



Second Report On Corporate Governance

The Internet Corporation
for Assigned Names and Numbers

Governance Comparisons

APRIL 17, 2012

Cooley
LLP

Introduction

Cooley LLP previously reviewed certain documents related to the corporate governance of the Internet Corporation for Assigned Names and Numbers (“**ICANN**” or “**Company**”), including its bylaws, articles, board resolutions, and corporate policies related to conflicts of interest and corporate conduct (collectively, the “**Governance Documents**”). Following the delivery of a summary detailing our initial findings, ICANN asked us to review the corporate governance policies of: (i) a leading international corporation, (ii) a leading international institution and (iii) an international institution experiencing problems stemming from its corporate governance policies (collectively, the “**Comparison Group**”), and to compare each of those entities’ corporate governance policies to the Governance Documents to identify areas of potential improvement. We selected: (i) International Business Machines Corporation (“**IBM**”), (ii) the International Finance Corporation (“**IFC**”) and (iii) the Fédération Internationale de Football Association (“**FIFA**”) as the corporation and institutions to include in the Comparison Group. This report summarizes our research and findings and provides a framework for further discussion of the Company’s Governance Documents.

We first provide a brief overview of IBM’s corporate governance guidelines. We then describe corporate governance guidelines advocated by IFC and follow with a summary of FIFA’s governance difficulties, which may have resulted in part from aspects of its own corporate governance documents. Finally, we conclude with recommendations ICANN may wish to consider for additional changes. We look forward to discussing these items with you further.

OVERVIEW OF THE COMPARISON GROUP'S CORPORATE GOVERNANCE

Sources and Standards in use by IBM

We included IBM in this comparison because many corporate institutions and investors view it as a leader in corporate governance. IBM's core governance policies are its *Business Conduct Guidelines* and *Corporate Governance Guidelines*. The *Business Conduct Guidelines* are included as **EXHIBIT A**; the *Corporate Governance Guidelines* are included as **EXHIBIT B**.

❖ *Business Conduct Guidelines*

IBM's *Business Conduct Guidelines* are provided to all IBM employees, and they apply to all locations where IBM conducts business. They are regularly reviewed and updated. The document establishes guiding principles to which all employees must adhere, along with interpretive notes that explain how the principles apply both internally and in employees' interactions with customers and other corporate outsiders. The *Business Conduct Guidelines* also instruct employees who believe a violation of the guidelines may have occurred or who have similar concerns to raise those concerns with their respective managers or other appropriate members of IBM's team. They emphasize IBM's "open door" policy and state plainly that retaliation for reporting alleged misconduct is not tolerated. In our view, establishing such a policy and putting it visibly into practice are essential steps to creating a healthy corporate culture.

❖ *Corporate Governance Guidelines*

Whereas IBM's *Business Conduct Guidelines* are generally applicable to all employees, the company's *Corporate Governance Guidelines* are designed to address issues at the Board level. It requires that a majority of IBM's Board remain independent and sets forth guidelines for determining independence. Those standards are found on Annex A attached to the *Corporate Governance Guidelines* and generally

include many of the independence standards of the New York Stock Exchange summarized in our initial report of October 3, 2011, including the requirements that independent directors and their family members (i) not have been employed by IBM within the past three years; (ii) not have received in any twelve-month period in the last three years more than \$100,000 in compensation from IBM, and (iii) not have been employed by another company that has received more than \$1,000,000, or two percent of that company's gross revenues, from IBM in the last three fiscal years.

Sources and Standards in use by the IFC

A member of the World Bank Group, the IFC provides private sector investment in projects and companies operating in developing countries. Owing to its involvement in investment activities in developing countries, some of which have weak traditions of corporate governance, the IFC emphasizes educating companies receiving investment on the importance of governance. In advocating for good corporate governance policies, the IFC borrows from several sister institutions involved in investment and economic development, including the United Nations ("**UN**") and the Organization for Economic Co-Operation and Development ("**OECD**").

❖ UN – Guidance on Good Practices in Corporate Governance Disclosure

The UN Conference on Trade and Development publishes Guidance on Good Practices in Corporate Governance Disclosure, which are included as **EXHIBIT C**. The guidance encourages corporations to create structures to prevent and mitigate conflicts of interest and to disclose conflicts of interest when they arise. Like IBM's Business Conduct Guidelines, it is applicable to dealings with those beyond a corporation's board and its board members. It encourages companies to adopt an enterprise code of ethics that may feature, among other items, the establishment of a senior ethics officer; the creation of an ethics committee; policies for breaches of the ethics code, including reporting mechanisms and "whistleblower" protection mechanisms; and policies on the dissemination and promotion of the ethics code. Many of these items

are also included in IBM's *Business Conduct Guidelines*, which may effectively serve as a template or precedent from which companies may consider building such a document.

❖ *OECD Principles of Corporate Governance*

The IFC views favorably the *OECD Principles of Corporate Governance* and recommends that companies receiving IFC funds adhere to them. A copy is included as **EXHIBIT D**. The document (page 24) states core principles related to disclosure and transparency in corporate governance. These echo some of the European standards that were summarized in our previous report, in that they emphasize the disclosure of matters of material importance to a corporation's stakeholders. The *Principles* distinguish (page 51) between strong disclosure practices and weak disclosure practices and points out that the latter can contribute to unethical behavior. The principles also note (page 54) the importance of disclosing related party transactions, "either individually, or on a grouped basis, including whether they have been executed at arms-length and on normal market terms."

The document summarizes (page 26) the responsibilities of a corporation's board and encourages boards to (i) act with high ethical standards, (ii) monitor the effectiveness of corporate governance practices, and (iii) monitor and manage potential conflicts of interests of management and the board to reduce the risk of abuse in related party transactions. With respect to the third item, the *Principles* emphasize the cardinal point (page 64) that boards "encourage the reporting of unethical/unlawful [behavior] without fear of retribution." As we noted earlier, establishing and visibly enforcing this policy is essential to creating a healthy corporate culture.

Sources and Standards in use by FIFA

❖ *Background*

Several years ago British print and television media began investigating alleged conflicts of interest, vote-rigging, and secret dealings to pay bribes to senior FIFA officials. The alleged bribes, according to a BBC report, may have totaled as much as \$100 million. These allegations have led to serious and longstanding controversy around FIFA, with many

calling for its overhaul or replacement by a successor organization. Recently the organization itself formed an internal independent governance committee that is preparing a concept paper titled “Governing Fifa” to recommend new actions and policies for the organization in the wake of the controversies. Some of these action items appear to bring the organization closer to the standards applicable to UK companies, instead of those applicable to organizations based in Switzerland, such as FIFA. FIFA was also the subject of a report earlier this year by Transparency International, which suggested that the organization create an independent group of outsiders to recommend improvements to its corporate governance practices and to oversee an investigation into allegations of corruption. Some of this information may be found in the article attached as **EXHIBIT E**.

❖ *FIFA’s Code of Ethics*

FIFA’s 2009 Code of Ethics, attached as **EXHIBIT F**, includes a section on conflicts of interest that is applicable to senior FIFA officials and board members, but in our view it is deficient in a number of respects. First, while it obligates officials to report conflicts of interest before their election or appointment and admonishes them to avoid conflicts of interest, it does not encourage them to disclose such conflicts on an ongoing basis (see page 6). It instead removes that responsibility from each official and notes that a deciding authority of the relevant organization is to decide on such conflicts of interest only after receiving an objection that raises a concern related to an existing or potential conflict of interest. FIFA also accepts complaints only from the executive committee of one of its membership organizations or from the office of the secretary general. This policy does little to foster the type of vigilance necessary to encourage a culture of strict adherence to corporate governance policies.

RECOMMENDATIONS

(1) ICANN should consider revising its guidebook for employees to ensure that policies covering unethical behavior and complaints are satisfactorily covered.

We recommend that the Company review, and consider revising, its staff policies and procedures guidebook, which covers among other things behavior by all employees, to ensure that policies on complaints (also known as “whistleblower” policies) and unethical behavior are plainly and robustly stated. The circumstances in which an employee is justified in reporting misbehavior via the hotline outside his or her normal reporting chain should be clarified. Doing so would be consistent with the practice at IBM and the UN. Certain aspects of ICANN’s “***Expected Standards of Behavior,***” included **EXHIBIT G**,¹ may also be usefully adopted in a revised guidebook. The guidebook and *Expected Standards* should be consistent.

(2) Consider adopting a policy to deal with repeat offenders of the Company’s ethical and governance standards.

We noted previously that the Company’s board policies are aligned with many of the essential governance principles that we reviewed in our initial report and that have been adopted by IBM and the IFC. The Company has in place much more robust policies than those currently in use by FIFA. Nonetheless, there may be room for improvement. We suggest that ICANN consider instituting mechanisms, to the extent they are not already in place, that enable the Company to evaluate removing or punishing serious or repeat violators of its policies. Doing so would further emphasize ICANN’s commitment to good governance and its refusal to tolerate material deviations from acceptable behavior.

¹ The *Expected Standards* do not apply to all employees but are meant for public engagements of community members, staff, and board.

EXHIBIT A

IBM BUSINESS CONDUCT GUIDELINES

[HTTP://WWW.IBM.COM/INVESTOR/GOVERNANCE/BUSINESS-CONDUCT-
GUIDELINES.WSS](http://www.ibm.com/investor/governance/business-conduct-guidelines.wss)

EXHIBIT B

IBM CORPORATE GOVERNANCE GUIDELINES

[HTTP://WWW.IBM.COM/INVESTOR/GOVERNANCE/CORPORATE-
GOVERNANCE-GUIDELINES.WSS](http://www.ibm.com/investor/governance/corporate-governance-guidelines.wss)

EXHIBIT C

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**GUIDANCE ON GOOD PRACTICES IN CORPORATE GOVERNANCE
DISCLOSURE**

[HTTP://UNCTAD.ORG/EN/DOCS/ITETEB20063_EN.PDF](http://unctad.org/en/docs/ITETEB20063_en.pdf)

EXHIBIT D

OECD PRINCIPLES OF CORPORATE GOVERNANCE

[HTTP://WWW.OECD.ORG/DOCUMENT/49/0,3746,EN 2649 34813 31530865 1 1 1 1,00.HTML](http://www.oecd.org/document/49/0,3746,EN_2649_34813_31530865_1_1_1_1,00.html)

EXHIBIT E

ARTICLE ON FIFA

**[NOT ATTACHED IN PUBLIC POSTING DUE TO RESTRICTIONS
ON REPLICATION]**

EXHIBIT F

FIFA'S CODE OF ETHICS

[HTTP://WWW.FIFA.COM/MM/DOCUMENT/AFFEDERATION/ADMINISTRAT
ION/50/02/82/EFSDCODEOFETHICS WEB.PDF](http://www.fifa.com/mm/document/affederation/administration/50/02/82/efsdcodeofethics_web.pdf)

EXHIBIT G

ICANN EXPECTED STANDARDS OF BEHAVIOR

**[HTTP://WWW.ICANN.ORG/EN/ABOUT/TRANSPARENCY/EXPECTED-
STANDARDS-10JAN08-EN.HTM](http://www.icann.org/en/about/transparency/expected-standards-10jan08-en.htm)**