

São Paulo, September 15th, 2020

To:

Mr. Garvin Payne

International Corporate Governance Network (ICGN)

Subject: Review of The ICGN Global Governance Principles

The Brazilian Institute of Corporate Governance (IBGC) would like to thank the International Corporate Governance Network (ICGN) for the opportunity of sending comments on the ICGN's Global Governance Principles (GGP) Consultation on the use and content of the Guidance. We also congratulate ICGN for the efforts made to revise this policy document, a relevant source of governance for regulators, investors, companies, and developers of governance codes.

Our comments are provided bellow each one of the three themes covered by the consultation paper: 1. The Purpose and use of the Global Governance Principles; 2. Structure of the Guidance; 3. Topics to be Covered. We hope they can contribute to your analysis.

Sincerely,

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1. The Purpose and use of the Global Governance Principles

Important Considerations

- GGP provides an investor perspective on corporate governance, focusing primarily on the role and effectiveness of company boards of directors.
- GGP is intended to be used by both investors and companies.
- ICGN would find it helpful to have a clearer understanding of who uses the GGP – and how they use it.

Questions

- Is GGP a useful resource for investors? How do they use the GGP at present?
- Are there differences in how asset owners and asset managers make use of the GGP?

- Is GGP a useful resource for companies? How do they use the GGP at present?
- For what other interests and organizations could the GGP potentially be a useful resource, and why?

IBGC's comments:

From IBGC's perspective, it's difficult to answer the set of questions about the vision and use of GGP by investors, considering that the document is not well known within Brazilian market players. In Brazil, there are well-disseminated codes of best practices of corporate governance, e.g. IBGC's Code of Best Practices of Corporate Governance, which is already over twenty years old and is aimed at all types of organizations (public, private, third sector), or the *Brazilian Corporate Governance Code – Listed Companies*, aimed at publicly-held companies.

However, we understand that GGP serves as an important reference for the constant improvement of codes of governance in Brazil, as well as for the adoption and understanding of best practices by executive and non-executive directors – since they have an international benchmark source of governance.

2. Structure of the Guidance

Important considerations

- GGP has eight sections, each of which relates to aspects of corporate governance and board effectiveness: i. Board role and responsibilities; ii. Leadership and Independence; iii. Composition and appointment; iv. Corporate culture; v. Risk oversight; vi. Remuneration; vii. Reporting and audit; and viii. Shareholder rights.
- The existing GGP does not differentiate between large and small companies, nor do they take into consideration a company's ownership structure.

Questions

- Is the current structure of the GGP clear and easy to use? Could it be improved?
- Are there sections that should be added or taken away?
- Is the level of detail in each section of the GGP sufficient? If not, which parts of the GGP could usefully be expanded? Are there elements that should be removed?
- Should distinctions be made in terms of company size or ownership structure?

- Should other distinctions be made?

IBGC's comments:

The GGP's structure, divided into two parts (principles and guidance), is very clear and easy to use. The number of principles (eight) is adequate. Regarding guidance to principles, we do not recommend any exclusion.

However, we miss (and so we suggest) an additional principle with the correspondent guidance that deals with strategy. Among many functions and responsibilities exercised by the board, strategic decision-making emerges as one of the most important (Fama & Jensen, 1983). Accordingly, IBGC states that:

"The board of directors is the collective body in charge of the decision-making process of an organization with regards to its strategic direction. It serves as the guardian of the principles, values, purpose and system of governance of the organization, being its main component." (IBGC, 2016, p. 39)

We, therefore, suggest the inclusion of a principle and guidance on strategy, which could even cover many of the themes suggested in the 'Topics to be Covered' section of the public consultation.

We also suggest adding to the guidance on corporate culture, as a good practice, the creation of a conduct committee, as an independent executive body *"responsible for the implementation, disclosure, update, and training for the code of conduct and communication channels. The committee reports directly to the board of directors or to the body assigned by the board."* (IBGC, 2016, p. 96). Furthermore, we believe it's important to adopt a policy of consequences (in the case of breaking the code of conduct). (IBGC, 2019)

3. Topics to be covered**Important Considerations**

- It is important for the GGP to reflect state of the art principles for good governance. This can lead to new issues being covered by the GGP, either as new sections or subtopics. These might include but are not limited to:
 - i. Purpose of the company: shareholder and stakeholder considerations
 - ii. Company boards, systemic risks, and Sustainable Development Goals
 - iii. Non-financial reporting and key performance indicators
 - iv. Capital Allocation

- v. The role of the creditor in corporate governance
- vi. Business groups/subsidiary governance
- vii. Diversity (not only gender, also race)

Questions

- Is the structure and scope of the current the GGP appropriate or would it benefit from adding new topics or considerations?
- Do any of the possible new topics listed above make sense for inclusion or greater emphasis in the new GGP?
- Are there any other topics or factors not currently covered by the GGP which should be addressed?

IBGC's comments

In line with the evolution and transformations of the business environment, the corporate governance itself and management practices, and considering the great challenges global society faces, we understand that the inclusion of new topics into GGP is both necessary and timely. In addition to the seven topics already mentioned, we suggest the inclusion of "innovation and digital transformation" as a new topic.

We also believe that some considerations are important, on the following topics:

ii. Company boards, systemic risks, and Sustainable Development Goals

The social implications of the COVID-19 pandemic and the perception of neglecting the environment can cause even more serious crises in the future, which highlights the need to consider social and environmental factors on investments. The ICGN Global Stewardship Principles document has already highlighted that these factors are valuable for generating long-term value. We believe it's important to mention them in the GGP as well.

We recommend not to mention the Sustainable Development Goals (SDGs), whose agenda runs until 2030, at the risk of making the document out of date in the future. Instead, we suggest replacing the SDGs with broader coverage of social and environmental factors.

We suggest the inclusion of the 'climate change' issue in the part of the document that addresses systemic risks. Climate change is one of the biggest challenges facing societies today, and corporate governance cannot avoid discussing it. Notably, the Global Risks Report 2020, released in

Davos this year by the World Economic Forum, identified environmental risks as the five most likely global threats for the next decade. At the top of the list are extreme weather conditions, failures in climate action, and natural disasters. (WEF, 2020).

v. The role of the creditor in corporate governance

We believe that the inclusion of creditors is fundamental to the proposed discussion. Many codes of corporate governance codes focus on shareholders, somehow minimizing the role of creditors. It's worth mentioning that, in the context of many countries, most of the capital structure of companies may be originated from debt, not equity.

vii. Diversity (not only gender, also race)

We agree on the importance of better defining this theme (not only gender, but also race or color and other factors). Diversity is one of the IBGC's core values, stamped on the first page of *the Code of Best Practices of Corporate Governance*. The Code also indicates that, for the best performance of the board of directors, the body must have diversity in its composition:

"The composition of the board of directors must consider diversity of knowledge, experiences, behaviors, cultural aspects, age and gender. The directors must ensure that the executive management defines and promotes policies that provide equal opportunities for women to access high leadership positions within the organization". (IBGC, 2016, p. 46)

New Topic

viii. Innovation and digital transformation

We understand that innovation and digital transformation are strategic issues that should be included on the list of new topics to be covered by the GGP. The board is the governance body whose function is ensuring the long-term vision and value of the company. Thus, it's up to the board to discuss and support innovation in line with the adopted strategy and risk appetite.

References:

Fama, E. F., & Jensen, M. C.. "Separation of ownership and control". *The journal of law and Economics*, 26(2), 1983, pp. 301-325.



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_____, *Compliance from a corporate governance perspective*. São Paulo: IBGC, 2019.

WEF (World Economic Forum) *Global Risks Report 2020*. Disponível em: <http://www3.weforum.org/docs/WEF_Global_Risk_Report_2020.pdf>. Acesso em: 10 set. 2020.