

São Paulo, October 21th, 2022

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IBGC Comments to the Public Consultation on the review of the G20/OECD Principles of Corporate Governance

Dear Mr. Di Noia,

Thank you for the opportunity to comment on the public consultation on the revisions to the G20/OECD Principles of Corporate Governance. This review is important to ensure that the Principles continue to serve their purpose of guiding policymakers and regulators in improving legal, regulatory and institutional corporate governance frameworks. The Principles have also supported the work of organizations like the Brazilian Institute of Corporate Governance (IBGC) in developing and propagating good practices.

Therefore, the IBGC welcomes the opportunity to provide comments for this important global consultation. After considering the revisions with the support of IBGC's volunteers and technical staff, in order to facilitate the understanding of our suggestions, we divided them in general (Session A) and specific (Session B) comments. We are available to clarify any issue and hope our contributions be helpful for OECD's work .

Yours sincerely,

Valeria Café

Head of Research, Publications, Advocacy and Chapters

IBGC

Session A - General comments

- Several concepts used in the document are interrelated, however, the intended meanings are not clear. In some cases, it we recommend using only one concept or using means such as footnotes or glossary to make the distinction explicit. We notice this problem in the following groups of concepts:
 - “executives”, “managers” and “management”;
 - “companies”, “corporations” and “market participants”
 - “corporate governance objectives”, “corporate governance arrangements”, “corporate governance practices” and “corporate governance rules”;
 - “non-executives directors”, “independent directors” and “non-interested board members”;
 - “non-financial” and “sustainability information”.
- The OECD has the purpose to work to build better policies for better lives, stating that the goal is to shape policies that foster prosperity, equality, opportunity and well-being for all. G20 claims for itself a “strategic role in securing future global economic growth and prosperity”. That said, the G20/OECD Principles should not hesitate in highlighting stakeholder interests. There is no sustainable growth without taking stakeholders into consideration. It is not only a matter of ethical imperative, but also the only approach to protect and generate value. It is time to bring a powerful message to the Principles, considering its influence. This is why we praise and encourage all the efforts to strengthen the Principles regarding sustainability and the role of stakeholders.
- Some paragraphs dispersed in the document are too long, redundant and may lead to confusion. After the consultation, we recommend a careful revision to make the text more clear, concise and objective.

Session B – Specific comments

Original version	IBGC suggestion	Comments
<p>p. 6</p> <p>The Principles of Corporate Governance are intended to help policy makers evaluate and improve the legal, regulatory, and institutional framework for corporate governance, with a view to supporting economic efficiency, sustainable growth and financial stability. This is primarily achieved by providing shareholders, board members, and executives, employees - along with other stakeholders where a jurisdiction's legal and regulatory framework permit - , as well as financial intermediaries and service providers with the right information and incentives to perform their roles and help to ensure accountability within a framework of checks and balances.</p>	<p>p. 6</p> <p>The Principles of Corporate Governance are intended to help policy makers evaluate and improve the legal, regulatory, and institutional framework for corporate governance, with a view to supporting economic efficiency, sustainable growth and financial stability. This is primarily achieved by providing shareholders, board members, and executives, employees, along with other stakeholders where a jurisdiction's legal and regulatory framework permit - , as well as financial intermediaries, and service providers, communities and other stakeholders with the appropriate right information and incentives to perform their roles and help to ensure</p>	<p>If a jurisdiction's legal and regulatory framework does not allow taking stakeholders interests into consideration, it should be changed.</p> <p>If the intention was highlighting the need of reliable and useful information, we recommend qualifying better those qualities. Information should be not only 'right', which may sound too simplistic, but also clear, complete and consistent.</p>

	accountability within a framework of checks and balances.	
p.7 Such a framework may include the disclosure of material financial and non-financial information that is reliable and comparable, notably concerning climate change.	p.7 Such a framework may include the disclosure of material financial and non-financial information that is reliable and comparable, notably concerning social inequality and climate change.	Climate change is an important and urgent topic, but it is also necessary to emphasize the growing social challenges caused by inequality, mainly in emerging markets and developing countries
p. 8 The Principles do not intend to prejudice or second-guess the business judgement of individual market participants , board members and company officials management. What works in one company or more companies or for one group of or more investors may not necessarily be generally applicable to all of business or of systemic importance		The definition of "market participants" is unclear along the document. Here we suggest the insertion of a footnote to clarify the concept.

<p>p. 16</p> <p>Basic shareholder rights may also include the right to approve or elect the external auditor.</p>	<p>p. 16</p> <p>Basic shareholder rights may also include the right to approve or elect the external auditor.</p>	<p>The selection of the independent auditor is a right and inalienable duty of the board of directors, approving their compensation, ratifying a work plan and evaluating their performance. In fulfilling these duties, it can rely on the support of the audit committee. This role should not be played by shareholders directly.</p>
<p>p. 17</p> <p>Some companies have charged fees for voting.</p>	<p>p. 17</p> <p>Some companies have charged fees for voting.</p>	<p>This practice is so harmful that it should not even be mentioned in the document so as not to incur the risk of being normalized.</p>
<p>p. 18</p> <p>The Principles call for the disclosure of remuneration of 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 remuneration arrangements made pursuant to this policy.</p>	<p>p. 18</p> <p>The Principles call for the disclosure of individual remuneration of board members and key executives. In particular, it is important for shareholders to know the remuneration policy, as well as the total individual compensation remuneration arrangements made pursuant to this policy or at least the minimum, average, and maximum values for each person.</p>	<p>We recommend disclosing the individual compensation or at least the minimum, average and maximum ones so that shareholders can evaluate the relevance of each director and key executive and mitigate the risk of unfair payments. The current text is not clear enough in advocating for disclosure of individual compensation.</p>

<p>p. 24</p> <p>Stewardship codes have become a well-established practice in many jurisdictions as a complement to other disclosure requirements for institutional investors on their engagement and voting policies. Most codes on shareholder engagement leave it to institutional investors' discretion whether to apply the code or not. This voluntary and flexible approach has been conceived to allow investors to adapt the codes to their respective investment strategies. Some countries also have established an implementation mechanism for such codes to ensure compliance and to promote best practice reporting. Some jurisdictions also value carrying out periodic updates and monitoring of these codes to ensure their relevance and oversee their effective implementation.</p>	<p>p. 24</p> <p>Stewardship codes have become a well-established practice in many jurisdictions as a complement to other disclosure requirements for institutional investors on their engagement and voting policies. Most codes on shareholder engagement leave it to institutional investors' discretion whether to apply the code or not. This voluntary and flexible approach has been conceived to allow investors to adapt the codes to their respective investment strategies. When regulators endorse stewardship codes and stimulate stewardship activities by investors, their effectiveness improve. Some countries also have established an implementation mechanism for such codes to ensure compliance and to promote best practice reporting. Some jurisdictions also value carrying out periodic</p>	<p>It is suggested to include the endorsement and support from regulators to stewardship codes and activities, in line with what is done by the Financial Reporting Council (FRC) in relation to the <i>UK Stewardship Code</i>.</p>
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	updates and monitoring of these codes to ensure their relevance and oversee their effective implementation.	
p. 36 V.A.1. Board members should be protected against litigation if a decision was made in good faith with due diligence.		We recommend exemplifying this practice by referring to the so-called “business judgment rule”.
p. 37 Policy statements generally tend to set conditions for payments to board members for extra-board activities, such as consulting.	p. 37 Policy statements generally tend to set conditions for payments to board members for extra-board activities, such as consulting.	The board members shall not provide consultancy for the same company they work for. This is a clear case of conflict of interests and should not be mentioned here as an acceptable practice.
p. 39 The board’s engagement and dialogue with shareholders is considered good practice in this process, provided that the board ensures transparency, equal treatment and that inside and business sensitive information is not disclosed. There are increasing calls It is		It is suggested to indicate that the relationship between the board of directors and investors should preferably be conducted by the lead independent director.

considered good practice to conduct for open search processes extending to a broad range of people backgrounds to respond to diversity objectives and the evolving nature of risks.		
<p>p. 39</p> <p>In fulfilling its control oversight responsibilities, it is important for the board to establish a whistleblowing policy in order to encourage the reporting of unethical/unlawful behaviour without fear of retribution. The existence of a company code of ethics should aid this process which should be underpinned by legal protection for the individuals concerned.</p>		<p>It would be better to standardize the terms used along the document. In this passage "code of ethics" is used. On page 26, code of conduct is used.</p>
<p>p. 40</p>	<p>p. 40</p> <p>Inclusion of a new item: V.D.10.</p>	<p>It is suggested to include among the specific activities to be performed by the board of directors receptivity and preparation for engagement with investors.</p>

<p>p. 40</p> <p>The Chairman chair 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 chair of the Supervisory Board on retirement.</p>		<p>It is suggested to insert a paragraph here that develops the idea that nowadays, with much more complex legal, regulatory and self-regulatory environments, the professional's scope of work has expanded exponentially, justifying in many organizations the structuring of a governance area, composed of a senior and qualified professional, and, in many cases, by a team of professionals.</p> <p>Currently, in several countries with more mature governance systems, the denominations of company secretary and chief governance officer positions coexist, where the latter tends to face the maturing of the governance system.</p>
<p>p. 42</p> <p>Other committees may be established to advise the board on additional issues. Some boards have created a sustainability committee to analyse in particular climate-related risks. The establishment of other committees, such as a technology committee, may also be considered by the board.</p>	<p>p. 42</p> <p>Other committees may be established to advise the board on additional issues. Some boards have created a sustainability committee to analyse in particular social, environmental and climate-related risks and opportunities. The establishment of other committees, such as a technology committee, may also be considered by the board.</p>	<p>It is recommended not to limit the scope of corporate sustainability to climate-related issues and to risk factors. More than risks, an updated notion of sustainability involves analysing business opportunities.</p>

<p>p. 44</p> <p>In jurisdictions that allow for or require the consideration of stakeholders' interests, companies should still consider the financial interests of their shareholders. A profitable company provides jobs for its employees and creates wealth for investors, many of whom are part of the general public and have invested their retirement savings.</p>	<p>p. 44</p> <p>In jurisdictions that allow for or require the consideration of stakeholders' interests, Companies should still consider the financial interests of their shareholders. A profitable company provides jobs for its employees and creates wealth for investors, many of whom are part of the general public and have invested their retirement savings.</p>	<p>If a jurisdiction's legal and regulatory framework does not allow taking stakeholders interests into consideration, it should be changed.</p>
<p>p. 45</p> <p>In jurisdictions that allow or require the consideration of stakeholder interests, disclosures may benefit such stakeholders. For instance, disclosure on collective bargaining coverage and mechanisms for employee representation may be both material for an investor's assessment of a company's value and relevant to its employees and other stakeholders.</p>	<p>p. 45</p> <p>In jurisdictions that allow or require the consideration of stakeholder interests, Disclosures may benefit such stakeholders. For instance, disclosure on collective bargaining coverage and mechanisms for employee representation may be both material for an investor's assessment of a company's value and relevant to its employees and other stakeholders.</p>	<p>It is fact not only in jurisdictions that require that.</p>

<p>p. 48</p> <p>VI.D.2. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights at a reasonable cost and without excessive delay.</p>	<p>p. 48</p> <p>VI.D.2. Where stakeholder interests are protected by law, Stakeholders should have the opportunity to obtain effective redress for violation of their rights at a reasonable cost and without excessive delay.</p>	<p>That principle is even more relevant where stakeholders are not protected by law.</p>
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