

**Review of the OECD Principles of Corporate Governance**

**IBGC Comments to the Public Consultation**

**January 4, 2015.**

## **IBGC comments to the public consultation**

### **General comments/suggestions**

Considering the proposed document, IBGC would like to suggest that:

- a) Since corporate Governance has also become a relevant topic for unlisted companies, we believe that the OECD should take into account this representative group of companies and agents. We are witnessing a decrease in the number of listed companies worldwide, and at the same time an increase in private funding as an alternative to capital markets. We then suggest that the OECD should consider the possibility of developing another document, derived from the principles, focused on unlisted (privately held) companies.
- b) In several moments, the document states that directors and officers must act in the best interest of the shareholders. We believe, and several jurisdictions laws define that, they must act in the best interest of the company, and not only of the shareholders. The interests of the company and the shareholders may be different in several cases, such as when the company needs cash to invest and the shareholders want dividends to be distributed. We believe that if the company is managed in its best long term interests, all stakeholders (the diverse base of shareholders, employees, customers, local communities, etc.) will receive their appropriate long-term returns. Therefore, we suggest revising all references related to this issue.

### **Specific comments/suggestions**

Specific comments are presented in the following way:

<b>OECD proposal</b>	<b>IBGC comment/suggestion</b>
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## **CAPÍTULO I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK**

### **OECD proposal**

3. -The corporate form of organisation of economic activity is a powerful force for growth. The regulatory and legal environment within which corporations operate is therefore of key importance to overall economic outcomes. Policy makers also have a responsibility to put in place a framework that is flexible enough to meet the needs of corporations operating in widely different circumstances, facilitating their development of new opportunities to create value and to determine the most efficient deployment of resources. Publicly listed companies are not a homogenous group, but vary greatly. Corporate governance frameworks should in particular take into account the size of listed companies and ensure proportionality. Other factors that may call for flexibility include the company's ownership structure, geographical presence, and where it finds itself in the corporate lifecycle. To achieve this goal, pPolicy makers should remain focussed on ultimate economic outcomes and when considering policy options, they will need to undertake an analysis of the overall impact on key variables that affect the functioning of markets, for example in terms of such as incentive structures, the efficiency of self-regulatory systems and dealing with systemic conflicts of interest. Transparent and efficient markets serve to discipline market participants and to promote accountability.

**IBGC comment/suggestion:** The document should clearly state, at the beginning or introduction, which are the values/principles that underlie the following recommendations (like transparency, fairness, and so on), making it clear which are the cornerstones that all companies must have in mind and comply with, despite of applying or not other specific recommendations.

Recommending that policy makers “should remain focused on ultimate economic outcomes” seems too limited, especially considering the new social and business environment which requires companies to take into account externalities in a broader context, not only economic, but also including social and environmental issues. We recommend that the Principles should consider a broader perspective considering the interests of a wider range of stakeholders, social and environmental issues and reinforcing that the duties and responsibilities of directors and officers are to the company and all its stakeholders (and not only the shareholders).

## **CAPÍTULO II. THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS**

### **OECD proposal**

23. -The Principles call for the disclosure of remuneration ~~policy by the~~ board members and key executives. In particular, it is important for shareholders to know the remuneration policy as well as the total value of compensation arrangements made pursuant to this policy. Shareholders also have an interest in specific link between ~~how~~ remuneration and company performance are linked when they assess the capability of the board and the qualities they should seek in nominees for the board. ~~Although board and executive contracts are not an appropriate subject for approval by the general meeting of shareholders, there should be a means by which they can express their views. Several countries have introduced~~ The different forms of say-on-pay (binding or ~~an~~ advisory vote, ex-ante and/or ex-post, board members and/or key executives covered) play an important role in ~~which conveys~~ conveying the strength and tone of shareholder sentiment to the board without endangering employment contracts. In the case of equity-based schemes, their potential to dilute shareholders’ capital and to powerfully determine managerial incentives means that they should be approved by shareholders, either for individuals or for the policy of the scheme as a whole. Shareholder approval should also be required for ~~In an increasing number of jurisdictions, any material changes to existing schemes must also be approved.~~

**IBGC comment/suggestion:** The Principles should reinforce the importance of remuneration transparency, especially in a way that allows shareholders and other *stakeholders* to evaluate if remuneration drivers are really linked to the company’s strategy, as well as permitting them to check if there are any value expropriation or unfair treatment.

### **OECD proposal**

26. -It has long been recognised that in companies with dispersed ownership, individual shareholders might have too small a stake in the company to warrant the cost of taking action or for making an investment in monitoring performance. Moreover, if small shareholders did invest resources in such activities, others would also gain without having contributed (i.e. they are “free riders”). This effect, which serves to lower incentives for monitoring, is probably less of a problem for institutions, particularly financial institutions acting in a fiduciary capacity, in deciding whether to increase their ownership to a significant stake in individual companies, or to rather simply diversify. However, other costs with regard to holding a significant stake might still be high. In many instances institutional investors are prevented from doing this because it is beyond their capacity or would require investing more of their assets in one company than may be prudent. To overcome this asymmetry which favours diversification, they should be allowed, and even encouraged, to co-operate and co-ordinate their actions in nominating and electing board members, placing proposals on the agenda and holding discussions directly with a company in order to improve its corporate governance. More generally, shareholders should be allowed to communicate with each other without having to comply with the formalities of proxy solicitation.

**IBGC comment/suggestion:** The Principles should recommend that the companies should foster and facilitate communication amongst shareholders, providing all possible and feasible ways and tools to help them to interact among themselves.

#### OECD proposal

28. -The optimal capital structure of the firm is best decided by the management and the board, subject to the approval of the shareholders. Some companies issue preferred (or preference) shares which have a preference in respect of receipt of the profits of the firm but which normally have no voting rights. Companies may also issue participation certificates or shares without voting rights, which would presumably trade at different prices than shares with voting rights. All of these structures may be effective in distributing risk and reward in ways that are thought to be in the best interests of the company and to cost-efficient financing. ~~The Principles do not take a position on the concept of “one share one vote”. However, many institutional investors and shareholder associations support this concept.~~

**IBGC comment/suggestion:** This concept is under discussion and debate in several forums, including at the IBGC, which is currently revising its code. Despite that, “one share one vote” is still one of the ways to foster fairness and alignment of interests (aligning political and cash flow rights) among shareholders. Moreover, discussions on the Latin American Corporate Governance Roundtable showed that not everybody is comfortable with dropping this concept from the Principles.

The Principles could state that “one share one vote” is one, but not the only, way to align interests among shareholder, and that companies and shareholders should discuss and set which structure is more appropriate in each case, being aware and disclosing the pros and cons (or risks) of each arrangement.

#### OECD proposal

34. -The potential abuse of related party transactions is an important policy issue in all markets, but particularly in those where corporate ownership is concentrated and corporate groups prevail. Banning these transactions is normally not a solution as there is nothing wrong per se with entering into transactions with related parties, provided that the conflicts of interest inherent in those transactions are adequately addressed, including through proper monitoring and disclosure. This is all the more important where significant portions of income and/or costs arise from transactions with related parties.

**IBGC comment/suggestion:** The document should recommend that companies establish a formal related-party transaction policy, setting out rules and procedures for such cases. It is desirable that compliance mechanisms take this policy into account.

#### OECD proposal

35. ~~Most jurisdictions have put in place rules for clearly flagging these transactions. They include broad definitions of what is understood to be a related party as well as rules to disregard some of these transactions when they are not material because they do not exceed ex ante thresholds, can be regarded as recurrent and taking place at verifiable market terms or taking place with subsidiaries where no specific interest of a related party is present. Once the related party transactions have been identified, jurisdictions set procedures for approving them in a manner that minimises their negative potential. In most jurisdictions, great emphasis is placed on board approval, often with a prominent role for independent board members, or a requirement for the board to justify the interest of the transaction for the company. Shareholders may also be given a say in approving certain transactions, with interested shareholders excluded.~~

**IBGC comment/suggestion:** The document should emphasize that, in company groups, when voting those transactions, directors should act in the interest of the company to which board they serve, since their duties and responsibilities are to that company.

## **CAPÍTULO III. INSTITUTIONAL INVESTORS, STOCK MARKETS, AND OTHER INTERMEDIARIES**

### **OECD proposal**

56. ~~Abusive self-dealing occurs when persons having close relationships to the company, including controlling shareholders, exploit those relationships to the detriment of the company and investors. As insider trading entails manipulation of the capital markets, it is prohibited by securities regulations, company law and/or criminal law in most OECD countries. However, not all jurisdictions prohibit such practices, and in some cases enforcement is not vigorous have taken vigorous enforcement action. These practices can be seen as constituting a breach of good corporate governance inasmuch as they violate the principle of equitable treatment of shareholders.~~

**IBGC comment/suggestion:** Regulators should focus more on prevention. The Principles should recommend that boards should be proactive, making sure there are appropriate instruments so that disclosure is made timely and equally.

## **CAPÍTULO IV. THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE**

### **OECD proposal**

60. ~~A key aspect of corporate governance is concerned with ensuring the flow of external capital to companies both in the form of equity and credit. Corporate governance is also concerned with finding ways to encourage the various stakeholders in the firm to undertake economically optimal levels of investment in firm-specific human and physical capital. The competitiveness and ultimate success of a corporation is the result of teamwork that embodies contributions from a range of different resource providers including investors, employees, creditors, and suppliers, and customers. Corporations should recognise that the contributions of stakeholders constitute a valuable resource for building competitive and profitable companies. It is, therefore, in the long-term interest of corporations to foster wealth-creating co-operation among stakeholders. The governance framework should recognise that the interests of the corporation are served by recognising the interests of stakeholders and their contribution to the long-term success of the corporation.~~

**IBGC comment/suggestion:** Companies are each day under more pressure by stakeholders and society to effectively take their interests into account, and not only recognize that they exist.

We suggest substituting:



"The governance framework should recognise the interests of stakeholders and their contribution to the long-term success of the corporation."

For

"The governance framework should recognize, respect and consider in business decisions the interests of stakeholders and their contribution to the long-term success of the corporation."

It is also important that the Principles state that companies, and specially boards, must be permanently alert to the social and environmental impacts of their operations, incorporating these concerns as a central element of their business models and strategies. Considering only the economic results can lead companies to lose track or the perspective of other long-term externalities, which must be avoided.

### OECD proposal

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

61. ~~In all OECD countries,~~ The rights of stakeholders are often established by law (e.g. labour, business, commercial and insolvency laws) or by contractual relations that companies must respect. Nevertheless, even in areas where stakeholder interests are not legislated, many firms make additional commitments to stakeholders, and concern over corporate reputation and corporate performance often requires the recognition of broader interests. Best practice calls for implementation of internationally recognised agreements and verification through due diligence procedures, notably as provided for in the OECD Guidelines for Multinational Enterprises and its general principles on due diligence.

**IBGC comment/suggestion:** To make the title coherent with the text that follows, we suggest altering (in bold) it to "The rights **and interests** of stakeholders that are established by law, mutual agreements **or other commitments** are to be respected."

### OECD proposal

63. ~~The degree to which employees participate in corporate governance depends on national laws and practices, and may vary from company to company as well. In the context of corporate governance, performance enhancing mechanisms for participation may benefit companies directly as well as indirectly through the readiness by employees to invest in firm specific skills.~~ Examples of mechanisms for employee participation include: employee representation on boards; and governance processes such as works councils that consider employee viewpoints in certain key decisions. With respect to performance enhancing mechanisms, employee stock ownership plans or other profit sharing mechanisms are to be found in many countries. Mechanisms for employee participation that aim at improving corporate performance may also increase the readiness of employees to invest in firm specific skills. Pension commitments are also often an element of the relationship between the company and its past and present employees. Where such commitments involve establishing an independent fund, its trustees should be independent of the company's management and manage the fund for all beneficiaries. International conventions and norms also recognise the rights of employees to information, consultation and negotiation.

**IBGC comment/suggestion:** We suggest emphasizing that in any case of employees participation, they should act in the best interest of the company, and not their own personal or their professional category interests.

### OECD proposal

65. -Unethical and illegal practices by corporate officers may not only violate the rights of stakeholders but also be to the detriment of the company and its shareholders in terms of reputation effects and an increasing risk of future financial liabilities. It is therefore to the advantage of the company and its shareholders to establish procedures and safe-harbours for complaints by employees, either personally or through their representative bodies, and others outside the company, concerning illegal and unethical behaviour. ~~In many countries~~ The board ~~is being~~ should be encouraged by laws and or principles to protect these individuals and representative bodies and to give them confidential direct access to someone independent on the board, often a member of an audit or an ethics committee. Some companies have established an ombudsman to deal with complaints. Several regulators have also established confidential phone and e-mail facilities to receive allegations. While in certain countries representative employee bodies undertake the tasks of conveying concerns to the company, individual employees should not be precluded from, or be less protected, when acting alone. ~~When there is an inadequate response~~ In the absence of timely remedial action or in the face of reasonable risk of negative employment action to a complaint regarding contravention of the law, the *OECD Guidelines for Multinational Enterprises* encourage ~~them~~ employees to report their *bona fide* complaint to the competent public authorities. Additionally or alternatively, any case of violations of the recommendations provided for in the OECD Guidelines on Multinational Enterprises can be brought to the National Contact Point (NCP). The company should refrain from discriminatory or disciplinary actions against such employees or bodies.

**IBGC comment/suggestion:** Besides direct access to and independent director or the audit/ethics committee, the document could include "whistleblowing or denunciation channels" as other options to deal with these issues.

## **CAPÍTULO V. DISCLOSURE AND TRANSPARENCY**

### **OECD proposal**

*The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.*

68. -In most ~~OECD~~ countries a large amount of information, both mandatory and voluntary, is compiled on publicly traded and large unlisted enterprises, and subsequently disseminated to a broad range of users. Public disclosure is typically required, at a minimum, on an annual basis though some countries require periodic disclosure on a semi-annual or quarterly basis, or even more frequently in the case of material developments affecting the company. Companies often make voluntary disclosure that goes beyond minimum disclosure requirements in response to market demand.

**IBGC comment/suggestion:** We suggest altering the title to include the disclosure of social and environmental issues. The title should then read: "The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, governance **and also social and environmental issues regarding the company, including intangible aspects.**"

We also suggest including the following sentence at the end of the paragraph, given the importance to corporate governance of an adequate disclosure: "It is encouraged that the company develops a formal information disclosure policy"

### **OECD proposal**

71. -A strong disclosure regime that promotes real transparency is a pivotal feature of market-based monitoring of companies and is central to shareholders' ability to exercise their ownership rights on an informed basis. Experience ~~in countries with large and active equity markets~~ shows that disclosure can also be a powerful tool for influencing the behaviour of companies and for protecting investors. A strong disclosure regime can help to attract capital and maintain confidence in the capital markets. By contrast, weak disclosure and non-transparent practices can contribute to unethical behaviour and to a loss of market integrity at great cost, not just to the company and its shareholders but also to the economy as a whole. Shareholders and potential investors require access to regular, reliable and comparable information in sufficient detail for them to assess the stewardship of management, and make informed decisions about the valuation, ownership and voting of shares. Insufficient or unclear information may hamper the ability of the markets to function, increase the cost of capital and result in a poor allocation of resources.

**IBGC comment/suggestion:** Disclosure is also a strong mechanism to protect stakeholders and society as a whole. So we suggest the following inclusions/alterations (in bold):

"Experience in countries with large and active equity markets shows that disclosure can also be a powerful tool for influencing the behaviour of companies and for protecting investors **and stakeholders.**"

and

"By contrast, weak disclosure and non-transparent practices can contribute to unethical behaviour and to a loss of market integrity at great cost, not just to the company and its shareholders but also **to the stakeholders, economy and society as a whole.**"

#### OECD proposal

72. -Disclosure also helps improve public understanding of the structure and activities of enterprises, corporate policies and performance with respect to environmental and ethical standards, and companies' relationships with the communities in which they operate. The *OECD Guidelines for Multinational Enterprises* are relevant in this context.

**IBGC comment/suggestion:** We suggest including a new paragraph to emphasize that communication should be clear and accessible, and also that it is important to balance positive and negative aspects:

Management must ensure that all communication is clear, and that information should be disclosed in an accessible language. The information provided must be balanced and must include both positive and negative aspects, to enable users of the information to have a correct understanding of the company."

#### OECD proposal

73. -Audited financial statements showing the financial performance and the financial situation of the company (most typically including the balance sheet, the profit and loss statement, the cash flow statement and notes to the financial statements) are the most widely used source of information on companies. ~~++ their current form, the two principal goals of financial statements are to~~ They enable appropriate monitoring to take place and ~~to~~ provide the basis to value securities. Management's discussion and analysis of operations is typically included in annual reports. This discussion is most useful when read in conjunction with the accompanying financial statements. Investors are particularly interested in information that may shed light on the future performance of the enterprise.

**IBGC comment/suggestion:** We suggest including "the auditors opinion/report on the statements" as one of the typical documents that companies should disclose.



We also suggest substituting (in bold) “provide the basis to value securities” for “provide the basis to value **the company**”, since someone may want to value a company based on its financial statements not only for the purpose of negotiating securities.

#### **OECD proposal**

76. -In addition to their commercial objectives, companies are encouraged to disclose policies relating to business ethics, the environment, human rights, including where relevant within their supply chain, and other public policy commitments. Such information may be important for investors and other users of information to better evaluate the relationship between companies and the communities in which they operate and the steps that companies have taken to implement their objectives.

**IBGC comment/suggestion:** Companies should disclose not only policies regarding these issues, but also relevant information related to those topics, and also information on social issues. So we suggest the following inclusions (in bold):

“In addition to their commercial objectives, companies are encouraged to disclose policies and **relevant information** relating to business ethics, the environment, **social issues**, human rights, including where relevant within their supply chain, and other public policy commitments.”

#### **OECD proposal**

77. -In many countries, such disclosures are required for large companies, typically as part of their management reports. Many companies have started to embrace concepts such as sustainability or “integrated” reporting. To allow investors to hold the board and managers accountable for the use of company funds, disclosure of donations for political purposes is also considered good practice, particularly where such information is not easily available through other disclosure channels.

**IBGC comment/suggestion:** Besides political donations, companies should also disclose all voluntary contributions, to ensure greater transparency on the use of its companies’ resources. Moreover, integrated reporting is a broader concept than sustainability reporting (not equivalent), so we suggest using just the integrated reporting concept. We suggest the following inclusion/changes (in bold):

“In many countries, such disclosures are required for large companies, typically as part of their management reports. Many companies have started to embrace **concepts such as “integrated reporting”**. To allow investors to hold the board and managers accountable for the use of company funds, disclosure of donations for political purposes **and other voluntary contributions (including philanthropic, cultural, social and environmental projects)** is also considered good practice, particularly where such information is not easily available through other disclosure channels.”

#### **OECD proposal**

5. ~~information~~ **Information** about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.

81. ~~Investors~~ require information on individual board members and key executives in order to evaluate their experience and qualifications and assess any potential conflicts of interest that might affect their judgement. For board members, the information should include their qualifications, share ownership in the company, membership of other boards and whether they are considered by the board to be an independent member. It is important to disclose membership of other boards not only because it is an indication of experience and possible time pressures facing a member of the board, but also because it may reveal potential conflicts of interest and makes transparent the degree to which there are inter-locking boards.

**IBGC comment/suggestion:** It is also important to disclose, besides other directorships, other executive positions held by board members (they may also be potentially conflicting and/or time consuming). Besides that, in some jurisdictions it is not the board that determines whether a director is independent or not, but regulation or self-regulation. We then suggest following inclusion (in bold) in the title:

"Information about board members, including their qualifications, the selection process, other company directorships **or executive positions** and whether they are regarded as independent by the board, **if regulation or self-regulation does not define criteria.**"

For the same reasons, we suggest the following amendments (in bold) to the paragraph:

"Investors require information on individual board members and key executives in order to evaluate their experience and qualifications and assess any potential conflicts of interest that might affect their judgement. For board members, the information should include their qualifications, share ownership in the company, membership of other boards **or executive positions** and whether they are considered by the board, **if regulation or self-regulation does not define criteria**, to be an independent member. It is important to disclose membership of other boards **and other executive positions held** not only because it is an indication of experience and possible time pressures facing a member of the board, but also because it may reveal potential conflicts of interest and makes transparent the degree to which there are inter-locking boards."

#### **OECD proposal**

82. ~~A number of~~ National principles, and in some cases laws, lay down specific duties for board members who can be regarded as independent and ~~in some instances recommend that~~ a significant part, in some instances a majority, of the board should be independent. ~~In many countries, it is~~ should be incumbent on the board to set out the reasons why a member of the board can be considered independent. It is then up to the shareholders, and ultimately the market, to determine if those reasons are justified. ~~Several countries have concluded that~~ eCompanies should disclose the selection process and especially whether it was open to a broad field of candidates. Such information should be provided in advance of any decision by the general shareholder's meeting or on a continuing basis if the situation has changed materially.

**IBGC comment/suggestion:** The Principles should reinforce that all directors have their duties and responsibilities to the company. We suggest including the following, after the first sentence:

"In any case all directors, including non-independent, have their duties and responsibilities and should act in the best interest of the company."

In some jurisdictions it is not the board that determines whether a director is independent or not, but regulation or self-regulation. We then suggest the following inclusion (in bold):

"It should be incumbent on the board, **if regulation or self-regulation does not define criteria**, to set out the reasons why a member of the board can be considered independent."

## OECD proposal

### 6. Related party transactions.

83. ~~It is important for the market to know whether~~To ensure that the company is being run with due regard to the interests of all its investors. ~~To this end, it is essential for the company to fully disclose all material related party transactions and the terms of such transactions to the market, either individually, or on a grouped basis, including whether they have been executed at arms length and on normal market terms individually. In a number of many jurisdictions this is indeed already a legal requirement. Related parties can should at least include entities that control or are under common control with the company, significant shareholders including members of their families and key management personnel. While the definition of related parties in internationally accepted accounting standards provides a useful reference, the corporate governance framework should ensure that all related parties are properly identified and that in cases where specific interests of related parties are present, material transactions with subsidiaries that are consolidated are also disclosed.~~

**IBGC comment/suggestion:** Directors and officers must run the company on its' best interest, and not only on the interest of investors. We suggest substituting:

"the interests of all its investors"

for

"the interests of **the company**"

Besides that, given the importance and relevance of related party transactions (RPT) we also suggest including, after the last sentence, a new one:

"It is encouraged that the company develops and discloses a related party transactions policy, which should include, among other issues, the disclosure requirements of RPT".

## OECD proposal

86. ~~Users of financial information and market participants need information on reasonably foreseeable material risks that may include: risks that are specific to the industry or the geographical areas in which the company operates; dependence on commodities; financial market risks including interest rate or currency risk; risk related to derivatives and off-balance sheet transactions; and risks related to the environmental liabilities.~~

**IBGC comment/suggestion:** Social issues may also be important risk factor. So we suggest including them, as follows (in bold):

"Users of financial information and market participants need information on reasonably foreseeable material risks that may include: risks that are specific to the industry or the geographical areas in which the company operates; dependence on commodities; financial market risks including interest rate or currency risk; risk related to derivatives and off-balance sheet transactions; and risks related **to environmental and social issues.**"

### OECD proposal

88. ~~Companies are encouraged, and in some countries even obliged, should to~~ provide information on key issues relevant to employees and other stakeholders that may materially affect the performance of the company. Disclosure may include management/employee relations, including remuneration, collective bargaining coverage, and mechanisms for employee representation, and relations with other stakeholders such as creditors, suppliers, and local communities.

**IBGC comment/suggestion:** Companies should disclose not only information on issues that could affect its' performance, but also on issues that could affect or have impacts on stakeholders. We then suggest the following addition (in bold):

"Companies should provide information on key issues relevant to employees and other stakeholders that may materially affect the performance of the company, **or that may affect or have impacts on them.**"

### OECD proposal

90. ~~Companies should report their corporate governance practices, and in a number of countries such disclosure is now should be mandated as part of the regular reporting. In several countries, companies must should implement corporate governance principles set, or endorsed, by the listing authority with mandatory reporting on a "comply or explain" basis. Disclosure of the governance structures and policies of the company, including, in the case of non-operating holding companies, that of significant subsidiaries, in particular the division of authority between shareholders, management and board members is important for the assessment of a company's governance and should cover the division of authority between shareholders, management and board members. Companies should clearly disclose the different roles and responsibilities of the CEO and/or Chair and, where a single person combines both roles, the rationale for this arrangement. It is also good practice to disclose the articles of association, board charters and, where applicable, committee structures and charters.~~

**IBGC comment/suggestion:** We suggest including the recommendation to disclose the following items:

- board and general meeting minutes (including dissenting votes)
- board composition
- management composition
- policies
- relevant shareholders
- code of conduct
- dividend policy
- directors and officers assessment results (group or individual)

### OECD proposal

92. ~~The application of high quality standards is expected to significantly improve the ability of investors to monitor the company by providing increased relevance, reliability and comparability of reporting, and improved insight into company performance. The quality of information substantially depends on the standards under which it is compiled and disclosed. The Principles support the development of high quality. Most countries mandate the use of internationally recognised standards for financial reporting, which can serve to improve transparency and the comparability of financial statements and other financial reporting between countries. Such standards should be developed through open, independent, and public processes involving the private sector and other interested parties such as professional associations and independent experts. High quality domestic standards can be achieved by making them consistent with one of the internationally recognised accounting standards. In many countries, listed companies are required to use these standards.~~

**IBGC comment/suggestion:** We suggest including the following statement, given the importance of companies using comparable and proven standards to non-financial disclosure:

"It's also encouraged that companies adopt international standards to nonfinancial reporting".



The Principle should also reinforce in here the importance of the adoption of the conceptual framework of the Integrated Reporting (<IR>), since leaving it just in paragraph 77 may give the impression that it is just related to ethics. <IR> is a growing trend and should be considered by the OECD since it foresees the use of several reporting standards with a focus on value creation, long term company sustainability and its impacts in society and environment.

### OECD proposal

**C. An annual audit should be conducted by an independent, competent and qualified, auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.**

**IBGC comment/suggestion:** The comma after "qualified" is misplaced.

### OECD proposal

93. -In addition to certifying that the financial statements represent fairly the financial position of a company, the audit statement should also include an opinion on the way in which financial statements have been prepared and presented. This should contribute to an improved control environment in the company.

~~Many countries have introduced measures to improve the independence of auditors and to tighten their accountability to shareholders should be required. A number of countries are tightening audit oversight through an independent entity. Indeed, the *Principles of Auditor Oversight* issued by IOSCO in 2002 states that effective auditor oversight generally includes, *inter alia*, mechanisms: "...to provide that a body, acting in the public interest, provides oversight over the quality and implementation, and ethical standards used in the jurisdiction, as well as audit quality control environments"; and "...to require auditors to be subject to the discipline of an auditor oversight body that is independent of the audit profession, or, if a professional body acts as the oversight body, is overseen by an independent body". It is desirable for such an auditor oversight body to operate in the public interest, and have an appropriate membership, an adequate charter of responsibilities and powers, and adequate funding that is not under the control of the auditing profession, to carry out those responsibilities. The designation of an audit regulator independent from the profession, consistent with the Core Principles of the International Forum of Independent Audit Regulators (IFIAR), can be an important factor in improving audit quality.~~

**IBGC comment/suggestion:** As stated on paragraph 97, auditors are accountable to shareholders but have their duties to the company. Therefore, we suggest the following changes (in bold):

"The independence of auditors, **their duty to the company and** their accountability to shareholders **and other stakeholders** should be required"

### OECD proposal

95. -The audit committee or an equivalent body ~~is often specified as should providing provide~~ oversight of the internal audit activities and should also be charged with overseeing the overall relationship with the external auditor including the nature of non-audit services provided by the auditor to the company. Provision of non-audit services by the external auditor to a company can significantly impair their independence and might involve them auditing their own work. To deal with the skewed incentives which may arise, ~~a number of countries now call for the~~ disclosure of payments to external auditors for non-audit services ~~should be required~~. Examples of other provisions to underpin auditor independence include, a total ban or severe limitation on the nature of non-audit work which can be undertaken by an auditor for their audit client, mandatory rotation of auditors (either partners or in some cases the audit partnership), a temporary ban on the employment of an ex-auditor by the audited company and prohibiting auditors or their dependents from having a financial stake or management role in the companies they audit. Some countries take a more direct regulatory approach and limit the percentage of non-audit income that the auditor can receive from a particular client or limit the total percentage of auditor income that can come from one client.

**IBGC comment/suggestion:** It is important to include that companies should disclose the ratio between audit and non-audit services fees.

## **CAPÍTULO VI. THE RESPONSIBILITIES OF THE BOARD**

### **OECD proposal**

*The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.*

**IBGC comment/suggestion:** The board is accountable to the company and its shareholders, but it is important to emphasize the long-term shareholders.

### **OECD proposal**

101. -Together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the corporation. In order for boards to effectively fulfil their responsibilities they must be able to exercise objective and independent judgement. Another important board responsibility is to oversee systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labour, environmental, equal opportunity, health and safety laws. In some countries, companies have found it useful to explicitly articulate the responsibilities that the board assumes and those for which management is accountable.

**IBGC comment/suggestion: Boards owe their duties and responsibilities to the company** and should be accountable to the shareholders. So we suggest the following inclusions/changes (in bold):

"Together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance and achieving **an appropriate** return for shareholders **(to whom they should be accountable) and stakeholders**, while preventing conflicts of interest and balancing competing demands on the corporation. In order for boards to effectively fulfil their responsibilities they must be able to exercise objective and independent judgement. Another important board responsibility is to oversee systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labour, environmental, equal opportunity, health and safety laws. In some countries, companies have found it useful to explicitly articulate the responsibilities that the board assumes and those for which management is accountable. "

### **OECD proposal**

A. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

**IBGC comment/suggestion:** Emphasis should be given to the long-term shareholders.

### **OECD proposal**

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

111. ~~-In an increasing number of countries -~~It is regarded as good practice for boards to develop and disclose a remuneration policy statement covering board members and key executives. Such policy statements specify the relationship between remuneration and performance, and include measurable standards that emphasise the longer run interests of the company over short term considerations. Policy statements generally tend to set conditions for payments to board members for extra-board activities, such as consulting. They also often specify terms to be observed by board members and key executives about holding and trading the stock of the company, and the procedures to be followed in granting and re-pricing of options. In some countries, policy also covers the payments to be made when hiring and/or terminating the contract of an executive.

**IBGC comment/suggestion:** The document should emphasize that extra-board activities, such as consulting fees, should be treated as related party transactions, and all appropriate measures to guarantee fairness and transparency should be taken in those cases.

**OECD proposal**

121. ~~-The Chairman or lead director may, in some countries, be supported by a company secretary. In the case of two tier board systems, consideration should be given to whether corporate governance concerns might arise if there is a tradition for the head of the lower board becoming the Chairman of the Supervisory Board on retirement.~~

**IBGC comment/suggestion:** The role of Corporate/Company Secretary should be reinforced, once it may offer a support to the organization of the corporate governance system as a whole.

**OECD proposal**

**4. Boards of large companies should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences.**

129. ~~-In order to improve board practices and the performance of its members, an increasing number of jurisdictions now encourage companies to engage in board training and voluntary board evaluation that meet the needs of the individual company, sometimes with the help of external facilitators to increase objectivity. This might include that board members acquire appropriate skills upon appointment, and thereafter remain abreast of relevant new laws, regulations, and changing commercial and other risks through in-house training and external courses. In order to avoid groupthink and bring a diversity of thought to board discussion, boards should also consider if they collectively possess the right mix of background and competences.~~

**IBGC comment/suggestion:** The recommendation for board evaluation/assessment should apply to all companies, regardless of their size.