Corporate Governance of Company Groups:

International and Latin American Experience

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Please send written comments to
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TABLE OF CONTENTS

Tables

Figures

Boxes

International and Latin American Overview[1]

1. Introduction

1. This draft report has been prepared as a reference for the 17 November, 2014 meeting of the Latin American Corporate Governance Roundtable's Task Force on Company Groups, and for the Roundtable's subsequent discussions of these issues on 18-19 November. It provides an overview of international and Latin American frameworks for and experience in addressing the challenges associated with corporate governance of company and economic groups, with specific country chapters on Argentina, Brazil, Chile, Colombia, Mexico and Peru. It will be modified in light of the discussions and input provided from these meetings.

2. The report builds on and makes use of the previous work of the Roundtable and its Task Force on Related Party Transactions (RPTs). The Task Force first began meeting in 2012 to exchange information, among Latin American countries and beyond, regarding successes and challenges involved in developing effective frameworks to prevent abuse of related party transactions; and to have an impact on improving these frameworks through country-specific information and recommendations for participating Latin American countries. The RPT Task Force's main recommendations can be found on the OECD web site at http://www.oecd.org/daf/ca/LatinAmericanReportonRelatedPartyTransactions.pdf.

3. The second meeting of the Task Force took place in Quito, Ecuador on 19 June, 2013 to consider country progress in implementing the recommendations, and called for further dialogue and follow-up, including on the issue of corporate governance challenges for company groups, for which related party transactions are particularly common. Following consultation with participating regulators in the Task Force, it was agreed to expand the Task Force's focus to also consider the broader range of corporate governance challenges specific to company groups, based on a survey of regulators' overall frameworks, policies and requirements for treatment of company groups.

4. Already at the Roundtable's 2011 meeting, the challenges specific to corporate governance of economic groups were raised through a "Discussion Note" on "Corporate Governance Challenges for Economic Groups" prepared by the Center for Financial Stability of Argentina (Silvina Vatnick and Pablo Souto). The report noted the predominance of economic groups or conglomerates in the Latin American region and called for further research and analysis of these issues. This survey of Latin American regulators represents a first, more systematic attempt to understand the differing contexts and frameworks in different Latin American countries, and to compare it to international experience and guidance on the subject.

[1] This overview chapter was jointly drafted by Daniel Blume, Senior Policy Analyst, OECD and Pablo Souto, Global Outcomes, Argentina, with additional input from Andres Bernal, Governance Consultants, Colombia. For the country chapters, we wish to thank our survey respondents from CNV Argentina (Maria Luisa Streb); CVM Brazil (Luciana Dias and Vicente Camilo); SVS Chile (Alejandra Valladares Muñoz); SFC Colombia (Clara Eugenia Castillo); CNBV Mexico (Yearim Valles); and SMV Peru (Rodney Rivera), as their survey responses and time devoted to responding to our follow-up questions have been crucial to the development of this report. The country chapters have been drafted by Pablo Souto (Argentina, Chile and Mexico), Andres Bernal (Colombia and Peru) and Daniel Blume (Brazil). As this is a working draft in progress intended to incorporate further input from Task Force members and Roundtable participants, please send written comments to Daniel.Blume@oecd.org by 5 December, 2014.

5. The purpose of this report will be to support the development of a better understanding of policies and practices in the region and internationally on how corporate governance issues for both company and economic groups are treated by law, regulation, and in practice; and how their corporate governance can be improved.

6. This chapter is structured to begin first with a general introduction to the economic context, benefits and challenges associated with company groups and their corporate governance; a second section reports on the wider international context with reference to international guidance on this topic and different approaches taken to corporate governance of company groups in different OECD countries; this is followed by a synthesis of trends, policies and practices in the Latin American region, and recent regional initiatives to develop guidance. The chapter concludes with identification of some preliminary issues for discussion and further consideration by the Task Force and Roundtable, looking ahead. Further details on the specific frameworks, policies and practices in Argentina, Brazil, Chile, Colombia, Mexico and Peru are covered in subsequent chapters on each of these countries.

2. Economic Rationale for Corporate Groups and the Role of Corporate Governance[2]

7. The corporate governance debate has been largely shaped by the agency problems arising within individual firms and between different stakeholders. It has been the successes and failures of the governance system in individual firms that have drawn the most attention of policy-makers and practitioners in recent decades. Additionally, global standard-setting institutions for the most part have taken this same approach, and consequently developed general principles that address the problems that arise at the firm-level. However, governance issues arising in firms that are part of a company or economic group (see Box 1 for a discussion of how such groups are defined) have to date drawn relatively minor attention.[3] Since successfully managing governance issues in economic groups also indirectly facilitates financial and economic integration (acting as a convergence mechanism), addressing these particular issues should also be part of a broader discussion.

Box 1. Company and Economic Groups: What are They?

Previous work of the Roundtable (and some academic literature) has made the distinction between company groups and economic groups by suggesting that company groups refer to a more formal (legal) set of relationships generally involving a holding or controlling company and its subsidiaries; whereas an economic group can involve firms that may be unrelated in purpose and may not be formally linked, but nevertheless are related through common control. While this distinction can be useful for the purposes of analysis in this overview chapter, the Task Force survey of regulators has made clear that definitions and terms used for groups differ substantially across jurisdictions. International Financial Reporting Standards (IFRS) manage to avoid this definitional problem by applying its requirements for the filing of consolidated accounts to a group of firms controlled by another entity or individuals related to each other. In this context, "control is presumed when the parent acquires more than half of the voting rights of the entity. Even when more than one half of the voting rights is not acquired, control may be evidenced by power: over more than one half of the voting rights by virtue of an agreement with other investors; or to govern the financial and operating policies of the entity under a statute or an agreement; or to appoint or remove the majority of the members of the board of directors; or to cast the majority of votes at a meeting of the board of directors." However, this report continues to make distinctions between company and economic groups when it may be useful for the purposes of analysis, but also refers to groups more generally when such distinctions are not needed. In addition, the country chapters necessarily make reference to (and specify in detail) the definitions and terms used in each of those countries, which may differ from the definitions described above.

[2] This section draws extensively on CEF (2011) Discussion Note "Corporate Governance Challenges for Economic Groups", prepared for the 2011 Latin American Corporate Governance Roundtable.

[3] An important exception was the debate around the impact that economic groups in Asia had in the dynamics of the so-called Asian crisis of 1997.

8. Particular note should be made of economic groups in which most of the member companies are financial intermediaries, the so-called financial conglomerates. In these cases, the governance problems that are common to non-financial economic groups are expanded to include the particular challenges posed by this type of firm. On the one hand, there is the potential negative impact on certain stakeholders given the structure of financial intermediaries and the consequent effect on risk-sharing practices and management within the group. On the other hand, the regulatory/supervisory function of financial intermediaries, in many countries, is carried out on a non-consolidated basis, therefore making it more difficult for the authorities to identify and enforce the protection of stakeholders' rights. Since governance standards for this type of institution have been developed by the Basel Committee for Banking Supervision, or the International Association of Insurance Supervisors, among others, these issues could be better addressed by a standard-setter able to provide a tailor-made response, which should be consistent with the OECD Principles.

9. A number of studies have approached this issue by trying first to identify the economic structures in the region and then to understand the rationale for such a wide presence of this phenomena; notably, this holds true for most countries in the world, with the exception in some of the most developed countries. In the former cases, a relation-based governance structure is formally or informally established, in contrast to the latter case where the governance structure is more of the rule-based type.[4]

10. The group structure raises many complex issues. One of the reasons behind the formation of such groups may be the synergies and efficiencies obtained through transactions and allocation of resources among companies within the same group, especially when financial institutions are involved, reducing the need to rely on outside sources of finance. Information asymmetries may also be reduced, allowing for companies to work together based on established relationships. These advantages have been found to be even stronger in the context of less developed economies, where weak enforcement, asymmetric information and greater difficulty to enforce contracts favours groups that are able to benefit from the lower transaction costs available through intragroup transactions.[5] Historically, the regulatory and institutional shortcomings and the corresponding underdevelopment of capital markets in emerging markets have contributed to the formation of groups, which have found it more efficient to integrate in such a manner that they can secure long-term financing and/or access to key production inputs so as to minimize those costs, thereby creating "internal markets" for both. This is why some authors have characterized business or economic groups as hybrid forms of diversified organizations between firms and markets.[6] All of this suggests that incentives for related party transactions (RPTs) may be higher and more prevalent within groups than for stand-alone corporations. From this perspective, excessive constraints or regulatory burdens placed on such transactions will reduce the efficiency gains that group structures can potentially achieve.

11. However, academic research has found that there are also costs and potential risks associated with such structures. Conflicts of interest between majority and minority shareholders or between companies within the group may jeopardize the efficiency of firms and their competitiveness. Also, if economic groups are largely dominant, the formation of internal financial markets within each group

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[4] Li, J. (2003), "Relation-based versus Rule-based Governance: an Explanation of the East Asian Miracle and Asian Crisis". Review of International Economics 11 (4), pag. 651-673.

[5] Kirkpatrick, G. (2004), "Corporate Governance and company groups: considerations from the OECD Principles". Paper presented at the KDI Conference on Corporate Governance of Group Companies, Seoul - November 2004

6 Khanna, T. and Yafeh, Y. (2005), "Business Groups in Emerging Markets: Paragons or Parasites?". ECGI Finance Working Paper # 92.

may act as a deterrent for the development of financial markets; provided the close relationship between financial depth, macroeconomic stability and long-term growth, countries may be trapped into a vicious circle of low-growth and higher instability. Also, some authors argue that the presence of business groups may lead to rigid political systems influenced by the interests of concentrated wealth that may impede economic reforms, thereby reinforcing the vicious circle mentioned above.

12. In addition, in the absence of good corporate governance, a lack of transparency regarding the ownership structure and the conditions under which transactions with related-parties are conducted, the costs of monitoring such transactions (and the associated free-rider problem), and the cross appointment of directors among firms that are members of a group all make it difficult for affected parties to identify and measure instances in which a company's or its shareholders' interests may be damaged, and to request redress.

13. Empirical evidence regarding the net effect of the costs and benefits of economic groups is still inconclusive.[7] Similar considerations may be put forward when judging the supposed beneficial effects of having financial intermediaries as holding companies of business groups. Also, for OECD countries there is evidence of the existence of a non-linear relationship in this regard, so beneficial effects are apparent up to a certain point.[8] This may well not be a relevant issue to address when the controlling entity is actually the sole entity in the group; however, this is not always the case, and the presence of other stakeholders (minority shareholders, creditors, etc.) triggers public and private interest on the topic.

14. The way groups are structured depends on certain idiosyncratic factors within each country: pyramidal structures, cross shareholdings, blocks and multiple class shares are the most common. The presence of a financial intermediary within the group -- in many cases as the holding company -- may add to the conflicts of interest and increase macro instability by including a financial channel to the vulnerability of the group. Adding to that, the presence of the state -- either as a minority or controlling shareholder of a firm member of a group -- poses additional challenges in terms of the impact it may have on corporate performance, and on the legal and regulatory response.

15. Ultimately, these structures allow controlling shareholders to drive a wedge between voting rights (equity holdings of voting shares) and cash-flow rights (assets disposal). This divergence between control rights and cash flow rights has been documented in academic research to increase the incentive and tendency of the controlling shareholder to seek and reap private benefits of control. Controlling shareholders are then able to exert disproportionate levels of control that are much higher than their actual economic interest in the individual companies that they control, hence enabling them to (at least potentially) reap benefits from companies disproportionate to their economic interest, at the expense of other stakeholders, mostly minority shareholders and creditors. Related-party transactions, self-damaging corporate strategies (including entrenchment of directors and senior managers),

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[7] Perotti, E. and Gelfer, S. (1999), "Red Barons or Robber Barons? Governance and Financing in Russian FIGs". CEPR Discussion Paper # 2204. They found some evidence (not conclusive) of Russian business groups as being more efficient in allocating resources than independent firms. Other recent work also point to benefits achieved by business group structures, such as Ramachandran, J. et. al. (2013), "Why Conglomerates Thrive (Outside the US)". Harvard Business Review, December 2013, and McCahery, J. and Vermeulen, E. (2014), "Corporate Ownership and Groups Revisited: An Introduction to the Six C's of Corporate Governance". Mimeo. On the other hand, Claessens, S., Djankov, S., and Lang, L. (2000), "The Separation of Ownership and Control in East Asian Corporations". Journal of Financial Economics 58, pag. 81-112, found negative results in selected Asian countries.

[8] Kirkpatrick (op. cit.)

tunnelling, preferences on new shares issuances, and dividends policies are the usual mechanisms used to benefit the group at the expense of a particular member.

16. These factors may introduce a premium on the cost of external financing for firms which are part of a group and are perceived not to follow good governance practices that secure the rights of other stakeholders. Empirical evidence for Latin American corporations provide some support for this statement; interestingly, that financing premium is lower when the controlling shareholder is either a corporation or a family group, contrary to the case of institutional investors or the government as controlling shareholders.[9] If capital markets development is at an early stage and market liquidity is low, then exercising the exit option for minority investors could come at a cost for them; but in such environment, this option may not be a valid alternative for minority shareholders with significant holdings (i.e. institutional investors).[10]

17. To minimize those costs, some economic groups have attempted to provide the market with clear signs of their commitment to implement and enforce good governance practices so as not to appropriate other stakeholders' benefits. Some of these mechanisms are: the inclusion of minority shareholders´ special rights (pre-emptive and tag-along rights); relatively high levels of debt (by signaling their commitment to be monitored by external institutions), listing in capital markets with higher governance requirements, and high reported compliance rates with best practice corporate governance codes. As noted by Kirkpatrick (op.cit.), in the case of debt as a signaling mechanism, there is evidence that international syndicated loans are more effective than other types of indebtedness; however, idiosyncratic factors prevent this mechanism from being valid in all cases and circumstances. Similar evidence is found in Colombia, where group firms have fared better than non-group firms, because many of these firms have developed a track record and certain commitments to good practices that engender trust; the group therefore becomes associated with good performance and attracts higher financing.[11]

18. From a more microeconomic perspective, balancing these two sides of the coin raises complex issues for Board members, particularly in terms of the exercise of their legal duties, which may form the basis for public or private enforcement actions. In the case of a stand-alone company, the traditional duties of loyalty and care to the company are relatively clear. But the board member's duties may become fuzzier when they sit on the Board of a company within a defined company group (especially if they are appointed by the controlling shareholder). How countries deal with such challenges is described in greater detail in the next section.

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[9] Cueto, D. (2008), "Corporate Governance and Ownership Structure in Emerging Markets: Evidence from Latin America". Mimeo.

[10] CEF (2008), "The Role of Institutional Investors in Promoting Good Corporate Governance Practices in Latin America: The Case of Argentina". Paper presented at the OECD-IFC IX Latin American Roundtable on Corporate Governance, Mexico City - November 2008.

[11] Mendoza, J. (2013), "The political economy of capital markets in Latin America". Mimeo. See: http://ssrn.com/abstract=2394781

3. International Work on Corporate Governance of Groups

19. As recognition grows of the important role that company groups play in many economies, including most emerging markets, there appears to be a growing focus internationally on corporate governance challenges associated with company groups.

20. For example, the Joint Forum of the Basel Committee on Banking Supervision, International Organization of Securities Commissions and International Association of Insurance Supervisors issued *Principles for the Supervision of Financial Conglomerates* in September 2012[12]. The Joint Forum Principles include specific chapters on corporate governance and risk management. While these Principles are specific to financial institution regulation and supervision, covering issues of prudential supervision, capital adequacy and liquidity that go beyond the Roundtable's more specific focus on corporate governance, they nevertheless provide specific corporate governance guidance that may be useful as well to the policy framework and supervision of non-financial listed companies that are part of a company group (See annex for the full text of relevant recommendations 10 to 14).

21. These recommendations suggest a number of key corporate governance components that supervisors of such groups should seek to ensure are in place. Some of these, such as efforts to ensure the suitability of board members, senior management and key persons in control functions, remuneration and certain general provisions to do with risk management, internal control, internal audit and compliance functions, could apply just as easily to stand-alone companies as to conglomerates. However, the Joint Forum Principles also devote an entire chapter (Recommendations 21 to 29) to different aspects of risk management aimed at ensuring that such risks are understood and managed effectively across the entire group. The Joint Forum Principles also raise a number of additional issues that are specific to the governance of groups, such as:

- Requiring that the conglomerate have in place "policies focused on identifying and managing conflicts of interest, including those that may result from intra-group transactions, charges, up streaming dividends, and risk shifting." (Explanatory notes of recommendation 10).

- "In the event the local corporate governance requirements applicable to any particular material entity in the financial conglomerate are below the group standards, the more stringent group corporate governance standards should apply except where this would lead to a violation of local law." (Explanatory notes of recommendation 10).

- "Supervisors should require that the board of the head of the financial conglomerate appropriately defines the strategy and risk appetite of the financial conglomerate, and ensures that this strategy is implemented and executed in the various entities, both regulated and unregulated" (Recommendation 13).

22. On the other hand, the *OECD Principles of Corporate Governance* (2004) provide relatively little guidance on the issue of corporate governance for company groups, instead providing recommendations to apply to companies regardless of whether they are part of a group or a stand-alone firm. The only specific references to company groups in the 2004 *Principles* can be found in the annotations to Principle V.A dealing with transparency and VI.A regarding board duties and responsibilities. Principle V.A.1 on disclosure of financial and operating results refers to the importance "that transactions relating to an entire group of companies be disclosed in line with high

[12] See http://www.bis.org/publ/joint29.pdf for the full text.

quality internationally recognised standards…" Principle VI.A. on board duties refers to the "central importance" of the duty of loyalty, stating: "It is also a key principle for board members who are working within the structure of a group of companies: even though a company might be controlled by another enterprise, the duty of loyalty for a board member relates to the company and all its shareholders and not to the controlling company of the group."

23. The *OECD Principles* are currently undergoing a revision to be issued in 2015, and the Roundtable's and Task Force's work on this subject may be considered as a relevant input to the OECD Corporate Governance Committee's review process.

24. However, developing consensus across the OECD and other partner countries participating in the *Principles* review process on specific recommendations for corporate governance of company groups may raise some challenges of its own, considering the varying approaches taken by different countries.

25. Economic groups are common in most countries of the world, particularly in countries with concentrated ownership, but are less common in dispersed ownership countries including the US, UK and Australia. The lower incidence of economic group structures in these countries may be attributed to a variety of factors. For example, an important factor in the US is the double taxation of inter-corporate dividends, which creates a disincentive for such group structures. Until recently, the Glass Steagal Act prevented banks from ownership roles that are allowed in other countries such as Germany and Japan. In addition, limited acceptance in these countries of multiple class shares by investors also makes it more difficult for a controlling owner with limited economic ownership to extend control through issuance of non-voting shares, which is common in many emerging markets as well as in developed countries such as Sweden where economic groups also play an important role. Not coincidentally, the US, UK and Australia have strong concepts of fiduciary loyalty of directors to the companies whose boards they serve on and not to the wider group, developed in the courts.[13]

26. On the other hand, Germany (and a number of other countries particularly in Central and Eastern Europe that have followed the German model such as Latvia) has developed a more elaborated framework for corporate governance of company groups that seeks to balance the interests of the group and that of its associated companies. German law distinguishes between two types of groups each with different responsibilities: factual and contractual groups.

27. In the more common factual group case in Germany, when a company has factual control over another company through ownership of stocks or voting rights, the negative impact of any influence by the parent company must be disclosed, audited and compensated. If the board declares that the negative influence was not properly compensated, any shareholder may request a special investigation by the financial market regulator. The parent and its directors are liable not only to the subsidiary for the negative influence but also to the shareholders of the subsidiary caused by additional losses such as through a decline in the company's share price. Directors and members of the supervisory board may be liable separately and jointly to the subsidiary company if they covered up a negative influence of the parent company without obtaining compensation. For this model to work effectively, it is important that the board act in line with its responsibilities. The efficiency of the special investigation of disputes, which tends to take a long time, is also a critical factor.

[13] Information in this paragraph and subsequent paragraphs regarding OECD country experience draws substantially on an internal OECD working paper prepared by Grant Kirkpatrick, "Company groups and corporate governance: dealing with related party transactions," May, 2013 (unpublished).

28. The second German group governance model covering contractual groups (similar to a provision available to Brazilian groups but rarely used there) applies to company groups established by a contract of control. The contract, which must be approved by shareholders of both companies, gives the management board of a parent company the right to issue instructions to the subsidiary, which may involve transferring of profits from the subsidiary. Creditors and shareholders are protected against losses in value through an obligation by the parent company to annually compensate losses. Shareholders in the subsidiary are further protected through establishment of a fixed dividend and the right to sell their shares to the parent at a fair price. Compensation may be provided in the form of cash or of shares of the parent or grandparent company. Reports from both Germany and Latvia suggest that enforcement in cases of disputes over the appropriate level of compensation can be problematic. Cases in Germany are reported to have taken as many as eight years to resolve. In Latvia, where a significant number of group companies use the contractual model, an OECD review of Latvia's corporate governance framework (not yet published) found that contractual agreements did not tend to specify terms and conditions for the provision of compensation for shareholders of subsidiary companies, making it difficult to enforce such provisions.

29. The concept of providing greater leeway to the holding company to manage the overall interests of the group has also been adopted to some extent in a number of other European countries through court case jurisprudence that has resulted in the application of the so-called "Rozenblum Doctrine," followed in France, Belgium and to some extent Italy. This doctrine sets out conditions under which a director may apply a "group defense" regarding the duty of loyalty for a decision that is not in the direct interests of the subsidiary company whose board he serves on under certain conditions. The group must be characterised by capital links between the companies; there is a strong, effective business integration among the companies of the group; and financial support for one company to another has an economic quid pro quo and does not break the balance of mutual commitments between the concerned companies; the support from the company must not exceed its possibilities or in other words it should not create a risk of bankruptcy for the company.[14]

30. Court cases in France and Belgium have reaffirmed that the directors' duty of loyalty may extend to the group under certain conditions. For example, the OECD peer review of Belgium on its framework for related party transactions[15] cited a case where a company transferred money to a failing subsidiary, prompting shareholders in the parent company that incurred a loss and the market regulator to sue the directors for breach of loyalty. However, the court upheld the right of the directors to act in the interest of the group under certain conditions.

31. An April, 2011 European Commission "*Report of the Reflection Group on the Future of EU Company Law*"[16] emphasised that "any EU legislation on the corporate governance of groups should seek to maintain and enhance the flexibility of the management of groups in its international business activities." The report suggested that transactions beneficial to the group but not in the direct interest of the subsidiary can be considered as legitimate for directors provided that the interest of that company are safeguarded on balance. The Reflection Group stated that the parent corporation could be vested with a right and also a duty to manage the group and its constituent companies in accordance with the overall interest of the group. However, some members of the Reflection Group suggested that the board of the parent company should have a duty to manage the group only if they choose to. Considering the very different approaches taken in different EU member states, the Reflection Group

[14] See Conac, P.H. et al (2007), "Constraining Dominant Shareholders' Self Dealing: The Legal Framework in France, Germany and Italy", ECFR, No. 4/2007.

[15] OECD (2012), "Related Party Transactions and Minority Shareholder Rights".

[16] See http://ec.europa.eu/internal_market/company/docs/modern/reflectiongroup_report_en.pdf .

did not reach a consensus on whether the EU Commission should adopt a recommendation recognising the interest of the group.

32. In many other countries, including the cases of the US, UK and Australia already mentioned, as well as in Israel, the board's duty of loyalty is clearly defined in terms of the company he or she serves on and not the wider interests of the group.[17] In Israel, this duty is further underpinned by requirements to have independent directors on the board who can only be elected by non-controlling shareholders. Independent board members comprise a majority on the Audit Committee, which must approve along with the board all extraordinary transactions.[18] Furthermore, extraordinary transactions must be approved by a majority of shareholders who do not have an interest in the transaction. In the cases of Korea and Israel, minority shareholder rights are further reinforced through a refined fiduciary duty of controlling shareholders to other shareholders. Finally, Israel has also forbidden the participation of financial institutions in corporate groups as a way of reducing the potential for conflicts of interests within such group structures.

33. Regarding disclosure, many jurisdictions require company groups to report on their ownership and structure, backed by International Financial Reporting Standards (IAS 24 and IAS 27) requiring disclosure about related parties and the group for the purposes of preparing consolidated financial statements. In addition to requirements for consolidated accounting, in Japan, for example, shareholders of a parent company have the right to inspect books, records, financial data and the minutes of board and shareholder meetings of a subsidiary if they obtain permission of the court.

34. A 2002 high-level EU group of company law experts also issued a report (known as the "Winters Report') recommending that the parent company of each group should be made responsible for disclosing coherent and accurate information with regard to the group's structure and relations. Moreover, "especially with respect to non-financial disclosure, it should be ensured that -- especially where listed companies are involved – a clear picture of the group's governance structure, including cross holdings and material shareholders' agreements, is given to the market and the public. In addition, companies could be required to provide specific information when they enter into or exit from a group."[19]

35. The more recent 2011 high-level "*Reflection Group on the Future of EU Company Law*" concluded that the EU has subsequently adopted a number of relevant requirements, but that the question remains "as to whether basic information on a listed company's group structure can be assessed to be easily accessible through the current regime of financial statements and annual reports." The report concluded that, "Although there are numerous and detailed rules on group information, there is no rule requiring an annual report, corporate governance statement or company web site to describe the main features of a company's group structure in a clear and investor-friendly manner. Currently, for example, some companies' annual reports contain a chapter on changes in group structure without providing information on the existing group structure."

[17] Although, according to Mike Lubrano, a director's consideration of the interests of the group can be taken into account in the US courts through application of the business judgement rule.

[18] Extraordinary transactions in Israel are defined as those which are not undertaken under market conditions, not in a company's ordinary course of business or that are likely to materially influence the profitability of a company, its property or liabilities

[19] *Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe*, Brussels, 2002, page 100.

4. Economic Relevance of Company Groups in LatAm

36. The presence and relevance of company groups in the largest Latin American economies are significant. Quantitative assessment of their actual importance in capital and financial markets varies across countries; listed firms that are part of a company group account for more than 80% of market capitalization in most countries; similarly, company groups in the financial sector (conglomerates) are also quite large, therefore being a potential source of financial instability through its systemic importance. In certain countries, notably Brazil and Mexico, regulators have found that nearly every listed company in the country is part of a company group (for Brazil, 64 of the 66 companies on the IBOVESPA index; and in Mexico, 98% of listed companies on the Mexican Stock Exchange). While for other countries the numbers were somewhat lower, and in some cases regulators did not provide specific numbers, it was nevertheless clear that company and economic groups are the predominant form of business for listed companies in these markets.

37. In most countries, company groups have grown steadily, but their growth rate has somewhat stalled in recent years, as would be expected due to their current size and slower growth in the global economy since the financial crisis. Company groups are of diverse type, including financial and non-financial firms; in the former case, they are usually the largest groups within countries. Another feature worth mentioning is the presence of the State as an owner in the case of the largest company groups in most countries surveyed. Also, an increasing presence of multinational company groups headquartered in any of the countries in the region has been verified in the last decade.

5. What is an Economic Group in LatAm?

38. Legal definitions of what a company or economic group is varies markedly in the surveyed countries. Some addressed this issue in general (through some provisions in the Companies Law or similar), while others are more specific to listed firms (through provisions in the Securities Market Law or similar). Also, the language of groups varies across countries: in Chile, Colombia, Mexico and Peru they are referred to mostly as business groups, whereas Argentina and Brazil used the term economic groups. When it comes to groups with financial members, conglomerate or financial conglomerate is the usual term used.

39. At one extreme, Argentina broadly defines controlling-controlled relationships between firms, without explicitly acknowledging what constitutes a group. At the other extreme, Mexico specifically defines business groups and establishes three different relationships structures (categories) that could be regarded as groups.

40. Relationships between companies forming a group are based primarily on shareholding considerations (direct or indirect voting and cash-flow rights) associated to controlling and controlled entities, and the possibility for one or more of them to exert significant (and in some cases, permanent[20]) influence over other members of the group; this provision is usually expressed in terms of the power to appoint a majority of the board (this is the case in Brazil, Chile, Colombia and Peru) or to remove the majority of the board (Peru). Acting in concert is also an element of legislation that complements the definition of a controlling entity in most countries.

41. A two-stage approach is only applied by Colombia to define a group. In addition to the controlled-controlling relationship, a common purpose and strategy condition shall be met by companies to be regarded as a group. In some cases, alternative features are taken into account to define if a set of companies qualify as a group; for instance financial or management relationships that

[20] Brazil and Peru.

could be regarded as guided by a common interest or subject to that of another entity are also elements that may determine the existence of a group (Chile).

42. In Chile and Colombia, the regulatory authorities have the power to determine -de facto- that a set of firms are a business group if certain conditions are met. In the case of Brazil, economic groups are labeled as *de facto* groups when certain conditions are met, and not because the regulator can demise them to be a group. An interesting unique feature in Brazil is that economic groups who wish to register themselves as a group, can do so on a voluntarily basis, the so-called *de jure* groups (only two listed firms define themselves in their respective bylaws as *de jure* groups). In Colombia, firms are obligated to report if they are part of a business group.

6. Structure of the Regulatory and Supervisory Framework

43. Countries have not established restrictions in terms of the possibility to form business groups having both financial and non-financial firms; also, members of financial conglomerates are usually different types of intermediaries (banks, other credit institutions, insurance companies, fund managers, pension funds, etc.). Therefore, a recurrent fact is the presence of mixed business groups, which poses a challenge for regulators since different parts of the group will be supervised by different authorities, without necessarily doing so on a consolidated supervisory approach.

44. This is so because the current regulatory structures in surveyed countries are heterogeneous. As shown in the table below, only Colombia has an integrated regulatory and supervisory structure[21]. Other countries rely more on coordination among separated entities as the most efficient way to deal with the presence of business groups. The issue here is not integrated vs coordinated regulatory and supervisory structure, but rather consolidated or segmented regulatory and supervisory approach.

[21] Even in Colombia, co-ordination between the Financial Superintendency and Superintendency of Companies may be necessary for cases involving groups containing listed and non-listed non-financial companies.

Table 1. Current Regulatory Structures in Surveyed Countries

	Non-Financial Listed Firms	Banks and Non-Banking Credit Firms	Insurance Companies	Pension Funds
Argentina	CNV	BCRA	SSN	N/A[22]
Brazil	CVM	BCB	SUSEP	PREVIC
Chile	SVS	SBIF	SVS	SP
Colombia	Superfinanciera	Superfinanciera	Superfinanciera	Superfinanciera
Mexico	CNBV	CNBV	CNSF	CONSAR
Peru	SMV	SBS	SBS	SBS

Source: OECD Survey of Latin American regulators.

45. Therefore, many countries have established inter-agency coordination spheres; whether formally or not, most countries have developed such mechanisms as a response to minimize systemic risks in the financial markets (financial stability) derived from the presence of financial and mixed economic groups.

46. Coordination has been structured around informal mechanisms between regulators (Argentina), formal mechanisms (Brazil and Peru), or establishing a superstructure such as a financial stability council with representation of relevant regulators (Chile and Mexico). These institutional arrangements also include other relevant governmental agencies, such as the Ministry of Finance, the tax authority, anti-money laundering agency, and the Central Bank. In some countries (Brazil and Mexico) such coordination goes beyond traditional exchange of information, and allows regulators to move towards a consolidated supervisory approach, for instance through joint in-situ supervision.

7. Protection of Minority Shareholder Rights

47. The most common requirement that aims to protect minority shareholders rights in the case of company groups relates to disclosure about the structure of the group. On the one hand, Argentina, Chile and Mexico require listed firms being part of a group to disclose in general terms the structure of the group (and changes in control); Argentina also requires disclosing remuneration policies in controlled entities if different from those implemented at the controlled entities. On the other hand, Brazil and Peru mandate listed firms to provide a more detailed description of the structure of the

[22] There is a single pension fund in Argentina which is state-run (FGS). There is no specific government agency in charge of regulating and supervising the FGS; some institutional oversight mechanisms include the National Congress and the Ministry of Economy.

group (including shareholdings and other commercial relationships); and finally, Colombia has established the preparation of a special report in the case of groups, where detailed information on the structure of the group and the transactions between members shall be disclosed.

48. All surveyed countries but Colombia[23] have implemented IFRS, so financial statements are prepared on a consolidated basis. However, there are no specific requirements applicable for groups.

49. This is also the case for related-party transactions (RPTs), where most country regulations apply for listed companies being part of a group or not alike.[24] A few exceptions are found in Chile and Colombia. In Chile, the supervisor has the power to suspend transactions between companies of the same business group if one of those companies is a market intermediary, a supervised fund manager, a life insurance company or a securitization entity in those cases where their assets under management are at risk due to financial distress of the entity or its related parties. Colombia has recently undertaken a major reform of its Country Code, including several recommendations with respect to more detailed and periodic disclosure obligations of RPTs in the case of business groups; also, the Superfinanciera (SFC) now requires financial groups to issue a quarterly report called "Reciprocal Intragroup Consolidated Transactions," which includes SFC review of RPTs.

50. Other mechanisms aiming at protecting minority shareholders' rights were developed to minimize the potential for stock dilution by controlling shareholders. The most common feature in surveyed countries are the requirements for immediate disclosure of significant events in relation to changes in ownership structure; these includes the reporting of corporate reorganization (M&A, spin-offs, transfers of key assets, etc.) and of issuance of new shares, changes in controlling shareholders, buyback programs, stock options, directors and senior management shareholdings, etc. as well.

51. In the above mentioned cases, regulations provide additional protection mechanisms to minority shareholders other than disclosure. These mechanisms usually give minority shareholders a preferred right to buy new shares, mandatory OPA, minimum thresholds for dividend payouts, and/or requirements for special majorities at the AGM for corporate ownership changes. However, all these provisions apply equally to firms that belong or not to a company group.

8. Economic Groups and Conflicts of Interest

52. Restrictions on firms' ownership structures to minimize conflicts of interest are mostly related to systemic financial stability considerations rather than motivated by governance concerns at the firm level. Therefore, all countries have established diverse ownership restrictions when it comes to financial intermediaries and non-financial firms.

53. These are usually established through the Banking Law (or similar) and related regulations, and aim to limit a financial intermediary's interest in other firms based on prudential norms; for instance, prohibiting banks to be shareholders of other firms (financial and non-financial); and

[23] Colombia will join this group beginning in 2015; currently, for a transition phase, listed firms submit two sets of financial statements to the regulator according to both IFRS and local standards, but are not yet required to publicly disclose the statements based on IFRS.

[24] For more information on the procedures and policies followed by each country with respect to RPTs, a report on this topic was prepared in 2013 by the RPTs Task Force of the Latin American Corporate Governance Roundtable.

See: http://www.oecd.org/daf/ca/LatinAmericanReportonRelatedPartyTransactions.pdf restricting their credit exposure to related entities/individuals (either through loans, bonds and/or other financial instruments).

54. Therefore, no restrictions or limits applying to control structures for economic or company groups (i.e. pyramidal ownership structures) that are aimed at reducing the scope for conflicts of interest and divergence between voting rights and cash flow rights are in place in surveyed countries. One soft exception to that common feature was found in Colombia where legislation forbids controlled firms to hold shares of its controlling entity in the case of company groups.

55. At the board level, the main element found across the surveyed countries in dealing with conflicts of interest is the establishment of the duty of diligence and loyalty of directors and their liability for breaching such duty. If a director is confronted with a conflict of interest in the discharge of his/her duties, he/she shall refrain from participating and voting in any discussion of the issue. But, again, these provisions are equally applicable to all firms, irrespectively of them being part of a group or not; only Brazil specifically acknowledges that administrators (supervisory and management board members) are liable before the company for possible damages arising from violation of ensuring that transactions between companies belonging to the same group were done at fair terms.

56. Regarding provisions with respect to the composition of the board, no specific restrictions are in place to prohibit interlocking board members within a group except in Colombia, but only for financial conglomerates. However, requirements for independent directors apply to all firms, hence providing some limits on individuals cross-sitting on boards of companies within the same group. While no Latin American country requires more than 25% of the board of directors to be designated as independent, independent directors can nevertheless play an important role, often comprising a majority of the audit committee or similar body[25], for example, in in Argentina, Chile, Colombia and Mexico.

57. Nevertheless, Brazil, Chile, Colombia and Mexico do have some specific regulations applying to company groups that constrain the ability of certain individuals (or related persons) to participate in firms' key decision-making bodies.

58. On the one hand, straightforward prohibitions are in place. Brazil established a provision banning administrators (or related persons, i.e. spouses) and other employees of companies belonging to the same group to serve as members of the fiscal council (it's a statutory oversight body with an advisory role). Mexico bans external auditors of any firm (over the previous 12 months) belonging to a business group to be appointed to the board of any of the firms of the group. Finally, Colombia prohibits an individual to have more than five board seats simultaneously; in the specific case of financial conglomerates, board members of financial holding companies can´t be elected to any of its subsidiaries' board (interestingly, this ban doesn't apply to executives of the holding company).

59. On the other hand, independence is the driver for limits to cross-sitting. Chile and Mexico have established that certain individuals do not qualify as independent for the purpose of board composition. In the former case, a director of a controlled firm can´t be elected as independent director of the holding company; in the latter case, individuals with senior responsibilities within a business group (over the previous 12 months) do not qualify as independent directors of any of the firms belonging to the group.

[25] Brazil has requirements for independent members of its Fiscal Council, which serves a similar function to an audit committee, but which does not contain members of the board of directors and serves an advisory role to the board.

60. There are two idiosyncratic practices in place in Chile and Peru that are worth mentioning. First, Chilean legislation allows the director of a holding firm the right to attend, without voting rights, the board sessions of the subsidiaries within a group. And second, under Mexican regulations in the case of a listed firm that is a controlled entity, the structure of the board's corporate practices committee[26] is different from other firms not having a controlling shareholder; in the former, a majority of independent members is required, whereas in the latter a full independent composition is mandated by law.

61. With respect to control environment, no country has established differential treatment for firms being part of a company group. Risk management provisions, and internal and external control regulations (the composition and functioning of the audit committee or similar, rotation of external audits, etc.) are applicable to all listed firms.

62. All surveyed countries have developed their own codes for good corporate governance practices. In four countries (Argentina, Chile, Colombia and Peru) they have a legal status based on a "comply or explain" mechanism. Argentina, Colombia and Peru have each developed recommendations with respect to enhanced transparency practices in the case of company groups. The Argentinean code also calls for ensuring mechanisms to deal with conflicts of interest, and preventing misuse of inside information. The Peruvian code calls upon company groups to adopt an integrated risk management framework across the group (including the recommendation to appoint the same external auditor for all companies within the group), with higher responsibilities taken by the board of the holding company. In the case of Colombia, a reform to the code in September 2014 included a number of recommendations targeting company groups in addition to those mentioned above, such as appointing a single chief risk officer, establishing a self-regulatory regime for boards of holding companies with increased responsibilities, etc.

9. Multinational Company Groups and Cross-border Activity

63. As it is reported in the individual country chapters, company groups having an international presence and operations abroad are important in all surveyed countries. This fact gives company groups additional room to undertake cross-border actions that may affect other stakeholders' rights.

64. Despite their growing presence, none of the surveyed countries have reported any situation under investigation involving breaching of corporate governance regulations by international business groups.

65. However, they do have the administrative tools to engage in cross-border investigations. All countries but Chile[27] are full signatories of the IOSCO Multilateral Memorandum of Understanding (IOSCO MMOU) concerning consultation and cooperation and exchange of information with other members. In addition to that, all countries have signed several bilateral Memoranda of Understanding with foreign securities regulators for consultation, enforcement and exchange of information. This is particularly important in the context of the Mercado Integrado Latinoamericano (MILA), where some exchanges of information have occurred among domestic capital markets regulators. Nevertheless, most bilateral MOUs focus on infringements of the stock exchanges' rules, rather than corporate governance issues.

[26] This committee has oversight responsibilities on matters such as board remuneration policies, RPTs, board effectiveness, etc.

[27] Chile is listed as an Annex B member, meaning that they have committed to became signatories of the MMoU once they have the necessary authority to do so.

10. Regional Guidance on Corporate Governance of Groups

Recognising the prevalence and importance of company and economic groups in Latin America and the specific challenges related to their governance, two recent initiatives provide guidance to regulators and companies tailored to the conditions of the region: the CAF Latin American Development Bank's Annex 1 of the CAF 2013 *Guidelines for a Latin American Code of Corporate Governance*[28]*;* and the *Corporate Governance Recommendations for Company Groups Based on Experiences from the Latin American Companies Circle* (November 2014). [29] Considering the very recent completion of the Circle's report, there has not been sufficient time to separately review and summarize its findings within this report, but the Circle's report will be circulated to all Task Force members and Roundtable participants as an additional reference for discussions.

70. The CAF guidelines refer to company or economic groups as business groups, much like most countries in the region. Two conditions are necessary to be regarded as a business group: common ownership, and control or effective influence. Most countries have followed these requisites when defining groups in their legislation.

71. The CAF approach to the governance within business groups puts at the forefront of the discussion the fact that the interest of the group as a whole should prevail over the interest of their individual members, with due consideration to the necessary autonomy to individual firms. CAF also calls for the definition and adoption of a framework for corporate governance at the group level -- based on the guidelines issued for individual firms -- but designed in order to better manage the particular conflicts of interest that are raised in the case of business groups. The Guidelines also acknowledge that financial conglomerates have a much broader set of conflict of interests that deserve particular attention: business complexity, risk profile, higher leverage, and systemic importance are distinctive features when compared to non-financial business groups.

72. The guidelines are grouped into four categories: i) Structure of the Business Group; ii) Board Functioning; iii) Framework for Control; and iv) Transparency and Disclosure.

73. In the first group, recommendations revolve around the establishment of a transparent and accurate organizational structure, with clear responsibilities for each member of the group, so as to facilitate the strategic planning for the group, its control, management and oversight. Specific guidelines are devoted to increase transparency and disclosure of the complete structure of the group, including business relationships (commercial, financial, managerial, etc.) and responsibilities within the group.

74. In the case of the functioning of the board, CAF calls for a differential treatment in the case of the board of the controlling entity and of the controlled entities, particularly when responsibilities have to be assigned to the members of the group. The former shall have responsibilities over the group as a whole, providing the group with a strategic view, a comprehensive risk management policy, and oversight of group achievement of strategic goals. The latter -- in addition to standard responsibilities -- shall ensure that the controlled entity follows the strategic guidelines set forth by the board of the controlling firm (as long as it doesn't jeopardize its own endurance), be accountable to the board of the

[28] CAF 2013 Guidelines for a Latin American Code of Corporate Governance (Annex I). The report is available at: http://publicaciones.caf.com/media/25389/lineamientos_codigo_latinoamericano.pdf

[29] "Corporate Governance Recommendations for Company Groups Based on Experiences from the Latin American Companies Circle". November 2014

controlling entity, and provide it with full information regarding the functioning of the controlled entity.

75. These differential requirements for boards have implications in terms of the professional profiles required for board members at every unit of the group, and on the optimal size of each board. Moreover, the establishment of board committees in controlled entities should be subject to a thorough evaluation regarding their convenience, given that certain functions shall be the domain of the board of the controlling entity; for instance, the Guidelines advise that audit, remuneration policies and risk committees should be established at the controlling board. Of course, actual adoption of this recommended practice is subject to existing regulations and legal requirements.

76. The control environment (policies and processes, risk management, control activities, reporting and communication, and oversight) in the group should be structured from a consolidated perspective, with formal procedures established across the group in order to have a comprehensive assessment of the risk exposure of the group as a single entity. No single model or benchmarking is recommended. Nevertheless, such environment shall be developed following best international practices (COSO I and COSO II), ensuring clear responsibilities, and providing an efficient bottom-up flow of information and reporting.

77. Finally, the CAF guidelines attach a critical importance to transparency practices. Information disclosure to all stakeholders should extend not only to the provision of an individual firm's information on a consolidated basis (vertical approach), but include key aspects of their relationships from a horizontal perspective, in order to have a much clearer understanding of the group, its functioning, complexities and responsibilities of its members. The guidelines recommend implementing a group-based transparency policy, and providing broad information about the group through an institutional website; in the case of controlled entities, references to the corporate governance implications of being part of the group should be disclosed.

10. Policy Options and Challenges

66. The region's regulators are not currently considering any major changes to their policy and regulatory frameworks for corporate governance of groups. However, in some countries, prospective regulations affecting company groups are under analysis and discussion with relevant stakeholders. For instance, Brazil plans to enact a new regulation on disclosure of corporate reorganizations that includes special provisions on transactions that involve economic group companies. Peru is considering to limit certain RPTs and to request additional protective procedures in those cases. Colombia is in the process of considering potential legislation to strengthen regulatory authority to supervise holding companies of financial conglomerates.

67. From a systemic perspective, Chile's SVS has recently embarked on a process of identifying and evaluating systemic risks derived from business groups in general, as a natural extension of similar work done on financial conglomerates. In a similar fashion, Mexico's CNBV mentioned that recent regulatory reform in the case of corporate governance issues at financial conglomerates may serve as a benchmark for non-financial listed firms if needed. Finally, Argentina's CNV expressed that as part of its ongoing process of reviewing its regulatory framework to identify potential weaknesses and risks, recommendations issued by CAF on corporate governance of company groups are being used as a relevant reference for potential inclusion in Argentina's comply or explain corporate governance code.

11. Conclusions and Issues for Discussion

78. Latin American regulators participating in the Task Force Survey have already indicated an interest to review the results of this Task Force survey, international experiences and guidance before considering a wider range of policy options for discussion and consideration.

79. As has been reported, regulatory frameworks in the region generally have defined company groups and established some specific regulation for groups, particularly with respect to disclosure (e.g. complying with IFRS requirements for consolidated disclosure of accounts and requirements to report information on group structures and ownership). But, like the *OECD Principles of Corporate Governance*, they do not necessarily go into specific detail with respect to the particularities of being part of a group. Rather, certain provisions, such as requirements for the review of related party transactions and other provisions to protect minority shareholder rights, have been conceived to be broadly applicable both to companies within groups as well as for stand-alone firms.

80. Nevertheless, recently issued corporate governance guidance for groups from the CAF Latin American Development Bank and the Latin American Companies Circle -- in addition to the relevant international experiences set forth in section 3 -- all suggest that there is scope for the development of more specific guidance – and potentially legal reforms -- with respect to the governance of groups, both because of their systemic importance to Latin American economies and because of some of the specific challenges and complexities involved. Convergence to a common standard could also facilitate regional integration of capital markets, and a more efficient functioning of the domestic regulatory and supervisory frameworks when it comes to corporate governance issues involving multinational business groups.

81. This could take the form of more group-specific voluntary guidance, similar to that provided in recent updates to the Colombian and Peruvian corporate governance codes, or may involve more legally binding requirements. Assessing what issues require regulation and which should be left to voluntary guidance, as usual, will depend on a range of factors, including whether current governance practices of groups are evaluated to be problematic and need to be improved; whether guidance or regulation provides sufficient flexibility to be applied to different group structures and business models; and not least, whether the benefits of additional regulation (or disclosure requirements with respect to voluntary recommendations) outweigh the additional costs.

82. In this context, Task Force (and Roundtable) participants are invited to consider within their own country contexts whether legal or regulatory reforms or best practice guidance would be desirable, and whether a regionally-coordinated approach should be pursued, with respect to:

a. **Structures of Groups and Potential Conflicts of Interest:** Some countries have restricted the involvement of financial intermediaries (e.g. banks, institutional investors) within company group structures to reduce the scope for conflicts of interest. Countries have also limited the number of layers of ownership in pyramid structures, and cross-shareholdings to limit the divergence between cash flow and control rights as part of a framework to help ensure minority shareholder protection. Other reforms and guidance have focused on ensuring that the group has the capacity and structures in place to manage the overall strategy, risks and potential conflicts of interest effectively. **Are further regulatory restrictions or voluntary guidance needed on this issue? If so, should this be limited to groups that include financial institutions, or should regulation or guidance be developed that is broadly applicable to groups that have at least one listed company member?**

b. **Board Functioning:** The report highlights the tensions and lack of clarity existing in many countries with respect to the duty of loyalty and liability of board members of a subsidiary when asked or required to act in the wider interests of the group at the expense of the subsidiary.[30] Discussions and experience in some European countries have pushed in the direction of providing greater flexibility for board members to act in the interests of the wider group, but also suggesting that safeguards are needed to give minority shareholders recourse (such as ability to sell shares or receive compensation) if the company acts against their interest. **Could more specific regulatory or voluntary guidance for controlling and controlled company board members regarding their respective responsibilities in a group situation be helpful to address these concerns? Is such guidance also desirable to improve the functioning of the board and board committees within groups?**

c. **Framework for Control:** Establishing an effective framework for control (policies and processes, risk management, control activities, reporting and communication, and oversight) is important for all companies but tends to be more complex and challenging in a group structure. **Are group-specific legal requirements desirable, for example for risk management and internal controls, or is good practice guidance sufficient and preferable to ensure that companies have sufficient flexibility to adapt their control environment to their particular structures and business models?**

d. **Transparency and Disclosure:** This is an issue on which there seems to be consensus that some regulatory requirements are necessary, but the extent of such requirements is subject to debate and significant variation across countries. Most countries require extensive disclosure of ownership, financial and non-financial information for listed companies, but these requirements may not extend to non-listed companies in the same group. **Should regulators have extended authority to require disclosure for non-listed companies that are part of a group that has listed company members? Brazil has just enacted regulations requiring its companies to report material related party transactions as a relevant fact requiring immediate disclosure to the market. Should other countries follow this example, or are IFRS annual reporting requirements sufficient?**

e. **Next steps:** What additional information/research may be needed to help clarify for policy-makers, regulators and markets desirable steps to enhance the framework for corporate governance of company groups? Should the Task Force continue to work on this issue to develop more specific guidance or support for improvements in the region? Do the Task Force and Roundtable wish to endorse this report or further develop this work for consideration by the OECD Corporate Governance Committee as part of its review process for the *OECD Principles of Corporate Governance?*

[30] This example may also occur in the opposite direction if a board member of a controlling company takes a decision that helps a subsidiary for the benefit of the group as a whole but is not in the controlling company's individual interest.

ANNEX

Excerpts from the Joint Forum's "Principles for the Supervision of Financial Conglomerates"[31]

(Chapter III on Corporate Governance: Recommendations 10 – 14)

10. Supervisors should seek to ensure that the financial conglomerate has a transparent organisational and managerial structure, which is consistent with its overall strategy and risk profile and is well understood by the board and senior management of the head company.

Implementation Criteria

10(a) Supervisors should require that the corporate governance framework of the financial conglomerate has minimum requirements for good governance of the entities of the financial conglomerate which allow for the prudential and legal obligations of its constituent entities to be effectively met. The ultimate responsibility for the sound and prudent management of a financial conglomerate rests with the board of the head of the financial conglomerate.

10(b) Supervisors should require that the financial conglomerate emphasises a high degree of integrity in the conduct of its affairs.

10(c) Supervisors should seek to ensure that the corporate governance framework appropriately balances the diverging interests of constituent entities and the financial conglomerate as a whole.

10(d) Supervisors should require that the governance framework respects the interests of policy holders and depositors (where relevant), and should seek to ensure that it respects the interests of other recognised stakeholders of the financial conglomerate and the financial soundness of entities in the financial conglomerate.

10(e) Supervisors should require that the governance framework includes adequate policies and processes that enable potential intra-group conflicts of interest to be avoided, and actual conflicts of interest to be identified and managed.

Explanatory Comments

10.1 The corporate governance framework should address where appropriate:

- alignment to the structure of the financial conglomerate;
- financial soundness of the significant owners;
- suitability of board members, senior management and key persons in control functions including their ability to make reasonable and impartial business judgments;

[31] The Joint Forum involves the Basel Committee on Banking Supervision (BCBS), IOSCO and the International Association of Insurance Supervisors (IAIS). See the BIS web site – http://www.bis.org/publ/joint29.pdf for the full set of recommendations in the report.

- fiduciary responsibilities of the boards of directors and senior management of the head company and material subsidiaries;

- management of conflicts of interest, in particular at the intra-group level and remuneration policies and practices within the financial conglomerate; and

- internal control and risk management systems and internal audit and compliance functions for the financial conglomerate.

10.2 The group's corporate governance framework should notably include a strong risk management framework (refer to the Risk Management section), a robust internal control system, effective internal audit and compliance functions, and ensure that the group conducts its affairs with appropriate independence and a high degree of integrity.

10.3 Group-wide governance not only involves the governance of the head of the financial conglomerate, but also applies group-wide to all material activities and entities of the financial conglomerate.

10.4 In the event the local corporate governance requirements applicable to any particular material entity in the financial conglomerate are below the group standards, the more stringent group corporate governance standards should apply, except where this would lead to a violation of local law.

10.5 Supervisors should require that the corporate governance framework of the financial conglomerate includes a code of ethical conduct.

10.6 Supervisors should require that the financial conglomerate have in place policies focused on identifying and managing potential intra-group conflicts of interest, including those that may result from intra-group transactions, charges, up streaming dividends, and risk-shifting. The policies should be approved by the board of the head of the financial conglomerate and be effectively implemented throughout the group. The policies should recognise the long-term interest of the financial conglomerate as a whole, the long term interest of the significant entities of the financial conglomerate, the stakeholders within the financial conglomerate, and all applicable laws and regulations.

Structure of the Financial Conglomerate

11. Supervisors should seek to ensure that the financial conglomerate has a transparent organisational and managerial structure, which is consistent with its overall strategy and risk profile and is well understood by the board and senior management of the head company.

Implementation Criteria

11(a) Supervisors should understand the financial conglomerate's group structure and the impact of any proposed changes to this structure.

11(b) Supervisors should assess the ownership structure of the financial conglomerate, including the financial soundness and integrity of its significant owners.

11(c) Supervisors should seek to ensure that the structure of the financial conglomerate does not impede effective supervision. Supervisors may seek restructuring under appropriate circumstances to achieve this, if necessary.

11(d) Supervisors should seek to ensure that the board and senior management of the head of the financial conglomerate are capable of describing and understanding the purpose, structure, strategy, material operations, and material risks of the financial conglomerate, including those of unregulated entities that are part of the financial conglomerate structure.

11(e) Supervisors should assess and monitor the financial conglomerate's process for approving and controlling structural changes, including the creation of new legal entities.

11(f) Where the financial conglomerate is part of a wider group, supervisors should require that the board and senior management of the head of the financial conglomerate have governance arrangements that enable material risks stemming from the wider group structure to be identified and appropriately assessed by relevant supervisory authorities.

11(g) Supervisors should seek to ensure that there is a framework governing information flows within the financial conglomerate and between the financial conglomerate and entities of the wider group (e.g. reporting procedures).

Explanatory Comments

11.1 A financial conglomerate may freely set its functional, hierarchical, business and/or regional organisation, provided all entities within the financial conglomerate comply with their relevant sectoral and legal frameworks.

11.2 Elements to be considered for assessing the significant ownership structure of the financial conglomerate may include the identification of significant owners, including the ultimate beneficial owners, the transparency of their ownership structure, their financial information, and the sources of their initial capital and all other requirements of national authorities. At a minimum, the necessary qualities of significant owners relate to the integrity demonstrated in personal behaviour and business conduct, as well as to the ability to provide additional support when needed.

11.3 Supervisors should seek to ensure that a financial conglomerate has an organisational and managerial structure that promotes and enables prudent management, and if necessary, orderly resolution aligned with corresponding sectoral requirements. Reporting lines within the financial conglomerate should be clear and should facilitate information flows within the financial conglomerate, both bottom-up and top-down.

11.4 Supervisors should be satisfied that the board and senior management of the head of the financial conglomerate understand and influence the evolution of an appropriate group legal structure in alignment with the approved business strategy and risk profile of the financial conglomerate, and understand how the various elements of the structure relate to one another. Where a financial conglomerate creates many legal entities, their number and, particularly, the interconnections and transactions between them, may pose challenges for the design of effective corporate governance arrangements. This risk should be recognised and managed. This is particularly the case where the organisational and managerial structure of the financial conglomerate deviates from the legal entity structure of the financial conglomerate.

11.5 Supervisors should assess changes to the group structure and how these changes impact its soundness, especially where such changes cause the financial conglomerate to engage in activities and/or operate in jurisdictions that impede transparency or do not meet international standards stemming from sectoral regulation.

Suitability of Board Members, Senior Managers and Key Persons in Control Functions

12. Supervisors should seek to ensure that the board members, senior managers and key persons in control functions in the various entities in a financial conglomerate possess integrity, competence, experience and qualifications to fulfil their role and exercise sound objective judgment.

Implementation Criteria

12(a) Supervisors should be satisfied of the suitability of board members, senior managers and key persons in control functions.

12(b) Supervisors should require financial conglomerates to have satisfactory processes for periodically assessing suitability.

12(c) Supervisors should require that the members of the boards of the head of the financial conglomerate and of its significant subsidiaries act independently of parties and interests external to the wider group; and that the board of the head of the financial conglomerate include a number of members acting independently of the wider group (including owners, board members, executives, and staff of the wider group).

12(d) Supervisors should communicate with the supervisors of other regulated entities within the conglomerate when board members, senior management and key persons in control functions are deemed not to meet their suitability tests.

Explanatory Comments

12.1 Board members, senior managers and key persons in control functions need to have appropriate skills, experience and knowledge, and act with care, honesty and integrity, in order to make reasonable and impartial business judgments and strengthen the protection afforded to recognised stakeholders. To this end, institutions need to prudently manage the risk that persons in positions of responsibility may not be suitable. Suitability criteria may vary depending on the degree of influence on or the responsibilities for the financial conglomerate.

12.2 Supervisors of regulated entities of the financial conglomerate are subject to statutory and other requirements in applying suitability tests to these entities in their jurisdiction. The organisational and managerial structure of financial conglomerates adds elements of complexity for supervisors seeking to ensure the suitability of persons. For instance, the management of regulated entities within the financial conglomerate can be extensively influenced by persons who are not directly responsible for such functions. A group-wide perspective regarding suitability of persons is intended to close any loopholes in this respect. Supervisors may rely on assessments made by other relevant supervisors in this area regarding suitability. Alternatively they may decide on concerted supervisory actions regarding suitability if required.

12.3 In order to meet suitability requirements, board members, senior managers and key persons in control functions, both individually and collectively, should have and demonstrate the ability to perform the duties or to carry out the responsibilities required in their position. Competence can generally be judged from the level of professionalism (e.g. pertinent experience within financial industries or other businesses) and/or formal qualifications.

12.4 Serving as a board member or senior manager of a company (from the wider group) that competes or does business with the regulated entities in the financial conglomerate can compromise independent judgment and create conflicts of interest, as can cross-membership on boards. A board's ability to exercise objective judgment independent of the views of executives and of inappropriate political or personal interests can be enhanced by recruiting members from a sufficiently broad population of candidates. The key characteristic of independence is the ability to exercise objective, independent judgment after fair consideration of all relevant information and views without undue influence from executives or from inappropriate external parties and interests and while taking into account the requirements of applicable law.

Responsibility of the Board of the Head of the Financial Conglomerate

13. Supervisors should require that the board of the head of the financial conglomerate appropriately defines the strategy and risk appetite of the financial conglomerate, and ensures this strategy is implemented and executed in the various entities, both regulated and unregulated.

Implementation Criteria

13(a) Supervisors should require that the board of the head of the financial conglomerate has in place a framework for monitoring compliance with the strategy and risk appetite across the financial conglomerate.

13(b) Supervisors should require that the board of the head of the financial conglomerate regularly assesses the strategy and risk appetite of the financial conglomerate to ensure it remains appropriate as the conglomerate evolved.

13(c) Where the financial conglomerate is part of a wider group, supervisors should assess whether the head is managing its relationship with the wider group and ultimate parent in a manner that is consistent with the governance framework of the financial conglomerate.

13(d) Supervisors should require that a framework is in place which seeks to ensure resources are available across the financial conglomerate for constituent entities to meet both the group and their own entity's governance standards.

Explanatory Comments

13.1 Supervisors should assess if the board of directors exercises adequate oversight over the management of the head of the financial conglomerate. This includes assessing the actions taken by the board of the head to define the strategy for the financial conglomerate and ensure the consistency of the operations of the various entities in the financial conglomerate with such strategy. To this end, the head company should set up an adequate corporate governance framework in line with the structure, business and risks of the financial conglomerate and its entities and applicable laws. This framework should ensure that the strategy is implemented and monitored throughout the financial conglomerate and reviewed on a regular basis and following material change including due to growth, increased complexity, geographic expansion, etc.

13.2 The head company should exercise adequate oversight of subsidiaries, both regulated and unregulated, while respecting independent legal and governance responsibilities. Supervisors should satisfy themselves that entities within a financial conglomerate adhere to the same group-wide corporate governance principles or at least apply policies that remain consistent with these principles.

The board of a regulated subsidiary of a financial conglomerate will retain and set its own corporate governance responsibilities and practices in line with its own legal requirements or in proportion to its size or business. These should not, however, conflict with the broader financial conglomerate corporate governance framework. Appropriate governance arrangements will address arrangements such that legal or regulatory provisions or prudential rules of regulated subsidiaries will be known and taken into account by the head company.

13.3 Where the financial conglomerate is part of a wider group structure, the head of the financial conglomerate is responsible for managing the relationship with its wider group. This includes ensuring there are appropriate arrangements for capital and liquidity management, assessing any material risk impact that may come from decisions made at its ownership level, service level agreements, reporting lines and regular top-level consultations with related companies in the wider group and the ultimate parent.

13.4 For smaller institutions within a larger conglomerate, it may be unnecessary to duplicate systems and controls. Such smaller institutions can rely on the systems and controls of the head if they have assessed that this is suitable to address group risks.

13.5 Supervisors should be satisfied with the amount and quality of information they receive from the head company of the financial conglomerate on its strategy, risk appetite and corporate governance framework.

Remuneration in a Financial Conglomerate

14. Supervisors should require that the financial conglomerate has and implements an appropriate remuneration policy that is consistent with its risk profile. The policy should take into account the material risks that organisation is exposed to, including those from its employees' activities.

Implementation Criteria

14(a) Supervisors should require that an appropriate remuneration policy consistent with established international standards is in place and observed at all levels and across jurisdictions in the financial conglomerate. An appropriate policy aligns risk-takers' variable remuneration with prudent risk taking, promotes sound and effective risk management, and takes into account any other appropriate factors. The overarching objective of the policy should be consistent across the group but can allow for reasonable differences based on the nature of the constituent entities/units and local legal requirements.

14 (b) Supervisors should require that ultimate oversight of the remuneration policy rest with the financial conglomerate's head company.

14(c) Supervisors should require that the remuneration of board members, senior managers and key persons in control functions be determined in a manner that does not incentivise them to disregard the obligations they owe to the financial conglomerate or any of its entities, nor to otherwise act in a manner contrary to any legal or regulatory obligations.

14(d) Supervisors should require that the risks associated with remuneration are reflected in the financial conglomerate's broader risk management framework. For example, staff engaged in financial and risk control at the group-wide level should be compensated in a manner that is consistent with their control role and should be involved in designing incentive arrangements, and assessing whether such arrangements encourage imprudent risk-taking.

14(e) Supervisors should require that the variable remuneration received by risk management and control personnel is not based substantially on the financial performance of the business units that they review but rather on the achievement of the objectives of their functions (e.g. adherence to internal controls).

Explanatory Comments

14.1 Remuneration is a key aspect of any governance framework and needs to be properly considered in order to mitigate the risks that may arise from poorly designed remuneration arrangements. The risks associated with remuneration should be reflected in the financial conglomerate's broader risk management framework.

14.2 Remuneration may serve important objectives, including attracting skilled staff, promoting better organisation-wide and employee performance, promoting retention, providing retirement security and allowing personnel costs to vary with revenues. It is also clear, however, that ill-designed compensation arrangements can provide incentives to take risks that are not consistent with the long term health of the organisation. Such risks and misaligned incentives are of particular supervisory interest.

14.3 Ultimately a financial conglomerate's remuneration policy should aim to ensure effective governance of remuneration, alignment of remuneration with prudent risk-taking, and engagement of recognised stakeholders.

14.4 Supervisors should ensure that the governance system identifies and closes loopholes that allow the circumvention of conglomerate, sectoral or entity-level remuneration requirements.

14.5 Board members, senior managers and key persons in control functions should be measured against performance criteria tied not only to the short-term, but also to the long-term interest of the financial conglomerate as a whole.

ARGENTINA

1. Data: Relevance of Company and Economic Groups for the Economy

68. Anecdotal evidence suggests that economic groups have a significant presence in the country; for instance, 8 out of the ten largest listed domestic firms in the Buenos Aires Stock Exchange are part of an economic group; also, as of 2003, 30 out of the 200 largest domestic companies were part of an economic group[32], while another study identifies 20 out of the 54 largest listed firms as linked to groups structured around pyramidal ownership structure.[33] Although there are many studies evaluating their economic, social and political impact, they do so by identifying and analyzing some of them without providing a quantitative assessment of their importance. Hence, to our knowledge there is no consolidated information on economic groups in Argentina.

2. Definitions

69. The Argentinean legal framework doesn´t address directly the issue of economic or company groups. Indeed, there is no specific legal definition of what constitutes a group. Nevertheless, the Companies Law (CL) and the Capital Market Law (CML) establish certain conditions that preclude the existence of certain relationships between firms.

70. Controlling relationships between companies are defined in the CL based on the power to solely influence the decision-making at shareholders meetings, while a category of linked companies is also established when a firm holds more than 10% of equity rights of another firm (art. 33); also, the CML under art. 2 establishes what a controlling group is, in the case of issuers in the capital markets (but this definition is mostly associated to controlling groups within a single firm, and not directly related to controlling groups of a group of firms). Definition of a related-party in the case of listed firms is provided under the CML (art. 72). In both cases, specific provisions and requirements are established.

71. Although no legal differentiation exists with respect to financial and non-financial firms when it comes to company or economic groups, the CML establishes that listed firms that are controlling entities of banks and/or insurance companies may also prepare their financial statements according to the valuation norms issued by the Superintendence of Banks (SEFyC) and/or the Superintendence of Insurance (SSN); other conditions shall be met in these cases.

72. There are no formal instances of information sharing between relevant regulators (e.g. SEFyC, SSN, CNV, Ministry of Economy, Financial Information Unit (UIF), the Federal Tax Authority, etc.); a Financial Regulation and Supervision Coordination Cabinet was established in 1999 and in place until 2012 as a mechanism aimed at filling that gap. Nevertheless, the CML allows the CNV to share information and cooperate with other regulators (SEFyC, SSN and UIF) to reinforce its supervisory powers.

[32] Gaggero, A. (2008) "Los Grupos Económicos Nacionales y el proceso de extranjerización del empresariado argentino durante la década de los noventa"

[33] Bebzcuk, R. (2005), "Corporate Governance and Ownership: Measurement and Impact on Corporate Performance and Dvidend Policy in Argentina," IADB Draft Paper.

3. Protection of Minority Shareholder Rights: Regulatory Oversight and Enforcement

73. The CL introduces additional disclosure requirements for linked companies (art. 63 to 66); for instance, financial statements should include information identifying the controlling shareholder and related-party transactions. Some provisions to protect minority shareholders in case of issue of new shares are also provided for (art. 195 and 202).[34]

74. In the particular case of listed companies, a major reform in regulations related to corporate governance took place in 2001 when Decree 677 was issued. Later in 2012 this provision was incorporated as Section III of the CML as part of a reform of several provisions of the CML. It included additional provisions regarding the protection of minority shareholders when a firm is quasi-totally controlled by another company (holds more than 95% of equity rights of the former).

75. Since 2012 listed firms shall prepare their financial statements according to IFRS. When firms register before the CNV to be authorized to list their shares and/or issue corporate bonds in public offer, it is requested that they shall inform the presence of controlling or controlled entities that constitute an economic group; in such cases, they are mandated to disclose additional information on the whole group.

76. The CML grants the National Securities Commission (CNV) the power to authorize listed firms to prepare financial statements on a consolidated basis, as long as by doing so, the financial and economic situation of the listed firm could be better assessed. Also, the CML requests listed firms to disclose the remuneration policies of controlled entities in those cases where those policies differ significantly from those followed by the controlling firm.

77. Controlling shareholders are also subject to additional requirements with respect to their ownership (number and types of shares, convertible bonds and stock options); when there are changes in controlling ownership, the company shall inform the CNV of such transactions regardless of whether the controller is an individual person or firm or a group of them acting in concert. Also, the firm shall inform the CNV of the existence of any kind of arrangement between shareholders that aim to exert control of the entity or significantly change the structure of voting rights of the firm.[35] In all of the above cases, listed firms shall also disclose such information to the markets in which its shares are listed; subsequently, markets should make public immediate the communications received, either through their institutional newsletters or other means to assure broad disclosure (sections 99 and 100 of the CML).

78. Also, the CML mandates the Audit Committee to provide -among other responsibilities- the board with a documented opinion regarding the conditions (whether done at arm´s length or not) under which related-party transactions and other commercial transactions where a conflict of interest may arise, are to be executed. Related-party transactions are defined as well, and it also establishes a minimum threshold of the transaction so as to be subject to greater scrutiny by the Audit Committee.[36]

[34] In case of issuance of new shares, existing shareholders have a preferred right to purchase new shares up to its current shareholding participation.

[35] In certain situations, the CNV may temporarily waive the obligation for firms to comply with this disclosure requirement (section 101 of the CML).

[36] Audit committee opinion is required for those transactions in which their value exceeds the equivalent to 1% of the firm’s equity.

79. Also, the board may request the opinion of two external independent experts regarding the conditions of such transactions. In such cases, the report prepared shall be disclosed to shareholders right after the transactions have been approved by the board (the vote of each director has to be identified). If the transaction is regarded (either by the Audit Committee or the external experts) as not complying with arm's length principles or market conditions, then it is required to be approved by the shareholders general assembly.

80. Shareholders can demand redress if damage has been caused because of a related-party transaction. As a rule, the reverse burden of proof is valid, and it is the board that has to prove that there has been no damage. However, if certain conditions are met, then the burden of proof reverts back to the claimant shareholder; this is the case when the transaction was approved by the board while also endorsed by the Audit Committee or external experts, or alternatively when the transaction was approved by the shareholders meeting without taking into account the votes of the shareholder that is involved in the RPT under consideration.

4. Other Corporate Governance Issues for Groups

81. The CL includes certain general provisions that could be considered as relevant in the case of company or economic groups. The duty of diligence and loyalty of directors and their responsibility for infringements are established as well (art. 59 and 274); similar considerations are included in the CML (art. 78). Finally, when a director is confronted with a conflict of interest in the discharge of his/her duties, he/she shall refrain from participating in any discussion of the issue, and shall inform the board about this situation (art. 272). However, no specific regulations are in place to minimize conflicts of interest at the board level in the case of company groups.

82. In 2012 the CNV reviewed a process initiated back in 2007 to promote the adoption of good corporate governance practices by listed firms and issuers of corporate bonds, through a Code of Corporate Governance. Since then, firms shall "comply or explain" whether they fully or partially adhere to a number of recommendations for good governance (as an addendum to the Annual Report and as a separate document to be disclosed through the CNV's website).

83. Recommendations are grouped under nine principles; the first principle relates directly to the necessary transparency in the relationship of the firm and the economic group to which it belongs. Recommendations under this principle call for disclosure of common policies/procedures within the group, ensuring mechanisms to deal with conflicts of interest, and preventing misuse of inside information.

5. Corporate Governance Issues for Multinational Economic Groups

84. In June, 2014 the CNV became full signatory of the IOSCO Multilateral Memorandum of Understanding (IOSCO MMOU) concerning consultation and cooperation and exchange of information with other members. This allows the CNV to expand its capacities to investigate cross-border financial operations in capital markets.

6. Policy Options for Consideration

85. Although no particular policy options are currently under consideration, the CNV follows an ongoing process of reviewing its regulatory framework to identify potential weaknesses and risks, so as to strengthen this framework. In particular, the CNV may consider the incorporation of specific recommendations into the Code of Corporate Governance that address the set of issues arising from the presence of economic groups. As part of that process, the CNV is paying particular attention to the

treatment of company groups as recommended in the Guidelines of Corporate Governance prepared by the CAF Latin American Development Bank.

BRAZIL

1. Data: Relevance of Company and Economic Groups for the Economy

86. Business groups play a dominant role among publicly-listed companies in Brazil: 64 of the 66 listed companies trading on the IBOVESPA index are part of an economic group, and the market value of these 64 companies represents 81.8% of BM&F Bovespa's total market capitalization, according to the Brazilian securities commission (CVM). While IBOVESPA comprises only 66 of BM&F Bovespa's 360 listed companies (as of the end of 2013), it includes Brazil's most actively traded and largest companies, accounting for 82.4% of the total market value as valued in the Economática database. Listed companies are required to report on their ownership structures, including a description of the group to which the issuer belongs, as well as on the controlling shareholder or group of controlling shareholders, as part of Reference Form disclosure requirements that are filed at least annually (see Section 3 for further details). Although CVM has not compiled overall data from the Reference Form to enable it to provide a precise count of how many of the 360 companies listed with BM&F Bovespa belong to an economic group, it reported that its staff believe that the vast majority of Brazilian listed companies belong to such groups.

2. Definitions

87. The vast majority of Brazilian listed companies belonging to a group operate as *de facto groups*, referred to as *economic groups.* A *de facto group* is formed by associate companies, subsidiaries and parent companies that maintain corporate relationships with each other under statutes applicable to individual companies, and that are not formally organized as a group (Chapter XX of the Brazilian Corporation Act[37] (Law No. 6404/76)). Such relationships are defined in terms of shareholding, i.e. voting and economic influence, with no binding obligations. Companies are considered as associated when an investor company holds "significant" influence, presumed when an investor maintains 20% or more of an investee's voting stock but does not exercise control. A controlling shareholder is regarded as such when it has prevalent and permanent influence in corporate decisions and the power to directly or indirectly elect a majority of administrators (Articles 116 and 143).[38] Article 245 of the Corporation Act states that business among companies that comprise such a group should be fair and impartial.

88. A more rarely used provision of the Corporation Act also defines the concept of *group of companies (de jure groups*), providing the opportunity for parent companies and subsidiaries (controlling and controlled companies) to register a contract with the Companies Registration Office that formally establishes them as a corporate group (Chapter XXI of the Corporation Act). Such a group may be described as a company of companies whose contract agreement establishes multilateral obligations with respect to activities, management and assets. To qualify as a *de jure group,* three conditions must apply: (i) there must be a subordinate relationship between the companies; (ii) an

[37] All subsequent legal references in this chapter relate to the Corporation Act.

[38] Brazilian corporations have a two-tier board system which includes a supervisory board, generally referred to as the board of directors (Consejo de Admnistraçao) elected by shareholders, and a management board or board of executive officers (Diretora), whose members are appointed by the supervisory board. However, the CEO, who chairs the management board, may also serve on and Chair the supervisory board. Brazil's questionnaire response (and this chapter) refers to "directors" as members of the supervisory board, "officers'" for executive board members, and "administrator" when referring to provisions that apply to both directors and officers.

agreement must be in place under which the participants must unite resources and efforts to achieve objectives; and (iii) control is exercised permanently by the parent company. In addition, Brazilian law requires the parent company of a *de jure group* to be incorporated under Brazilian Law and to be headquartered in Brazil. Similar to economic groups, reciprocal holdings between a company and its associates or subsidiaries are not permitted; only the controlling company can hold interests in a subsidiary's capital.

89. Only two listed companies, WEB and ITAUTEC, representing approximately 1.0% of market capitalization, define themselves in their respective bylaws as *de jure groups.* The main legal benefit of belonging to a *de jure* group is that it clarifies that administrators of associate companies shall follow the direction of the administrators of the group in accordance with the group contract (Articles 272-273); and that damages to minority shareholders or the interests of the company for the subordination of the interests of one corporation to those of another within the group, as well as the sharing of costs, revenue or results may not be claimed if the company is following the conditions of the group contract (Article 276).

3. Supervision of Brazilian Company Groups

90. In Brazil, CVM is responsible for supervising all listed companies, including those that are part of a group as well as listed financial institutions. In general, supervision criteria are the same for listed financial institutions as for other listed companies overseen by CVM. However, economic groups led by a financial institution are also required to report accounting and prudential information to the Central Bank of Brazil (BCB) in order to enable the BCB to assess the financial/economic position and regulatory capital of such groups. All financial institutions under BCB supervision and their respective economic groups must submit and disclose financial statements prepared under IFRS with consolidated information on the group, as well as separate financial statements for each financial institution in an economic group according to accounting principles applicable to financial institutions (COSIF).

91. CVM regulation does not apply to non-listed companies within the same economic group. However, the CVM and the market may have access to information related to non-listed companies if their parent company is a listed company, for example, through their filing of consolidated financial statements under which the parent company must include financial information about its subsidiaries, including non-listed ones.

92. CVM and the BCB have established a co-operation agreement that allows: (i) each institution to have the opportunity to comment on regulation to be issued by the other; (ii) issuance of joint decisions; (iii) exchange of information regarding the activities performed in financial and capital markets; (iv) reciprocal access to databases; (v) each institution may request information from the institutions or persons supervised by the BB and the CVM; (vi) joint inspections and mutual cooperation in surveillance and supervision activities; and (vii) cooperation aimed at staff training in both bodies.[39]

[39] CVM also has signed co-operation and information exchange agreements with other supervisory bodies including 1) the Superintendence of Private Insurance (SUSEP); 2) the Financial Activities Control Council (responsible for surveillance and discipline with respect to illegal activities related to money laundering); 3) the Internal Revenue Office (RFB); and 4) the National Electric Power Agency (ANEEL).

4. Protection of Minority Shareholder Rights

93. Most provisions aimed at the protection of minority shareholder rights in the case of companies that are part of economic groups deal with disclosure requirements and related-party transactions (RPTs) regulations.

94. In the case of disclosure, listed companies are required to prepare and disclose their financial statements on a consolidated basis (IFRS). In addition, as mentioned in Section 1 of this chapter, Brazilian listed companies face detailed disclosure requirements on the structure and control of the group that a listed company belongs to as part of Reference Form disclosures that must be filed at least annually.[40] Item 8 of the Reference Form requires the company to describe the economic group to which the issuer belongs, including a) direct and indirect controlling shareholders, b) subsidiaries and affiliates; c) The issuer's participation in corporations of the group; d) participation of corporations of the group in the issuer; and e) corporations under common control. The issuer may include an organizational chart of the economic group, and will be required to do so beginning in 2016. An additional section, Item 15, requires detailed disclosure with respect to shareholders and groups of shareholders with 5% or greater participation in any class of shares, including their name, nationality, number and types of stocks held, and whether they participate in a shareholder agreement.

95. Other provisions related to protection of minority shareholder rights generally do not distinguish between listed companies that are part of a group and other listed companies. The Corporation Act requires at least 50% of voting shares to approve major decisions such as the establishment of preferred shares or increasing an existing class of shares without maintaining its ratio to the other types and classes of shares unless otherwise provided in the bylaws; merging the corporation with another corporation or consolidating it; or participating in a group of corporations (article 265); and spin-offs.

5. Related Party Transactions

96. The Corporation Act does not treat transactions with subsidiaries differently than transactions with other related parties. However, some CVM regulation regarding disclosure of RPTs does differentiate between fully owned subsidiaries/controlled companies and other types of association.

97. CVM announced in October, 2014 an amendment to Instruction No. 480 that will require immediate disclosure of relevant related party transactions (in addition to annual financial statement reporting requirements under IFRS). The rule applies to transactions involving at least 50 million *reais* (USD 21 million as of 30 October, 2014) or 1% of the issuer's total assets; or smaller amounts at management's discretion taking into consideration the characteristics of the transaction or group of transactions; the nature of the relation between the related party and the issuer; and the nature and the proportion of the related party's interest in the transaction or group of transactions.

98. The disclosure must describe the transaction, including the parties and their relation to the issuer; its object and key terms and conditions. The disclosure must also describe, if, when, in which way and in what proportion the transaction's counterparty, its partners, directors or board members were involved in the issuer's decision on the transaction, along with a description of such involvement; and the negotiation of the transaction as the issuer's proxy, along with a description of such involvement. Furthermore, the issuer must supply a thorough explanation of the reasons that

[40] An English translation of CVM Instruction 480/09, setting out the specific disclosure requirements, may be found at http://www.cvm.gov.br/ingl/regu/CVMINST_480.asp

management considers the transaction has been made under fair conditions or that adequate compensation has been secured, for example, by informing if any tendering procedures were used or other procedures followed and their respective results; or if such procedures were not undertaken, an clarification of the reasons. The issuer must also provide the reasons that a related party was selected to engage in the transaction rather than third parties; and provide a detailed description of measures adopted to assure that the transaction was made under fair market conditions. Additional, more detailed disclosure requirements are established for related party loans, such as criteria used to determine the borrower's credit risks and the interest rate offered in comparison to other loans that the borrower has received.

99. In addition, Law 4.595/64, Article 34 prohibits loan operations to directors of financial institutions and affiliated companies, and to a number of other related parties such as officers and members of its advisory, administrative, fiscal or similar boards, their spouses and relatives up to the 2^{nd} degree; or to natural persons holding more than 10% of the financial institution's joint stock.

100. Protection of minority shareholders in related party transactions involving a parent company, subsidiaries or associates is also regulated by article 264, which grant an exit right in certain situations.

6. Other Corporate Governance Issues for Groups

Board duties and treatment of conflicts of interest

101. Brazilian legislation prohibits administrators (supervisory and management board members) of *de facto* or *de jure groups* from acting for the benefit of one company in detriment to another. More specifically, article 245 provides for the liability of directors of parent companies in *de facto* economic groups, requiring administrators to ensure that transactions carried out between companies of a group be impartial or have proper compensation. Impartiality is assessed through a fairness test, which takes into account a comparison with other transactions conducted on market terms, as well as convenience and opportunity criteria in carrying out the transaction. Administrators are liable before the company for possible damages arising from violation of this provision.

102. In the case of *de jure groups*, administrators of associate groups are required to observe general guidelines and instructions issued by group administrators that do not violate statutes or group agreements, without prejudice to their duties, powers and responsibilities in accordance with their by-laws.

103. Furthermore, Article 156 dealing with conflicts of interest prohibits administrators from acting in any corporate transaction in which there is a conflicting interest with the company, since an administrator can only contract with the company under reasonable and fair conditions, similar to those prevailing on the market or to those under which the company would contract with third parties.

104. Article 115 further restricts shareholders from voting on general meeting resolutions concerning the approval of an appraisal report regarding assets which that shareholder has contributed for the formation of the corporation's share capital, of that shareholder's accounts as a corporation administrator, or of any other resolution which may benefit that shareholder personally or in which that shareholder may have a conflict of interest with the company.

105. Brazil does not have any restrictions with respect to interlocking board members. However, administrators and other employees of a company, associate company, parent company or companies

belonging to the same group may not be elected to serve as fiscal council members.[41] This restriction also applies to persons related to the company's administrators or their spouses.

106. There are no differing requirements from those established for listed companies in general for *de facto* groups with respect to the use of audit committees, fiscal councils and other restrictions, such as on the rotation of external auditors. However, for *de jure groups,* minority shareholders with 5% or more of voting or preferred (non-voting) shares have the right to require the installation of a fiscal council (article 277). The fiscal council of a company that is part of a *de jure group* may request that the board of the parent company or of other member companies provide it with information and explanations it deems necessary to monitor or verify compliance with the group's agreement.

7. Corporate Governance Issues for Multinational Economic Groups

107. CVM has had no international enforcement cases in the last five years regarding corporate governance issues.

[41] Under article 161 of the Corporation Act, a corporation shall establish a fiscal council, which may be either permanent or appointed for a specific fiscal year upon request of shareholders holding at least 5% of the outstanding shares of the company. The fiscal council is an oversight body having only an advisory role and does not participate in management. It is charged mainly with overseeing financial management and reporting of a corporation. The responsibilities of the Fiscal Council may be more fully described in its charter (`*regimento interno*') or in the by-laws of the company, which may build on the statutory responsibilities of the Fiscal Council. However, the core duties of the Fiscal Council are established by article 163 of the Corporation Law, according to which the Fiscal Council has the following legal authorities:

(a) to supervise the acts of the officers and ensure that they comply with their legal and statutory duties;

(b) to provide an opinion on management's annual report and include supplementary information deemed necessary or useful for deliberation at a general meeting;

(c) to provide an opinion on proposals of the administrative bodies to be submitted to a general meeting, regarding alteration of share capital, issuing of corporate bonds or subscription bonuses, investment plans or capital budgets, dividend distribution, transformation, merger, consolidation or division;

(d) to report any error, fraud or criminal acts it may discover to the administrative bodies and, if those fail to take the necessary steps to protect the corporation's interests, report matters to a general meeting suggesting an appropriate course of action;

(e) to summon the annual general meeting should the administrative bodies delay doing so for more than one month, and an extraordinary general meeting whenever serious or urgent matters occur, including in the agenda of the meeting such matters as it may deem necessary;

(f) to examine, at least every three months, the trial balance sheet and other financial statements periodically prepared by the corporation;

(g) to examine the accounts and financial statements for the fiscal year and to provide an opinion on them;

(h) to exercise such responsibilities during a liquidation, taking into account the special provisions which regulate liquidations.

The Fiscal Council comprises a minimum of 3 and a maximum of 5 members, who are elected by a shareholder vote and, accordingly, controlling shareholders typically elect a majority of its members. Holders of preferred, non-voting shares are entitled to elect one member of the Fiscal Council. Non-controlling holders of voting shares representing at least 10% of all voting shares may also elect one member of the Fiscal Council. The members of the Fiscal Council have fiduciary duties and are accountable to the company for any failure to fulfill their statutory and corporate responsibilities.

108. The CVM is a signatory to the IOSCO Multilateral Memorandum of Understanding (IOSCO MMOU). Additionally, it has signed around 30 bilateral Memoranda of Understanding with foreign securities regulators for consultation, enforcement and exchange of information.

109. When a company registered with the CVM has associates in other jurisdictions and such entities are included in the company's financial statements, the CVM shall request information directly to the company in Brazil and its local auditor, and both are responsible and liable to render information to the CVM.

110. The CVM may also perform on-site inspections and, if additional information is required, the CVM may request the assistance of foreign regulators under the aforementioned memoranda whether or not the parent company is headquartered in Brazil.

111. Additionally, in recent cases regarding transactions in which some of the companies were in different jurisdictions, CVM and the other relevant regulator have interacted through conference calls aimed at sharing views and impressions on such transactions, as well as at discussing how local law would apply to the relevant issues.

8. Policy Options for Consideration

112. CVM is not currently considering any of the policy options forwarded for consideration in the OECD questionnaire. However, in the first semester of 2015, CVM is planning to enact new regulation on disclosure of corporate reorganizations. The proposal that was submitted for public consultation had special provisions on transactions that involve economic group companies; therefore it is reasonable to expect a different treatment of company groups in the final rule too.

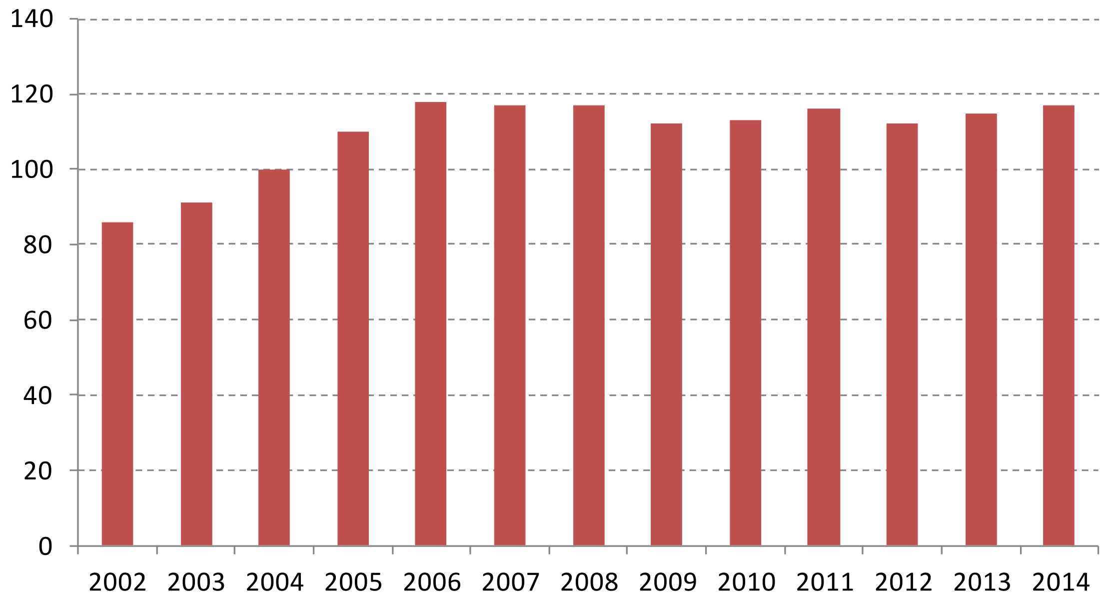
CHILE

1. Data: Relevance of Company and Economic Groups for the Economy

113. The presence of business groups in Chile is extensive and has been so historically. According to data provided by the Superintendence of Securities and Insurance (SVS), as of September 2014 there were 117 business groups in Chile, including financial and non-financial firms; groups having dominant financial members are also labeled as financial conglomerates.[42] Approximately 55% of business groups under supervision of the SVS and the Superintendence of Banks and Financial Institutions (SBIF) have at least one of their members listed on the Santiago Stock Exchange.

114. Business groups have grown in number since 2002, but they have remained somehow stable in the last years (see graph). The OECD, in its review of Chile's compliance with good corporate governance practices, has also remarked the relevance of business groups when it comes to listed firms.[43]

Figure 1. Number of Business Groups (End-year Data; 2014 as of September)



Source: Elaboration based on SVS.

[42] Reported business groups are those whose members -at least one of them- are either under regulation of the SVS (stockbrokers, insurance and reinsurance companies, fund managers) and/or the Superintendence of Banks and Financial Institutions (banks and non-banking credit institutions).

[43] OECD (2011), "Corporate Governance in Chile"

115. Lefort and Walker (2007)[44], using a different methodology to identify groups, assert that the 50 largest business groups had ownership control of more than 70% of listed non-financial firms that represented 91% of total market capitalization in the Santiago Stock Exchange in 2002.

116. In the case of financial conglomerates, they also have important systemic relevance to the Chilean economy, with the assets of the 15 largest conglomerates representing 160% of Chilean GDP as of 2011, according to the Central Bank of Chile[45]. Financial and mixed conglomerates -- usually led by a bank -- have an important presence in the insurance sector, pension funds management and with respect to other financial intermediaries[46]. For instance, as of 2011, the 15 largest financial and mixed conglomerates accounted for 83% of the banking system's assets, 72% of assets managed by pension funds, 58% of insurance companies' assets, and 77% of non-bank credit card portfolios. Out of those 15 conglomerates, 9 of them are exclusively financial, and the remaining 6 are of the mixed type; moreover, about half of the conglomerates have an international presence.[47]

2. Definitions

117. Provisions with respect to business groups are mostly included in the Securities Market Law (SML) in chapter XV. The SML defines business groups as groups of entities that have relations in their ownership, management or credit liabilities presuming that their economic or financial behavior is guided by common interests of the group or subordinated to them, or that there are common financial risks in their liabilities or in acquisition of securities issued by them.

118. By Law, all the entities with a common controller are considered to be part of the same business group. Moreover, controlling shareholders are defined as those (individually or a group of individuals/firms acting in concert) that have the power to secure a majority of votes in the shareholders general assembly to appoint a majority of the board of directors, or to decisively influence the management of the firm. Acting in concert is also defined in the legislation, while individuals or firms acting in concert are regarded as members of a controlling entity of a group. Also, if a foreign shareholder of a company cannot be properly identified, it is presumed that it acts in conjunction with the largest shareholder. In addition to these legal definitions, the regulatory authority (SVS) has the power to determine that a firm is part of a business group if certain conditions are met.[48]

119. With respect to the composition of business groups, there is neither legal differentiation of treatment between different types of groups, nor restriction with respect to the participation of financial institutions in business groups. Nevertheless, from a functional perspective, there are certain

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[44] Lefort and Walker (2007), "Do Markets Penalize Agency Conflicts Between Controlling and Minority Shareholders? Evidence from Chile". The Developing Economies, XLV-3 (September 2007): 283–314. See: doi: 10.1111/j.1746-1049.2007.00044.x.

[45] Central Bank of Chile (2013), "Financial Stability Report: second-half 2013". See: http://www.bcentral.cl/eng/publications/policies/pdf/fsr2_2013.pdf .

[46] For example, credit card companies associated with retail businesses.

[47] Either foreign groups with a presence in Chile or through Chilean parent companies with a presence overseas.

[48] This may include any of the following conditions: a) a significant part of the assets of the firm are invested in a group (through securities, credits, collaterals, etc.); b) indebtedness levels are high while the business group is a relevant claimant and/or guarantor of such debt; c) the firm is a member of a group of shareholders of a controlling company; and d) if the firm is controlled by one or more members of the controlling entity of any part of the business group.

prudential provisions in the specific legal framework (e.g. banking law) that restrict exposure to risk across firms within a business group to limit regulatory arbitrage and contagion. A recent modification of the banking law allows the regulatory authority (SBIF) to request bank information (on ownership, related-parties transactions, etc.) from firms that are part of the same business group that could put the financial situation of the bank at risk.

120. In such a context, the regulatory and supervisory framework is not integrated. Banks and similar financial entities such as those providing credit are under the regulation of the SBIF; listed firms, capital market brokers and fund managers, and insurance companies are the domain of the SVS, while pension funds managers are regulated and supervised by the Superintendence of Pensions (SP).

121. Coordination among them occurs at two levels. First, the Chairmen's Committee created in 2001 gathers together the Chairmen of the SVS, the SP and the SBIF as a formal instance for effective regulatory coordination and the sharing of experiences.[49] And second, the Financial Stability Council created in 2011 (and reformed in 2014) is composed by the Minister of Finance and the Chairmen of the SVS, the SP and the SBIF; the Central Bank provides technical assistance to (and participates in) the Council. It is used for technical coordination and information-sharing, mainly on financial stability issues.

3. Protection of Minority Shareholder Rights: Regulatory Oversight and Enforcement

122. Most provisions aiming at protecting rights of minority shareholders and other incumbents in the case of companies that are part of business groups deal with disclosure requirements and related-party transactions (RPTs) regulations.

123. In the case of disclosure, listed companies are required to prepare their financial statements on a consolidated basis (IFRS), and to disclose information about business groups in their annual reports. The Securities Market Law grants to the SVS the power to request additional information from its supervised entities' business groups in order to make a determination on the significant commercial relations they have or the financial situation of the supervised entity.

124. Disclosure of control structures of listed companies is required by the SVS under provisions of the SML; the SVS has the authority to request information from supervised entities in order to determine their ownership relations, controllers and business groups they belong to. This information is gathered during the registration process, from the financial statements (IFRS – quarterly and annually based); and as a permanent disclosure requirement in case changes in ownership occur. Compliance in this regard is not subject to specific thresholds.

125. RPTs have to comply with certain requirements as per the SML, Corporations Law (CL) and SVS regulations; however, these regulations are applicable to RPTs in general, and don't distinguish whether the firm is part of a business group. In the case of listed companies, Chapter XVI of the CL establishes that related-party transactions -- in addition to the arm's length requirement -- shall be subject to a number of specific procedures before taking place: disclosure of directors/managers that are related to the company undertaking such transaction, approval of a majority of the board (excluding the board members mentioned above); approval by unanimity of the directors not involved in the transaction (when the majority of the board directors are excluded of the vote). If voting directors cannot reach a majority, then unanimity is required or an extraordinary shareholders general assembly shall be convened and an independent assessment of the transaction shall be conducted for the reference of such assembly (approval in this latter case requires a two-thirds majority); and an

[49] Central Bank authorities may also be invited to participate in the meetings

independent assessment of the transaction shall be conducted for the reference of such assembly; ex-post, the board shall inform shareholders general assembly of such transactions.

Infractions related to any of the above mentioned conditions will grant the company or its shareholders the right to redress equivalent to the loss that such transaction caused to the company plus any other compensation for the damages it may cost. Exceptions to these procedures are established for low-value transactions, repeated transactions (a general agreement on how to proceed in this case shall exist and be reported to shareholders), and in the case where the parties involved are related through cross ownership exceeding 95% of shares.

126. Specific to business groups, the legal framework grants special powers to regulators with respect to their RPTs. For example, the SVS is empowered to suspend transactions between companies of the same group if one of those companies is a market intermediary, a supervised fund manager, a life insurance company or a securitization entity in those cases where their assets under management are at risk due to financial distress of the entity or its related parties.[50]

4. Other Corporate Governance Issues for Groups

127. Listed members of a business group aren´t subject to additional specific regulations or requirements other than those applicable to individual firms. Nevertheless, the Corporations Law grants the director of a holding firm the right to attend, without voting rights, the board sessions of the subsidiaries. Also, by law, neither a director of the subsidiary can be elected as independent director of the holding company or the director of main competitors, clients or suppliers.

128. General Regulation #341 of 2012 issued by the SVS requires listed companies to disclose information on whether they have adopted a number of practices of good corporate governance. However, this guide doesn't include specific provisions with respect to corporate governance of company groups.

5. Corporate Governance Issues for Multinational Economic Groups

129. As was already mentioned, a significant share of business groups have operations in domestic and foreign markets.

130. The SVS has yet not confronted situations involving international business groups. Although Chile is not a signatory of the IOSCO Multilateral MOU, the SVS has stressed that is jointly working with other jurisdictions to ensure effective surveillance and enforcement of multinational economic groups and to ensure compliance with corporate governance-related requirements through bilateral MOUs.

131. The SVS has signed 26 MOUs with different countries; in particular, with Peru, Colombia and Mexico there are several MOUs signed between domestic regulators in order to supervise and exchange information in the framework of the MILA agreement. These agreements primarily refer to infringements of the stock exchanges rulings, rather than corporate governance issues. In particular, the aforementioned MOUs establish that the country where an infringement is committed will initiate the enforcement procedure, but with cooperation of other regulators in case the issuer's primary location is in another country.

[50] Art. 4 (u)

6. Policy Options for Consideration

132. Chilean authorities expressed primary concern with respect to potential damages arising from weak corporate governance in business groups involving financial conglomerates; this is due to their relevance and financial stability implications. In recent years, these considerations have expanded also to business groups that are not necessarily financial groups, but mixed and with an international presence.

133. The SVS under the Financial Stability Council is currently in the process of identifying and evaluating systemic risks derived from business groups in general, so as to better understand their functioning and react accordingly when needed. Also, based on the outcome of a publicly well-known case[51] that has been recently sanctioned by the SVS in relation to a set of transactions that might have affected the interests of minority shareholders of a Chilean business group, the SVS is still evaluating possible policy actions that may be needed in order to properly protect, in the future, those minority interests. The SVS is also investigating a case that was triggered by a report made by the internal revenue service (SII) about expenses made by a firm that were registered as professional fees paid to relatives of some of the controlling shareholders of the group.[52]

[51] The Cascadas case.

[52] The Grupo Penta case; the group comprises firms in the insurance sector, investment banking, stockbroking, real estate, etc.

COLOMBIA

1. Colombian Company Groups

134. Business groups have had great importance for the Colombian economy. Groups contribute to the Colombian economy in various economic sectors including financial services, energy and retail.

135. During the last decade, Colombian economic groups have significantly expanded their presence, due to the increase in M&A opportunities created by the disinvestment of American and European companies in Latin America, particularly following the 2008-2009 financial crises. During this period, Colombian groups not only became more important for the domestic economy, but an increasing number have also become "Multilatina"[53] groups.

136. In the Colombian Stock Exchange (hereinafter "BVC"), 40 listed companies out of 77 stock issuers are part of a business group; 28 of them are holding companies and 12 are subsidiaries. Among the 40 companies that are part of a business group, 12 are part of the COLCAP[54], and represent more than 60% of the shares that are traded among companies that form the COLCAP index.

137. The most relevant groups in Colombia are financial conglomerates, including: "Grupo Aval", "Grupo Bancolombia", "Grupo Bolivar", "BBVA" and "Corpbanca-Helm". These financial institutions have almost 67% of the total assets of the Colombian financial system[55]. The Colombian controlled groups are Grupo Aval and Bancolombia, which are listed in both Colombia and on the NYSE; and Grupo Bolivar, which includes "Banco Davivienda". These three Colombian financial groups operate as Multilatinas, with a significant position in the Central American banking sector.

138. In the non-financial sector, Ecopetrol is the largest company, as well the biggest group. Ecopetrol is a listed SOE and is the fourth largest oil company in Latin America. Ecopetrol, although 88 percent owned by the state, also has the largest number of shareholders in the local market, with more the 400 000 private shareholders. Ecopetrol is also listed on the NYSE. On the other hand, "Grupo Argos" is one of the biggest non-financial, private groups in Colombia, with local and international business presence in sectors such as energy, ports, coal and real estate.

139. Corporate governance of company groups in Colombia has created an interesting discussion on how to define fiduciary duties of boards of directors in subsidiary companies and to whom are due (group, holding or subsidiary). However, the new Country Code (2014) clarifies that company groups can self-regulate how to handle this governance challenge in companies groups.

2. Definition and Regulation of Colombian Company Groups

140. Local regulation defines a business group as a set of companies in which there is a relationship of subordination with regard to the same holding company, as well as an agreement of subordination with a "unit of purpose and direction". In Colombia, there is a regulatory difference

[53] Multilatinas are defined by the Economic Commission for Latin America (ECLAC) as transnational corporations with operations in Latin America.

[54] COLCAP is the main stock index of the BVC, comprised of the 20 issuers with the most liquid shares in the market.

[55] Accordingly to the Colombia Financial Superintendency.

between "control situations" and "business groups". To be considered a business group, it should have a control situation (being controlled by another company/subordination); and common purpose and strategy.

Control Situations/Subordination

141. Colombian regulation has three presumptions in which a company should be considered controlled by another:

- If more than 50% of its ownership belongs to a holding company, directly or through other subsidiaries.

- If a holding company and its subsidiaries control the shareholders meeting, or have the right to elect a majority of board of directors.

- If a holding company or its subsidiaries exercise control or significant influence over the decision-making process of the company.

Common Purpose and Strategy

142. As was mentioned before, companies are only considered to be part of a business group for the purposes of Colombian regulation if two requirements are met (i. subordination and ii. common purpose and strategy). The "unit of purpose and direction" is understood when the activities of the companies, under common control (subordination), are defined by a parent company.

143. As it was mention before, local regulation[56] allows "unit of purpose and direction" of business groups in Colombia. Nevertheless, the corporate law did not refer specifically to board duties in subsidiary companies, so it is unclear if fiduciary duties in the context of business groups can be self-regulated to recognize the "unit of purpose and direction" and the interest of a group as a whole. This has created a legal and academic discussion in the country. There is one view that recognizes the possibility of a consolidated group interest above the subsidiaries' interests. On the other hand, there are some academics and corporate lawyers that believe Colombian corporate law does not allow to differentiate duties for boards of subsidiaries. Lastly, the new Colombian Country Code (local standard of corporate governance) recognizes the possibility of self-regulation for business groups on this topic[57].

3. Supervision of Colombian Company Groups

144. In Colombia, groups supervision is divided between Supersociedades (hereinafter "Companies Superintendence") and the Financial Superintendency (SFC); however there are several other public bodies that may supervise specific aspects of business groups.

[56] According to Law 222 of 1995 art. 28.

[57] The new country code issued by SFC refers to a principle of group interests and mentions the possibility of recognizing a unit group.

145. SFC is in charge of supervising business groups with financial activities, as well as individual companies (financial and non-financial) within a group that are listed. The Companies Superintendence is responsible for supervising business groups with non-financial activities[58].

146. If a group undertakes significant activities associated with financial institutions, insurance companies or stock issuers, prudential regulation applies, and these types of groups are subject to the supervision of SFC. If a group is comprised by companies with financial and non-financial activities, supervision can be jointly exercised by SFC and the Companies Superintendence[59].

147. Colombian groups are required to consolidate financial statements and report it to the supervisor (SFC or Supersociedades) and tax authorities. Also Colombian groups shall prepare an annual "Group Special Report" to AGMs in which it should describe the contracts, operations and "economic relations" between controlled and controlling companies. This "Group Special Report" must include the major decisions made by the controlled company that are the product of being influenced by a holding company; and major decisions made by the controlling company to protect the interest of the controlled company.

148. Finally, the SFC reviews semi-annually the shareholding structure reported by supervised institutions (mainly financial institutions). The SFC regular supervision for groups includes:

- Understanding of the ownership structure;
- Analysis of consolidated financial positions;
- Monitoring of related party transactions;
- Levels of concentrations of risks, and the control environment within the conglomerate; and supervision of off-shore investments.

4. Restrictions on Colombian Company Groups

149. Under the Colombian regime, there are only a few restrictions regarding investments of financial companies; this facilitates the development and increases the importance of financial conglomerates in the country.

150. In general, financial institutions can be a parent or subordinate to other financial institutions or non-financial companies with some exceptions:

- A financial institution is restricted from being a shareholder of another institution with the same regulated activity (e.g. banks cannot be shareholders of other banks);
- Credit institutions (all financial institutions that may provide credit) can only be shareholders of trust companies, brokers and managers of pension funds if they control it (over 51% ownership);

[58] According to Decree 4350 of 2006.

[59] According to Art. 3 Lit. b) No. 2. Decree 4350 of 2006.

- Investments of credit institutions in the real sector are only allowed through a special vehicle called "financial corporations." In addition, an exception is allowed for credit institutions to invest in a company created to provide goods or services to the financial institution (e.g. a security company created by a financial institution to provide guards and security services to the financial entity);

- Insurance companies can only invest in banks and financial services entities up to 10% of the equity, 10% of converted bonds and only if this investment does not exceed 10% of the total portfolio of the insurance company.

151. As was mentioned before, SFC is the supervisor of issuers (of equity and other securities) and financial institutions. Regarding securities issuers, SFC is responsible for oversight of regulatory compliance with respect to securities market rules, especially disclosure of information and minority shareholder protection.

152. Securities issuers, including listed companies, must disclose to the market via the "National Registry of Securities and Issuers" (hereinafter SIMEV), all corporate reorganizations, such as mergers, acquisitions, spin-offs and transfers of assets, liabilities and contracts, as well as report all material information. The SFC requires securities issuers to report in several areas, including, among others:

- Top 20 shareholders;

- Any change in corporate control;

- Changes in the threshold over 5% with the same beneficial owner;

- Directors and top officers' purchases or sales of stock, directly or through related parties;

- Major corporate decisions such as mergers, takeovers, stock issuance, buyback programs, among others.

153. In Colombia, corporate law imposes some restrictions between voting rights and cash-flow rights that are applicable to every company, not only groups. For company groups, Colombian corporate law only restricts subsidiaries to have stock of its own holding company.

154. The Colombian Commercial Code has a "one-share, one-vote" provision for ordinary shares; however, privileged and preferential dividend stock without voting rights are allowed in the country. Actually most of the recent public stock issuances in the local market have been of preferred or privileged shares.

155. There are several other corporate provisions to mitigate the risk of minority rights expropriation (that applies to every kind of company, not only groups), including, among others:

- Shareholders may have a preemptive right in every new stock issuing to reduce the risk of dilution.

- To distribute less than 50% of annual earnings, the shareholders meeting must approve it with at least 78% of stockholders present during the meeting.

- If a company has accumulated capital reserves (required by regulation, by-law or defined by its shareholders), it must distribute at least 50% of its annual earnings.

- Shareholders agreements are required to be registered by the company. If a company is a securities issuer, all shareholder agreements must be disclosed via SIMEV. If the agreement is not disclosed, it is not legally binding.

- For listed companies, any stock transaction over USD 7 000[60] must be performed through a stock exchange.

- Any ultimate beneficial owner interested in acquiring 25% or more stock of a listed company must proceed through a public tender offer (OPA). Any beneficial owner with 25% or more, interested in acquiring 5% or more of additional stock shall also proceed through tender offers.

5. Related Party[61] Transactions and Conflicts of Interest

156. In Colombia, there are no special provisions for related party transactions for groups. However, there are several disclosure duties that should be considered, and in the context of financial conglomerates, there are also special restrictions on investments and transactions.

157. The country is currently implementing IFRS. As part of the transition, during 2014 the first groups of companies (mainly listed and financial institutions) reported to SFC their annual financial statements both under Colombian GAAP and IFRS, but will not be required to publicly disclose their IFRS-based reports until 2015. Due to this transition, and specifically the implementation of rule IAS24, the related party transactions disclosure will promptly change. Currently, only the “Special Groups Report”, previously described, is required.

158. In the case of issuers which are part of a group, they must disclose in their financial statements the following information: type of transaction and amounts of operations made within the group during the fiscal year; and if these transactions were held at market value. If there is a transaction not at “market value”, the reason and effects must be reported.

159. Additionally, for financial conglomerates, there are a dispersed set of rules that restrict investments or transactions, including the following:

- Credit institutions are not allowed to lend to their shareholders (i.e. shareholders with over 20% of equity in the credit institution) a sum equivalent to more than 20% of the net worth of the financial institution.

- Subsidiaries of financial conglomerates are not allowed to acquire stock of their holding company; and trust companies, stock brokers and AFPs cannot trade, acquire or guarantee securities issued by their parent company.

[60] This value corresponds to 66 000 UVR (Unidades de Valor Real). For 2014 this amount is about COL $14 097 600.

[61] There is a document prepared for a task force of the Latin American Corporate Governance Roundtable in 2013 that explained in detail about RPTs in Colombia. http://www.oecd.org/daf/ca/LatinAmericanReportonRelatedPartyTransactions.pdf

- All mutual fund investments to issuers of the same group must be traded through a stock exchange.

- Stock brokers are required to have a formal policy and procedures to manage conflicts of interests. These guidelines must be included in the corporate governance code of every stock broker. These provisions may include among others: Chinese walls with trading areas; limits to operate with securities of related companies; and restrictions to OTC operations.

- AFPs regime restricts to 10% investments in securities of affiliated companies of the AFP.

160. Specifically regarding conflicts of interests, Colombian corporate law is very limited. There is only one specific provision that requires directors and officers to refrain from participating in activities that represent a permanent conflict of interest with its company, unless expressly authorized by the AGM. However, a broad interpretation of fiduciary duties of directors and officers creates a more complete set of standards regarding conflicts of interests.

161. The other aspect that is critical for the corporate governance of groups is associated with protecting creditors' rights. In Colombia there is a presumption of responsibility of the holding company in cases in which a subsidiary is insolvent[62].

162. There are no specific rules or restrictions for interlocking boards in Colombia. However the rules of independent board members (25%)[63] apply to all issuers, including holdings and subsidiaries of groups. And there is a general restriction in which no person is allowed to have more than five board seats. Specific to financial conglomerates, there is a restriction for board members of financial holding companies to be a part of any of its subsidiary boards; however it is allowed to have executives (employees) of the holding company acting as board members of its subsidiaries[64].

163. Regarding the control environment, there are not specific rules for groups in Colombia. An audit committee is required for issuers and financial institutions, consisting of independent directors. On the other hand, credit institutions with off-shore subsidiaries must consolidate credit operations with the same individual (person or company).

164. As was mentioned, the cross-border growth of Colombian groups has been substantial during the last decade. This situation has prompted SFC to establish several bilateral and multilateral MOUs to access to international information about Colombian financial conglomerates that operate abroad. Currently there are 20 bilateral MOUs and 11 multilateral agreements signed by the SFC.

[62] According to art. 61 Ley 1116 de 2006.

[63] According to art. 44 Ley 964 de 2005.

[64] According to (art. 76 No. 1 Organic Statute of Financial System).

6. New Corporate Governance Benchmark in Colombia

165. SFC with the support of several private business associations launched the new corporate governance guidelines in the country ("Country Code") on September, 2014. This new Country Code includes several non-mandatory provisions[65] for groups, including the following:

- Annual corporate governance reports for groups should include a clear and integral view of all the subsidiaries, in order to provide to the public an informed opinion of organization, complexity, activities, size and corporate governance model of the group.

- Boards of holding companies should promote a control environment with a consolidated scope that includes all subsidiaries, defining policies and clear reporting lines to have an integrated risk view of the group.

- Risk management (ERM) should be managed in a consolidated manner.

- For some groups, it is recommended to have a chief risk officer with scope and authority over all subsidiaries.

- The new Colombian Country Code allow a self-regulatory regime for boards of holdings in which it recommends that:

  - The holding company board should have an integral authority and the decision making process relating to the entire group should be clearly defined.

  - The holding company board should have the authority to define the ownership structure, corporate governance model, management of conflicts of interests, financial and investment policies of the group.

  - The board or executive committees of parent companies should coordinate responsibilities with decision-makers of subsidiaries.

  - The subsidiary board may decide not to create board committees to deal with certain matters that may be assumed by the holding company or its board committees. However, this is not intended to imply a transfer of the responsibilities of subordinate boards to the holding company.

  - The holding company should require board evaluations for all boards within a group.

  - The holding company board should create a "related parties map" in which board members and executives report their relationships that may create conflicts of interests.

  - The holding company board should establish a formal Related Party Transaction Policy in which it defines the procedure to evaluate, approve and disclose related party transactions.

[65] The Code is based on a "comply or explain" model; the first reports against the code's recommendations will be required beginning in January 2016. https://www.superfinanciera.gov.co/jsp/loader.jsf?lServicio=Galeria&lTipo=user&lFuncion=multGaleria&id=11301

7. Policy Options for Consideration

166. Currently Colombia is in the process of considering potential legislation to strengthen SFC's authority to supervise financial holding companies, and to clarify SFC supervision authority with regard to non-financial companies that are part of a supervised group.

MEXICO

1. Data: Relevance of Company and Economic Groups for the Economy

167. Business groups in Mexico are large and relevant, mainly due to the fact that the largest firms in Mexico are part of a group. Historically, the formation of the largest business groups was a combination of a company expanding into new business lines, and of companies merging or acquiring other firms. Approximately 60% of business groups are diversified across industries, while the remaining 40% operate in the same or related line of business (vertically integrated). Both types have been relevant for a long time, while their presence in the economy has steadily been growing.168. A tax benefit to business groups has been also a key driver explaining the formation and growth of these types of business arrangements. In 2014, a reform to the tax system limited the scope for business groups to reduce their overall tax burden (income tax) through consolidation of tax obligations across holding and subsidiaries.

169. As of October 2014, 98% of listed firms are part of a business group; and they represented 99.8% of total market capitalization. A large share of those firms (92%) are controlling firms within a group, 6% are subsidiaries within a group and the remaining 2% are simultaneously controlling and controlled entities. There are only two cases where a controlling and a controlled member within a group are listed.

2. Definitions

170. The Mexican legislation has explicitly established what a business group is. The Securities Markets Law (SML) provides some relevant definitions regarding business groups and firms that are related through their shareholders:

- consortium of firms: group of firms having one or more controlling individuals;
- company group: group of firms with common direct or indirect shareholdings by another company (the controller);
- group of people: group of persons having an agreement to make joint and coordinated business decisions.

171. In the case of financial intermediaries, the Financial Groups Law (LRAF) defines financial conglomerates as a group of financial firms under the control of a common institution; therefore, it is understood that a financial conglomerate is a company group. Additionally, similar definitions for consortium of firms are embedded into the LRAF.

172. When it comes to the particular legal and regulatory treatment, the company or companies that are listed in the stock exchange, including those that belong to a business group, shall comply with the provisions of the SML, and with the regulation set forth in the Issuers' Provisions (CUE). Financial intermediaries that are part of a business group or a financial group should adhere to the regulation established in the various laws and provisions related to the financial sector.

173. Regardless of whether it is part of a business group or not, a financial intermediary (bank, insurance company, pension fund, investment fund, financial cooperative, credit union, financial

company or Sofome[66]) that is listed in the domestic capital market shall comply with the legal and regulatory framework corresponding to its financial nature. Nevertheless, in the case of shareholders rights and disclosure of the ownership structure, listed financial firms are subject to the provisions of the SML.

174. In all cases mentioned above, listed firms are subject to the same legal and regulatory requirements (either the SML or financial sector laws) regardless of their being part of a business group or not. Participation of financial firms in business groups is not restricted, although banks are limited in providing financing to related firms (up to 35% of their core capital). No legal or regulatory difference is made with respect to business groups with a common strategy or independently determined by its individual members.

175. Supervision and regulation of listed firms, banks, brokerage houses, other depositary financial entities, mutual funds, and other financial intermediaries and market participants in the stock and debt markets are carried out mainly by the National Banking and Securities Commission (CNBV). The remaining systemically important players in financial markets -- insurance companies and pension funds -- are respectively regulated and supervised by the National Commission for Insurance (CNSF) and the National Commission for the Pension System (CONSAR). Tax issues are under the control of the Ministry of Finance (MF).

176. The fact that banks (larger financial intermediaries) and listed firms are under the supervision of the same authority facilitates a consolidated approach in the case of business groups (company groups and financial conglomerates). The CNBV is empowered to oversee and enforce compliance with SML and financial sector laws, irrespective of being part of a business group. In the case of banks and other financial intermediaries, the CNBV conducts in-situ oversight, a procedure that is less frequent in the case of listed firms.

177. From a systemic perspective, there is permanent communication between the CNBV, the MF and the Central Bank on matters related to regulations, especially for financial firms. In 2010, the Financial System Stability Council was created to evaluate and monitor risks to financial stability and to enhance the coordination of the various financial authorities. In January 2014, the FSSC was strengthened with its inclusion in the LRAF, so as to formalize such cooperation and enhance its functioning. It is comprised of the SHCP, CNBV, CONSAR, CNSF, Central Bank of Mexico and the Institute for the Protection of Banking Deposits.

178. In addition, the recent financial reform, which took place in 2014 and included amendments to various financial and non-financial laws, enhanced the information-sharing processes among regulatory bodies. The CNBV may allow other agencies to participate in in-situ supervision of financial firms, and to inform other regulatory bodies of any development that could affect the stability and/or solvency of a financial firm being supervised. Moreover, prudential regulation on a consolidated basis could be jointly developed by the CNBV, CNSF and CONSAR.

3. Protection of Minority Shareholder Rights: Regulatory Oversight and Enforcement

179. Most provisions aiming at protecting rights of minority shareholders in the case of companies that are part of business groups deal with disclosure.

180. There are no limitations on the ownership structure of business groups, other than those applicable to any kind of firm in terms of issuance of ordinary and non-ordinary shares; however, a

[66] Non-banking credit company

firm that is controlled by a listed firm is forbidden to acquire shares or any type of ownership right of its controlling parent.[67]

181. In the case of disclosure, listed companies that are controlling firms within a business group are required to prepare their financial statements on a consolidated basis (IFRS), and have to report financial information of their controlled entities. If the listed company is a controlled member of a business group, then no financial information about its controlling entity or other firms belonging to the group must be disclosed, except in the case when this controlled firm does indeed control another entity. However, it is obligated to disclose minimum information with respect to the structure of the business group (their members).

182. Disclosure obligations when changes in the ownership structure of a firm occur are homogenous across listed firms; no specific provision is in place in the case of firms within a business group. Related-party transactions (RPTs) are also subject to the same regulatory treatment regardless the presence of a business group.

4. Other Corporate Governance Issues for Groups

183. The duties of care and loyalty for board members included in legislation prohibit them from undertaking actions that could cause a benefit to third-parties (for example, controlling shareholders) at the expense of the firm or other stakeholders. In cases where a conflict of interest arises, then board members shall refrain to participate and vote in such a matter. A minimum of 25% of board members of a listed company are required to meet conditions qualifying them as independent. Individuals with senior responsibilities within a business group do not qualify as independent for the purpose of meeting these requirements.

184. In addition to general legal requirements for boards, there are soft limitations regarding the appointment of directors and the conditions for independent directors in the case of business groups. On the one hand, a person that has been acting as external auditor of any firm that has been part of a business group in the previous 12 months cannot be appointed to the board of any of the firms of the group. On the other hand, if a person is or has been in the previous 12 months a “relevant” employee of any firm that is part of a business group or *consortium* or has significant influence over it, he/she cannot be appointed as an independent director (art. 26).

185. In the case of a listed firm that is a controlled entity, the board’s corporate practices committee[68] structure is different from other firms not having a controlling shareholder. In the former, a majority of independent members is required, whereas in the latter a full independent composition is mandated by law.[69] Therefore, firms that are a controlled member of a business group would be subject to such soft or less strict requirement.

5. Corporate Governance Issues for Multinational Economic Groups

186. Some of the largest Mexican business groups have subsidiaries operating abroad, and in some cases they are listed in foreign capital markets. For regulatory purposes, listed firms in Mexico

[67] They can only do so indirectly, through mutual funds investments

[68] This committee has oversight responsibilities on matters such as board remuneration policies, RPTs, board effectiveness, etc.

[69] Art. 25 of the SML

that are part of a business group shall disclose the complete structure of the group, including their subsidiaries and operations abroad.

187. The CNBV has collaboration and exchange of information procedures with other regulators that are undertaken through a number of Memoranda of Understanding (MOUs). In particular, the CNBV is signatory of the IOSCO Multilateral MOU concerning consultation and cooperation and exchange of information with other members.

188. In addition, the reform of LRAF in 2014 provided local authorities (SHCP, CNBV, CONSAR and CNSF) with more power to share information with foreign regulators and also for greater coordination and oversight between among them in the case of business financial groups, hence moving towards implementation of a consolidated supervisory approach. For instance, the CNBV may invite other relevant regulators to participate in-situ supervision of regulated entities being part of a business financial group.

6. Policy Options for Consideration

189. The CNBV acknowledges the relevance of business groups and considers that current regulations broadly provide protection to minority shareholders and other stakeholders in business groups as part of the whole framework.

190. A recent reform of the LRAF pins down a number of governance-relevant issues in the case of financial conglomerates that could be a guide for further actions in the case of listed firms. The board of directors of a controlling financial firm is embedded with much larger responsibilities than before. Surveillance responsibilities -then the role of an internal comptroller or “comisario”- are now under their control through the Audit committee. The board has also the responsibility to define and implement the business strategy of the group.

PERU

1. Peruvian Company Groups

191. As in other countries in the region, business groups have a significant role in the local economy. According to the Superintendency of Securities Markets (hereinafter "SMV") 179 out of 233 companies listed on the Lima Stock Exchange (BVL) are part of a business group. Moreover, the report "Peru: the top 10 000 Companies 2014"[70], concludes that of the 42 business groups that operate in the country, 19 are Peruvian and 23 are controlled by foreigners. The most relevant business group is the National Fund for Financing of the Business Activity of the State (FONAFE), the central ownership entity of Peruvian SOEs, with revenues of over USD 8.7 billion in 2012; followed by Repsol with revenues of over USD 8.1 billion, and Grupo Romero with US$4.5 billion. In the local financial system, the biggest financial conglomerate is Credicorp, with revenues of over USD 3.1 billion.

2. Definition and Regulation of Peruvian Company Groups

192. In Peru, local regulation defines business groups in two different contexts: one for groups that participate in the capital markets and the other for groups in the financial system.

193. Regarding capital markets, the SMV has approved resolution No. 090-2005-EF/94.10, in which the concept of economic group is defined as a set of companies which are subject to control of the same person or the same group of shareholders. However, an exception is considered if the group of shareholders have neither at least 30% of voting rights, nor the capability to elect more than 50% of board members.

194. Peruvian capital market regulation has two presumptions in which a company should be considered controlled:

- When through direct or indirect ownership of shares, or any kind of agreements or contracts, a shareholder can exercise more than half of voting rights.
- When a shareholder can nominate or remove the majority of the board of directors.

195. On the other hand, the Banking Superintendency (Superintendencia de Bancos, Seguros y Fondos de Pensiones), defines business groups as a set of companies in which one company exercises control over others, or when a company's control corresponds to one or more persons who act as decision makers. However, it includes a reference to control based on two elements: "predominant" and "continuing influence" in governing company decision-making bodies that can be exercised directly or indirectly.

196. The Banking Superintendency classifies business groups in three categories: financial, mixed (financial and non-financial companies), and non-financial groups[71].

[70] Accordingly to the publication Peru the top 1 000 companies, available at http://www.ptp.pe/

[71] According to article 11 - SBS N ° 445-2000

3. Supervision of Peruvian Company Groups

197. In Peru, the Banking Superintendence (hereinafter "SBS") carries out groups` supervision, this regulatory body supervise financial and mixed groups in a consolidated manner.

198. In the case of financial groups, the SBS is empowered to require material financial information on a consolidated basis. In the case of mixed groups, the SBS may use the same authority to supervise any company within a group with financial institutions.

199. Furthermore, according to article No. 29 of the Financial Law, banks, financial and leasing companies are also under the supervision of the SMV due to the fact that they have to be listed in the local stock exchange (BVL). Also, all market regulation recognizes that all financial information should be presented following SBS regulation[72].

200. The SMV and the SBS have an inter-institutional cooperation agreement signed in March 2012, to "efficiently support supervision for the Peruvian securities and financial system". Under this agreement, both Superintendence have the commitment to exchange information, as well as to establish permanent coordination mechanisms, to ensure analogous standards and cost structure optimizations. On top of that, the SBS is part of the board of SMV; this facilitates sharing of information in both entities.

201. Finally, as in other Latin American markets, there are a significant number of foreign business groups operating in Peru, that have spurred the SMV and SBS to sign several agreements with foreign supervisory authorities. The SMV in 2012 was admitted as a signatory member to the IOSCO Multilateral Agreement of Understanding on consultation, cooperation and exchange of information. This MOU provides that signatory institutions should provide international cooperation, ensuring effective supervision and monitoring of the activities carried out by entities involved in securities and derivatives markets.

202. In addition, under the framework of the Latin American integrated market (MILA), in order to ensure the proper functioning of this market, some agreements have also been signed with Chilean and Colombian regulators.

4. Disclosure of Information Regarding Company Groups

203. For Peruvian issuers that are part of a group, it is compulsory to submit to the SMV the following information:

- A description of the group to which it belongs, their position within the group (holding or subsidiary), as well as a list of other companies including the consolidated percentage of voting that the group has.

- A report with a list of its shareholders with more than 5% stake, indicating their ownership level; as well as, describing any relation (labor, contract, other) with directors and managers.

- Also, to the extent of the issuer's knowledge, the list of people who exercise control of the group.

[72] This regulation is prepared in accordance with the Accounting Manual for the companies of the financial system, approved by resolution SBS No. 895-98, based on international standards of financial information (IFRS).

204. On the other hand, a CONASEV (now SMV) resolution[73] states that issuers must prepare their financial statements with full observation of International Financial Reporting Standards (IFRS). Hence, to prepare financial statements, all local issuers are subject to IAS 24, which deals with disclosure of related party transactions.

205. Additionally, the local Corporate Governance Code for the Peruvian companies (2013)[74] includes in Principle No. 30 a recommendation to disclose the ownership structure, including, if applicable, the participation of a business group.

5. Restrictions on Peruvian Business Groups

206. The Peruvian capital markets regulation does not have restrictions or limits on control structures in business groups. Nevertheless, the capital markets law (hereinafter "LMV") establishes some requirements to minimize conflicts of interests within a group, especially focused on controlling shareholders.

207. Local regulation defines[75] the following obligations to issuers:

- It is forbidden for directors and managers to borrow or use company property for their own benefit.

- Boards should approve any transaction that involves more than 5% of company assets, with a person or company linked to its directors, managers or shareholders that have, directly or indirectly, more than 10% of the ownership.

- All issuers must report any stock transaction (buy or sell) of a person, directly or indirectly, with more than 10% ownership.

- Any transaction involving more than 1% of the issuance, made by directors or managers, must be reported within 5 days after it is reported to the issuer.

- Also there is a relevant information regime in which listed companies must report by-laws modifications, merger proposals or any other corporate reorganization.

6. Related Party Transactions and Conflicts of Interest

208. In Peru, related party transactions regulation is defined in the Corporate Law (Ley General de Sociedades[76], hereinafter LGS) which stipulates that company directors can only contract with the company under market conditions. In addition, company directors are responsible for any contract, credit, loan or guarantee held or issued in violation of this principle.

209. On the other hand, the Peruvian Corporate Governance Code (2013), Principle 22, recommends to have a compulsory code of ethics applicable to directors, managers, officials and other

[73] CONASEV's resolution No. 102-2010EF/94.01.1

[74] Please add web site link. The Code's recommendations are voluntary, but companies must disclose whether they comply or explain the reasons for not doing so.

[75] Article No. 51 of LMV

[76] Articles No. 179 and 180.

employees; to require directors to abstain from voting or participating in decisions that may involve a conflict of interest; and to forbid board members and senior management to receive loans from the company, unless it is a financial institution.

210. Peruvian regulation does not make any reference to allow, regulate or forbid "interlocking directorships".

7. Control Environment

211. The Peruvian Corporate Governance Code (2013), Principle 25, recommends to business groups to develop an integrated risk management policy with scope over all subsidiaries, and to assure that the holding board has a clear picture of integrated material risks. Additionally, this corporate risk policy should define roles, authorities and reporting lines required to have a prudent risk management system.

212. Moreover, for business groups, it is recommended to appoint the same external auditor for all companies, including off-shore subsidiaries. And it is recommended that all companies have an Audit Committee[77].

213. For financial institutions, the SBS issued a regulation in January 2008[78], calling for integrated risk management systems and requiring the establishment of a risk committee with independent directors. A separate SBS regulation[79] requires a rotation of audit partners after five consecutive years. Furthermore, it points out that once this period is concluded, at least two years must elapse before hiring the same auditors.

214. Finally, in the case of SOEs belonging to FONAFE, these enterprises should follow a specific set of recommendations defined in the "Corporate Governance Code of FONAFE"[80] which establishes that SOE boards should have audit committees. Principle No. 27 of this Code also requires that SOEs implement systems and procedures to identify risks and its consequences.

8. Policy Options for Consideration

215. Peruvian regulators are considering to regulate Article 51 of the LMV, which forbids any act or contract with persons or companies linked with directors, managers and shareholders with more than 10% ownership, unless it is previously approved by the board and informed by an external fairness opinion. Consequently, the SMV is in the process of regulating which type of entities can be allowed to prepare this required fairness opinion.

[77] The Peruvian Corporate Governance Code (2013), principles 21 and 27.

[78] Resolution N ° 37-2008 S.B.S

[79] Adopted by resolution S.B.S.N ° 17026 - 2010

[80] Approved by agreement No. 002-2013/003-FONAFE