sector companies, and very few large foreign branches. Yemen’s laws are a patchwork of relatively simple laws with few contradictions, however, with many exceptions created by one law overriding another over time. Laws emphasize formal compliance more than practical control. Laws of importance to this study include the Companies Law, Commercial Law, Income Tax Law, and various sector specific laws, notably the Banks Law. Yemen’s laws, although less than comprehensive, are not the weak link in Yemen’s regulatory framework. No culture of compliance exists in relation to secular laws. Widespread non-compliance, combined with weaknesses in the court system and limited enforcement authority on the part of regulators all mean that even strong laws cannot be effective.
Yemen’s bankruptcy law is effective, and favors creditors to such an extent that bankruptcy is avoided at all costs, since it typically means the end of the bankrupt entity.

Banks are by far the most heavily regulated entities in Yemen, and the CBY is almost the only governmental entity that resembles a typical independent regulatory agency in its oversight powers. The CBY also doubles as a central bank and treasury, issuing and managing currency and reserves, and acting as a banker to the government (CIPE, 2009: 18). As a regulator in practice, the CBY has broad power to issue regulations governing the banks, monitor their compliance, but comparatively weak enforcement authority. The CBY Law actually limits the CBY’s regulatory authority, but in practice the CBY sets a wide variety of rules by issuing circulars which are binding on all banks.

In this regard, governance in the Yemeni banks is influenced by many laws, regulations and directives in force, including the Yemeni Companies Act No. 22/1997 and its later amendments, the Commercial Law No. 32/1991 and its later amendments, the Yemeni Banking Law No. 38/1998, the Islamic Banks Law No. 21/1996 and its amendments, the Auditing Profession Law 26/1999, the Civil Law 14/2002, and the Central Bank Act (along with the instructions issued by the Central Bank of Yemen), in addition to the Yemeni Guidelines Manual of Corporate Governance issued by the Yemeni Businessmen Club.

Based on the above, this chapter displays and assesses the Yemeni laws, rule and regulations pertinent to the accounting profession with an aim to meet the basic rules and requirements of corporate governance issued by the Organization for Economic Cooperation and Development (OECD), as follows:

5-2. Ensuring the Basis for an Effective Corporate Governance Framework

5-3. The Rights of Shareholders and Key Ownership Functions

5-4. The Equitable Treatment of Shareholders

5-5. The Role of Stakeholders in Corporate Governance

5-6. Disclosure and Transparency

5-7. The Responsibilities of the Board
5-2. Ensuring the Basis for an Effective Corporate Governance Framework:

This item of OECD includes the following elements:

5-2-1. 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:

To achieve efficiency and transparency of financial markets in Yemen for the sake of activating corporate governance is irrelevant and is not possible, because Yemen has a small size economy. Besides, Yemen does not have stock markets, and has a very limited financial services sector, and has its economic activity entirely dominated by a small number of sectors such as oil, agriculture, trade, government and transportation sectors, which altogether make up more than 75% of the total economy. Corporations are relatively few in number (a few dozens only in their entirety), but represent a lot of the largest projects in Yemen, especially in the most organized sectors that require efficiency, integrity and transparency of stock markets, or where contribution of capital can be requested from a third party, e.g., the private sector (insurance companies, banks and huge communications operators) and other large businesses that have foreign investors and technical support especially in the industry sectors. These big companies or projects in which the government has a share constitute the primary focus of traditional governance of companies. Therefore, the authorities concerned with this regard should pay much attention to this issue, especially the rapid establishment of a securities market, the re-drafting of legal texts that hinder the process of attracting foreign investment, and the issuance by the Central Bank of Yemen of guidelines of application of corporate governance in banks and forcing bank to issue guidelines for governance of their own.

The only exception to what has been mentioned above is an excerpt from what has been indicated in *Handbook of Guidelines of Corporate Governance* issued by the Yemeni Businessmen Club in Paragraph (1-1): “The Board has to ensure a proper governance culture and make sure of the company’s commitment to it. Besides, the Board has to ensure a framework of effective governance and is encouraged to set up special training programs on governance and its implementation at various levels in the company starting with the Board itself”.
5-2-2. The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent and enforceable:

With regard to transparency and consistency with the provisions of law, Articles (92) and (150) of the Companies Act Yemeni include following:

1. Each year, the Board of Directors shall publish in an official daily newspaper – within two months from the date of approval of the General Assembly on the accounts – the budget and final accounts of the concluded fiscal year and a list of members of the Board of Directors and accounts inspectors.

2. The chairman of the Board shall publish the budget, the profit and loss accounts, a compendium of his report, and the full text of the auditor’s report in an official daily newspaper published in Arabic in company’s headquarters at least 15 days before the date of the General Assembly.

The Handbook of Guidelines of Corporate Governance by the Yemeni Businessmen Club also includes the following: partners and other stakeholders should be given access on time to sufficient and adequate information regarding the company’s financial performance, its objectives, the ownership of the majority of quotas or shares, voting rights, compensation policies, perquisites of the Board and senior managers, transactions with the concerned parties, and the structure and policy of governance. Such information should also be disclosed in accordance with the international standards of accounting and auditing, IFRS and ISA, except as incompatible with the standards adopted locally in the laws and regulations in force.

5-2-3. The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.

Yemeni laws include many legal articles relating to the division of responsibilities among concerned authorities, including monitoring of companies, and the Central Bank of Yemen. Article (143) of the Yemeni Companies Act has indicated that the Board of Directors has to set up systems and internal regulations to regulate its work and determine the terms of reference and the rights and duties of workers, taking into account the provisions stipulated in the applicable laws and the company’s system.
In Item (4), the *Handbook of Guidelines of Corporate Governance* indicates that duties and responsibilities of the members of the Council should be defined clearly, disclosed, and fully implemented. It also states that “the Board should clearly define the responsibilities and ways to hold accountable those in charge, and to make mandatory the compliance with them at all administrative levels in the company”.

5-2-4. 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.

In this regard, Articles (27), (29), (30), (31) and (32) of the Yemeni Banks Act has indicated as follows:

1. Each bank established in the Republic, or established abroad and does business in the Republic through its branches or offices, has to prepare – according to the form prescribed by the Central Bank, and the accounting rules and principles established by it, within three months of the end of its fiscal year – its balance sheet and profit and loss account up to the last working day in the financial year for its operations in the Republic.

2. The Central Bank is entitled to set auditing standards as it deems appropriate for the audit of any bank to ensure the safety and integrity of the bank, and banks should follow those standards in the performance of the functions of internal and external audit.

3. The Central Bank shall from time to time inspect any bank or any of its branches or affiliated institutions whenever the Central Bank considers it necessary or desirable to ensure that the bank is in sound financial condition and that it is committed to the requirements of this law and the law of the Central Bank in its management.

4. Each bank shall appoint a chartered accountant yearly, and the Central Bank has the right to object within a period of a month from the date of notification of the decision of the appointment. In case the Central Bank objects to the chartered accountant, the concerned bank must nominate another accountant to perform the duties. If the bank does not appoint another accountant acceptable to the Central Bank, the latter has the authority to appoint a chartered accountant of the bank and to estimate his fees, and the bank is committed to pay.

5. Each bank (and its institutions) shall provide all books, records and accounts and cash and bonds, documents and receipts in its possession or custody with regard to its business in the Republic,
and also all information relating to such business for the purpose of examination by an inspector appointed by the Central Bank within the time limit specified by the inspector.

6. If the Central Bank considers that inspection has revealed that the concerned bank manages its work illegally or improperly or that there is a shortfall in capital, the Central Bank may:
   i. Ask the bank to take some specific measures deemed necessary by the Central Bank to correct the situation, which may include, but not limited to, compliance with the plan agreed upon with the Central Bank, suspension of dividends and bonuses, compulsory sale of non-core assets, reduction of assets and operating, suspension of additional loans to specific borrowers, audit of any specific accounts, and – in extreme cases – the liquidation of the bank’s activities.
   ii. Appoint a person deemed by the Central Bank to have the competence and expertise required to advise the bank on the steps that should be taken to correct the situation and determine the fees that must be paid by bank.
   iii. Manage the bank.

In that respect, we find that the Yemeni Companies Law does not refer in its articles to the need to adhere to apply generally accepted accounting principles or international accounting standards, which requires the Yemeni legislators to reconsider the situation, especially as Yemen is seeking to expand and attract foreign investment.

5-3. The Rights of Shareholders and Key Ownership Functions:

5-3-1. Basic shareholder rights should include the right to:

5-3-1-1. Secure methods of ownership registration:

The Yemeni Companies Act in Article (110) indicates that the shareholder has all rights related to the share, particularly the right to receive part of the distributed profits and of the company’s assets upon liquidation, the right to attend the general assemblies and participate in its deliberations and voting, the right to dispose of the share, the right to request to see the company’s papers and books and observe performance of the board, the right to file a suit of responsibility on board members, and the right to challenge the decisions of the General Assembly, provided that such rights tally with the provisions and restrictions contained in this Act or in the company’s system.
5-3-1-2. Convey or transfer shares;

Regarding convey or transfer of ownership of the stock, the Yemeni Companies Act includes in Articles (100) and (101) the following:

- shares should be tradable;
- nominal shares should be traded by enrollment of the share in the disposition register and by marking the share out, and objection to disposition may be permissible for the company or any third parties only after the date of enrollment.
- Shares are traded to their bearer once delivered; if ownership of a nominal share comes through inheritance or will, the heir/custodian shall request transfer of ownership in the share register.
- if the transfer of ownership of stock comes pursuant to a final judgment, registration in the share register is made in accordance with this ruling, and the share ownership is indicated to have been transferred by inheritance, will or judicial order.

Article (14) of the Banking Law also includes that no bank is entitled to pay any share of the profits, or declare it, or register it for the benefit of shareholders, or conduct any transfer of interest, unless all expenditures of capital (e.g. including initial expenses, foundation expenses, shares sales commission, brokerage, and any other losses or disbursements not in the tangible assets) have been fully covered, and the provisions of this law have been carried out, and the bank has obtained the prior written consent of the Central Bank.

5-3-1-3. Obtain relevant and material information on the corporation on a timely and regular basis;

Regarding timely and regular access to important and relevant information, Article 92 in the Companies Act of Yemen includes that the Board of Directors shall publish in an official daily newspaper – within two months from the date of approval of the General Assembly on the accounts – the budget and final accounts of the concluded fiscal year and a list of members of the Board of Directors and accounts inspectors. Moreover, the Yemeni Banking Law in Articles (27), (28) and (31) has indicated the following:
1. Each bank has to submit to the Central Bank within four months of the end of its fiscal year a copy of its last annual budget ratified by a chartered accountant, and has to publish this budget in at least one official daily newspaper that has circulation all over the Republic.

2. All the year around, each bank has to put in a conspicuous place in each of its branches or offices in the Republic a copy of the last annual budget approved by a chartered accountant.

3. Each bank has to send to the Central Bank, not later than the fifteenth day of the next month, a statement, according to the model approved by the Central Bank, showing the assets and liabilities including branches and offices in the Republic as well as analysis of advances/loans and bills discounted and other assets as it is at the end of the last day of the previous month and analysis of foreign exchange operations during the same month.

4. Each bank (along with its affiliated institutions) has to provide all books, records and accounts and cash and bonds, documents and receipts in their possession or custody relating to its operations in the Republic as well as all information relating to such operations for the purpose of examination by an inspector appointed by the Central Bank within the time limit specified by the inspector.

5-3-1-4. Participate and vote in general shareholder meetings

Regarding participation and voting at the AGM, Articles (158, 159, 161, 160 and 163) of the Yemeni Companies Act include as follows:

1. Each shareholder has the right to attend the general assembly of shareholders.

2. The invitation of the General Assembly of shareholders shall be announced in a daily official newspaper at least fifteen days before the date of meeting; however, it may be possible to make invitation through registered letters sent to all shareholders. Besides, the agenda should be included in the announcement.

3. The Board of Directors prepares the general assembly’s, which includes in particular the following:
   - hearing the report of the Board of Directors and the auditor’s report and ratification.
   - considering the company’s balance sheet and profit and loss, and ratification after hearing the auditor’s report.
- election of the members of the Board of Directors to represent the shareholders, the appointment of auditors, and the determination of the fees given them during the next fiscal year if not specified in the statute.
- consideration of proposals of the board on profits and taking the necessary decision on them.
- giving permission to the Board of Directors to grant donations.
- considering dismissal of any board members when necessary.
- discharge of the members of the Board of Directors and the auditor from liability or reporting a claim of responsibility on them depending on the circumstances.

4. A register shall be opened in the headquarter of the company at least one week before the date of the general assembly, recording the names of the shareholders wishing to participate in the general assembly and the number of shares held by the shareholder (in ownership and/or proxy). The shareholder is then given a card stating the number of votes s/he deserves under the supervision of and signed by one of the members of the Board of Directors on the responsibility of the Council.

5. Each shareholder has the right to discuss the topics included in the agenda of the general assembly and to question the board members and supervisors on them, and may submit any questions at least five days before the assembly meeting; any clause in the system serving to deprive the shareholder of the right to interrogation or asking questions shall be void.

6. The Board of Directors shall respond to questions from shareholders to the extent that does not jeopardize the interest of the company or any other body or public interest; but if the shareholder sees that the answer to his question is not sufficient, he may seek the general assembly’s arbitration and the decision shall be enforceable; and each shareholder has a number of votes in the general assembly equal to the number of shares.

The Yemeni Companies Act also includes in Articles (166), (169) and (170) the following:

1. Voting in the general assembly shall be conducted in the manner specified by the company’s system, and must be made by secret ballot if the issue is related to a decision of election and/or dismissal of members of the Board of Directors or filing a case of liability suit against them or if requested by the chairman of the Board or 10% of the shareholders at least.

2. The Board must give the shareholder a copy of the minutes of the meeting if requested. The resolutions issued by the general assembly in accordance with provisions of the law and the
company’s system shall be considered binding on all shareholders, whether or not they are present at the meeting (in which these decisions are issued) and whether or not they agree over them. The board of directors shall implement the resolutions of the general assembly.

5-3-1-5. Elect and remove members of the board:

Regarding the election of members of the Board of Directors, Articles (124), (125), (126), (130) and (131) of the Yemeni Companies Act include the following:

1. The election of members of the Board of Directors by the general assembly shall be held by secret ballot in writing, and they may be re-elected unless, otherwise, there is an objection to that in the company’s system.

2. Each year, the Board of Directors shall elect from among its members a Chairman and Vice-Chairman to act in the former’s absence; the Board shall appoint secretary chosen from among its members or others; and the Ministry shall be informed with a copy of the election results (of Chairman, Vice-Chairman and commissioned members) and also of any amendment to the structure of the Board.

3. If the position of one of the members of the Board of Directors is vacated, the authority that appointed the predecessor shall elect in his place from among the shareholders another member who is eligible for membership; this appointment shall be displayed to the general assembly at its first meeting for approval or else election of another member; and in all cases, the new member shall carry through his predecessor’s term. In case a third of the positions of the Board of Directors become vacant, the general assembly shall be invited to convene immediately to elect replacements unless the general assembly has been determined to convene within a period not exceeding thirty days. If the appointment of some members is decided to be made through a government agency, this agency is entitled to nominate the members of Board of Directors representing its interest by dint of a resolution of the minister.

4. It may not be permissible to hold a dual function simultaneously of membership of the Board of Directors and any other job, and the election of an employee to the membership of the Board of Directors is considered null and void, but on behalf of his job.

5. Election to membership of the Board of Directors may not include anyone who has been indicted in a crime involving moral turpitude and dishonesty or in one of the crimes stipulated in this law, unless he has been rehabilitated.
6. With the exception of the representatives of the government and honorary persons in the Board of Directors, a person may not be elected a member of the board of directors unless he declares in writing to accept the nomination, and the declaration shall include a statement indicating the member’s recognition of his nationality and the companies he has worked in and the type of his work during the three years prior to nomination.

7. With the exception of the representatives of the government and honorary persons in the Board of Directors, a member of the board of directors shall be an owner of a number of shares tantamount to 2% of its capital at least; however, a member may by an owner of a number of shares upon the time of his election not less than thirty thousand riyals, and the chairman of the Board of Directors is required to have twice the number of shares required from the member; the touchstone shall depend on stock prices in the stock market or on the nominal value of shares if the company has not been registered in stock market.

8. The number of shares indicated in the preceding paragraph shall be allocated to ensure the responsibility of board members, and those shares shall be deposited in one of the accredited banks within a month from the date of election of the member and shall remain non-tradable until the expiry of the term and the expiry of lawsuit liability period determined by the company of the member; the shares shall be indicated as non-tradable; the lawsuit responsibility of a member shall expire at the passage of two years from the date of the commission of the act invoking responsibility.

The Yemeni Companies Act also includes Articles (135) and (145) as regards dismissal of members of the board:

1. The general assembly shall dismiss all or some of the members of the Board of Directors elected by it even if there is a clause in the company’s system prohibiting the dismissal; a dismissed member can make a claim for compensation if the dismissal occurs at an inappropriate time or for some inappropriate reason; the government and honorary persons may dismiss their representatives in the Board of Directors without the consent of the Board or the assembly.

2. Dismissal is made based on a decision by the Board of Directors or at the request of a number of shareholders representing 10% of the capital and in the latter case, the chairman of the Board shall display the dismissal resolution on the general assembly.
3. If the dismissal of the members of the Board of Directors is requested two months or more before the due date for the general assembly, the chairman of the Board of Directors shall call for an extraordinary meeting within ten days from the date of the request for dismissal; otherwise, the Ministry shall extend an invitation.

4. The general assembly shall not consider the request of dismissal unless it is included in its agenda, unless serious facts appear at the meeting and require dismissal; in all cases the member to be shall be given the opportunity to respond to what is attributed to him, or else decision of dismissal is void.

5. If the general assembly decides to dismiss one of the members of the Board of Directors, this member may not be re-elected for five years from the date of the Assembly’s resolution of his dismissal.

6. Each member of the Board of Directors of the company and each manager has to submit to the Board of Directors at its first meeting after his appointment a declaration stating his ownership of shares in the company and assignment of loans issued in his name or on behalf of his spouse or minor children, as well as all the changes in these instruments including an acknowledgment on the date of each individual transaction, and the number of shares or the assignment of loans he traded, including the price of purchase and sale; anyone who violates the provision of this paragraph shall be considered dismissed by virtue of the law.

5-3-1-6. Share in the profits of the corporation:

As regards sharing the company’s profits, Articles (190), (191) and (192) of the Yemeni Companies Act include the following:

1. A shareholder deserves his share in the profits as soon as the resolution for distribution is made by the general assembly.

2. The Board of Directors shall implement the resolution of the general assembly to distribute profits to shareholders within two months from the date of issuance of the resolution unless the company’s system stipulates for a less period.

3. The distribution of profits accrued is made by virtue of a resolution of the general assembly upon a proposal of the Board of Directors in accordance with the following order:
- Accrued profits shall be sorted out from the company’s obligations and taxes owed by the company under business laws and systems to secure payment of these obligations in a timely manner.

- Accrued profits shall be sorted out from the prescribed percentage of capital consumption and compulsory legal reserve and optional statutory reserve within the boundaries of the ratios prescribed herein this law and order to be used for the purposes allocated to them.

- The General Assembly decides bonuses allocated to members of the board of directors and accounts inspectors.

- The remaining profits shall be distributed to shareholders as per their shares.

4. The Board of Directors shall set aside 10% of the net profits every year as legal reserve and the general assembly may decide to stop this process if the reserve reaches half of the capital.

5. It may be provided by the Company to set aside a certain percentage of the net profits to form an optional statutory reserve allocated for the purposes set forth in the system, and this reserve may not be used in a way other than what it is devoted unless a resolution by the Extraordinary General Assembly allows otherwise. If the statutory reserve is not earmarked for specific purposes, the Ordinary General Assembly may on a proposal of the Board of Directors decide to spend it for the benefit of the company.

5-3-2. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes:

Instances for such include:

5-3-2-1. Amendments to the statutes, or articles of incorporation or similar governing documents of the company;

With respect to amendments of the statutes or articles of incorporation or similar governing documents of the company, Articles (172), (194), (195) and (196) of the Yemeni Companies Act include the following:

1. The Extraordinary General Assembly has the exclusive right to amend the company’s incorporation with another company or other institution, or dissolution before the end of the period, or extension of its duration.
2. Subject to the provisions of Article (111) of this Law, the Extraordinary General Assembly may introduce any amendments to the company’s system, except for: 1) amendments that would increase financial burden of shareholders; 2) modification of the primary purpose of the company; and 3) shifting of the company’s headquarter established in the Republic to a foreign country.

3. The resolutions of the Extraordinary General Assembly concerning the modification of the Company’s system, its dissolution or merger with another company take effect only if approved by the Minister.

4. The Board may request approval of an amendment enclosed with the minutes of the Extraordinary General Assembly meeting at which the decision for amendment is adopted, along with all related papers and documents, from the Ministry during five days of the date of issuance of the resolution.

5. The Minister shall issue his decision on the amendment within fifteen days from the date of returning the papers to the Ministry, and approval to that is implied if this period expires without deciding on the request.

6. The company shall make the payment of the expenses of publishing the Minister’s decision to approve the amendment to the company accompanied by General Assembly amendment resolution in an official newspaper. The Board shall circulate the amendment in the commercial register in accordance with the provisions of the law.

In this regard, the Yemeni Banking Law included in Article (10) that no bank is entitled to make any amendment to its statute and memorandum of association without the prior approval of the Central Bank. Besides, each bank founded abroad and holds a license to operate in the Republic must submit a notice to the Central Bank thirty days prior to the date of any meeting of the bank to consider an amendment to its statute or memorandum of association document attached with a copy of the proposed amendment. Also, no bank is entitled to merger or to join any bank or other institution or make ownership of any part of its capital, directly or indirectly, to any person/party so that this person/party has the right to more than 10% of the total shares or voting power without the prior consent of the bank Central.

5-3-2-2. The authority of additional shares

Regarding the authorization of additional shares Yemeni Companies Act has indicated in Articles (197-203) as follows:
1. The Extraordinary General Assembly may decide to increase capital only after the original capital has been delivered as a whole. Furthermore, the Extraordinary General Assembly resolution must determine the method to be followed in the capital increase and the amount of the increase and the issue price of the new shares, and the Board of Directors shall not be entitled to these authorities.

2. The nominal value of the new shares shall be equivalent to the nominal value of the shares of origin, and the Extraordinary General Assembly may decide to add a premium to the face value of the shares and to determine the amount and the premium added to the legal reserve even if it reaches half of the capital.

3. The original shareholders have priority right to subscribe new shares, and any provisions stating otherwise are considered non-existent. A statement shall be published in one of the official daily newspapers containing the shareholders’ declaration of priorities in the IPO and the opening and closing dates and the price of the new shares. In addition, it may be possible to notify the shareholders regarding this statement via registered letters, unless this would result in huge expenses for company. Each shareholder has to show his desire in writing regarding the use of his right to priority in the new IPO shares within fifteen days from the date of publication of this statement.

4. The new shares shall be distributed to the original shareholders who have submitted subscription request if the requested shares do not exceed the required stock. In case the required stock exceeds the offered shares, the shares shall be distributed to the original shareholders as per the number of shares owned by a shareholder provided that the number of shares does not exceed the number of new shares requested by the shareholder. If offered stock exceeds the shares required, the remaining new shares shall be put for public subscription and shall be subject to IPO provisions relating to public subscription at the founding of the company, and to provisions relating to the assessment of shares in kind in which context the General Assembly serves as the Constituent Assembly.

5. If new shares are put forward for public subscription, a prospectus shall be made including, in particular, the following data: (1) the reasons for the capital increase (2) the decision of the Extraordinary General Assembly to increase the capital and the Minister’s decision to approve the decision. (3) the company’s capital when issuing new shares and the amount of the proposed increase and the number of new shares and share premium, (4) data on shares in kind, (5) data on the average profits distributed by the company during the three years prior to the decision to
increase the capital, and (6) approval of the auditor confirming the correctness of the data contained in the prospectus signed by the chairman of the Board and the auditor who shall both be jointly liable for the validity of the data contained therein.

5-3-2-3. Extraordinary transactions, including the transfer of all or substantially all assets that in effect result in the sale of the company:

Concerning the above, the Yemeni Banking Act in Article (10) points that any bank operating in the Republic is not entitled to sell all or any significant portion of its assets exceeding the value specified by the Central Bank except with the prior approval of the Central Bank and according to the conditions and procedures that accompany such approval. The Central Bank may issue a decision to cancel any approval issued under this paragraph if it finds that the approval issuance was based on incorrect data and the concerned bank shall implement the Central Bank’s decision but is entitled to appeal the decision in court within thirty days from the date of announcing the declaration.

5-3-3. 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:

5-3-3-1. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting.

With respect to the above, the Yemeni Companies Act includes in Article (159) the invitation to the General Assembly shall be declared to the shareholders in at least one official daily newspaper and must be announced fifteen days at least before the deadline; however, it may be sufficient to send invitation by registered letters sent to all shareholders, and the invitation must include the agenda.

5-3-3-2. Shareholders should have the opportunity to ask questions to the board, including questions relating to the annual external audit, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations.
Regarding the above, Article 163 of the Yemeni Companies Act indicates that each shareholder has the right to discuss the topics on the agenda of the General Assembly and to question board members and supervisors on them, and may raise any questions at least five days prior to the Assembly; and that any clause in the system serving to deprive the shareholder of the right to interrogation or ask questions will be void.

5-3-3-3. Effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members, should be facilitated. Shareholders should be able to make their views known on the remuneration policy for board members and key executives. The equity component of compensation schemes for board members and employees should be subject to shareholder approval.

Regarding the point above, the Yemeni Companies Act indicates in Article (163) that each shareholder has a number of votes in the General Assembly equal to the number of shares he owns.

5-3-3-4. Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.

Regarding the paragraph above, the Yemeni Companies Act guarantees in Article (158) indicates that the presence of a guardian, trustee or a legal representative of the shareholder does the same legal function as the presence of the original shareholder at AGM, even if that guardian or representative is not a shareholder in the company.

5-3-4. Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed:

With respect to this matter, Article (14) in the Yemeni Banking Law ensures that a bank is not entitled to pay any part of the profits, declare or register it for the benefit of shareholders, or conduct any transfer of interest account, unless all expenditures from capital (including initial expenses, stocks sale commission expenses, brokerage and any other losses or disbursements not subsumed in the tangible assets) have been fully covered and the provisions of this law have been implemented and the Central Bank’s prior written consent has been obtained.
5-3-5. Markets for corporate control should be allowed to function in an efficient and transparent manner:

Yemeni legislation does not include any legal texts related to the paragraph referred to above.

5-3-6. The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated:

Article (81) in the Companies Act Yemeni states that the founders must call subscribers to the Constituent Assembly within fifteen days from the date of closing of the IPO, and the period between the date of the call and the date of the meeting may not exceed three weeks but not less than ten days. In all cases, the meeting may be held before the expiration of twenty days from the date on which the founders receive the report of the experts committee on the assessment of shares in kind. Irrespective of the number of shares, each subscriber has the right to attend the Constituent Assembly.

This paragraph includes two main dimensions, as follows:

5-3-6-1. Institutional investors acting in a fiduciary capacity should disclose their overall corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights.

In this regard, Article (145) in the Yemeni Companies Act indicates that each member of the Board of Directors of the company and each director/manager has to submit to the Board of Directors at its first meeting after his appointment a declaration stating owned stake in the company, the assignment of loans issued in his name or in the name of spouse or minor children, as well as all the changes in these instruments including recognition of the history of each individual transaction and the number of shares or the assignment of loans which he traded and the purchase or sale price. By virtue of the law, anyone who violates the provision of this paragraph is considered dismissed. The company shall prepare a special record to register the ownership of the company’s shares and assigned loans of each member of the Board of Directors and each director in his name or in the name of his spouse or minor children as well as any change on this property.
5-3-6-2. Institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.

With regard to the paragraph above, the Yemeni Companies Act includes in Articles (132), (133) and (146) the following:

1. The Director of a shareholding company or any other user in the company shall not either permanently or temporarily or incidentally function in any other shareholding company except after obtaining a license from the Board of Directors which should be renewed annually.

2. Anyone who is a member of the board of directors of a bank or a company in which the State or other public bodies, institutions and companies own at least 10% of its capital shall not function in his personal capacity or in his acting capacity as a member in the board of directors of another bank or any other joint stock company. Anyone who occupies the post of Director or any other function in one of the banks or companies referred to in the preceding paragraph may not function permanently in any other shareholding bank or company, and anyone who violates the provisions of this article shall be considered resigned from his job at the bank or company.

3. Not without the approval of the General Assembly shall it be possible to conclude any contract or do any business for the personal interest of a member of the Board of Directors or a director of a shareholding company, with the exception of business and contracts that come accidentally through public tenders if the offer of the board member or manager is the most appropriate. The said board member or manager must notify the Board of his personal interest in the business and contracts that are for the company and to prove this notification in the minutes of the meeting and shall not participate in the vote on the resolution issued regarding the mentioned business or contracts. The chairman of the Board of Directors shall notify the General Assembly meeting regarding business and contracts where one of the board members or managers has a personal interest, and must be of such communication shall be accompanied by a report from the auditor.

5-3-7. 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.

Yemeni legislation does not include an explicit and clear text in this regard.
5-4. The Equitable Treatment of Shareholders:

This article of equitable treatment of shareholders in corporate governance framework implies fair treatment of all shareholders, including minority and foreign shareholders. All shareholders should be given the opportunity to obtain effective compensation for any violations of their rights.

5-4-1. All shareholders of the same series of a class should be treated equally:

The Yemeni Companies Act indicates in Article (163) that each shareholder has the right to discuss the topics included in the agenda of the General Assembly and to question the board members and supervisors on them, and may raise any questions to the Assembly at least five days prior to its meeting; and every clause in the system serving to deprive the shareholder of the right to interrogation or asking questions is considered null and void; and each shareholder has a number of votes in the General Assembly equal to the number of shares he has.

5-4-1-1. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress.

In this regard, the Yemeni Companies Act has included in Article (154) that members of the Board of Directors may be questioned regarding compensation for damage to a shareholder or others because of their mistakes.

5-4-1-2. Votes should be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares.

Article (163) of the Yemeni Companies Act indicates that each shareholder has a number of votes in the General Assembly equal to the number of shares he has.

5-4-1-3. Impediments to cross border voting should be eliminated.

The current laws, regulations and instructions do not include a clear and explicit text in this regard.
5-4-1-4. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes.

The current laws, regulations and instructions do not include a clear and explicit text in this regard.

5-4-2. Insider trading and abusive self-dealing should be prohibited.

In this regard, the Yemeni Companies Act ensures in Articles (146) and (147) that it is not permissible without the approval of the General Assembly to conclude any contract or do any business in which a board member or manager of shareholding company has a personal interest with the exception of business and contracts that are accidentally public tenders if a board member or manager is the most suitable bidder. Also, the board member or manager must notify the Board stating his personal interest in the business and the contracts struck for the company and prove this notification in the minutes of the meeting and shall not participate in the vote on the decision issued regarding the mentioned business or contracts. The chairman of the Board shall indicate the same at the General Assembly meeting, and such communication shall be accompanied by a report from the auditor.

Not without a special license from the General Assembly shall a board member or manager of a JSC (Joint-Stock Company) participate in any action that would compete with the company or trade for his own personal interest or on behalf of another in a branch of activity practiced by the company, else the company has the right to claim compensation from him or consider the transactions initiated for his own interest as belonging to the company itself.

5-4-3. 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.

In this regard, the Yemeni Companies Act in Articles (130) and (133) indicates that it is not permissible to combine the membership of the Board of Directors and any public function and is considered null and void the election of the employee to the membership of the Board of Directors, but on behalf of his job. Anyone who is a member of the board of directors of a bank or
a JSC in which the State or other public bodies, institutions and companies own at least 10% of its capital shall not participate in his personal capacity or in his acting capacity as a member in the Board of Directors of another bank or any other joint stock company. Anyone who occupies the post of Director or any other function in one of the banks or companies referred to in the preceding paragraph may not function permanently in any other shareholding bank or company, and anyone who violates the provisions of this article shall be considered resigned from his job at the bank or company.

This is in addition to what the provisions of Articles (146) and (147) referred to in the preceding paragraph.

Furthermore, Article (35) of the Banking Law has in this regard indicated that each board member at any bank who has an interest of any kind, whether directly or indirectly, in any advance, loan or credit facility shall reveal the nature of the that interest to the members of Board of Directors of the bank as soon as possible and distribute his statement to all members of the Board of Directors.

Each member of the Board of Directors of a bank holding a position or having property that has a conflict of interest, directly or indirectly, with the interests of the bank or with his or her duties towards the bank should declare this in a meeting of the Board of Directors of the bank and show the nature and extent of the conflict and should not participate in the deliberations of the Board or attempt to impact on any decision related to a matter that has a conflict with his interests.

5-5. The Role of Stakeholders in Corporate Governance:

The principles of corporate governance include the role of stakeholders in the following:

5-5-1. The rights of stakeholders that are established by law or through mutual agreements are to be respected.

The Yemeni Companies Act includes Articles (138) and (139) which state that the Board of Directors shall meet at the invitation of the chairman of the Board of Directors or at the request of at least one third of its members. The Board of Directors must meet at least six times during one fiscal year: a period of two months shall not expire without holding a meeting of the Board.
The meeting of the Board of Directors shall be valid only if attended by half the number of its members at least, unless the company’s system stipulates for a larger percentage or number. The resolutions of the Board are passed by a majority vote of those present, and in the case of a tie, the chairman’s side shall win the vote.

Also, Article (34) of the Banking Law indicates that, without prejudice to the provisions of any applicable law relating to companies, any board member or manager or employee of any bank management will cease to hold his position in the following cases:

A) If he declares bankrupt or inability to fulfill his obligations towards his creditors.
B) If convicted of any crime involving moral turpitude or dishonesty.

5-5-2. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

Articles (152), (153) and (154) of the Yemeni Companies Act state as follows: Members of the Board of Directors shall be held accountable before the company and in front of shareholders if they abuse its management or violate the provisions stipulated in law or in the company’s system and every requirement otherwise is considered non-existent.

Responsibility shall be shouldered by all members of the Board of Directors if the erred resolution has passed unanimously by the board members, whereas in case the erred resolution passed by majority voting, those board members who opposed the resolution shall not be held accountable provided that they prove their objection explicitly in the minutes of the meeting. Absence from the meeting is not considered as a reason for exemption from liability unless the absentee proves to be unaware of the resolution or to be aware of it but unable to oppose it.

If more than one board member are jointly responsible for the error, they shall be held accountable jointly before the company and responsibility shall be distributed in proportion to the share of each of them in the common error. The members of the Board of Directors shall be asked for compensation for damage to the shareholder or others because of their mistakes.

The comptroller shall be responsible before the company to compensate the damage inflicted because of errors committed by him in the implementation of his work. If multiple auditors are involved in error, they shall be held accountable jointly before the company and shall
be asked to compensate the damage to the shareholder or third party because of their mistake. The civil liability of the suit mentioned in the preceding paragraph shall be dropped at the lapse of a year from the date of the General Assembly following the report of the comptroller, but if the act attributable to the comptroller is considered a crime, the liability suit shall not be dropped unless the public suit is dropped.

5-5-3. Performance-enhancing mechanisms for employee participation should be permitted to develop.

Yemeni legislation has no legal texts in this regard.

5-5-4. Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

In this regard, Articles (10), (13), (24), (27), (28), (30) and (31) of the Yemeni Banking Law include:

1. A bank is not entitled to any amendment to its statute and memorandum of association without the prior approval of the Central Bank. Besides, each bank founded abroad and holding a license to operate in the Republic must also submit a notice to the Central Bank before thirty days from the date of any meeting of the bank to consider any amendment in its statutes or memorandum of association, and must attach to the notice a copy of the proposed amendment. A bank is not entitled to make merger or to join any bank or other institution or ownership of any part of its capital, directly or indirectly, to any person, so that this person has the right to more than 10% of the total shares or voting power without the prior approval of the Central Bank.

2. A bank shall maintain liquid assets as determined by the Central Bank, and the Central Bank determines a period of time to deal with increase or decrease in the amount of liquid assets.

3. Each bank shall:
   i) put, throughout the year in a conspicuous place in each branch or office in the Republic, a copy of the last annual budget approved chartered accountant.
   ii) submit to the Central Bank within four months of the end of its fiscal year a copy of its annual budget last ratified by a chartered accountant and publish this budget in at least one official daily newspaper widespread in the Republic.
4. A bank may not receive any deposit in case it lacks the ability to fulfill its obligations, and each board member, director or employee who is aware of the bank’s inability to fulfill its obligations may not receive or authorize the receipt of any deposit.

5. Central Bank may from time to time ask any bank for any other information needed for the purposes of this Act with respect to the operations or processes of the bank or its branches and institutions in the Republic.

6. The Central Bank shall from time to time inspect each bank or any of its affiliated institutions/branches him this is considered necessary or desirable to ensure that the bank is in sound financial condition and that it is committed in its management to the requirements of this Act and the Central Bank’s regulations.

7. Each bank (and its institutions) shall present all books, records, accounts, cash, bonds, documents and receipts in its possession or custody relating to its work in the Republic as well as all information relating to such business for the purpose of examination by an inspector appointed by the Central Bank within the time limit specified by the Inspector.

5-5-5. 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.

Article (32) in the Banking Law indicates that if the Central Bank considers that the inspection has revealed that the concerned bank manages its business illegally or improperly or that there is a shortfall in capital, the Central Bank can:

A) ask the bank to take some specific actions – at the discretion of the Central Bank – considered necessary to correct the situation, which can include, but are not limited to, compliance with the plan agreed upon with the Central Bank, suspension of dividends and bonuses, compulsory sale of non-core assets, reducing assets and operation, suspension of additional lending to specific borrowers, conducting the required audit, and – in extreme cases – liquidation of the bank’s activities.

B) appoint a person considered by the Central Bank to have the required competence and expertise to advise the bank on the steps that should be taken to correct the situation and determine the fees that must be paid by this bank.

C) takes charge of the bank’s management.
5-5-6. The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

The Banking Law includes in Articles (13), (11) and (43) the following:

1. Each bank shall maintain liquid assets as determined by the Central Bank, and the Central Bank is in charge of determining a period of time to deal with increase or decrease in the amount of liquid assets.
2. The Central Bank, pending the approval of its board of directors, may put its hand on any bank operating in the Republic in the following cases:
   A) if the bank fails to comply with the orders and instructions of the Board of Directors of the Central Bank and its policies;
   B) if it shows or suffers from a deficit in its capital;
   C) if its practices (or any of its branches) are considered unsafe with regard to management and sustainability or if its practice is done illegally;
   D) if its condition is unsound or insolvent and will lead to harm the interests of depositors;
   E) if the bank has violated any of the provisions of this Act or regulations of the Central Bank;
   F) if it is a branch of a foreign bank of which the headquarter has been exposed to liquidation or bankruptcy.
3. A bank must maintain permanently the minimum regulatory capital prescribed by the Central Bank from time to time.

5-6. Disclosure and Transparency:

Regarding the disclosure and transparency process, corporate governance rules have included the following:

5-6-1. Disclosure should include, but not be limited to, material information on:

5-6-1-1. The financial and operating results of the company.

In this regard, Article (28) of the Banking Law includes:

Every bank has to:
A) put throughout the year in a conspicuous place in each branch or office in the Republic a copy of the last annual budget approved by a chartered accountant.

B) submit to the Central Bank within four months of the end of its fiscal year a copy of its annual budget last ratified by a chartered accountant and this budget has to be published in at least one official daily newspaper widespread in the Republic.

The Yemeni Companies Act also includes in Article (92) that the Board of Directors has to publish each year in an official daily newspaper within two months from the date of approval of the General Assembly on the accounts the concluded fiscal year’s budget and final accounts and a list of the members of the board of directors and inspectors of accounts.

5-6-1-2. Company objectives.

The guidelines for corporate governance in Yemen indicate in Item (11) that the company should adopt appropriate mechanisms and culture of transparency and disclosure by giving partners and other stakeholders access – in a timely manner – to sufficient and adequate information on the company’s financial performance, objectives, ownership of the majority of quotas or shares, voting rights, compensation policies, allowances of the Board and senior managers, transactions with related parties, and the structure and policy of governance. Disclosure of information should also be made in accordance with the international accounting and auditing standards (IFRS & ISA), except for what conflicts with the standards adopted locally in the laws and regulations in force.

5-6-1-3. Major share ownership and voting rights.

Article (134), (122), (159) and (163) of the Yemeni Companies Act indicate as follows:

1. A member of the Board of Directors should be a shareholder in the company. With the exception of representatives of the government and legal persons in the Board of Directors, a member of the board of directors must be the owner of a number of shares equal to at least 2% of its capital; however, a member may be owner of a number of shares not less than thirty thousand riyals at the time of his election. The chairman of the Board is required to have twice the number of shares required from an ordinary member – stock prices are determined by the stock market or by the nominal value of the shares if the company has not been registered in these markets.
2. The invitation for shareholders to the General Assembly shall be announced in an official daily newspaper at least fifteen days before the deadline; however, invitation on the particular date may be made simply by registered letters sent to all shareholders, including the agenda. Each shareholder has a number of votes in the General Assembly equal to the number of shares.

5-6-1-4. Remuneration policy for members of the board and key executives, and information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.

In this regard, Article (137) and (153) of the Yemeni Companies Act indicate as follows:

The company’s system shall reveal the remuneration policy for members of the board, taking into account the provisions prescribed in the following paragraphs:

1. If the remuneration is specified by a certain percentage of the company’s profits, such percentage shall not exceed 10% of the net profit after deduction of the amounts mentioned in the articles (191 and 192) of this law. Regarding the distribution of this remuneration among members of the board, the provisions stipulated in the Company’s system or in the internal bylaw of the board shall be implemented.

2. If the remuneration for a member of the Board of Directors is specified in terms of a certain stipend or meetings attendance allowance or other in-kind benefits not stipulated by the nature of the work of the company, the above mentioned annual remuneration shall not exceed the extent determined by the executive regulations of this law, whether in relation to a member of the board of directors or in relation to the chairman of the board.

3. In all cases, the remuneration granted by a company in accordance with the two preceding paragraphs may not exceed the limit determined by the executive regulations of this law; every estimate at odds with the provisions of this article shall be null and void, and so is any requirement to pay remunerations exclusive of assessed taxes.

4. The Board shall develop internal systems and regulations to regulate its work and determine the terms of reference and the rights and duties of employees, taking into account the provisions of the applicable laws and the provisions stipulated in the law and the company’s system. The board shall distribute the work among its members in accordance with the nature of the investment carried out by the company, and the Board may form committees from among its members or
others to study issues and reports referred to them, and the Board may authorize one of its members or someone else to do a particular job or strike a certain deal and give him the powers to do so. Any time, the board has the right to solve such committees or discharge the proxies it authorized to do some business.

5-6-1-5. Related party transactions.

In this regard, Article (35) of the Banking Law indicates as follows: Each member of the Board of Directors of a bank holding a position or in possession of property that is directly or indirectly in contravention with the interests of the bank or with his or her duties towards the bank must declare this in a meeting of the Board of Directors of the bank and show the nature and extent of the conflict and should not participate in any negotiation or make any attempt to influence any decision on any issue related to the conflict of interest with them.

The Yemeni Companies Act in Article (146) ensures that a board member or manager must inform the board regarding his personal interest in the businesses and contracts that are made to the company’s account, and this notification must be proved in the minutes of board meeting and the board member or manager shall not participate in the vote on the decision issued regarding the business or contracts in question.

5-6-1-6. Foreseeable risk factors.

The guidelines of corporate governance in the Republic of Yemen, in Item (20) on joint-stock companies and financial and banking institutions, stipulates for risk disclosure: disclosed information must include risk limits and periodic reviews related to them, as well as such risks’ control strategies, management, the effectiveness of these strategies, and internal control apparatus.

Article (15) of the Yemeni Banking Law states that “no bank in the Republic is entitled to grant any person (except in the case of prior approval of the Central Bank) any advance or facilitation or financial guarantee or bear any other obligations on his behalf (excluding the value of guarantees allowed as defined by the Central Bank and maintained by the bank) so that the total gross advances and facilitations or financial guarantees provided to that person and his institutions exceed (15%) of the total capital of the bank, paid and reserved under the provisions
of Articles (11) and (12) of this Act and any other legal reserves exclusive of the specified reserves the provisions. In the case of approval of the Central Bank to increase the rate above (15%), the bank is not entitled to grant any advance or facilitation or financial guarantee or bear any obligation whereby the total gross advances and facilitations and financial guarantees provided to that person and his institutions exceed (25%) of the paid-up capital.

5-6-1-7. Issues regarding employees and other stakeholders.

The laws, rules and regulations of Yemen do not contain a corresponding clear and explicit text in this regard.

5-6-1-8. Governance structures and policies, in particular, the content of any corporate governance code or policy and the process by which it is implemented.

Article (149) of the Yemeni Companies Act states that “The Board of Directors prepares for each fiscal year the company’s budget, profit and loss account, and a report on the activities of the company during the concluded financial year, the financial position of the current year and the proposed way for distribution of net profits resulting therefrom, at least one month prior to the General Assembly. The budget, profit and loss account and other accounts of the company should be clear and conform to the provisions prescribed by the regulations of this law.”

As stated in Item (21) in The Guidelines of Corporate Governance in Yemen, joint-stock companies and financial and banking institutions should disclose aspects of governance whereby: corporations and financial and banking institutions should disclose to the public and regulatory bodies their goals, basic organizational and administrative structure, and their ability to adapt to changes in the market. This includes information on: the legal structure of the establishment, the structure and responsibilities of the Board of Directors, the structure of executive management, and the corresponding obligations of disclosure by the mentioned parties, their competencies, expertise, and structures of incentives, including policies of remuneration and compensation for officials and staff, and the role of the Board of Directors in determining compensation, the amounts of compensation, and organizational structure, nature and extent of the transactions with related parties.
Islamic banks, in particular, should disclose the methodology of formation and function of *sharia*-based supervisory bodies, and the bases of distribution of profits.

5-6-2. Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure.

The Yemeni Companies Act does not include a legal provision requiring companies to disclose information in accordance with International Accounting Standards, or any special criteria. But the provisions of Articles (26) and (27) of the Banking Act indicate that “the Central Bank may put the audit criteria it deems appropriate to audit any bank to ensure the security and safety of the bank, and banks should follow those standards in the performance of functions of internal and external audit. Each bank founded in the Republic, or founded abroad and does business in the Republic through its branches or offices, must prepare (according to the form and accounting rules and principles prescribed by the Central Bank) until the last working day in the financial year for operations in the Republic within three months from the end of its fiscal year balance sheet and profit and loss account.

Item (11) in *The Guidelines of Corporate Governance in Yemen* indicates that disclosure of information should be made in accordance with the international accounting and auditing standards (IFRS & ISA), except for conflicts with standards adopted locally in the laws and regulations in force.

5-6-3. 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.

Articles (174-183) of the Yemeni Companies Act include several adequate details in relation to this matter. Besides, Item (12) in *The Guidelines of Corporate Governance in Yemen* indicates that there should be annual audit by an independent certified chartered accountant in order to secure an external and objective confirmation for the board and the partners that the financial statements represent properly the current financial status and performance of the company at all levels. The company must also, at a minimum, ask for regular rotation by the primary partner in the organization in charge of the external audit. The certified chartered
accountants in charge of the above task must be prohibited to provide any non-audit-related services to the company.

5-6-4. 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.

Articles (183-182) of the Yemeni Companies Act indicate that it is not permissible for the auditor to divulge to the shareholders in the General Assembly or to others any of the secrets of the company he has discovered as part of doing his job, or else he may be relieved of his duties and required to pay compensation. The auditor shall be responsible before the company to compensate the damage inflicted because of errors occurring in the implementation of the work. If multiple auditors commit the error, they share responsibility jointly before the company. The civil liability suit mentioned in the preceding paragraph may be dropped at the lapse of a year from the date of the General Assembly followed by the report of the Comptroller. If the act of violation attributable to the Comptroller is a crime, the liability suit may be dropped only after the public case is dropped. The Comptroller shall be required to compensate the damage caused to the shareholder or a third party because of his mistake.

5-6-5. Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

The laws, rules and regulations of Yemen do not include a clear and explicit text in this regard.

5-6-6. 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.

Yemeni legislation does not include any legal text in this regard. The researcher believes that the reason behind that is due to the absence of a securities market in Yemen.
5-7. The Responsibilities of the Board:

The principles of Corporate Governance issued by OECD include the responsibilities of the Board of Directors as follows:

5-7-1. 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.

The Yemeni Companies Act in Article (139) indicates that voting on the resolutions of the Board of Directors would be made in person, carried out by a member himself; power of attorney may not be permissible, and may not be done by correspondence.

Item (13) in The Guidelines of Corporate Governance in Yemen indicates that members of the Board should be eligible to fill their positions, should meet the necessary conditions prescribed in advance, should have the capacity to clearly comprehend their role in the framework of corporate governance and should be able to exercise their functions in relation to the affairs of the company. The board should work to implement programs of continuing education for board members to enable them to perform their responsibilities better.

5-7-2. Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.

Item (8) in The Guidelines of Corporate Governance in Yemen indicates shareholders of the same class must be treated equally, and the shares of the same class must bear the same rights. Besides, all shareholders should be able to obtain information relating to the rights associated with the quotas and shares of all categories.

5-7-3. The board should apply high ethical standards. It should take into account the interests of stakeholders.

The Yemeni Banking Law indicates in Article (34) that any member of the Board of Directors or any manager or employee of the management of any bank shall cease to hold his position in the following cases:

A) If declared bankrupt or unable to fulfill his obligations towards his creditors.
B) If convicted of any crime involving moral turpitude or dishonesty.
5-7-4. The board should fulfill certain key functions, including:

5-7-4-1. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.

The Yemeni Companies Law indicates in Articles (142 and 143) the following:

1. The Board shall set up internal systems and regulations to regulate its work and determine the terms of reference and the rights and duties of members, taking into account the provisions of the applicable laws and the company’s system. The board shall supervise the maintenance of records and books.

2. The board shall distribute make the terms of reference among its members in accordance with the nature of the investment carried out by the company, and the Board may form, from among its members or others, committees to study the issues and reports referred to it. The Board may authorize one of its members or other person(s) to do a particular job or strike a specific deal and grant that person the power to do so. At any time, the board may solve the committees formed or to counteract the authorization.

Item (16) in The Guidelines of Corporate Governance in Yemen indicates that there should be available proper risk management as both the board and the executive management should understand the aspects of risk facing the enterprise, and ensure that the capital rates reflect this risk in an appropriate manner.

1. The Board of Directors should ensure the availability of appropriate information systems that enable the board to appropriately analyze the risks faced by the institution. Both the Board of Directors and the executive management should benefit significantly from the results of the work carried out by the internal audit unit, chartered accountants, and internal control units.

2. The financial and banking institutions should create jobs and units for risk measurement, monitoring and control, specifying their tasks clearly. Such jobs must be independent enough to take a stand as per market risks.

3. The Board of Directors should be aware of the fundamental aspects of operational risks of the bank or financial institution, and should therefore develop a framework for operational risk
management, applied by the executive management at all levels of the company. Executive management must assume responsibility for developing policies, processes and procedures for the management of operational risk in each of the enterprise’s products, activities, processes and systems, and it should develop an emergency plan, and a plan for business continuity, in order to ensure their ability to work regularly and limit losses in the event of sharp disturbances at work.

5-7-4-2. Monitoring the effectiveness of the company’s governance practices and making changes as needed.

There is no explicit legal provision in the legislation of Yemen in this regard.

5-7-4-3. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.

Considering the Yemeni Companies Law, Article (129) authorizes the chairman of the Board of Directors or his deputy or any of the members of the board to function in the post of general manager of the company, and this is incompatible with the principles of OECD. So, Item (13) in The Guidelines of Corporate Governance in Yemen includes some considerations that may possibly be seen as alternatives, as follows:

1. Appointment of the Deputy Executive Director, who shall be responsible before the board and be subordinate to it.
2. Appointment of a board the majority of which consists of independent directors.
3. Companies need to examine the possibility of appointing a reporter of the board who is not a member, or is an executive director or employee of the company. In addition to his role in preparing and arranging for meetings of the board, he will be responsible for writing and archiving meetings of the board. He will also be obliged to ensure that respect for the board’s procedures is maintained, and that the information relating to the company are communicated properly to each of the members of the board and members of the committees and management.

5-7-4-4. Aligning key executive and board remuneration with the longer term interests of the company and its shareholders.

In this regard, the Yemeni Companies Law indicates in Article (143) that with the exception of remunerations specified to the Board of Directors in the company’s system, the
chairman or members of the board may not obtain any reward for any additional work they do for the company.

5-7-4-5. Ensuring a formal and transparent board nomination and election process.

Articles (124, 125, 128, 130 and 134) of the Yemeni Companies Act indicate the following:

1. The General Assembly elections of the members of the Board of Directors shall be held by secret ballot in writing and they may be re-elected unless the company’s system indicates otherwise.

2. The board shall elect each year from among its members a chairman and vice-chairman to function in his absence. The Board shall also appoint a secretary chosen from among its members or others, and shall notify the ministry with a copy of the decisions of the election of chairman, vice-chairman, and commissioned members, as well as of any amendment to the formation of the board.

3. If the government or one of its public bodies or institutions is a shareholder in the company, it shall be represented in the Board of Directors in proportion to its holdings of equities. In all cases, the government or bodies mentioned in the preceding paragraph may not participate in the election of board members who do not represent them. A board member may not combine membership of the board and any public function, and the election of an employee to the membership of the board shall be considered null and void, unless on behalf of his job.

4. Anyone who was convicted in a crime involving moral turpitude and dishonesty or in one of the crimes stipulated in this law may not be elected to the Board of Directors, unless he has been rehabilitated. A member of the board of directors may not be allowed to be a board member of more than two joint stock companies that have registered some or all of their shares for public subscription, and should not be president or delegated member in more than two joint stock companies if he is a representative of the government.

5. Anyone who is a member of the board of directors of a bank or a company in which the State or other public bodies, institutions and companies own at least 10% of its capital may not participate in his personal capacity or in his capacity as deputy for non-membership in the Board of Directors of another bank or any other joint stock company. Anyone who occupies the post of Director or any other function in banks or one of the companies referred to in the preceding paragraph may not function permanently at another bank or joint stock company, and the consequent violation of
the provisions of this article shall be considered offending and an implied resignation from the bank or company.

6. With the exception of the representatives of the government and legal persons in the Board of Directors, a board member must be the owner of a number of shares equal to at least 2% of its capital; however, a member may be the owner of a number of shares not less than thirty thousand riyals at the time of his election. The chairman of the board must have twice the number of shares required from another member. The stock prices is determined by the stock market or the nominal value of the shares if the company has not restricted in these markets.

5-7-4-6. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.

Articles (152, 153 and 154) of the Yemeni Companies Act includes the following:

1. The members of the Board of Directors are responsible before the company and shareholders if they abuse its affairs or violate the provisions stipulated in this Law or the company’s system and every requirement otherwise is considered non-existent.

2. Responsibility shall be shouldered by all members of the Board of Directors if the error is a result of a resolution passed unanimously by the members. Responsibility on erroneous decisions that passed by majority do not fall on members of opposition provided that they prove their objection explicitly in the minutes of the meeting. Absence from the meeting at which the decision was made shall not be considered a reason for exemption from liability unless the absentee proves to be unaware of and unable to challenge the decision.

3. If more than one member commit the error, they shall be responsible jointly before the company and responsibility shall be distributed as per the share of each of them in the common error.

4. The members of the Board of Directors shall be required for compensation for damage to the shareholder or others because of their mistakes.

5-7-4-7. Ensuring the integrity of the corporation’s accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
There are no explicit legal provisions in the legislation of Yemen in this regard, except as provided in Item (16) of *The Guidelines of Corporate Governance in Yemen* that the financial and banking institutions should create jobs and units for risk measurement, monitoring and control, with tasks specified clearly. These jobs must be independent enough to take a stand as per market risk. The banks and financial institutions should work within sound and well-defined parameters as regards the granting of loans and facilities, and such standards include a clear signal of the market targeted by the institution, an understanding of the borrower, the objective of loans and facilities, its structure and the source of repayment, and the limits of total loans and facilities at the level of individual borrowers and peers (customers).

5-7-4-8. Overseeing the process of disclosure and communications.

There is a significant legal gap in the Yemeni legislation in this regard as there are no clear and explicit legal texts here.

5-7-5. The board should be able to exercise objective independent judgement on corporate affairs.

Item (13) of *The Guidelines of Corporate Governance in Yemen* indicates that members of the Board should be eligible to fill the positions, meet the necessary conditions supposed to be identified in advance, have comprehended clearly their role in the framework of corporate governance, and be able to exercise their functions with respect to the affairs of the company. The board should work to implement programs of continuing education for board members to enable them to perform their responsibilities better. Members of the board should be selected on the basis of enlightened thinking and the value they will add to the board and to the company overall.

5-7-5-1. Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement 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 board members and key executives, and board remuneration.
Article (129) in the Yemeni Companies Law indicates that it is permissible that the chairman of the Board of Directors or his deputy or any other non-members to hold the post of general manager of the company.

Item (13) of The Guidelines of Corporate Governance in Yemen indicates that the formation of the board should be a balanced between executives and non-executives, that a fair number of these should be independent. Members of the board should be selected on the basis of enlightened thinking and the value they will add to the board and to the company overall. The company needs to develop its own definition of an independent member of the board of directors. The best practices internationally accepted have identified minimum standards for independence, whereby a member of the board of directors is considered independent if:

- he has not been employed by the company during the two years preceding the appointment of a member of the board;
- he does not have a direct relationship with any of the senior staff;
- he does not receive compensation and benefits from the company (other than those assigned to him as a member of the board);
- he is not a manager, or a member of the Board of Directors, or the owner of a company that has a business relationship with the company; and
- he does not own 5% or more shares in the company.

5-7-5-2. When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board.

Article (143) of the Yemeni Companies Act indicates that the board should distribute the work among its members in accordance with the nature of the investment carried out by the company. The Board may form, from among its members or others, committees to study issues and reports referred to it. The board may authorize one of its members or other people to do a particular job or make a certain deal and may grant the power to do so. At any time, the board may solve the committee(s) formed or relieve the person(s) authorized of their duties.

Item (14) of The Guidelines of Corporate Governance in Yemen indicates the following:
Joint stock corporations and financial and banking institutions should seriously consider the benefits of establishing committees of the board in accordance with the special circumstances of each individual company. Terms of reference, formation and working procedures of committees must also be clearly defined in the documents being circulated to shareholders and other stakeholders and the public, indicating each committee’s duration, duties, powers and structure, and the way in which the board monitors their activities. Committees must inform the board on its activities and findings with full transparency.

Boards of directors of joint stock companies, especially financial institutions and banks, have to establish audit committees composed exclusively of members independent of the board, under written terms defining clearly the powers and duties of such committees. The role of an audit committee should particularly focus on the following:

- study the qualitative aspects of financial reports and statements to be submitted to the shareholders and regulatory bodies;
- (as regards banks and financial institutions) monitor the bank’s performance of management of banking and financial risks in coordination with the Risk Management Committee;
- ensure the adequacy of internal controls;
- ensure that management takes into consideration legal, professional and regulatory requirements in force.

The role of the Audit Committee also includes coordination with other board committees, and maintaining strong and positive working relationships with the management, chartered accountants, internal auditors, legal counsel, and other committee advisers.

The terms of reference of the Audit Committee must include the power to make recommendations to the Board on the appointment of chartered accountants, or dispense with their services and fees, and other contractual items of their own. In addition to the Audit Committee, boards of directors should consider the possibility of establishing the following committees:

1. Appointments Committee: It is responsible for proposing all appointments in the board, taking into account the capabilities and qualifications of the candidates, as well as the re-approniment, by
evaluating the presence of the members and their attendance at the meetings of the board, and the effectiveness of their participation.

2. Governance Committee: Governance committee puts recommendations for the adoption of corporate governance systems, and monitors the effectiveness of compliance.

3. Compensation and Allocations Committee: This committee provides counseling to the Board on compensation and allowances of directors and executive management.

5-7-5-3. **Board members should be able to commit themselves effectively to their responsibilities.**

Articles (141), (142) and (143) of the Yemeni Companies Act indicate as follows:

1. The board of directors has all necessary powers to carry out the work required for the purposes of the company except as circumscribed by law or the company’s general assembly, and must comply with the directives and decisions of the general assembly.

2. The board shall put forth internal systems and regulations to regulate its work and determine the terms of reference and the rights and duties of employees, taking into account the provisions stipulated in the applicable laws and the company’s system.

3. The chairman of the board of directors shall conduct daily business of the company, and shall do the following in particular:
   - invite the Board of Directors to convene;
   - invite the General Assembly to be convened in accordance with the provisions stipulated in this law and the company’s system;
   - sign on behalf of the company, taking into account the conditions mentioned in the system;
   - represent the company in front of others;
   - follow up the implementation of decisions of the board of directors;
   - request from the General Assembly the appointment of auditors;
   - recruit, dismiss and supervise employees; and
   - supervise the company’s bookkeeping and taking into account the availability of legal requirements.

5-7-6. **In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.**
In this regard, Articles (141) and (143) of the Yemeni Companies Act include:

1. The board shall put forth internal systems and regulations to regulate its work and determine the terms of reference and the rights and duties of employees, taking into account the provisions stipulated in the applicable laws and the company's system.

2. The board of directors has all necessary powers to carry out the work required for the purposes of the company except as circumscribed by law or the company’s general assembly, and must comply with the directives and decisions of the general assembly.

The evaluation of laws and regulations of Yemen in the light of the standards of OECD of Corporate Governance proves that the laws and regulations of Yemen are considered good compared to others and there is fair consistency and compliance with the standards of OECD, but the main problem facing Yemen, according to the study of YBC & CIPE (2009) is “that the problem with the Yemeni legal system has nothing to do with the laws themselves, but because of low levels of compliance and poor implementation.” This is the actual problem of Yemen.

Therefore, the researcher presents a summary of the contents of Yemeni laws and regulations regarding corporate governance that are consistent with the principles of OECD, as follows:

1 - Shareholders’ equity:

1-1: The rights of major shareholders:

Major shareholders’ rights are actually guaranteed by Yemeni law, as follows: Companies Act allows for only one class of shares, with no restrictions, to vote and participate in the general assembly in person or by proxy, or have the rights to dividends of paid shares. All shares are legally equal, and control of a simple majority of shares provides the ability to take any usual decision in any ordinary assembly of shareholders. Control of a majority of three-quarters of the stock grants absolute power to call for an extraordinary general assembly and pass resolutions, including the increase or reduction of capital or amend the statute.

Voting rules actually mean that any of the major shareholders can get one or more seats in the board of directors and thus have direct interference in the daily management.

1-2: Small shareholders:
Small shareholders have very limited rights, especially where a single bloc of shareholders with close relationships have control of an absolute majority of the capital. If there is no dominant bloc, the shareholders who have seats in the board will tend to run the business while those who do not have representation in the board will have limited rights.

A group of shareholders controlling more than 25% of the capital can call for an extraordinary general assembly and stop decisions to change the statute or capital, but does not generally have more than those powers. A group which controls 10% of the capital can request the ordinary general assembly to convene, and propose the dismissal of members of the board of directors or request a secret ballot in the general assembly, but does not generally have more than those powers. A group which owns 5% could ask to enter items on the agenda of the general assembly. A shareholder must own at least 2% to serve as a member of the board of directors (and 4% to work as chairman of the board of directors). The property of these minimum shares must be deposited in a bank as collateral and cannot be disposed of as long as the shareholder is a member of the board of directors.

Besides, dominance of the ownership of most of the Yemeni companies and even joint stock companies is limited to one or two of the prominent business families. Companies in their honest and widely known terms of ownership seem to be non-existent. However, a lot of public shareholding companies or closed shareholding companies have a number of small shareholders who function as passive investors. When a single family that owns 51% or more dominates company, a shareholder with opposing opinion (even possessing 20%) will not have a real impact other than creating a fuss and having his opinion recorded in the board and general assembly meetings.

2 - Disclosure and transparency:

This is a major weakness in the existing laws of Yemen, especially with regard to the government’s stated intention of the creation of financial markets. The existing systems identify very few requirements.

2-1: Financial statements:
Article (149) of the Commercial Code stipulates for “balance sheet, profit and loss account, a report on the company’s operations during the financial year, its financial position and the proposed method of distribution of net profits.” Also, a joint stock company must publish its financial statements and auditors’ report and “comprehensive summary” of the annual report of the board of directors in an official daily newspaper.

Article (13) of the Income Tax Act and the relevant regulations stipulate for “profit or loss audited by a chartered accountant, accompanied by copies of the final accounts, balance sheet and statement of depreciation prepared by the taxpayer, and the statement of accounting principles upon which all the numbers in the recognition have been based,” – the decision of the Minister of Finance No. (255) 1999 Article (4) adds the requirement of “explanatory notes”.

Article (49) of Accountants Law also requires that the audited financial statements indicate to the “the generally accepted accounting principles” but it does not specify them.

2.2: Reports of the Board of Directors (joint-stock companies only):

In addition to the financial statements, the board must submit the following to the shareholders prior to or during the AGM:

- the agenda of the Ordinary General Assembly;
- a report on the operations of the company during the year (contents unspecified);
- compensation and other amounts received by the current or former members of the Board of Directors;
- transactions of stakeholders;
- details of the amounts disbursed on advertising or donations; and
- detailed minutes of AGM, including any required data inserted by certain shareholders which must be provided to any shareholder on request.

2.3: Stakeholders (joint stock companies only):

All joint stock companies are subject to the following legal restrictions and disclosure requirements with respect to stakeholders:
• The members of the Board of Directors are not entitled to any compensation except as permitted by the statute of the company and approved by the AGM.

• No contract shall be concluded in the interest of a member of the Board of Directors or manager without the approval of the Ordinary General Assembly unless the contract award is a result of public tender.

• It is not permissible for the board members to vote in the meetings of the board or the General Assembly on any issues in which they have a financial interest or otherwise.

• Members of the Board of Directors are prohibited to participate in any business or activity competing company.

• Members of the Board of Directors are prohibited to obtain loans or guarantees from the company except in the case of banks in which credit can be granted at the same market prices granted to a third party customers.

• The members of the Board of Directors must acknowledge their ownership of stocks, bonds and the ownership of their immediate family members and any changes in these properties to the board at the earliest meeting of the Board subsequent to appointment, as well as any change in ownership of the stock.

• The chairman of the Board must report to the AGM any acts or contracts in the interest of a member of the Board of Directors, together with the report of the auditors (This report may be included in the financial statements).

• As mentioned above, the board should inform shareholders before the AGM of all amounts received by the members of the Board of Directors of the company in cash or in kind, including a description of their nature and of all the work and contracts that any member of the Board of Directors has an interest.

The law does not put any specific requirement to disclose transactions of members of the board, subsidiaries and associate companies under public control when there is not control on it in terms of a member of the Board of Directors in any form.

In addition to the above rules, banks are subject to additional rules by the Central Bank:

• Facilities granted to stakeholders should be given substantially in the same terms as those granted to similar third party customers.
• Total credit facilities granted to any employee may not exceed the total compensation for one year.
• Total credit facilities granted to any unemployed member of the Board of Directors may not exceed 0.5% (half a per cent) of the total bank’s capital and reserves.
• Total credit facilities granted to any shareholder who owns 5% or more of the capital is limited to 15% of the bank’s total capital and reserves.
• Total facilities granted to any stakeholder must not in the aggregate exceed the bank’s total capital and reserves.
• Stakeholders’ loans may not be canceled without a court decision of bankruptcy and the unanimous approval of the General Assembly and the approval of the Central Bank, and the cancellation may not be deductible from tax as a loss.
• Islamic banks may not grant facilities to shareholders without guarantee.
• By virtue of the rules of the Central Bank regarding financial reports, banks are, in effect, subject to international financial reporting standards and disclosure requirements with respect to all stakeholders, including sister companies. These requirements include the disclosure of categories of stakeholders and the nature and size of transactions and an indication as to whether the terms of the deal are by the same conditions of dealing with stakeholders at free market prices or more, favorable for the benefit of the stakeholders.

As regards other issues in Yemen, the implementation can be the moot point. Some local banks are known to regularly violate restrictions on the total facilities to stakeholders.

Based on the above, the researcher finds that there is significant consistency in the laws and regulations of Yemen with the rules and principles of Corporate Governance issued by OECD, but it requires reconsideration in each of the Yemeni legislation to achieve uniformity given the pervasive repetition – i.e. certain laws are mentioned in the Companies Act, then repeated in the Banking Act and so on, creating confusion and lack of clarity. Besides, there is some discrepancy between the legal texts in Companies Act and Banking Law, in addition to the absence of clear and explicit texts about some things: some laws, legislations or instructions are so general that they leave gaps for possible fraudulence and manipulation of laws and legislations. Furthermore, the rules and principles of governance issued by OECD include repetitions of several things, especially while interpreting the six basic rules in the items of OECD. In addition, the researcher
has noted that the Yemeni legislation does not contain clear and explicit legal texts on the following topics:

1- **The Rights of Shareholders and Key Ownership Functions:**
   1-1. Markets for corporate control should be allowed to function in an efficient and transparent manner.
   1-2. 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.

2- **The Equitable Treatment of Shareholders**
   2-1. Impediments to cross border voting should be eliminated.
   2-2. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes.

3- **The Role of Stakeholders in Corporate Governance**
   3-1. Performance-enhancing mechanisms for employee participation should be permitted to develop.

4- **Disclosure and Transparency**
   4-1. Issues regarding employees and other stakeholders.
   4-2. Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.
   4-3. 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.

5- **The Responsibilities of the Board**
   5-1. Monitoring the effectiveness of the company’s governance practices and making changes as needed.
   5-2. Overseeing the process of disclosure and communications.

Moreover, there are no clear and explicit legal provisions in the laws and regulations of Yemen that stipulate for mandatory application, as has been mentioned in the preceding paragraphs, but *The Guidelines of Corporate Governance in Yemen* has referred to it, yet it should
be known that the application of these guidelines is voluntary and non-binding to banks or companies. In general, despite global, international and local efforts on the subject of corporate governance, particularly with regard to disclosure and transparency, there are no binding instructions of disclosure in corporate governance in the annual reports of companies.
References


9. OECD, April 1999, OECD’s "Definition Consistent with the one presented by Cadbury", P. 15.


