

INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE

LATIN AMERICA



WEIL, GOTSHAL & MANGES LLP

Holly J. Gregory
2003 Edition

Corporate Governance refers to that blend of law, regulation, and appropriate voluntary private-sector practices which enables the corporation to attract financial and human capital, perform efficiently, and thereby perpetuate itself by generating long-term economic value for its shareholders, while respecting the interests of stakeholders and society as a whole.

The principal characteristics of effective corporate governance are: transparency (disclosure of relevant financial and operational information and internal processes of management oversight and control); protection and enforceability of the rights and prerogatives of all shareholders; and, directors capable of independently approving the corporation's strategy and major business plans and decisions, and of independently hiring management, monitoring management's performance and integrity, and replacing management when necessary.

Ira M. Millstein

*Senior Partner, Weil, Gotshal & Manges LLP
and noted authority on corporate governance*

Weil, Gotshal & Manges LLP: *Founded in 1931, Weil, Gotshal & Manges LLP has evolved into a leading international law firm, offering expertise in a wide range of diverse practice areas. With an extraordinary talent base of over 1,000 attorneys in 16 offices around the world, Weil Gotshal serves a broad array of clients across multiple industries.*

The Firm's Corporate Governance Group is recognized as the preeminent counselors of corporate boards, management and institutional investors on the full range of governance issues including: board composition, structure and processes; executive and director compensation; director responsibilities, including in connection with mergers, spin-offs and other extraordinary transactions; internal and governmental investigations of alleged accounting or other corporate misconduct; and, shareholder initiatives.

The Corporate Governance practice is well-integrated with other practice areas, providing the Firm with an unparalleled capacity to serve as counselors to companies and their boards across the entire range of situations: from healthy companies using governance to reduce risks of future business distress or to protect extraordinary transactions, to companies facing takeovers or enterprise-threatening litigation, to companies on the brink of financial distress. The Business, Finance & Restructuring department is renowned for its ability to advise directors, investors, creditors, and companies on preventing and handling all forms of financial distress. The Business & Securities Litigation department is highly regarded for its representation of a wide variety of companies and their directors in various forms of shareholder litigation, including in litigation related to takeovers. The Firm's Corporate department regularly represents clients in the full range of merger and acquisition, private equity, capital markets, bank and securitized financing, and other commercial transactions, including in many of the largest and innovative transactions completed each year.

Holly J. Gregory
Partner
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153-0119
Tel: +1 212 310 8038
Fax: +1 212 310 8007
e-mail: holly.gregory@weil.com

*Ms. Gregory specializes in
corporate governance as a
field of legal practice.*

Weil Gotshal attorneys have advised the World Bank, the OECD, the European Commission and various stock exchanges and regulatory bodies on governance reform efforts and have been leaders in providing director training programs worldwide. In addition, the Firm has played a leading role in the development of some of the world's most influential corporate governance recommendations and guidelines, including the OECD Principles of Corporate Governance (1999); the Report of the OECD Business Sector Advisory Group on Corporate Governance (Millstein Report) (1998); European Association of Securities Dealers (EASD), Corporate Governance Principles and Recommendations (2000); International Corporate Governance Network (ICGN), Statement on Global Corporate Governance Principles (1999); Report of The Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (for the New York Stock Exchange (NYSE) and National Association of Securities Dealers (NASD)) (1999); Report of the NACD Blue Ribbon Commission on Director Professionalism (1996); and General Motors Board of Directors Corporate Governance Guidelines (1994). The Firm recently completed a study of guidelines and codes relating to the European Union entitled: Comparative Study of Corporate Governance Codes Relevant to the European Union and Its Member States (2002).

For more information about the services we offer, visit www.weil.com or call Holly J. Gregory at 212-310-8038.

NEW YORK * AUSTIN * BOSTON * DALLAS * HOUSTON * MIAMI * SILICON VALLEY * WASHINGTON, DC * BRUSSELS * BUDAPEST * FRANKFURT * LONDON * PARIS * PRAGUE
SINGAPORE * WARSAW

INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE: LATIN AMERICA

TABLE OF CONTENTS

	<u>Page</u>		<u>Page</u>
OVERVIEW	1	20. Number, Structure & Independence of Committees	23
1. Definition of Corporate Governance.....	2	21. Assignment & Rotation of Committee Members	24
2. The Corporate Objective & Mission of the Board of Directors.....	3	22. Committee Meeting Frequency, Length & Agenda.....	25
2a. Board Job Description/Responsibilities	4	23. Formal Evaluation of the Chief Executive Officer	26
2b. The Role of Stakeholders	5	24. Management Succession & Development	27
3. Board Membership Criteria/Qualifications.....	6	25. Executive Compensation & Stock Ownership.....	28
4. Selecting, Inviting & Orienting New Directors	7	26. Board Access to Independent Advisors	29
5. Separation of Chairman & CEO	8	27. Content & Character of Disclosure.....	30
6. “Presiding” or Lead Director	9	28. Disclosure Regarding Compensation.....	31
7. Board Size.....	10	29. Disclosure Regarding Corporate Governance.....	32
8. Mix of Inside & Outside Directors	11	30. Accuracy of Disclosure, Internal Control Systems & Liability.....	33
9. Definition of “Independence”	12	31. Auditor Independence.....	34
10. Conflicts of Interest and Ethics	13	32. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non- Votes, One Share/One Vote).....	35
11. Commitment, Limits on Other Board Service & Changes in Job Responsibility.....	14	33. Shareholder Voting Powers	36
12. Election Term, Term Limits & Mandatory Retirement	15	34. Shareholder Meetings & Proxy Proposals	37
13. Director Compensation & Stock Ownership	16	35. Anti-Takeover Devices	38
14. Executive Sessions of Outside Directors.....	17		
15. Evaluating Board Performance	18	APPENDICES	
16. Board Interaction with Institutional Investors, Press, Customers, etc.....	19	I. International Listing of Corporate Governance Guidelines & Codes of Best Practice	App-1
17. Attendance of Non-Directors at Board Meetings/Board Access to Senior Management	20	II. Commentary on Corporate Governance Guidelines & Codes of Best Practice in Developing & Emerging Markets.....	App-10
18. Board Meetings & Agenda	21		
19. Board Information Flow, Materials & Presentations.....	22		

INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE: LATIN AMERICA

Holly J. Gregory¹
2003 Edition²

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
OVERVIEW				
<p>Code: OECD PRINCIPLES OF CORPORATE GOVERNANCE (May 1999)</p> <p>Related Document: CORPORATE GOVERNANCE: IMPROVING COMPETITIVENESS AND ACCESS TO CAPITAL IN GLOBAL MARKETS – A REPORT TO THE OECD (“Millstein Report”) (April 1998)</p> <p>Issuing Body: Organisation for Economic Cooperation & Development (“OECD”), an intergovernmental organisation</p> <p>Legal Basis and Compliance: Voluntary</p> <p>Objective: Improve companies’ performance, competitiveness and/or access to capital</p> <p>Scope: Listed companies; encouraged to all companies</p>	<p>Code: CVM RECOMMENDATIONS ON CORPORATE GOVERNANCE (June 2002)</p> <p>Issuing Body: Comissão de Valores Mobiliários (“CVM”) (Securities & Exchange Commission of Brazil), a committee (Commission) organized by government</p> <p>Legal basis and Compliance: Disclosure (comply or explain)</p> <p>Objective: Improve companies’ performance, competitiveness and/or access to capital; improve quality of governance-related information available to equity markets</p> <p>Scope: Listed companies</p> <p>Predominant board structure: Unitary</p> <p>Note: This Code refers to a structure called the “fiscal board,” in addition to the “board of directors.” Since the “fiscal board” has very limited powers, and since it is the board of directors that hires the CEO and has all traditional supervisory body powers, we characterize the Brazilian system as having a unitary board.</p>	<p>Code: CODE OF BEST PRACTICE OF CORPORATE GOVERNANCE (April 2001)</p> <p>Issuing Body: Instituto Brasileiro de Governança Corporativa – “IBGC” (Brazilian Institute of Corporate Governance), a hybrid association of investors, business, industry and/or academic people, auditors, the Brazilian government, legislators, a stock exchange and international corporate governance experts</p> <p>Legal basis and compliance: Voluntary</p> <p>Objective: Improve companies’ performance, competitiveness and/or access to capital</p> <p>Scope: Publicly listed and private companies</p> <p>Predominant board structure: Unitary</p> <p>Note: This Code refers to a structure called the “supervisory board” (the same organ referred to as the “fiscal board” in the CVM Code), in addition to the “board of directors.” Since the “fiscal board” has very limited powers, and since it is the board of directors that hires the CEO and has all traditional supervisory body powers, we characterize the Brazilian system as having a unitary board.</p>	<p>Code: CORPORATE GOVERNANCE CODE (“White Paper”) (August 2002)</p> <p>Issuing Body: Confederación Colombiana de Cámaras de Comercio (“Confecámaras”) (Colombian Confederation of Chambers of Commerce), a business, industry and/or academic association, in collaboration with the Colombian Association of Pension Funds, the Colombian Stock Exchange, experts in finance and law, CIPE, IFC, the OECD, CAF, et al.</p> <p>Legal basis and Compliance: Voluntary</p> <p>Objective: Improve companies’ performance, competitiveness and/or access to capital; improve quality of governance-related information available to equity markets</p> <p>Scope: Listed companies; encouraged to all companies</p> <p>Predominant board structure: Unitary</p>	<p>Code: CORPORATE GOVERNANCE CODE FOR MEXICO (June 1999)</p> <p>Issuing Body: El Consejo Coordinador Empresarial (“CCE”), a committee related to a stock exchange and a business, industry and/or academic association; and La Comisión Nacional Bancaria y de Valores (“CNBV”), a committee (Commission) organized by government</p> <p>Legal Basis and Compliance: Disclosure (comply or explain)</p> <p>Objective: Improve quality of board (supervisory) governance; improve companies’ performance, competitiveness and/or access to capital</p> <p>Scope: Listed companies</p> <p>Predominant Board Structure (listed companies): Unitary</p> <p>Note: The CNBV plays a role in Mexico analogous to the Securities & Exchange Commission in the United States</p>

¹ Holly J. Gregory, a partner in the Law Firm of Weil, Gotshal & Manges LLP, practices in the Firm’s corporate governance group, which is led by Ira M. Millstein. Frederick W. Philippi, a senior paralegal, assisted in this comparative analysis. See also INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE (revised 2003); INTERNATIONAL COMPARISON OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE – INVESTOR VIEWPOINTS (revised 2001); COMPARATIVE STUDY OF CORPORATE GOVERNANCE CODES RELEVANT TO THE EUROPEAN UNION AND ITS MEMBER STATES (2002); AND COMPARISONS OF CORPORATE GOVERNANCE GUIDELINES AND CODES OF BEST PRACTICE – UNITED STATES (revised 2003), Asia (revised 2002) and Developing & Emerging Markets (revised 2002).

² In this COMPARISON, standard text, also when underlined or capitalized, replicates the verbatim text of the codes cited. *Italic text* indicates comments or interpretations provided by the author.

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
1. Definition of Corporate Governance				
<p>Corporate governance relates to the internal means by which corporations are operated and controlled. While governments play a central role in shaping the legal, institutional and regulatory climate within which individual corporate governance systems are developed, the main responsibility lies with the private sector. (Preface)</p> <p><i>See</i> Preamble at 9 ([C]orporate governance ... involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and shareholders, and should facilitate effective monitoring, thereby encouraging firms to use resources more efficiently.</p> <p>Corporate governance is only part of the larger economic context in which firms operate, which includes, for example, macroeconomic policies and the degree of competition in product and factor markets. The corporate governance framework also depends on the legal, regulatory and institutional environment. In addition, factors such as business ethics and corporate awareness of the environmental and societal interests of the communities in which it operates can also have an impact on the reputation and the long-term success of a company.).</p>	<p>Corporate governance is a set of practices aiming to optimize a company's performance and protect stakeholders such as investors, employees, and creditors, thus facilitating access to capital....</p> <p>The adoption of good corporate governance practices constitutes a set of mechanisms through which investors ... protect themselves against deviation of assets by individuals with the power to influence or take decisions in the name of the company.</p> <p>Companies with a governance system that protects all investors tend to have higher valuations, because investors recognize that everyone will receive the due and respective return on their investment. (Introduction)</p>	<p><i>Not covered.</i></p>	<p>Corporate Governance – The form in which the company is administered and controlled. (p. 8)</p>	<p><i>Not covered directly, but see the Code, Motive and Intent ([The] purpose [of the Code] is to encourage more transparent management practices in order to ... attract more investment....).</i></p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
2. The Corporate Objective & Mission of the Board of Directors				
<p>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.</p> <p>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.</p> <p>B. Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.</p> <p>C. The board should ensure compliance with applicable law and take into account the interests of stakeholders. (OECD Principle V)</p> <p>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.... [It also] implement[s] systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labor, environmental, equal opportunity, health and safety laws. (OECD Principle V Annotation at 40)</p> <p>See Millstein Report, Perspective 21 ([C]orporations should disclose the extent to which they pursue projects and policies that diverge from the primary corporate objective of generating long-term economic profit so as to enhance shareholder value in the long term.).</p> <p>See also Topic Heading 2a, below.</p>	<p><u>Board of Directors</u></p> <p>The board of directors should seek to protect the company's assets, ensure that the objectives of the company are carried out, and guide management with the goal of maximizing return on investments, adding value to the company. (II.1)</p> <p><u>Fiscal Board</u></p> <p>The fiscal board's supervisory capacity shall be the broadest possible, due to responsibilities imposed by law in the case of misconduct. (IV.5)</p> <p>See Topic Heading 2a, below.</p>	<p><u>Board of Directors</u></p> <p>The mission of the board of directors is to protect the company's assets and maximize the return on the owners' investment, adding value to the business.</p> <p>The board of directors should uphold the company's values, as well as the owners' principles and purposes, discussed, reviewed and approved at board meetings. (§ 2.01)</p> <p>The board represents the owners and is accountable to them for company performance and activities. (§ 2.27)</p> <p><u>Fiscal Board</u></p> <p>The [fiscal] board [has] the purpose of bridging a gap in the supervision of the board of directors' activities. It works as a separate controlling mechanism for both majority and minority owners. (§ 5.01)</p> <p>See §§ 2.30, 5.02 (The [fiscal] board's role and responsibilities are set forth by Law 6404 of 12/15/1976 (Corporate Law)).</p> <p>See Topic Heading 2a, below.</p>	<p>Colombian companies should create a Board of Directors that is efficient, independent and responsible, that will represent the shareholders as well as the growth and management of the company. (II)</p> <p>The Board of Directors is mainly responsible for the supervision of the production and yield of key executives and guarantor of acceptable benefits for shareholders and other capital investors. At the same time, they are in charge of preventing any conflicts of interest and are required to balance the requirements that the different groups fulfill in the company. The Boards should maintain their independence regarding the directorship so as to administer their responsibilities in an appropriate manner. (II.2)</p> <p>See Topic Heading 2a, below.</p>	<p>In addition to the obligations stipulated in the General Mercantile Companies Law, the Credit Institutions Law, the Securities market Law and other specific laws, the following should be included in the functions of the Board of Directors:</p> <ol style="list-style-type: none"> i. establish a strategic vision for the company; ii. ensure that stockholders and the market have access to public information about the company; iii. establish internal control mechanisms; iv. ensure that the company has the necessary mechanisms to prove that it complies the various legal provisions to which it is subject; and v. regularly evaluate the performance of the chief executive officer and other senior management of the company. <p>(Principle at I.1)</p> <p>One [Board meeting each year] should be devoted to defining the company's medium- and long-term strategy. (Principle at I.4)</p> <p>[T]he definition of [the company's] strategic vision and approval of its management should be the responsibility of the Board of Directors. All the members of the Board share in the responsibility for these tasks. (Recommendation at I)</p> <p>See Topic Heading 2a, below.</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
2a. Board Job Description/Responsibilities				
<p>[K]ey [board] functions includ[e]:</p> <ol style="list-style-type: none"> 1. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures. 2. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning. 3. Reviewing key executive and board remuneration, and ensuring a formal and transparent board nomination process. 4. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. 5. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law. 6. Monitoring the effectiveness of the governance practices under which it operates and making changes as needed. 7. Overseeing the process of disclosure and communications. <p>(OECD Principle V.D)</p> <p>[S]pecific functions of board members may differ according to the articles of company law in each jurisdiction and ... statutes of each company. (Annotation to OECD Principle V.D)</p>	<p><u>Board of Directors</u></p> <p>The board should adopt its own by-laws about its duties.... (II.2)</p> <p>The board of directors supervises management. (II.4)</p> <p>The board of directors should provide appropriate means for the good functioning of the fiscal board, such as notices and locations for meetings, agenda organization and assistance with information requested by members of the fiscal board. (IV.2)</p> <p><u>Fiscal Board</u></p> <p>The fiscal board should adopt by-laws covering its duties, with a focus on analyzing the relationship with the auditor. The by-laws should not restrict any member's individual initiatives. (IV.2)</p> <p><i>See also</i> Topic Heading 2, <i>above</i>.</p>	<p><u>Board of Directors</u></p> <p>The responsibilities of the board of directors are set forth by Law 6404 of December 15, 1976 (Corporate Law). These responsibilities involve the definition of strategies, electing and removing directors, supervising management and naming and replacing independent auditors.</p> <p>The activities of the board of directors should be further laid down in an internal regulation.... (§ 2.03)</p> <p>The board of directors elects and removes the Chief Executive Officer and establishes his/her remuneration.</p> <p>The board of directors decides on director nominations submitted by the CEO. The board supervises management, especially regarding company relations with stakeholders. The board of directors should not interfere in operating matters. (§ 2.28)</p> <p>[T]he board of directors ... approves [the annual report] and subsequently recommends its acceptance or rejection by the general assembly of shareholders. (§ 3.04.01)</p> <p><u>Fiscal Board</u></p> <p>Law 6404 of 12/15/1976 (the Corporate Law) establishes the [fiscal] board's authority. (§ 3.09)</p> <p>The [fiscal] board reports to the owners. (§§ 2.30, 5.03)</p> <p>[T]he [fiscal] board may request ... minutes of board of directors meetings, financial statements [and] clarifications and detailed information. [It] should be present at board of directors and management meetings, whenever items requiring the [fiscal] board's opinion are discussed. (§ 5.04)</p> <p><i>See</i> Topic Heading 2, <i>above</i>.</p>	<p>The main functions of the Board of Directors are:</p> <ol style="list-style-type: none"> a. Approve and examine the company corporate strategy.... b. Nominate, name, evaluate and remove key executives of the company.... c. Determine the compensation systems for key executives of the company.... d. Request periodic reports from key executives regarding the company status.... e. Verify the effectiveness and transparency of the accounting systems of the company. f. Develop periodic reports to present to the shareholders regarding the financial situation and the governance of the company. g. Place before the General shareholders Assembly, for their review and consideration, any changes (reforms) regarding the corporate governance of the company which they consider necessary. h. Determine compensation for the auditing. i. Authorize transactions between controlling shareholders. <p>(II.2)</p> <p>Responsibilities of the Board of Directors [include]:</p> <ol style="list-style-type: none"> a. Act in good faith, use independent judgement and guarantee the rights and equal treatment of all shareholders. b. Guarantee the effectiveness of the information disclosure systems.... e. Guarantee the use of good corporate governance policies utilized by the company. <p>(II.3)</p> <p>The designation of the Principal Executive should be done by the Board of Directors. (V.2)</p> <p><i>See</i> Topic Heading 2, <i>above</i>.</p>	<p>[I]t is important for a company to have a general frame of action that establishes standards of conduct for its board members.</p> <p>Companies should address six principles of conduct, recommending that Board members:</p> <ul style="list-style-type: none"> ▪ Notify the Chairman and Secretary of the Board of Directors of any situation that constitutes, or could be construed as, a conflict of interest, and refrain from participating in the corresponding debate; ▪ Use the company's assets and services exclusively in pursuing its corporate purpose, and define clear policies to apply in exceptional cases...; ▪ Dedicate the necessary time and attention to their job, attending at least 70% of the meetings...; ▪ Hold all information that might affect company operations ... in utmost confidence; ▪ Board members and their respective alternates, if any, must be kept mutually informed of the matters discussed in the Board meetings they attend; and ▪ Support the Board of Directors with opinions, recommendations and directions that are based on an analysis of the company's performance, so that decisions it makes are duly founded on professional criteria and qualified personnel who can offer a broader independent focus on the company's operations. <p>(Principles at I.5)</p> <p><i>See</i> Topic Heading 2, <i>above</i>.</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
2b. The Role of Stakeholders				
<p>The corporate governance framework should recognize the rights of stakeholders as established by law and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.</p> <p>A. The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected.</p> <p>B. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.</p> <p>C. The corporate governance framework should permit performance-enhancing mechanisms for stakeholder participation.</p> <p>D. Where stakeholders participate in the corporate governance process, they should have access to relevant information.</p> <p>(OECD Principle III)</p> <p>The board should ... take into account the interests of stakeholders. (OECD Principle V.D)</p> <p>Boards are expected to take due regard of, and deal fairly with ... stakeholder interests including those of employees, creditors, customers, suppliers and local communities. (OECD Principle V Annotation at 40)</p> <p>See Millstein Report, 1.2.16 (Corporate success is linked to the ability to align the interests of directors, managers and employees with the interests of shareholders.... [C]orporate actions must be compatible with societal objectives.... Attending to legitimate social concerns should, in the long run, benefit all parties, including investors.).</p>	<p><i>Not covered directly, but see</i> Introduction (Corporate governance is a set of practices aiming to optimize a company's performance and protect stakeholders such as investors, employees, and creditors, thus facilitating access to capital.).</p>	<p>Stakeholders usually include the employees, customers, suppliers, banks, the government, environmental protection and non-governmental organizations, among others. Both the CEO and management are accountable to the stakeholders. (§ 3.07)</p> <p>[E]very company should have a code of ethics ... adopted by all the company's directors and employees. (§ 6.01)</p> <p>The code of ethics should cover relations between employees, suppliers, and associates. It should mainly cover the following topics: bribes; inappropriate payments; conflicts of interest; insider trading; receiving gifts; discrimination of opportunities; donations; the environment; sexual harassment; occupational safety; political activities; community relations; alcohol and substance abuse; personal confidentiality; the right to privacy; nepotism; child labor. (§ 6.02)</p> <p>See § 2.28 (The board supervises management, especially regarding company relations with stakeholders.).</p> <p>See also § 3.04 (The CEO must disclose all relevant information, whether or not mandatory, to the owners and stakeholders.).</p>	<p>Colombian companies recognize the rights of the social interest groups stipulated by law and the ones that invest either directly or indirectly in the development of the company. The companies will promote the consolidation of the active synergies within the companies and different interest groups so as to assure additional income, employment and achieve financial stability. (IV)</p> <p>Among the groups of interest are...:</p> <ol style="list-style-type: none"> a. The consumers.... b. The suppliers.... c. The regulation organizations ... that have any claim on the economic activity of the company: Colombian companies will utilize the appropriate mechanisms to verify the fulfillment of the standards that regulate ... (i) taxes; (ii) employment; (iii) restrictive practices regarding free competition; (iv) rights of the consumer; (v) commercial and corporate standards; (v) traditional standard financial activities and the market. d. The competitors.... e. The company employees.... f. Company location.... g. Private debt title holders. <p>(IV.1)</p> <p>[C]ompanies will encourage a healthy environmental policy (IV.2.a)</p> <p>[C]ompanies should assure the fulfillment of national standards and international agreements regarding ... intellectual property. (IV.2.b)</p> <p>[C]ompanies ... will develop quality of life improvement programs in the communities where they are located.... (IV.2.d)</p> <p>See generally IV (Interest Groups and Social Responsibility).</p>	<p><i>Not covered.</i></p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
3. Board Membership Criteria/Qualifications				
<p><i>Not covered directly, but see OECD Principle I Annotation at 25 (Shareholders' rights to influence the corporation center on certain fundamental issues, such as ... influencing the composition of the board.).</i></p>	<p>The board of directors should have ... technically qualified members, with at least two members possessing experience in finance and primary focus on accounting practices. Such experience should enable them to take responsibility for scrutinizing the adopted accounting practices. (II.1)</p>	<p>The following experiences and knowledge should be present amid the board members:</p> <ul style="list-style-type: none"> ▪ having served at top-quality boards, <i>i.e.</i>, known for their excellence ▪ having served as Chief Executive Officer ▪ experience in managing crises ▪ financial knowledge ▪ accounting knowledge ▪ familiar with the company's field of business ▪ domestic and international market knowledge ▪ strategic vision ▪ connections of interest to the company. <p>.... The board, as a whole, should congregate various fields of knowledge and experience. (§2.10)</p> <p>See §2.10 (Every board member should:</p> <ul style="list-style-type: none"> ▪ be honest ▪ be capable of reading and understanding financial statements ▪ have no conflicts of interest ▪ have time available ▪ be motivated ▪ be aligned with company values ▪ be familiar with the Best Practices of Corporate Governance.) 	<p>Colombian companies should structure a Board of Directors that guarantees the suitability, experience and independence of their decisions. (II.1)</p> <p>The members of the Board of Directors should, at least, have the following qualifications: (i) experience in the financial activities provided by the company and/or have experience in the financial field, the Law or similar field; (ii) have a good name and [be] recognized for excellent professionalism and integrity; (iii) be within the age range established by the General Shareholders Assembly; (iv) not belong to more than five (5) boards simultaneously. (II.1.d.ii)</p>	<p>Outside Board members are those selected for their professional prestige, experience and capacity. (Principle at I.2)</p> <p>It is also important that the Board include what are called owning Directors. This type of member has assumed the risk of a significant participation in the company's equity, and their presence on the Board is helpful because, as they keep a constant watch on their investment, they benefit the entire company. (Recommendation at I.2)</p> <p>It is ... important that new board members are informed of the scope and the legal and statutory consequences of their position. (Recommendation at I.4)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
4. Selecting, Inviting & Orienting New Directors				
<p>Basic shareholder rights include the right to ... elect members of the board. (OECD Principle I.A)</p> <p>Shareholders' rights to influence the corporation center on certain fundamental issues, such as the election of board members, or other means of influencing the composition of the board. (OECD Principle I Annotation at 25)</p> <p>The board should fulfill certain key functions, including ... ensuring a formal and transparent board nomination process. (OECD Principle V.D.3)</p> <p>In order to improve board practices and the performance of its members, some companies have found it useful to engage in training and voluntary self-evaluation that meets the needs of the individual company. This might include that board members acquire appropriate skills upon appointment, and thereafter remain abreast of relevant new laws, regulations, and changing commercial risks. (OECD Principle V.E.2 Annotation at 42)</p>	<p><u>Board of Directors</u></p> <p>The company should immediately allow holders of preferred shares to elect a representative to the board of directors, to be nominated and chosen solely by the preferred shareholders. The Corporate Law establishes that until 2006 preferred shareholders can choose a member of the board of directors from a list of three names appointed by the controlling shareholders. But such a measure is not justified in light of the best corporate governance practices, and therefore the company should include in its by-laws a rule that ensures right away that holders of preferred shares who are not part of the controlling group may freely nominate and elect a member and its surrogate to the board of directors. (II.3)</p> <p><u>Fiscal Board</u></p> <p>Holders of preferred shares and holders of common shares, excluding shareholders in the controlling group, should have the right to elect an equal number of members [of the fiscal board] as the controlling group. The controlling group should renounce the right to elect the last member (third or fifth member), who should be elected by the majority of share capital, in a shareholder's meeting at which each share represents one vote, regardless of its type or sort, including controlling group shares....</p> <p>According to principles of good corporate governance, the fiscal board's majority should not be elected by the controlling shareholder. (IV.2)</p>	<p><u>Board of Directors</u></p> <p>The board members are elected by the owners. (§ 2.27)</p> <p>The board of directors decides on director nominations submitted by the CEO. (§ 2.28)</p> <p>It's the CEO's responsibility to nominate directors for the board of directors' approval. (§ 3.02)</p> <p>The nominating committee should examine whether it is convenient to propose ... reelection [of directors]. (§ 2.13)</p> <p>Each new board member should get an introductory briefing and a folder from the board describing the board member's responsibilities and containing the latest annual reports, minutes of regular and special shareholders' meetings, and other company information. The new member should be introduced to his/her fellow board members, the CEO, the management and other key staff. The new board member should also visit the main places where he/she will be working. Depending on the type of company, additional programs should be included. (§ 2.23)</p> <p>Owner agreements should avoid specifying director nominations. This should be up to the CEO, who subsequently submits his recommendations to the board of directors for approval. (§ 1.02)</p> <p><u>Fiscal Board</u></p> <p>The [fiscal] board is elected by the owners. (§§ 2.30, 5.03)</p>	<p>[Shareholders have the right to] [p]articipate in the election and removal of the members of the Board of Directors and evaluate their administration. (I.1.b)</p> <p>The shareholders ... [e]lect members to the Board of Directors. (I.2.e)</p> <p>Responsibilities of the Board of Directors [include] [t]rain[ing] new members to the Board of Directors regarding the decisions made up to the moment of their appointment, regarding the financial situation and the standards for corporate governance. (II.3.h)</p> <p><i>See I.3</i> (Any agreement made between shareholders ... relating to ... appointment or removal of <u>administradores</u> [i.e., members of the Board of Directors and key executives] will be made known to the other shareholders.).</p>	<p>When Board members are first appointed, they should be given proper orientation with regard to their new responsibilities. At the least, the company should supply them with information regarding the company and its environment, as well as the obligations, responsibilities and powers that accompany appointment to the Board. (Principle at I.4)</p> <p>New Board members should ... have a broad knowledge of the business, including, among other aspects, the company's position within its sector, its main competitors, clients and suppliers. (Recommendation at I.4)</p> <p>Board members are legally bound to perform their duties. Ignorance of their responsibilities does not exempt them from these duties. It is therefore important that new Board members are informed of the scope and the legal and statutory consequences of their position. (Recommendation at I.4)</p> <p>It is important ... that stockholders receive all pertinent information on nominees to the Board of Directors, which can be contained in a brief résumé, so that they can assess the candidate's profile and issue an informed vote. (Recommendation at V.1)</p> <p><i>See Recommendation at I.2</i> (It is important to avoid situations in which regular members who are unable to attend meetings are replaced at random by any alternate member, because this dilutes his or her obligations to the rest of the Board. It is also important that the regular member and his or her alternate form a team in order to participate more effectively on the Board. For this reason, regular members should participate in the process of selecting their alternates.).</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
5. Separation of Chairman & CEO				
<p>The Chairman as the head of the board can play a central role in ensuring the effective governance of the enterprise and is responsible for the board's effective function. The Chairman may in some countries be supported by the company secretary. In unitary board systems, the separation of the roles of the Chief Executive and Chairman is often proposed as a method of ensuring an appropriate balance of power, increasing accountability and increasing the capacity of the board for independent decision making. (OECD Principle V.E Annotation at 42)</p>	<p>The chairman of the board [of directors] and the chief executive officer shall not be the same person. The board of directors supervises management. Therefore, in order to avoid conflicts of interests, the chairman of the board should not also be the chief executive officer. (II.4)</p>	<p>Chair of the board [of directors] and Chief Executive Officer should be two separate positions, held by different persons. The logic is the same as in the case of avoiding internal board members. The board supervises management. Therefore, the chair of the board should not double as CEO. (§2.18)</p>	<p>Key executives of the company or any other member of the company, may not be members of the Board of Directors. Key executives will be present during the Board of Directors meetings only to present reports and answer any questions directed to them by the Board of Directors. This prohibition guarantees that the main executives of the company and the president of the Board of Directors are not the same person. (II.1.d.iii)</p>	<p><i>Not covered.</i></p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
6. “Presiding” or Lead Director				
<i>Not covered directly, but see Topic Heading 5, above.</i>	<i>Not covered directly, but see Topic Heading 5, above.</i>	In case the chair of the board [of directors] and the CEO are the same person, it is important that the board have a particularly influential member, someone who is highly regarded by his/her fellow executives and the business community in general, capable of balancing the power of that executive who is both chair of the board and CEO. (§ 2.19)	<i>Not covered directly, but see Topic Heading 5, above.</i>	<i>Not covered.</i>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
7. Board Size				
<i>Not covered.</i>	<p><u><i>Board of Directors</i></u> The board of directors should have five to ten technically qualified members.... For companies under shared control, boards with more than nine members are justifiable.... The recommendation about the number of members takes into consideration that the board of directors should be large enough as to ensure wide representation but not so large as to impair efficiency. (II.1)</p> <p><u><i>Fiscal Board</i></u> The fiscal board should have a minimum of three and a maximum of five members. (IV.2)</p>	Boards of directors may vary in size, and can consist of between 5 and 9 members, according to the company's needs. (§ 2.05)	According to the needs of the company, it is recommended that the Board of Directors be comprised of no less than five (5) and no more than nine (9) members. (II.1.a)	<p>The Board of Directors should consist of between 5 and 15 regular members. (Principle at I.2)</p> <p>There should be no alternate Board members; if there are, they should be assigned to replace only a previously established regular member, and each prospective regular Board member should be asked to suggest their alternate. (Principle at I.2)</p> <p>The Board should ... include at least enough members to offer an adequate range of opinions, but not so many that members cannot effectively express and discuss their viewpoints without provoking inefficient practices by an excessive number of Board members. (Recommendation at 3)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
8. Mix of Inside & Outside Directors				
<p>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. (OECD Principle V)</p> <p>The board should be able to exercise objective judgement on corporate affairs independent, in particular, from management. (OECD Principle V.E)</p> <p>Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination and executive and board remuneration. (OECD Principle V.E.1)</p> <p>Policy makers and regulators should encourage some degree of independence in the composition of corporate boards. Stock exchange listing requirements that address a minimal threshold for board independence ... have proved useful, while not unduly restrictive or burdensome. However, ... corporate governance – including board structure and practice – is not a “one-size-fits-all” proposition, and should be left, largely, to individual participants. (Millstein Report, Perspective 15)</p>	<p><u>Board of Directors</u> As many board members as possible should be independent of company management. (II.1).</p> <p><u>Fiscal Board</u> <i>Not covered directly, but see IV.2</i> (Holders of preferred shares and holders of common shares, excluding shareholders in the controlling group, should have the right to elect an equal number of members as the controlling group. The controlling group should renounce the right to elect the last member (third or fifth member), who should be elected by the majority of share capital, in a shareholder’s meeting at which each share represents one vote, regardless of its type or sort, including controlling group shares....</p> <p>According to principles of good corporate governance, the fiscal board’s majority should not be elected by the controlling shareholder.)</p>	<p>There are three kinds of board members:</p> <ul style="list-style-type: none"> ▪ independent (see item 2.16) ▪ external (board members who are not company workers, but who are not independent) ▪ internal (board members that are company directors or employees) <p>(§ 2.06)</p> <p>Most of the board members should be independent.... (§ 2.10)</p>	<p>The Board of Directors should be comprised by representatives of the majority shareholders, at least one representative for the minority shareholders, the title owners and independent members. (II.1.b)</p>	<p>Owning directors are selected from among major stockholders or the individuals that direct them. Depending on whether the major stockholder or its director qualify to be outside directors, they can be appointed as outside owning directors or inside owning directors. (Principle at I.2)</p> <p>Inside directors are those that do not fall into either of the previous two described categories. (Principle at I.2)</p> <p>Outside and owning members should together make up at least 40% of the Board of Directors. ... Outside members should make up at least 20% of the Board of Directors. (Principle at I.2)</p> <p>To fulfill its purpose, the Code recommends that the Board include members that are not involved in the daily operation of the company so that they can provide an external, independent perspective. (Recommendation at I)</p> <p>In order for outside and owning directors to fulfill their purpose, they must be represented in a sufficient percentage on the Board. (Recommendation at I.2)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
9. Definition of “Independence”				
<p>The board should be able to exercise objective judgement on corporate affairs independent, in particular, from management. (OECD Principle V.E)</p> <p>The variety of board structures and practices in different countries will require different approaches to the issue of independent board members. Board independence usually requires that a sufficient number of board members not be employed by the company and not be closely related to the company or its management through significant economic, family or other ties. This does not prevent shareholders from being board members. (OECD Principle V.E Annotation at 41)</p> <p>Whether in a single-tier or two-tier board system, individual corporations should ensure that an effective number of board of director members – or in certain nations, board of auditor members – are persons who are capable of exercising judgement, independent of management views. Generally, this will require that such board members are persons who are not employed by the company. (Millstein Report, Perspective 24)</p> <p>See Millstein Report, 1.4.34 (For the board to play [its] role in a meaningful way, it needs to be capable of acting independently of management. This requires board members (or in some nations, board of auditor members) capable of exercising business judgement independently of management – whether in a single-tier or two-tier board.).</p>	<p><i>Not covered directly, but see Topic Heading 8, above.</i></p>	<p>The definition of [director] independence is:</p> <ul style="list-style-type: none"> ▪ having no ties with the company, with the possible exception of a few shares ▪ not having been an employee of the company or any of its subsidiaries ▪ not providing any service or product to the company ▪ not being an employee of any supplier to the company ▪ not being married or related to any company director or manager, down to the second degree ▪ receiving no pay from the company other than the normal board member remuneration and possibly dividends (if also a shareholder). <p>A board member should cater to the interest of the company, and consequently of <u>all</u> its shareholders.</p> <p>A board member should seek maximum independence from the shareholder, controlling group, or stakeholder that may have named or elected him/her, knowing that, once elected, his/her responsibility should be to all the owners. (§ 2.16)</p>	<p>Independed members of the Board of Directors are those who (i) are not representatives of the majority shareholders; (ii) those who have not worked for the company within the last three (3) years; (iii) those who are not providers of goods and services to the company; (iv) and those who do not work for the company. (II.1.d.i)</p>	<p>Outside Board members are those ... who do not fit into the following hypothetical situations at the time of their assignments:</p> <ol style="list-style-type: none"> i. employees or executives of the company; ii. stockholders that have control over the company’s directors; iii. consultants to the company ... whose revenues depend significantly on their contractual relationship; iv. clients, suppliers, lenders or borrowers of the company...; v. employees of a foundation, university or non-profit organization that receives substantial donations from the company; vi. chief executive officers or senior management of a firm on whose Board of Directors the company’s chief executive officer or an upper-level executive sits; or vii. relatives of any of the individuals mentioned above. <p>(Principle at I.2)</p> <p>[I]t is important that the Board include outside members. The term outside member is used to identify members who are not connected with the company’s management team. These members are called to join the Board by virtue of their personal and professional prestige. Their main purpose is to offer an impartial perspective on the company’s strategic planning and other tasks that fall to the Board. (Recommendation at I.2)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
10. Conflicts of Interest and Ethics				
<p>The board should fulfill certain key functions including ... [m]onitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. (OECD Principle V.D)</p> <p>Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. (OECD Principle V.E)</p> <p>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. (OECD Principle IV Annotation at 37)</p> <p>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. (OECD Principle V Annotation at 40)</p> <p>While the responsibility for financial reporting, remuneration and nomination are those of the board as a whole, independent non-executive board members can provide additional assurance to market participants that their interests are defended. Boards may also consider establishing specific committees to consider questions where there is a potential for conflict of interest. These committees may require a minimum number, or be composed entirely of, non-executive members. (OECD Principle V.E.1 and Annotation at 42)</p>	<p>The board of directors supervises management. Therefore, in order to avoid conflicts of interest, the chairman of the board [of directors] should not also be the chief executive officer. (II.4)</p> <p>For ... transactions with related parties, the interested parties should not be allowed to vote. (III.1)</p> <p><i>See</i> III.4 (The board of directors should ensure that transactions among related parties are clearly reflected in the financial statements and were carried out in writing and under market conditions. The company's by-laws should prohibit service contracts among related parties with remuneration based on sales/revenues and, in principle, loan agreements with any shareholder in the controlling group or related parties....)</p> <p>In principle, loan agreements between the company and related parties should be prohibited. The company should not grant credit to related parties. Such operations are frequently not carried out under prevailing market conditions, (terms, rates and guarantees), and therefore are not in compliance with legal requirements. If the related party seeks credit, it should do so with third parties, and not through the company.).</p> <p><i>See also</i> III.6 (The company's by-laws should establish that divergences between shareholders and the company or between controlling shareholders and minority shareholders will be solved by arbitration.).</p> <p><i>See also</i> IV.4 (The board of directors should prohibit or restrict hiring the company's auditor for other services that may present conflicts of interest.).</p>	<p>There is a conflict of interest whenever a party is not independent vis-à-vis a particular issue and may influence decisions or make biased choices.... A few definitions of independence have been given to board members and independent auditors. Similar criteria apply to directors or any other company employee or representative.</p> <p>The person in question should preferably state his/her conflict of interest. Failing that, any other person can do so. (§ 6.03)</p> <p>As soon as a conflict of interest has been identified the person in question should physically leave the meeting room. This temporary exclusion should be minuted.... (§ 6.04)</p> <p>The activities of the board of directors should be ... laid down in an internal regulation to specify its roles and responsibilities, and avoid situations of conflict with the executive management, particularly the CEO. (§ 2.03)</p> <p>The board of directors supervises the management. Supervising oneself is a typical conflict of interest situation. Therefore, board members and directors should avoid holding both positions. (§ 2.06)</p> <p>Every board member should ... have no conflicts of interest.... (§ 2.10)</p> <p>In order to avoid conflicts of interest, the independent auditors should not be members of the [fiscal] board. (§ 4.08)</p> <p>The code of ethics should cover ... conflicts of interest. (§ 6.02)</p>	<p>Colombian companies will implement mechanisms to assist in the prevention, handling and disclosure of the conflicts of interest that could present themselves among investors, key executives, groups of interest and members of the Board of Directors. (VI)</p> <p>[C]ompanies will establish a policy manual for the management, prevention and solution of conflicts of interest, which will be placed at the disposal of the public. (VI.3)</p> <p>Colombian companies will utilize systems for management and resolution of conflicts such as mechanisms to improve foreign investments, business relationships and ease of coexistence among the shareholders, interest groups and management. (VII)</p> <p>The Board of Directors is ... in charge of preventing any conflicts of interest and [is] required to balance the requirements that the different groups fulfill in the company. (II.2)</p> <p>[T]he Board of Directors ... [m]ay not manipulate, divulge or use the internal confidential information ... for their personal use or for the benefit of others. (II.3.d)</p> <p>We recommend that the companies ... create an Ethics Committee inside the company to understand and direct any conflicts which might come up between them. (IV.2.c)</p> <p>The Principal Executive of the company should be responsible for ... present[ing] possible conflicts of interest. (V.3.h)</p> <p><i>See generally</i> IV.2.c (ethical practices).</p> <p><i>See also</i> VI.1 (Forbidden Practices).</p> <p><i>See generally</i> VII (Management and Conflict Resolution).</p>	<p>[Committees should have] no conflict of interest among their members.... (Principle at I.3)</p> <p>Companies should address .. principles of conduct, recommending that Board members [n]otify the Chairman and Secretary of the Board of Directors of any situation that constitutes, or could be construed as, a conflict of interest, and refrain from participating in the corresponding debate.... (Principles at I.5)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
11. Commitment, Limits on Other Board Service & Changes in Job Responsibility				
<p>Board members should devote sufficient time to their responsibilities. (OECD Principle V.E.2)</p> <p>It is widely held that service on too many boards can interfere with the performance of board members. Companies may wish to consider whether excessive board service interferes with board performance. Some countries have limited the number of board positions that can be held. Specific limitations may be less important than ensuring that members of the board enjoy legitimacy and confidence in the eyes of shareholders. (OECD Principle V.E.2 Annotation at 42)</p>	<i>Not covered.</i>	<p>A board member's main position is an important factor when choosing him/her. When his/her main position is changed, the member should tender his/her resignation. The nominating committee should examine whether it is convenient to propose his/her reelection. (§ 2.13)</p> <p>Every board member should:</p> <p>....</p> <ul style="list-style-type: none"> ▪ have time available ▪ be motivated ▪ be aligned with company values.... <p>(§ 2.10)</p>	<p>The members of the Board of Directors should ... not belong to more than five (5) boards simultaneously. (II.1.d.ii)</p> <p>Responsibilities of the Board of Directors [include] [d]evot[ing] sufficient time to their responsibilities as members of the Board of Directors. (II.3.c)</p>	<i>Not covered.</i>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
12. Election Term, Term Limits & Mandatory Retirement				
<i>Not covered.</i>	All board members should serve concurrent one-year terms of office, with the possibility of re-election.... Unified office terms facilitate the representation of minority shareholders on the board. (II.1)	The board member's term in office should be clearly established. Length of service should be short, preferably just one year long. Re-election should be possible after a formal appraisal of performance. Reelection should never be automatic. All the board members should be elected at the same time. (§ 2.11) If the term in office is short and the appraisal method efficient, no age limit is necessary. (§ 2.12)	Membership to the Board of Directors should be limited to one (1) year. The members may be re-elected according to the evaluation made at the General Shareholders Assembly. (II.1.c) The members of the Board of Directors should ... be within the age range established by the General Shareholders Assembly (II.1.d.ii)	<i>Not covered.</i>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
13. Director Compensation & Stock Ownership				
<p>The board should fulfill certain key functions, including [reviewing] board remuneration. (OECD Principle V.D.3)</p>	<p><i>Not covered.</i></p>	<p>The independent board member's remuneration rate should be the same as the CEO's hourly rate, including bonuses and benefits, commensurate with the time he/she actually devotes to his/her functions. (§ 2.14)</p>	<p>[C]ompanies should use the appropriate systems of compensation for the members of the Board of Directors according to their situation. The compensation plan should be approved by the General Shareholders Assembly and will be proportional to the time dedicated to the position, the financial situation of the company and their participation in the various committees. (II.4)</p> <p><i>See</i> I.2.j (The shareholders ... will ... [a]pprove the remuneration systems for the members of the Board of Directors.).</p>	<p><i>Not covered directly, but see</i> Principle I.3 (In order to make better informed decisions, the Board of Directors should perform the tasks of evaluation and compensation ... through one or more [committees].).</p> <p><i>See also</i> Recommendation at II (The Committee recommends that there be a mechanism to support the Board in its responsibilities with regard to evaluation and compensation of the chief executive officer and senior management of the company. This mechanism may be supported by the company's internal structure, such as the human resources area.).</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
14. Executive Sessions of Outside Directors				
<i>Not covered.</i>	<u>Board of Directors</u> <i>Not covered.</i> <u>Fiscal Board</u> As part of the analysis of the company's financial statements, the fiscal board and the audit committee should meet regularly and separately with the auditors, without the presence of executive officers. (IV.3)	To enable the board of directors to appraise management performance at freedom [<i>sic</i>], it is important that external and independent members meet regularly with no [executive] directors and/or internal board members present. (§ 2.07)	<i>Not covered directly, but note that this Code excludes executives from membership on the Board of Directors. See II.1.d.iii (Key executives of the company, or any other member of the company, may not be members of the Board of Directors.).</i>	<i>Not covered.</i>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
15. Evaluating Board Performance				
<p>Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are: financial reporting, nomination and executive and board remuneration. (OECD Principle V.E.1)</p> <p>Independent board members ... can bring an objective view to the evaluation of the performance of the board. (OECD Principle V.E Annotation at 41)</p> <p>In order to improve board practices and the performance of its members, some companies have found it useful to engage in training and voluntary self-evaluation that meets the needs of the individual company. (OECD Principle V.E.2 Annotation at 42)</p>	<i>Not covered.</i>	<p>A formal appraisal of the performance of the board and each of its members should be made every year. The appraisal method should be in accordance with each company's circumstances. (§ 2.09)</p> <p>Re-election [of directors] should be possible after a formal appraisal of performance. Re-election should never be automatic. (§ 2.11)</p>	<i>Not covered.</i>	<i>Not covered.</i>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
16. Board Interaction with Institutional Investors, Press, Customers, etc.				
<p><i>Not covered directly, but see</i> OECD Principle IV.D (Channels for disseminating information should provide for fair, timely and cost-efficient access to relevant information by users.).</p> <p><i>See also</i> OECD Principle V.D.7 (The board should fulfill certain key functions, including ... [o]verseeing the process of disclosure and communications.).</p>	<p><i>Not covered.</i></p>	<p><i>Not covered directly, but see</i> § 2.20 (The board of directors should name one person as the company’s spokesman, to avoid contradiction between statements made by the chair of the board and the CEO. The manager of investors relations is empowered to act as the company spokesman.).</p>	<p>The Principal Executive of the company should be responsible for ... [k]eep[ing] the investors informed... (V.3.j)</p> <p><i>See</i> III. 4 (It is recommended [that companies] establish offices for investor customer service, [and that they make] use of internet portals and communications by email and internet.).</p> <p><i>See also</i> III.5 ([C]ompanies will utilize the appropriate mechanisms so that the disclosed information will be received by the agents in the field in an opportune and simultaneous manner.).</p>	<p>[T]he functions of the Board of Directors ... ensure that the stockholders and the market have access to the public information about the company. (Principle at I.1)</p> <p>Every company should have policies, mechanisms and designated personnel responsible for reporting to investors in order to keep the lines of communication open with stockholders and potential investors. (Principle at V.2)</p> <p><i>See</i> Recommendation at V.2 (The prevailing lack of stockholder participation in stockholders’ meetings, and the meetings’ limitations as a forum of communication between the company and its investors, reveal the need for additional efforts to create other means of communication that allow investors and the general public to obtain the information they need on the company.)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
17. Attendance of Non-Directors at Board Meetings/Board Access to Senior Management				
<p>In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information. (OECD Principle V.F)</p> <p>The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company. (OECD Principle V.F Annotation at 43)</p>	<p><i>Not covered directly, but see IV.3 (Any member of the audit committee may request an individual meeting with management ... when necessary.).</i></p>	<p>Key people from the company or technical assistants may occasionally be invited to board meetings in order to give information and/or discuss their activities. (§ 2.08)</p> <p>[Fiscal] board members should be present at board of directors and management meetings, whenever items requiring the [fiscal] board's opinion are discussed. (§ 5.04)</p> <p><i>The fiscal board's role, responsibilities and authority are set forth in Law 6404 of 12/15/1976. See Topic Headings 2 and 2a, above.</i></p>	<p>Key executives of the company or any other member of the company, may not be members of the Board of Directors. Key executives will be present during the Board of Directors meetings only to present reports and answer any questions directed to them by the Board of Directors. (II.1.d.iii)</p>	<p><i>Not covered for the Board as a whole, but see Principle at 8-9 (The Chairman of each [committee] may invite company executives whose duties correspond to the [committee's] area of concern to attend meetings.).</i></p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
18. Board Meetings & Agenda				
<p><i>Not covered.</i></p>	<p><u><i>Board of Directors</i></u> The board should adopt its own by-laws about its duties and how often, at a minimum, it should meet.... The by-laws should give any board member the authority to call for a meeting in special cases, such as when the member in charge of calling meetings fails to carry out this function. (II.2)</p> <p><u><i>Fiscal Board</i></u> [B]y-laws should stipulate the frequency of [fiscal] board meetings, the method for calling such meetings, that meeting materials be provided in advance, rights and duties of board members, relationship with management and auditors and procedures to request information. The fiscal board should also meet when requested by representatives of the minority shareholders, if such a request is deemed to be well grounded. (IV.2)</p>	<p>The chair of the board is in charge of its good performance, of establishing its objectives and programs, and chairing the meetings, to fulfill its purpose of representing all the owners and following up on management activities. (§ 2.17)</p> <p>The agenda of the board meeting should be prepared by the chair of the board, based on requests from board members and discussions with the directors. (§ 2.25)</p> <p>The minutes should be clearly worded and record all decisions made. The minutes themselves should be formally approved. (§ 2.26)</p>	<p>Responsibilities of the Board of Directors [include] [m]eet[ing] at least four (4) times a year [and] [c]reat[ing] documents wherein the decisions made by the Board of Directors are recorded. (II.3.g & i)</p> <p>The Principal Executive of the company should be responsible for ... [i]nvit[ing] the Board of Directors' members to extraordinary meetings when he considers it necessary or convenient, and keep[ing] them informed regarding the business activities of the company. [He is also responsible for] [p]resent[ing] them with trial balances for review, as well as any other information that any of the committees require. (V.3.f)</p>	<p>The Board of Directors should meet at least four times a year. One of its meetings should be devoted to defining the company's medium- and long-term strategy. (Principle at I.4)</p> <p>The Board should meet frequently enough to ensure proper and continuous oversight of the company's affairs. (Recommendation at I.4)</p> <p>A procedure should be in place under which a Board meeting can be called by agreement of at least 25% of its members. (Principle at I.4)</p> <p>It is also important for companies to have mechanisms that guarantee openness within the Board, so that its functions do not depend on just one person. (Recommendation at I.4)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
19. Board Information Flow, Materials & Presentations				
<p><i>Not covered directly, but see OECD Principle V.F (In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.).</i></p> <p><i>See also OECD Principle V.F Annotation at 43 (Board members require relevant information on a timely basis in order to support their decision-making. Non-executive board members do not typically have the same access to information as key managers within the company.... In order to fulfill their responsibilities, board members should ensure that they obtain accurate, relevant and timely information.).</i></p>	<p><u>Board of Directors</u> Board members should receive materials for their meetings in advance, with the timescale reflecting the degree of complexity of the issues to be covered. (II.2)</p> <p><u>Fiscal Board</u> The company should make information available at the request of any member of the fiscal board, with no limitations regarding prior terms, as long as such information is related to matters currently under analysis, and with no limitations on subsidiaries or related companies, as long as it does not violate the secrecy imposed by law. (IV.5)</p> <p>[B]y-laws should stipulate ... that [fiscal board] meeting materials be provided in advance ... and procedures to request information.... The board of directors should provide appropriate means for the good functioning of the fiscal board, such as notices and locations for meetings, agenda organization and assistance with information requested by members of the fiscal board. (IV.2)</p>	<p>Board meeting efficiency depends heavily on the quality of documentation delivered to the board members in advance. Proposed decisions must be adequately explained and supported. All documentation must reach the board members prior to the weekend before the meeting. Board members must have read the entire documentation and be prepared for the meeting. (§ 2.24)</p>	<p>The Board of Directors will act in good faith and with sufficient information so as to execute their rights and obligations. The members will avoid situations where they might encounter conflicts of interest and promise to manage the internal confidential information with the utmost discretion during their time in their position on the board. (II)</p> <p>The main functions of the Board of Directors [include] [r]equesting periodic reports from the key executives regarding the company status. The Board of Directors as a board or through one of their committees – auditing, compensation and/or corporate governance committees – should request from key executives of the company sufficient information to allow them to adequately fulfill their obligations. (II.2.d)</p>	<p>Board members should have access to any information relevant to decisions that are on the meeting agenda at least five days in advance of that meeting. This does not apply to confidential strategic matters that are to be discussed, in which cases there should be mechanisms available by which Board members can properly assess proposals regarding those strategic matters. (Principle at I.4)</p> <p>The active participation and responsibility of the members of the Board of Directors makes the Board a stronger institution. To promote this, it is important that Board members are supplied with information in advance to give them the elements they need to fulfill their duties. (Recommendation at I.4)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
20. Number, Structure & Independence of Committees				
<p>Boards may consider establishing specific committees [which] may require a minimum number, or be composed entirely of, non-executive members. (OECD Principle V.E.1 Annotation at 42)</p> <p>Stock exchange listing requirements that address a minimal threshold for ... audit committee independence have proved useful, while not unduly restrictive or burdensome. (Millstein Report, Perspective 15)</p>	<p>The board should ... set up specialized committees to analyze certain questions in depth, especially relationships with auditors and operations among related parties. (II.2)</p> <p>An audit committee, composed of members of the board of directors with experience in finance and including at least one board member representing minority shareholders, should supervise the relationship with the auditor....</p> <p>[I]f a company executive is a member of the board of directors, he or she should not participate in the audit committee. (IV.3)</p>	<p>Several activities of the board of directors need more thorough analyses, which may exceed the meeting time available. Different committees, made up of a few members of the board, must be set up. For example, a nomination committee, an audit committee, a remuneration committee, etc. Each committee studies the issues in its specific area and submits the proposals accordingly. Only a full board can make decisions.</p> <p>Every company should have at least an audit committee. (§ 2.04)</p>	<p>The Board of Directors should structure within their member representatives special committees, comprised mainly of independent members. The following committees will be created: (i) the Financial and Auditing Committee; (ii) Nominating Evaluation and Compensation Committee for key executives; (iii) Corporate Governing Committee. (II.1.e)</p> <p>We recommend that the companies ... create an Ethics Committee inside the company to understand and direct any conflicts which might come up.... (IV.2.c)</p>	<p>In order to make better informed decisions, the Board of Directors should perform the tasks of evaluation and compensation, auditing, finances and planning ... through one or more [committees]. (Principle at I.3)</p> <p>The following principles should be considered when creating [committees]:</p> <ul style="list-style-type: none"> ▪ [T]hey have a clear purpose and there is no conflict of interest among their members...; ▪ They should have between three and seven members...; ▪ The Chairman of each [committee] may invite company executives whose duties correspond to the [committee's] area of concern to attend meetings; ▪ [E]ach outside Board member should participate in at least one [committee]; and ▪ the [committee] in charge of auditing should be chaired by an outside Board member. <p>(Principle at I.3)</p> <p>The Committee recommends that there be a mechanism to support the Board in ensuring that the auditing functions are performed, ensuring that internal and external audits are performed as objectively as possible and that the financial information is useful, timely and reliable. (Recommendation at III)</p> <p>The Committee recommends that the Board of Directors have a support mechanism in the area of finances and planning, particularly for evaluating the long-term strategy of the business and its central investment and financing policies. (Recommendation at IV)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
21. Assignment & Rotation of Committee Members				
<p><i>Not covered directly, but see OECD Principle V.E Annotation at 41-42 ([Independent board members] can play an important role in areas where the interests of management, the company and shareholders may diverge, such as executive remuneration, succession planning, changes of corporate control, takeover defenses, large acquisitions and the audit function.).</i></p> <p><i>See also Topic Heading 20, above.</i></p>	<p>[I]f a company executive is a member of the board of directors, he or she should not participate in the audit committee. (IV.3)</p>	<p><i>Not covered directly, but see Topic Heading 20, above, and Topic Heading 22, below.</i></p>	<p><i>Not covered.</i></p>	<p>In addition to his or her duties on the Board, each outside Board member should participate in at least one [committee]. (Principle at I.3)</p> <p>The [committee] in charge of auditing should be chaired by an outside Board member. (Principle at I.3)</p> <p>[I]t is considered important that the owning and outside directors participate in the work of the [committees]. The latter because they were selected for their professional prestige and experience, and the former because they have the incentive to get involved in and resolve the affairs of those [committees]. (Recommendation at I.3)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
22. Committee Meeting Frequency, Length & Agenda				
<p><i>Not covered directly, but see Topic Headings 20 and 21, above.</i></p>	<p>[Board] committees should study their subjects and prepare proposals, which should then be submitted to the vote of the board of directors. (II.2)</p> <p>An audit committee, composed of members of the board of directors with experience in finance and including at least one board member representing minority shareholders, should supervise the relationship with the auditor. As part of the analysis of the company's financial statements, the fiscal board and the audit committee should meet regularly and separately with the auditors, without the presence of executive officers. (IV.3)</p>	<p>The nominating committee should examine whether it is [appropriate] to propose ... re-election [of any given director]. (§ 2.13)</p> <p>The independent auditors, jointly with the board of directors or their audit committee, establish their work plan and remuneration agreement. (§ 4.03)</p>	<p>The Board of Directors as a board or through one of their committees – auditing, compensation and/or corporate governance committees – should request from key executives of the company sufficient information to allow them to adequately fulfill their obligations. (II.2.d)</p> <p>The nomination of the Principal Executive of the company should be done by the Nominating and Compensatory Committee of the Board of Directors in accordance with the established profiles. (V.1)</p>	<p><i>The executive evaluation and compensation committee is responsible for:</i></p> <ul style="list-style-type: none"> (i) suggesting procedures ... to propose candidates for [CEO] and senior management positions; (ii) proposing criteria ... to evaluate the [CEO] and senior management ...; and (iii) analyzing ... the [CEO's] proposal regarding the structure and amount of compensation for ... senior management. <p>(Principle at II.1)</p> <p><i>Audit committee functions:</i></p> <ul style="list-style-type: none"> (i) recommend ... external auditors ...; (ii) recommend contract clauses and the scope of external auditors' professional responsibilities for Board approval; (iii) ... supervis[e] performance of the auditors' contracts; (iv) serve as a channel of communication between the Board of Directors and external auditors, and guarantee the independence and objectivity of the latter; (v) review ... auditing reports, and notify the Board of Directors of the results; (viii) help define the general guidelines for the internal control system, and evaluate its effectiveness; (ix) assist the Board in coordinating and evaluating annual internal audit programs; (x) coordinate the tasks of the external, internal and statutory auditors; and (xi) check that the necessary mechanisms are in place in order to prove that the company is in compliance with the various provisions to which it is subject. <p>(Principle at III.1)</p> <p><i>See generally III. Auditing</i></p> <p><i>See also IV. Finances and Planning.</i></p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
23. Formal Evaluation of the Chief Executive Officer				
<p><i>Not covered directly, but see OECD Principle V.D.2 (The board should fulfill certain key functions, including ... [s]electing, compensating, monitoring and, when necessary, replacing key executives.).</i></p> <p><i>See also OECD Principle V.E Annotation at 41 ([Independent board members] can bring an objective view to the evaluation of the performance of ... management.).</i></p>	<p>The board of directors should make annual formal evaluations of the chief executive officer's performance. (II.2)</p>	<p>Once a year, the board of directors should make a formal appraisal of the CEO's performance. (§ 2.21)</p> <p><i>See § 3.06 (The CEO and management report to the board of directors and are accountable for the company's performance and activities.).</i></p>	<p><i>Not covered directly, but see II.2.b ([Among] [t]he main functions of the Board of Directors [is:] evaluate key executives in accordance with the objectives outlined in the corporate strategy ...).</i></p> <p><i>See also V (The mission of the Principal Executive of the company is to execute all the company directives and corporate strategies approved by the Board of Directors.).</i></p> <p><i>See also V.3 (responsibilities of the Principal Executive).</i></p>	<p><i>The executive evaluation and compensation committee should encompass the following functions:</i></p> <ul style="list-style-type: none"> (i) suggesting procedures for the Board of Directors to propose candidates for chief executive officer and senior management positions; (ii) proposing criteria for the Board of Directors to evaluate the chief executive officer and senior management, according to general guidelines established by the Board of Directors; and (iii) analyzing and bringing before the Board of Directors the chief executive officer's proposal regarding the structure and amount of compensation for the company's senior management. <p>(Principle at II.1)</p> <p>The [committee] established for assisting the Board of directors in its evaluation and compensation functions should verify whether the hiring conditions of the chief executive officer and senior management, as well as any severance pay commitments, comply with Board-approved guidelines. (Principle at II.2)</p> <p>The mechanism or intermediate body should assist the Board in evaluating policies to determine compensation for the chief executive officer and senior management of the company. These policies should encompass aspects such as established goals, individual performance, and the performance of the company itself. (Recommendation at II.2)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
24. Management Succession & Development				
<p>The board should fulfill certain key functions, including ... overseeing succession planning. (OECD Principle V.D.2)</p> <p>[Independent board members] can play an important role in areas where the interests of management, the company and shareholders may diverge, such as ... succession planning. (OECD Principle V.E Annotation at 41-42)</p>	<i>Not covered.</i>	<p>The board of directors should always have an updated succession plan for the CEO and all other key persons in the company. (§ 2.22)</p>	<p>[Among] [t]he main functions of the Board of Directors [is:] prepare systems of succession for key executives. (II.2.b)</p>	<i>Not covered.</i>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
25. Executive Compensation & Stock Ownership				
<p>The board should fulfill certain key functions, including [reviewing] key executive and board remuneration. (OECD Principle V.D.3)</p> <p>[Independent board members] can play an important role in areas where the interest of management, the company and shareholders may diverge, such as executive remuneration. (OECD Principle V.E Annotation at 41-42)</p>	<p><i>Not covered.</i></p>	<p>The board of directors ... establishes [the CEO's] remuneration. (§ 2.28)</p>	<p>The main functions of the Board of Directors [include] [d]etermin[ing] the compensation systems for key executives of the company: the Board of Directors should establish the fixed and variable systems of compensation according to the company needs. In the same manner, the Board should establish, taxwise, the occasions where the key executives may receive extraordinary remuneration. (II.2.c)</p> <p><i>See I.2.L (The shareholders ... will ... [a]pprove the compensation policies for the key executives.).</i></p>	<p><i>The functions of the executive evaluation and compensation committee should include:</i></p> <p>....</p> <ul style="list-style-type: none"> (ii) proposing criteria for the Board of Directors to evaluate the chief executive officer and senior management, according to general guidelines established by the Board of Directors; and (iii) analyzing and bringing before the Board of Directors the chief executive officer's proposal regarding the structure and amount of compensation for the company's senior management. (Principle at II.1) <p>The [committee] established for assisting the Board of Directors in its evaluation and compensation functions should verify whether the hiring conditions of the chief executive officer and senior management, as well as any severance pay commitments, comply with Board-approved guidelines. (Principle at II.2)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
26. Board Access to Independent Advisors				
<p>The contributions of non-executive board members to the company can be enhanced by providing ... recourse to independent external advice at the expense of the company. (Annotation to OECD Principle V.F)</p> <p><i>See Topic Heading 31, below.</i></p>	<p><u><i>Board of Directors</i></u></p> <p>The board should be allowed to request the hiring of external specialists to assist with decisions, when it deems necessary. (II.2)</p> <p>Any member of the audit committee may request an individual meeting with ... auditors when necessary. (IV.3)</p> <p><u><i>Fiscal Board</i></u></p> <p>The fiscal board should adopt by-laws covering its duties, with a focus on analyzing the relationship with the auditor. (IV.2)</p> <p><i>See Topic Heading 31, below.</i></p>	<p><u><i>Board of Directors</i></u></p> <p>Board members should be entitled to consult with external professionals (lawyers, auditors, tax experts, etc.) at the company's expense, in order to get a second opinion. The board should include this matter in its internal regulations. (§ 2.15)</p> <p><u><i>Fiscal Board</i></u></p> <p>If the company hires independent auditors, the [fiscal] board may ask them for clarifications and information. If the company does not hire independent auditors, the [fiscal] board may, for better fulfillment of its role, hire an accountant, or auditing firm at the company's expense. (§ 5.05)</p> <p><i>See Topic Heading 31, below.</i></p>	<p><i>Not covered directly, but see Topic Heading 31, below.</i></p>	<p><i>Not covered directly, but see Topic Heading 31, below.</i></p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
27. Content & Character of Disclosure				
<p>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.</p> <p>Disclosure should include, but not be limited to, material information on:</p> <ol style="list-style-type: none"> 1. The financial and operating results of the company. 2. Company objectives. 3. Major share ownership and voting rights. 4. Members of the board and key executives, and their remuneration. 5. Material foreseeable risk factors. 6. Material issues regarding employees and other stakeholders. 7. Governance structures and policies. <p>(OECD Principle IV.A)</p> <p>Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed. (OECD Principle I.D)</p> <p>Members of the board and managers should be required to disclose any material interests in transactions or matters affecting the corporation. (OECD Principle II.C)</p> <p>[C]orporations should disclose the extent to which they pursue projects and policies that diverge from the primary corporate objective of generating long-term economic profit so as to enhance shareholder value in the long term. (Millstein Report, Perspective 21)</p> <p><i>See Annotation to OECD Principle IV.D (public filing of information).</i></p>	<p>Each quarter, along with the financial statements, the company should release reports prepared by management with a discussion and analysis of the factors that most influenced results, indicating the main internal and external risk factors to which the company is subject. (IV.1)</p>	<p>The CEO must disclose all relevant information, whether or not mandatory, to the owners and stakeholders. (§ 3.04)</p> <p>The annual report ... should not be restricted to information required by law. It should include all aspects of corporate activity throughout a fiscal year, compared with previous years....</p> <p>The annual report must contain the opening address by the chair of the board or CEO, the management report, and a set of financial statements complete with the opinion of the independent auditors and the [fiscal] board, when applicable. (§ 3.04.01)</p> <p>Periodic information on publicly-listed companies is regulated by CVM (the Securities and Exchange Commission). Privately-held or limited liability companies should do the same, to the extent applicable. (§ 3.04.04)</p> <p>Unusual events of relevance should be immediately reported to the owners and, in the case of publicly-listed companies, to the stock market, as per CVM regulations. (§ 3.04.05)</p> <p>Company information should be balanced and include both positive and negative aspects, so as to allow the reader to correctly appraise the company. (§ 3.04.06)</p> <p>All information that may in any way affect investment decisions should be disclosed immediately to all users. The Internet and other information technologies offer interesting opportunities. (§ 3.04.08)</p>	<p>Colombian companies should ... assure that ... information is presented in a precise and organized manner..., including the results obtained, the financial situation, the eventual risks, the conflicts of interest and the corporate governance. (III)</p> <p>Balances and Status of Results: (i) The financial statements should include at least the general balance, status of results, status of cash flow, status of changes in the financial situation and the notes regarding financial statements; (ii) balances and results status must be backed by a narrative report from the principal executive of the company; (iii) Colombian companies will make an annual presentation of the consolidated financial statements for the groups of companies. (III.2.b)</p> <p>Should there be an extraordinary financial change..., companies shall establish the mechanisms to place the information in the hands of the public in a timely fashion. (III.2.c)</p> <p>[C]ompanies will reveal ... control ... they might have over other companies.... (III.2d)</p> <p>[C]ompanies will utilize the appropriate mechanisms so that the disclosed information will be received by the agents in the field in an opportune and simultaneous manner. (III.5)</p> <p>During the annual meeting, [the Principal Executive will] present the General Shareholders Assembly with the balance at the end of his terms, as well as the reports and the distribution of profits and other appropriate data, as required by law, after careful study, consideration and approval by the Board of Directors. (V.3.g)</p> <p><i>See I.1.d ([Shareholders have the right to] access to company information in a timely and appropriate manner.).</i></p>	<p>The annual report presented by the Board of Directors should mention which members are outside and which are owners, and which type the owning members are. (Principle at I.2)</p> <p>The annual report presented by the Board of Directors should also describe the main positions held by each Board member as of the report date. (Principle at I.2)</p> <p>The Board of Directors should include information on the work of each [committee] in its annual report to stockholders. The reports on each [committee] which are presented to the Board should be made available to stockholders along with the other material for the meeting, with the exception of confidential information whose disclosure might hurt the company's competitiveness. The annual report should also include the names of the members of each [committee]. (Principle at V.2)</p> <p>Every company should have policies, mechanisms and designated personnel responsible for reporting to investors in order to keep the lines of communication open with stockholders and potential investors. (Principle at V.2)</p> <p>The prevailing lack of stockholder participation in stockholders' meetings, and the meetings' limitations as a forum of communication between the company and its investors, reveal the need for additional efforts to create other means of communication that allow investors and the general public to obtain the information they need on the company. (Recommendation at V.2)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
28. Disclosure Regarding Compensation				
<p>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.</p> <p>Disclosure should include, but not be limited to, material information on ...[m]embers of the board and key executives, and their remuneration [and g]overnance structures and policies. (OECD Principle IV.A.4, 7)</p> <p>Companies are generally expected to disclose sufficient information on the remuneration of board members and key executives (either individually or in the aggregate) for investors to properly assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to performance. (Annotation to OECD Principle IV.A.4 at 37)</p>	<p><i>Not covered.</i></p>	<p>International codes of best corporate governance practices recommend that the annual report specify the stock ownership and remuneration of each of the board members and directors. (§ 3.04.03)</p>	<p>[C]ompanies should reveal the systems of compensation for the key executives established by the Board of Directors to the shareholders and market, as well as those established at the General Shareholders Assembly regarding the members of the Board of Directors. (III.2.e)</p>	<p>The annual report presented by the Board of Directors should describe the policies used and the compensation packages of Board members, the chief executive officer and the company's senior management. (Principle at II.2)</p> <p>The existence of [the executive evaluation and compensation committee] should be openly known and operated in a clear and above-board fashion, to enhance investors' confidence in management. (Recommendation at II)</p> <p>The Committee believes that the market at large should be informed of the compensation policies applied by the Board of directors. (Recommendation at II.2)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
29. Disclosure Regarding Corporate Governance				
<p>Disclosure should include ... material information on ... [g]overnance structures and policies. (OECD Principle IV.A.7)</p> <p>Companies are encouraged to report on how they apply relevant corporate governance principles in practice. Disclosure of the governance structures and policies of the company, in particular the division of authority between shareholders, management and board members, is important for the assessment of a company's governance. (OECD Principle IV.A.7 Annotation at 38)</p> <p>See Millstein Report, Perspective 3 (Regulatory intervention in the area of corporate governance is likely to be most effective if limited to:</p> <ul style="list-style-type: none"> ▪ Ensuring the protection of shareholder rights and the enforceability of contracts with resource providers (Fairness); ▪ Requiring timely disclosure of adequate information concerning corporate financial performance (Transparency); ▪ Clarifying governance roles and responsibilities, and supporting voluntary efforts to ensure the alignment of managerial and shareholder interests, as monitored by boards ... having some independent members (Accountability); and ▪ Ensuring corporate compliance with other laws and regulations. (Responsibility)). <p>See also Millstein Report, Perspective 23 (Individual corporations, shareholders and other interested parties should continue their efforts to articulate and adopt – voluntarily – corporate governance “best practices” designed to improve board independence and activism, and accountability to shareholders.).</p>	<p>The analysis of corporate governance practices applied to the securities markets involves: transparency of ownership and control, equal treatment of shareholders, and disclosure. (Introduction)</p> <p>The company should make available to all shareholders any shareholders' agreements of which it is aware, including those to which the company is a party. (I.3)</p> <p>The company should adopt and release standard procedures that enable shareholders easily to obtain the list of shareholders. The quantity of shares held should be specified in the list. In the case of a request by shareholders with at least 0.5% of share capital, a contact address should also be provided. (I.4)</p> <p>[I]t is imperative to give transparency to contracts between related parties, in order to enable shareholders to supervise and follow the actions of the company. (III.4)</p>	<p>The annual report should contain a statement as to what corporate governance practices are being adopted. (§ 3.04.02)</p> <p>Within the concept of best corporate governance practices, and in compliance with the country's legislation, every company should have a code of ethics prepared by its management and approved by its board of directors. Such code must be adopted by all the company's directors and employees. (§ 6.01)</p> <p>The code of ethics should cover relations between employees, suppliers, and associates. It should mainly cover the following topics: bribes; inappropriate payments; conflicts of interest; insider trading; receiving gifts; discrimination of opportunities; donations; the environment; sexual harassment; occupational safety; political activities; community relations; alcohol and substance abuse; personal confidentiality; the right to privacy; nepotism; child labor. (§ 6.02)</p> <p>See § 1.02 (All owner agreements should be available to all the owners.).</p>	<p>Any agreement made between shareholders ... will made known to the other shareholders. (I.3)</p> <p>[C]ompanies will inform the market and especially the minority shareholders when an individual or a company acquires more than 10% of the shares of the company or if there is any type of change in the control of the company. (I.5.c)</p> <p>The main functions of the Board of Directors [include] [p]lac[ing] before the General Shareholders Assembly, for their review and consideration, any changes (reforms) regarding the corporate governance of the company which they consider necessary. (II.2.g)</p> <p>Colombian companies should ... assure that [disclosed] information is presented in a precise and organized manner..., including [information on] corporate governance. (III)</p> <p>[C]ompanies should disclose [their] [s]tructure of corporate governance [and shareholders'] [r]ights and voting procedures. (III.3)</p> <p>Key executives, shareholders and members of the Board of Directors, will disclose any and all conflicts of interest.... (VI.2)</p> <p>See p. 11 (The present Code will be used as a frame of reference so that all companies might develop their own Internal Corporate Governance Codes. The standards contained in this document, constitute general guidelines regarding the Corporate Governance Code model that the companies should adopt in their organizations, financial activities and sources of financing.).</p> <p>See also I.4.a ([S]hareholders will [disclose] ... the rights to vote derived from the acquisition of shares that have been issued on the public market.).</p>	<p>The recommendations contained in this Code ... complement many of the applicable legal provisions.... Compliance is voluntary, but publicly-traded firms must report to the Bolsa on the degree to which their practices conform to the Code. If they do not follow the Code, they must establish an alternative mechanism for this purpose. (The Code, Motive and Intent)</p> <p>The annual report ... should mention which members are outside and which are owners, and which type the owning members are. (Principle at I.2)</p> <p>The annual report ... should also describe the main positions held by each Board member as of the report date. (Principle at I.2)</p> <p>The annual report ... should describe [the statutory auditor's] professional profile. (Principle at III.2)</p> <p>In order for the market to be able to evaluate the makeup of the Board, the company should provide information on the background and category of each member. (Recommendation at I.2)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
30. Accuracy of Disclosure, Internal Control Systems & Liability				
<p>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. (OECD Principle IV) Information should be prepared, audited, and disclosed in accordance with high quality standards of accounting, financial and non-financial disclosure. (OECD Principle IV.B)</p> <p>An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented. (OECD Principle IV.C)</p> <p>Regulators should require that corporations disclose accurate, timely information concerning corporate financial performance [and] cooperate internationally in developing clear, consistent and comparable standards for disclosure. (Millstein Report, Perspectives 9 & 10)</p> <p>Policy makers and regulators should articulate clearly the legal standards that govern shareholder, director and management authority and accountability, including their fiduciary roles and legal liabilities.... [L]egal standards should be flexible and permissive of evolution. (Millstein Report, Perspective 13)</p> <p><i>See</i> OECD Principle V.D.7 (The board should fulfill certain key functions, including ... [o]verseeing the process of disclosure and communications.).</p> <p><i>See also</i> Topic Headings 2a, 28 & 29, above.</p>	<p>The company should adopt, in addition to accounting standards in force in Brazil, either standards promulgated by the International Accounting Standards Board (IASB) or United States Generally Accepted Accounting Principles (US GAAP), attested by an independent auditor....</p> <p>Small companies, for which costs to produce international standards statements are high, should at least include a cash flow statement. Relevant off-balance-sheet transactions should be detailed in the notes to the financial statements. (IV.6)</p> <p>The auditor's recommendations note should be reviewed by all members of the board of directors and the fiscal board. (IV.7)</p> <p>The board of directors should ensure that transactions among related parties are clearly reflected in the financial statements and were carried out in writing and under market conditions. The company's by-laws should prohibit service contracts among related parties with remuneration based on sales/revenues and, in principle, loan agreements with any shareholder in the controlling group or related parties. (III.4)</p> <p>The fiscal board's supervisory capacity shall be the broadest possible, due to responsibilities imposed by law in the case of misconduct. (IV.5)</p> <p>The company should adopt ... accounting standards ... attested by an independent auditor. (IV.6)</p>	<p>The use of insider information to negotiate shares should be strictly forbidden and closely watched by the board members. (§ 1.06)</p> <p>The CEO is in charge of carrying out the guidelines laid down by the board of directors. (§ 3.01)</p> <p>The CEO is accountable for the company's performance and operations. (§ 3.03)</p> <p>The annual report must contain ... a set of financial statements complete with the opinion of the independent auditors....</p> <p>[M]anagement ... prepare[s] the annual report and submit[s] it to the board of directors who approves it and subsequently recommends its acceptance or rejection by the general assembly of shareholders. (§ 3.04.01)</p> <p>Financial reports should ... be prepared according to the IAS (International Accounting Standards) or GAAP (Generally Accepted Accounting Principles). (§ 3.04.07)</p> <p>The independent auditors should give their opinion on the financial statements to be disclosed, in accordance with professional standards, and, for that purpose, assess the company's internal controls and procedures. (§ 4.02)</p> <p><i>See</i> Topic Heading 2a, above.</p>	<p>The main functions of the Board of Directors [include] [a]pprov[ing] and examin[ing] the company's ... financial plan [and] plan for risk management.... [They also include] [v]erify[ing] the effectiveness and transparency of the accounting systems of the company [and] [d]evelop[ing] periodic reports to present to the shareholders regarding the financial situation and the governance of the company. (II.2.a, e & f)</p> <p>Responsibilities of the Board of Directors [include] [g]uarantee[ing] the effectiveness of the information disclosure systems. [They also include] [g]uarantee[ing] the use of good corporate governance policies utilized by the company [and] [v]erify[ing] fulfillment of the law. (II.3.b, e & f)</p> <p>Colombian companies will follow the principles and accounting standards outlined in IASC. (III.2.a)</p> <p>[C]ompanies should disclose ... Internal and Auditing Controls. (III.3)</p> <p>[C]ompanies will utilize the appropriate mechanisms to disclose and manage risks. It is recommended that they utilize self regulation mechanisms, in accordance with at least the following principles established by the Council of Basel:</p> <ul style="list-style-type: none"> ▪ Report on Solvency ▪ Use of GAAP ▪ Risk evaluation of counterpart ▪ Investment evaluation at market price. <p>(III.6)</p> <p><i>See</i> IV.2.c (anti-bribery policies) and IV.2.e (maintaining confidentiality of electronic information).</p> <p><i>See also</i> Topic Headings 2a and 27, above.</p>	<p>The accounting policies used to prepare the financial information of the company should be presented to the Board of Directors for approval. (Principle at III.3)</p> <p>Board members are legally bound to perform their duties. Ignorance of their responsibilities does not exempt them from these duties. It is therefore important that new board members are informed of the scope and the legal and statutory consequences of their position. (Recommendation at I.4)</p> <p>The Committee recommends that there be a mechanism to support the Board in ensuring that the auditing functions are performed, ensuring that internal and external audits are performed as objectively as possible and that the financial information is useful, timely and reliable. (Recommendation at III)</p> <p>The General Mercantile Companies Law stipulates that the stockholders of a company must appoint a statutory auditor, who is responsible, among other aspects, for examining both the financial statements themselves and the application of accounting principles. The company's management also commissions an external auditor to issue an opinion on its financial statements. (Recommendation at III.2)</p> <p><i>See</i> Topic Heading 2a, above.</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
31. Auditor Independence				
<p>An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented. (OECD Principle IV.C)</p> <p>It is widely felt that the application of high-quality audit standards and codes of ethics is one of the best methods for increasing independence and strengthening the standing of the profession. Further measures include strengthening of board audit committees and increasing the board's responsibility in the auditor selection process.</p> <p>.... Some countries apply limitations on the percentage of non-audit income that the auditor can receive from a particular client. Other countries require companies to disclose the level of fees paid to auditors for non-audit services. In addition, there may be limitations on the total percentage of auditor income that can come from one client. Examples of other proposals include quality reviews of auditors by another auditor, prohibitions on the provision of non-audit services, mandatory rotation of auditors and the direct appointment of auditors by shareholders. (Annotation to OECD Principle IV.C)</p> <p>The board should fulfill certain key functions, including ... [e]nsuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit.... (OECD Principle V.5)</p> <p>Policy makers and regulators should encourage sound audit practices, which include board selection of, and reliance on, an independent auditor. (Millstein Report, Perspective 16)</p>	<p>Good governance practices recommend the auditors' complete independence as a requisite for the quality of their service. The restriction to render other services aims to avoid the loss of this independence over time. (IV.4)</p> <p><i>See IV.4</i> (The board of directors should prohibit or restrict hiring the company's auditor for other services that may present conflicts of interest. When the board of directors allows the hiring of the auditor for other services, they should, at least, establish for which other services the auditor may be hired, and what maximum annual proportion such services could represent in relation to the auditing costs.).</p>	<p>The board of directors must ensure that the procedures adopted by the audit firm are independent and objective, especially when the same audit firm provides consulting work. This is an important consideration, since audit work should be hired by the board and consulting is normally hired by the management. If independence is affected, the board should decide as to hiring different consultants or different auditors. (§ 4.05)</p> <p>It is recommended that, for the sake of independence, auditors be hired for a specific number of years. They may be rehired after an assessment of their independence and performance, as per legislation and regulations in force. (§ 4.05)</p> <p>The owners, board of directors and audit committee are the independent auditors' clients. This establishes the relationship between the parties involved. (§ 4.06)</p> <p>The independent auditors' relations with the CEO, management and other company employees should be strictly professional. (§ 4.07)</p> <p>The independent auditors must cooperate with the [fiscal] board, so that it may fulfill its mission.</p> <p>In order to avoid conflicts of interest, the independent auditors should not be members of the [fiscal] board. (§ 4.08)</p> <p>The independent auditors should annually submit a letter to the board of directors confirming their independence. (§ 4.09)</p> <p>The board of directors, on behalf of the owners, appoints and replaces independent auditors. (§ 2.29)</p>	<p>Auditing Characteristics: (i) We recommend that the services be contracted with an outside source, so that the auditing services be done by an individual(s) that does not work for the company; (ii) the Statutory Auditor, as an individual, may not be in charge of the external auditing of the company; (iii) the relationships between the key executives of the company and the auditor should be strictly professional; (iv) we recommend that the Directors of the auditing work group be rotated every five (5) years; (v) we recommend that the outside auditing firm or statutory auditors not make recommendations regarding designs and implementation services while they are performing auditing services at the same company; (vi) the board of Directors should establish a compensation system for the auditing services. (III.7.b)</p> <p>Colombian companies that must present consolidated financial statements should contract the same statutory auditors and/or external auditors for the company and its affiliates; the determination of the company that will be assigned the job of external auditor could be the same as that of the statutory auditor if this determination is approved at the shareholders assembly. (III.8.a)</p> <p><i>See also I.2.f</i> (The shareholders ... will ... [e]lect the auditor and approve their honorarium.).</p> <p><i>See generally III.7</i> (Auditing Systems) <i>and III.8</i> (Statutory Audit).</p>	<p>Two key criteria in the selection process [of the outside auditor] are the technical capacity and the independence of the auditors. Those making the selection should also be alert for any circumstances that might affect the auditor's objectivity, for example, when the auditing firm depends heavily on the company for its revenues.</p> <p>If the Auditors supply other services to the company in addition to auditing, the nature and extent of these services should be kept under review, in order to ensure that the auditors' objectivity is not affected.</p> <ul style="list-style-type: none"> ▪ No firm that receives more than 20% of its total revenues from all services supplied to the company should be proposed to the Board of Directors to perform external auditing of the company's financial statements, or any other external review.... ▪ A proposed mechanism of turnover for the partner that issues the opinion on the company should be presented for Board approval, in order to ensure objectivity in the reports. Ideally, the turnover should take place at least every 6 years.... ▪ The person signing the auditors' opinion on the annual financial statements should be different from the person who serves as statutory auditor, although both may be members of the same firm. ▪ Those selecting the statutory auditor should be sure that the professional profile of that individual allows him or her to comply with their legal obligations. The annual report ... should describe their professional profile. <p>(III.2)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
32. Shareholder Voting Practices (Cumulative & Confidential Voting, Broker Non-Votes, One Share/One Vote)				
<p>The corporate governance framework should protect shareholders' rights. (OECD Principle I)</p> <p>The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.</p> <p>A. All shareholders of the same class should be treated equally.</p> <ol style="list-style-type: none"> 1. Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights attached to all classes of shares before they purchase. Any changes in voting rights should be subject to shareholder vote. 2. Votes should be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares. 3. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders.... <p>B. Insider trading and abusive self-dealing should be prohibited. (OECD Principle II.A & B))</p> <p>Some companies issue preferred ... shares [or] participation certificates or shares without voting rights.... All of these structures may be effective in distributing risk and reward in ways that are thought to be in the best interest of the company and to cost-efficient financing. The Principles do not take a position on the concept of "one share/one vote." (OECD Principle II.A.1 Annotation at 30)</p>	<p>The majority of share capital, regardless of type or sort, should have the right to deliberate on decisions of high relevance, with each share representing one vote....</p> <p>For certain decisions, ... no voting restrictions on preferred shares should apply. This is because such decisions have an impact on the rights of all shareholders. For relevant transactions with related parties, the interested parties should not be allowed to vote. (III.1)</p> <p>The controlling group [of shareholders] should renounce the right to elect the last member (third or fifth member) [of the fiscal board], who should be elected by the majority of share capital, in a shareholder's meeting at which each share represents one vote, regardless of its type or sort, including controlling group shares.... (IV.2)</p>	<p>One share/one vote – This principle is valid for all types of corporations. Companies contemplating an initial public offering (IPO) should consider issuing common shares (voting stock) only. Publicly-listed corporations, with common and preferred (non-voting) shares, should consider converting the latter into common shares or, in case of insurmountable difficulties, extending voting rights to holders of preferred shares, restricted to matters of their specific interest. (§ 1.01)</p> <p>Voting rules should be well defined and available to all the owners. They must be established with the purpose of facilitating the vote, including by proxy and other means. Proxies must vote according to the expressed or perceived wishes of the owners. (§ 1.04.07)</p>	<p>Colombian companies will promote specific mechanisms so that the shareholders can vote through their representatives or vote by proxy. (I.6.c)</p> <p>Colombian companies will establish voting procedures depending on the number of shareholders and the infrastructure that would guarantee the exercising of the right to vote by the shareholders that are present as well as those who are absent. The title representatives will vote according to the instructions received from the owners of the shares. (I.6.e)</p>	<p>A form should be prepared containing detailed information and voting choices on the issues contained in the agenda, through which stockholders may issue proxy instructions on their voting rights corresponding to each point on the meeting agenda. (Principle at V.1)</p> <p>Election of members of the board of directors by cumulative voting is an important protection of the rights of minority shareholders. The company should develop and make shareholders aware of simple and easily understandable rules and procedures that they can use to exercise their right to elect the board of directors by cumulative voting. (Ch. 3, § 2.3.2)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
33. Shareholder Voting Powers				
<p>The corporate governance framework should protect shareholders' rights.</p> <p>A. Basic shareholder rights include the right to:</p> <ol style="list-style-type: none"> 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5) elect members of the board; and 6) share in the profits of the corporation. <p>B. Shareholders have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes.</p> <p>C. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings.</p> <p>(OECD Principle I)</p> <p>The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights. (OECD Principle II)</p> <p>In some OECD countries it was customary for financial institutions ... to vote in support of management unless specifically instructed by the shareholder to do otherwise.... Rules in some countries have recently been revised to require custodian institutions to provide shareholders with information concerning their options in the use of their voting rights. (OECD Principle II.A.2 Annotation at 30)</p>	<p>Company by-laws should clearly regulate requirements for shareholders' voting and representation at meetings, in order to facilitate participation and voting. (I.5)</p> <p>The company's by-laws should determine that, if the general meeting does not declare payment of dividends to shares with rights for fixed or guaranteed-minimum dividends, such shares immediately attain the right to vote. If the company does not pay dividends for three years, non-voting shares will acquire the right to vote. (III.5)</p> <p>Public companies incorporated before Law 10,303/2001 went into effect should not raise the proportion of preferred shares above the limit of 50%, which was established by the referred law for new public companies. Companies with more than 50% of their capital represented by preferred shares should not issue new shares of this sort.</p> <p>The goal is to encourage companies to have their capital composed of more shares with voting rights. (III.7)</p>	<p><i>Not covered directly, but see Topic Headings 32, above, and 34, below.</i></p>	<p>The shareholders ... will be protected by the standards of the corporate governance code of the company, which should protect their rights and their capital. The minority and foreign shareholders will receive equal treatment that promotes greater dynamics in the capital markets by attracting new and different sources from the collective savings. (I)</p> <p>The shareholders ... will ... [a]pprove changes regarding the right to vote derived from share acquisition. (I.2.m)</p> <p>Colombian companies will guarantee equal treatment to all shareholders, including minority and foreign shareholders. (I.5)</p> <p>Colombian companies will prefer the democratization of the stock options. (I.5.a)</p> <p>[The Board of Directors] and investors will promote the subscription of agreements for approval regarding matters that bind the rights of the minority shareholders. (I.5.b)</p> <p><i>See I.1 (list of shareholders' rights).</i></p> <p><i>See also I.2 (list of matters reserved to shareholders' decision).</i></p> <p><i>See also I.4.b ([C]ompanies will prefer to issue non-restriction shares for free negotiation. When there is a right of preference, the companies will indicate this restriction to the market.).</i></p>	<p><i>Not covered.</i></p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
34. Shareholder Meetings & Proxy Proposals				
<p>Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:</p> <ol style="list-style-type: none"> Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting. Opportunity should be provided for shareholders to ask questions of the board and to place items on the agenda at general meetings, subject to reasonable limitations. Shareholders should be able to vote in person or <i>in absentia</i>, and equal effect should be given to votes whether cast in person or <i>in absentia</i>. <p>(OECD Principle I.C)</p> <p>Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes. (OECD Principle II.A.3)</p> <p>The Principles recommend that voting by proxy be generally accepted. Moreover, the objective of broadening shareholder participation suggests that companies consider favorably the enlarged use of technology in voting. (OECD Principle I.C.3 Annotation at 26)</p> <p>Proposals to change the voting rights of different classes of shares are normally submitted for approval at general shareholders meetings by a specified majority of voting shares in the affected categories. (OECD Principle II.A.1 Annotation at 30)</p>	<p>General shareholders' meetings are to be held at times and on dates that do not impair shareholders' attendance. Meeting notices should contain precise descriptions of issues to be discussed. Regardless of the percentage required by law for calling shareholder meetings, the board should include in the agenda relevant and timely issues suggested by minority shareholders.</p> <p>Regular general meetings should take place on the nearest possible date to the end of the relevant fiscal year. (I.1)</p> <p>When there are complex issues on the agenda, the company should call for meetings at least 30 days in advance. Companies with programs of foreign depositary receipts programs, such as ADR-American Depositary Receipts and GDR-Global Depositary Receipts (both, "DR"), representing common shares (ações ordinárias) or preferred shares (ações preferenciais) holding voting rights for certain issues should call for meetings at least 40 days in advance. (I.2)</p> <p>Contracts between related parties should be in writing, detailing the main characteristics.... During shareholder meetings to discuss such contracts, if minority shareholders deem it necessary, they can ask for a written opinion from an independent entity, to be paid for by the company. (III.4)</p>	<p>The general assembly is the supreme decision-making body of the company. It "... has the power to make all business decisions regarding the company's purpose and take the action it deems appropriate for the protection and the development of the company" (article 121 of Law 6404 of 12/15/1976 – Corporate Law). (§ 1.04)</p> <p>[The general assembly's] main responsibilities are:</p> <ul style="list-style-type: none"> Changing the by-laws; Electing or removing members of the board of directors and [fiscal] board, at any time; Examining management accounts and financial statements on an annual basis; and Deciding on corporate changes, mergers, takeovers, split-ups and liquidation. (§ 1.04.01) <p>All owners should be notified of the date of the regular shareholders' meeting no later than on the last day of the fiscal year. The date should be chosen so as to enable them to attend.... If there are American Depositary Receipts, the call should be made 40 days in advance. (§ 1.04.02)</p> <p>[V]enue ... should ... enable the owners to attend it. (§ 1.04.03)</p> <p>All the owners should receive the agenda of the meeting and adequate documentation well in advance.... (§ 1.04.04)</p> <p>The owners should have the opportunity of including matters of their interest in the agenda. (§ 1.04.05)</p> <p>The owners should be given a chance to request information from the board of directors, the independent auditors, or the [fiscal] board. (§ 1.04.06)</p>	<p>Colombian companies should adopt internal regulations for the development of the General Shareholders Assemblies so that they guarantee the rights and equal treatment of all shareholders. These regulations should take into account, at least, the aspects relating to the meeting, the agenda, the voting process and the representation to the same. (I.6)</p> <p>The company will notify the shareholders of the date and time of the meeting at least twenty (20) days prior to the meeting. Should the shareholders be living out of the country, this notification should be made at least thirty (30) days prior to the meeting. (I.6.a.i)</p> <p>When financial statements, reorganization processes, and commercial operations ... are presented during the General Shareholders Assembly, the required backup documentation must be presented as well. (I.6.a.ii)</p> <p>The agenda should be sent to the shareholders prior to the General Shareholders Assembly. (I.6.b)</p> <p>It is proscribed that the managers of a company will represent the shareholders at the General Shareholders Assembly. (I.6.c)</p> <p>See I.5.d (Minority shareholders may request an extraordinary meeting of the General Shareholders Assembly, as long as that request is backed by more than 5% of the ... total number of shares ...).</p> <p>See I.1, I.6.d (<i>rights of shareholders at the General Shareholders Assembly</i>).</p> <p>See I.6.a.iii (<i>notification of the General Shareholders Assemblies via electronic means of communication</i>).</p>	<p>Companies should avoid ... grouping together various matters under a single point on the agenda. (Principle at V.1)</p> <p>All information relative to each point on the stockholders' meeting agenda should be available at least 15 days before the meeting. (Principle at V.1)</p> <p>A form should be prepared containing detailed information and voting choices on the issues contained in the agenda, through which stockholders may issue proxy instructions on their voting rights corresponding to each point on the meeting agenda. (Principle at V.1)</p> <p>The information delivered to stockholders should include the proposed members of the Board of Directors as well as a professional profile on each candidate. (Principle at V.1)</p> <p>The Board of Directors should include information on the work of each [committee] in its annual report to stockholders. The reports on each [committee] which are presented to the Board should be made available to stockholders along with the other material for the meeting, with the exception of confidential information whose disclosure might hurt the company's competitiveness. The annual report should also include the names of the members of each [committee]. (Principle at V.2)</p> <p>It is important ... that stockholders receive all pertinent information on nominees to the Board of Directors, which can be contained in a brief resumé, so that they can assess the candidate's profile and issue an informed vote. (Recommendation at V.1)</p>

OECD Principles/Millstein Report (International)	CVM Recommendations (Brazil)	IBGC Code (Brazil)	Confecámaras Code (Colombia)	CCE/CNBV Code (Mexico)
35. Anti-Takeover Devices				
<p>Shareholders have the right to participate in, and to be sufficiently informed on ... extraordinary transactions that in effect result in the sale of the company. (OECD Principle I.B)</p> <p>Markets for corporate control should be allowed to function in an efficient and transparent manner.</p> <p>1. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.</p> <p>2. Anti-takeover devices should not be used to shield management from accountability. (Principle I.E)</p> <p>In some countries, companies employ anti-takeover devices. However, both investors and stock exchanges have expressed concern over the possibility that widespread use of anti-takeover devices may be a serious impediment to the functioning of the market for corporate control. In some instances, takeover defenses can simply be devices to shield management from shareholder monitoring. (OECD Principle I.E.2 Annotation at 28)</p> <p>[Independent board members] can play an important role in ... changes of corporate control. (OECD Principle V.E Annotation at 41-42)</p>	<p>The majority of share capital, regardless of type or sort, should have the right to deliberate on decisions of high relevance [including] mergers, spin offs, or incorporations.... (III.1)</p> <p>Tag-along for Companies Incorporated Before Law 10,303, of October 31, 2001, Went Into Effect: The sale or transfer of shares representing a company's control must be contracted under the condition that the buyer makes a tender offer for all remaining shares of the company for an equal price, regardless of type or sort. According to the Corporate Law, the buyer is obliged to make a tender offer for all common shares not in the controlling group for at least 80% of the price paid for each control share. According to good corporate governance practices, the buyer shall give the same treatment to all types and sorts of shares. Therefore, the price offered to minority voting shareholders should be extended to all remaining shares of the company. (III.2)</p> <p>Tag-along for Companies Incorporated After Law 10,303/2001 Went Into Effect: For companies incorporated after Law 10,303/2001 went into effect the buyer shall offer the same price paid for the controlling group shares to all other shares. The goal is that newly incorporated companies go beyond recommendation III.2, and, in case of a change in control, assure equal treatment to all shareholders, minority and controlling, regardless of their share type or sort. (III.3)</p>	<p>The board of directors and management should not make any commitments with the specific purpose of hindering a possible company takeover. (§ 1.05.03)</p> <p>[The] main responsibilities [of the shareholders' general assembly include] [d]eciding on corporate changes, mergers, takeovers, split-ups and liquidation. (§ 1.04.01)</p> <p><i>See</i> § 1.05.01 (Acquisition by minority shareholders – The acquisition price should be transparent. Stock sales by minority shareholders and/or holders of preferred stock should be conducted as provided in the company's bylaws, following well-defined rules.)</p> <p><i>See also</i> § 1.05.02 (Going private – A controller or controlling group willing to acquire 100% of the capital stock and then go private should notify the other owners of his/her/their intentions. The same principle should apply, whenever possible, to closed corporations and limited liability companies. The controller must not use his position as the sole buyer to reduce the acquisition price. The price should reflect economic value.)</p>	<p>The shareholders ... will decide on ... [p]rocesses of company reorganization (mergers, excisions, changes, acquisitions, among others). (I.2.c)</p>	<p><i>Not covered.</i></p>

APPENDIX I

INTERNATIONAL LISTING OF CORPORATE GOVERNANCE GUIDELINES & CODES OF BEST PRACTICE

INTERNATIONAL ORGANIZATIONS

- Institute of International Finance, Inc., Policies for Corporate Governance and Transparency in Emerging Markets (February, 2002). http://www.iif.com/data/public/NEWEAG_Report.pdf *
- Center for International Private Enterprise (“CIPE”), Instituting Corporate Governance in Developing, Emerging and Transitional Economies – A Handbook (2002). <http://www.cipe.org>
- APEC-PECC, Towards Implementing Corporate Governance Reforms: Guidelines for Good Corporate Governance Practice (October 15, 2001). <http://www.pecc.net>
- European Association of Securities Dealers (“EASD”), Corporate Governance: Principles and Recommendations (May 2000). <http://www.easd.com/recommendations>
- European Shareholders Group (“Euroshareholders”), Euroshareholders Corporate Governance Guidelines (February 2000). <http://www.dcg.dk/publications/2000> *
- Hermes Investment Management Ltd., International Corporate Governance Principles (December 13, 1999). <http://www.hermes.co.uk> *
- Commonwealth Association for Corporate Governance (“CACG”), CACG Guidelines: Principles for Corporate Governance in the Commonwealth (November 1999). <http://www.cbc.to>
- International Corporate Governance Network (“ICGN”), Statement on Global Corporate Governance Principles (July 1999). <http://www.icgn.org> *
- Organisation for Economic Cooperation and Development (“OECD”) Ad Hoc Task Force on Corporate Governance, OECD Principles of Corporate Governance (May 1999). <http://www.oecd.org/daf/governance/principles.htm>
- ICGN, Global Share Voting Principles (July 1998). <http://www.icgn.org> *
- OECD Business Sector Advisory Group on Corporate Governance, Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets, Report to the OECD (Millstein Report) (April 1998). <http://www.oecd.org>
- European Bank for Reconstruction and Development (“EBRD”), Sound Business Standards and Corporate Practices: A Set of Guidelines (September 1997). <http://www.ebrd.com>
- Centre for European Policy Studies (“CEPS”), Corporate Governance in Europe – Recommendations (June 1995). <http://www.ecgi.org>

ARGENTINA

- Report on Capital Market Transparency and Reform for Best Corporate Governance Practices (Villegas Report) (June 2001). Available upon request at vscaffino@nicholsonycano.com.ar

AUSTRALIA

- Australian Stock Exchange Corporate Governance Council, Principles of Good Corporate Governance and Best Practice Recommendations (March 2003). http://www.asx.com.au/about/3/aboutcorporategovernance_aa3.shtml
- Investment & Financial Services Association (“IFSA”), formerly Australian Investment Managers Association (“AIMA”), Corporate Governance: A Guide for Investment Managers and Corporations (June 1995, revised July 1999). <http://www.ifs.com.au> *
- The Audit Office of New South Wales, Performance Audit Report – Corporate Governance, Volume One: In Principle & Volume Two: In Practice (June 1997). <http://www.ecgi.org>
- Working Group representing Australian Institute of Company Directors, Australian Society of Certified Practising Accountants, Business Council of Australia, Law Council of Australia, The Institute of Chartered Accountants in Australia & The Securities Institute of Australia, Corporate Practices and Conduct (ASX Principles & Recommendations) (3d ed., 1995). <http://www.ecgi.org>

AUSTRIA

- Österreichischen Arbeitskreises für Corporate Governance, Regierungsbeauftragter für den Kapitalmarkt, Austrian Code of Corporate Governance (September 2002). <http://www.corporate-governance.at/corporate/kodex.htm>

* Investor viewpoint.

** Hybrid viewpoint (investors, academics and private business sector representatives).

APPENDIX I

INTERNATIONAL LISTING OF CORPORATE GOVERNANCE GUIDELINES & CODES OF BEST PRACTICE

BELGIUM

- Fondation des Administrateurs (“FDA”), The Directors’ Charter (January 2000). <http://www.ecgi.org>
- Brussels Stock Exchange/Banking & Finance Commission, Corporate Governance for Belgian Listed Companies (a “Dual Code” combining the Cardon Report and the Banking & Finance Commission Recommendations) (December 1998). http://www.cbf.be/pe/pec/en_ec01.htm
- Federation of Belgian Companies (VBO/FEB), Corporate Governance – Recommendations (January 1998). <http://www.vbo-feb.be>

BRAZIL

- Comissão de Valores Mobiliários (“CVM”) (Securities & Exchange Commission of Brazil), CVM Recommendations on Corporate Governance (June 2002). <http://www.cvm.gov.br>
- Instituto Brasileiro de Governança Corporativa (“IBGC”), Code of Best Practice of Corporate Governance (May 8, 1999, revised April 9, 2001). <http://www.ibgc.org.br>

CANADA

- Canadian Coalition for Good Governance, Corporate Governance Guidelines for Building High Performance Boards (September 2003). [http://www.ccg.ca/web/website.nsf/web/CCGG_Guidelines/\\$FILE/Guidelines_Sept_10_FinalLaunch.pdf](http://www.ccg.ca/web/website.nsf/web/CCGG_Guidelines/$FILE/Guidelines_Sept_10_FinalLaunch.pdf)
- Toronto Stock Exchange, Corporate Governance Policy – Proposed New Disclosure Requirement and Amended Guidelines (draft, March 26, 2002). <http://www.tsc.ca>
- Joint Committee on Corporate Governance, Beyond Compliance: Building a Governance Culture (Saucier Report) (November 22, 2001). <http://www.jointcomgov.com>
- Institute of Corporate Directors & Toronto Stock Exchange, Report on Corporate Governance, 1999 – Five Years to the Dey (1999). <http://www.ecgi.org>
- Pension Investment Association of Canada (“PIAC”), Corporate Governance Standards (September 1993; revised March 1997, updated June 1998). <http://www.piacweb.org> *
- Toronto Stock Exchange Commission on Corporate Disclosure, Responsible Corporate Disclosure: A Search for Balance (March 1997). Available upon request at marketdata@tse.com
- Toronto Stock Exchange Committee on Corporate Governance in Canada, “Where Were The Directors?”: Guidelines For Improved Corporate Governance in Canada (Dey Report) (December 1994). <http://www.ecgi.org>

CHINA

- China Securities Regulatory Commission (“CSRC”), Guidelines for Company Annual Reports and Accounts (January 2003). <http://www.csrc.gov.cn>
- The People’s Bank of China (“PBC”), Guidance on Corporate Governance of Joint-Stock Commercial Banks (June 4, 2002). <http://www.pbc.gov.cn>
- PBC, Guidance on Independent Directors and External Supervisors of Joint-Stock Commercial Banks (June 4, 2002). <http://www.pbc.gov.cn>
- CSRC and State Economic and Trade Commission, Code of Corporate Governance for Listed Companies in China (January 7, 2002). <http://www.csrc.gov.cn>
- CSRC, Guidelines For Introducing Independent Directors to the Board of Directors of Listed Companies (August 16, 2001). <http://www.csrc.gov.cn>

COLOMBIA

- Confederación Colombiana de Cámaras de Comercio (“Confecámaras”) (Colombian Confederation of Chambers of Commerce), Principios y Marco de Referencia para la Elaboración de un Código de Buen Gobierno Corporativo (“White Paper”) (August 2002). <http://www.confecamaras.org.co/cgcolombia/gobierno-corp/ private/codigoconfecamaras.pdf>. English version, Corporate Governance Code, <http://www.confecamaras.org.co/cgcolombia/gobierno-corp/html/documents/CORPORATECOVERNANCECODE1.pdf>

CZECH REPUBLIC

- Czech Securities Commission (Komise pro Cenné Papíry – “KCP”), Corporate Governance Code Based on the OECD Principles (February 2001). <http://www.sec.cz>
- Czech Institute of Directors, Corporate Governance Code of Practice (February 2001). <http://www.sec.cz> (Annex 1 to the KCP Code listed above)

* Investor viewpoint.

** Hybrid viewpoint (investors, academics and private business sector representatives).

APPENDIX I

INTERNATIONAL LISTING OF CORPORATE GOVERNANCE GUIDELINES & CODES OF BEST PRACTICE

DENMARK

- Nørby Commission, Recommendations for Good Corporate Governance in Denmark (December 6, 2001). <http://www.corporategovernance.dk>
- Danish Shareholders Association, Guidelines on Good Management of a Listed Company (Corporate Governance) (draft, February 29, 2000). <http://www.shareholders.dk> *

FINLAND

- Ministry of Trade and Industry, Guidelines for Handling Corporate Governance Issues in State-Owned Companies and Associated Companies (November 7, 2000). http://www.vn.fi/ktm/eng/newsktm_etu.htm
- Central Chamber of Commerce/Confederation of Finnish Industry and Employers, Corporate Governance Code for Public Limited Companies (February 10, 1997).

FRANCE

- Working group chaired by Daniel Bouton, Promoting Better Corporate Governance in Listed Companies (Bouton Report) (September 23, 2002). Available upon request at blserve@abanet.org
- Association Française de la Gestion Financière – Association des Sociétés et Fonds Français d'Investissement (“AFG-ASFFI”), Recommendations on Corporate Governance (Hellebuyck Commission Recommendations) (June 9, 1998, revised October 2001) English translation by AFG-ASFFI. <http://www.afg-asffi.com> *
- Association Française des Entreprises Privées (AFEP) & Mouvement des Entreprises de France (MEDEF), Report of the Committee on Corporate Governance (Viénot II) (July 1999). <http://www.ecgi.org>
- Stock Exchange Operations Commission, Regulation No. 98-01 – 98-10 (March 1999). English translation available at publications@cob.fr
- Conseil National du Patronat Français (“CNPF”) & Association Française des Entreprises Privées (“AFEP”), The Boards of Directors of Listed Companies in France (Viénot I) (July 10, 1995). <http://www.ecgi.org> (French only). English translation by CNPF & AFEP.
- CNPF & AFEP, Stock Options: Mode d'Emploi pour les Entreprises (Lévy-Lang Report) (1995). English translation by CNPF & AFEP.

GERMANY

- Regierungskommission Deutscher Corporate Governance Kodex (Government Commission German Corporate Governance Code), German Corporate Governance Code (February 26, 2002). <http://www.corporate-governance-code.de>
- Government Panel on Corporate Governance, Recommendations (Baums Report) (July 2001). <http://www.bundersregierung.de> (German only); English summary available at gpw@davisglobal.com
- Grundsatzkommission Corporate Governance (“GCP”) (German Panel on Corporate Governance), Corporate Governance Rules for German Quoted Companies (January 2000, revised July 2000). <http://www.corgov.de> **
- Berliner Initiativkreis, German Code of Corporate Governance (June 6, 2000). <http://www.gccg.de>
- Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (“DSW”), DSW Guidelines (June 1998). <http://www.ecgi.org> *
- Deutsche Bundestag, Gesteht zur Kontroll und Transparenz im Unternehmensbereich (Law on Control and Transparency in the Corporate Sector) (“KonTraG”) (March 1998).

GREECE

- Federation of Greek Industries, Principles of Corporate Governance (August 2001). English translation by Weil, Gotshal & Manges LLP (January 2002). Available upon request from holly.gregory@weil.com
- Capital Market Commission, Committee on Corporate Governance, Principles on Corporate Governance in Greece: Recommendations for its Competitive Transformation (Mertzanis Report) (October 1999). <http://www.ecgi.org>

* Investor viewpoint.

** Hybrid viewpoint (investors, academics and private business sector representatives).

APPENDIX I

INTERNATIONAL LISTING OF CORPORATE GOVERNANCE GUIDELINES & CODES OF BEST PRACTICE

HONG KONG

- Hong Kong Society of Accountants (“HKSA”), Corporate Governance Disclosure in Annual Reports: A Guide to Current Requirements and Recommendations for Enhancement (March 2001). <http://www.hksa.org.hk>
- Stock Exchange of Hong Kong (“SEHK”), Code of Best Practice (December 1989; revised June 1996, February 1999, August 2000). <http://www.sehk.com>
- SEHK, Model Code for Securities Transactions by Directors of Listed Companies (August 2000). <http://www.sehk.com>
- HKSA, New Corporate Governance Guide on Formation of Audit Committees (January 1998). <http://www.hksa.org.hk>

INDIA

- Securities & Exchange Board of India (“SEBI”), Report of the Committee Appointed by the SEBI on Corporate Governance (February 2000). <http://www.sebi.gov.in>
- Confederation of Indian Industry, Desirable Corporate Governance – A Code (April 1998). Available upon request at cii@cii@access.net.in

REPUBLIC OF INDONESIA

- National Committee for Corporate Governance, Code for Good Corporate Governance (March 8, 2001). Available upon request from <http://www.jsx.co.id>

IRELAND

- Irish Association of Investment Managers (“IAIM”), Corporate Governance, Share Option and Other Incentive Scheme Guidelines (March 1999). <http://www.iaim.ie> *
- IAIM, Statement of Best Practice on the Role and Responsibilities of Directors of Public Limited Companies (1992). <http://www.iaim.ie> *

ITALY

- Commissione Nazionale per le Società e la Borsa (“Consob”), 2002 Corporate Code of Conduct (revised May 2, 2003). <http://www.consob.it>
- Comitato per la Corporate Governance delle Società Quotate (Committee for the Corporate Governance of Listed Companies), Report & Code of Conduct (Preda Report) (October 1999, revised July 2002). <http://www.borsaitalia.it>
- Ministry of the Italian Treasury, Report of the Draghi Committee (Audizione Parlamentare, Prof. Mario Draghi, Direttore Generale de Tesoro) (December 1997). <http://www.ecgi.org>

JAPAN

- Japan Corporate Governance Committee of the Japan Corporate Governance Forum, Revised Corporate Governance Principles (October 26, 2001). <http://www.jcggf.org>
- Kosei Nenkin Kikin Rengokai (Pension Fund Corporate Governance Research Committee), Action Guidelines for Exercising Voting Rights (June 1998). *
- Japan Federation of Economic Organizations (Keidanren), Urgent Recommendations Concerning Corporate Governance (Provisional Draft, Sept. 1997). <http://www.ecgi.org>

KENYA

- Private Sector Initiative for Corporate Governance, Principles for Corporate Governance in Kenya and Sample Code of Best Practice for Corporate Governance (November 1999, revised July 2000). Available upon request at pscgt@insightkenya.com

REPUBLIC OF KOREA

- Committee on Corporate Governance (sponsored by the Korea Stock Exchange et al.), Code of Best Practice for Corporate Governance (September 1999). <http://www.ecgi.com>

* Investor viewpoint.

** Hybrid viewpoint (investors, academics and private business sector representatives).

APPENDIX I

INTERNATIONAL LISTING OF CORPORATE GOVERNANCE GUIDELINES & CODES OF BEST PRACTICE

KYRGYZ REPUBLIC

- Prime Minister's Office of the Kyrgyz Republic, Department of Economic Sectors Development, Model Charter of a Shareholding Society of Open Type (Approved by decree of government July 26, 1997). http://www.cdc.kg/eng/doc_2.html
- Working Group on Corporate Governance, Handbook on Best Practice – Corporate Governance in the Kyrgyz Republic (Approved by decree of government July 26, 1997). http://www.cdc.kg/eng/doc_3.html

MALAYSIA

- Kuala Lumpur Stock Exchange, Listing Requirements (January 2001, effective as of June 1, 2001). <http://www.klse.com.my>
- JPK Working Group I on Corporate Governance in Malaysia, Report on Corporate Governance in Malaysia (March 20, 2000). <http://www.sc.com.my/html/publications/inhouse>

MALTA

- Working Group on Corporate Governance set up by the Malta Stock Exchange, The Code of Principles of Good Corporate Governance (October 1, 2001). <http://www.borzamalta.com.mt/Corporate%20Governance/section2.htm>

MEXICO

- El Consejo Coordinador Empresarial (“CCE”) y la Comisión Nacional Bancaria y de Valores (“CNBV”), Corporate Governance Code for Mexico (June 9, 1999). <http://www.ecgi.org>

THE NETHERLANDS

- Stichting Corporate Governance Onderzoek voor Pensioenfondsen (“SCGOP”) (Foundation for Corporate Governance Research for Pension Funds), Corporate Governance Handbook of the SCGOP (August 2001). http://www.scgop.nl/downloads/Handbook_scgop.pdf *
- Committee on Corporate Governance, Corporate Governance in the Netherlands – Forty Recommendations (Peters Code) (June 1997) <http://www.ecgi.org>
- Vereniging van Effectenbezitters (“VEB”), Ten Recommendations on Corporate Governance in the Netherlands (1997). <http://www.vebbottomline.com> *

NEW ZEALAND

- New Zealand Stock Exchange, Final Corporate Governance Rules (May 2003). http://www.nzse.co.nz/exchange/listing_rules/proposed_listing_rule_changes/19_May_2003.html
- Institute of Directors in New Zealand, Inc., under the aegis of the Commonwealth Association for Corporate Governance (“CACG”), Best Practice Statements for Boards and Directors in New Zealand (August 2000). iod_nz@compuserve.com

PAKISTAN

- Securities & Exchange Commission of Pakistan, Code of Corporate Governance (March 28, 2002). [http://www.secp.gov.pk/news/code_corporate\(revised\).htm](http://www.secp.gov.pk/news/code_corporate(revised).htm)
- Institute of Chartered Accountants of Pakistan (“ICAP”) Committee on Corporate Governance, Recommendations for Code of Corporate Governance in Pakistan (March 4, 2002). <http://www.secp.gov.pk/CorpGovernance.pdf>

PERU

- Comisión Nacional Supervisora de Empresas y Valores (“CONASEV”), et al., Principios de Buen Gobierno para las Sociedades Peruanas (July 2002). http://www.mcfperu.org/gob_cor.htm (English translation not available)

* Investor viewpoint.

** Hybrid viewpoint (investors, academics and private business sector representatives).

APPENDIX I

INTERNATIONAL LISTING OF CORPORATE GOVERNANCE GUIDELINES & CODES OF BEST PRACTICE

REPUBLIC OF THE PHILIPPINES

- Securities & Exchange Commission, Code of Corporate Governance (April 4, 2002). Available upon request from jjdcmoreno@hotmail.com
- Institute of Corporate Directors, Code of Proper Practices for Directors (March 30, 2000). <http://www.icd.ph/codeofproper.html>

POLAND

- The Polish Corporate Governance Forum, Best Practices in Public Companies in 2002 (July 4, 2002). <http://www.ecgi.org>
- Gdansk Institute for Market Economics (“GIME”) & Polish Corporate Governance Forum, The Corporate Governance Code for Polish Listed Companies (June 2002). <http://www.pfcg.org.pl>

PORTUGAL

- Comissão do Mercado de Valores Mobiliários (Securities Market Commission), Recommendations on Corporate Governance (November 1999). <http://www.cmvm.pt>

ROMANIA

- International Center for Entrepreneurial Studies (Bucharest University) & Strategic Alliance of Business Associations, Corporate Governance Code: Corporate Governance Initiative and Economic Democracy in Romania (draft, March 24, 2000).

RUSSIAN FEDERATION

- Federal Securities Commission (Igor Kostikov, Chairman), Russian Code of Corporate Conduct (April 4, 2002). <http://www.rid.ru>
- Corporate Governance Initiative of the World Economic Forum, Changing Corporate Governance in Russia (January 29, 2001).
- Yeltsin, Boris, President of the Russian Federation & Parker School of Foreign & Comparative Law, Columbia University, Decree on Measures to Ensure the Rights of Shareholders (as amended, October 27, 1993) (Release No. 28, TRANSNATIONAL JURIS, 1996).

SINGAPORE

- Corporate Governance Committee of the Singapore Institute of Directors, Code of Corporate Governance (November 2001). http://www.mof.gov.sg/cor/cor_pcode.html
- Stock Exchange of Singapore, Listing Manual (as amended) & Best Practices Guide (1998, amended 2000). <http://www.ses.com.sg>

SOUTH AFRICA

- Institute of Directors in Southern Africa, The King Report on Corporate Governance (“King I Report,” November 1994; updated as the “King II Report,” March 2002). Available upon request at <http://www.iodsa.co.za>

SPAIN

- Comisión Especial, Informe de la Comisión Especial para el Fomento de la Transparencia y Seguridad en los Mercados y en las Sociedades Cotizadas (“Aldama Report”) (January 8, 2003). <http://www.cnmv.es/publicaciones/gobierocorp.htm>
- Comisión Especial para el Estudio de un Código Etico de los Consejos de Administración de las Sociedades, El gobierno de las sociedades cotizadas (Olivencia Report) (February 1998). <http://www.ecgi.org> English translation available upon request from the Instituto Universitario Euroforum Escorial, The Governance of Spanish Companies (February 1998): instuniv@euroforum.es
- El Circulo de Empresarios, Una propuesta de normas para un mejor funcionamiento de los Consejos de Administración (October 1996). <http://www.ecgi.org>

* Investor viewpoint.

** Hybrid viewpoint (investors, academics and private business sector representatives).

APPENDIX I

INTERNATIONAL LISTING OF CORPORATE GOVERNANCE GUIDELINES & CODES OF BEST PRACTICE

SRI LANKA

- Institute of Chartered Accountants of Sri Lanka, Code of Best Practice: Report of the Committee to Make Recommendations on Matters Relating to Financial Aspects of Corporate Governance (December 12, 1997). Available upon request at icaweb@lanka.net

SWEDEN

- Swedish Shareholders Association, Corporate Governance Policy (January 2000). <http://www.aktiesparana.se> English translation: <http://www.ecgi.org>*
- Swedish Academy of Directors, Western Region, Introduction to a Swedish Code of “Good Boardroom Practice” (March 27, 1995). Available upon request at bandreaz@vast.styrakad.se

SWITZERLAND

- SWX Swiss Exchange, Directive on [Disclosure of] Information Relating to Corporate Governance (August 2002). http://www.swx.com/admission/cg_intro_en.html
- Panel of Experts on Corporate Governance, Swiss Code of Best Practice for Corporate Governance (Böckli Report) (July 2002). <http://www.economiesuisse.ch>

THAILAND

- Stock Exchange of Thailand (“SET”), The Roles, Duties and Responsibilities of the Directors of Listed Companies (December 1997; revised October 1998). Available upon request at webmaster@set.or.th

TURKEY

- Turkish Industrialists’ and Businessmen’s Association, Corporate Governance Code of Best Practice: Composition and Functioning of the Board of Directors (December 2002). <http://www.tusiad.us/Content/uploaded/CORP-GOV.PDF>

UNITED KINGDOM

- The Financial Reporting Council (“FRC”), The Combined Code on Corporate Governance (July 1998, revised July 2003). <http://www.frc.org.uk/publications/content/CombinedCodeFinal.pdf>
- Derek Higgs, Review of the Role and Effectiveness of Non-Executive Directors (January 20, 2003) (“Higgs Report”). http://www.dti.gov.uk/cld/non_exec_review/pdfs/higgsreport.pdf
- Financial Reporting Council Group, Audit Committees -- Combined Code Guidance (“Smith Report”) (January 20, 2003). <http://www.frc.org.uk/publications/content/ACReport.pdf>
- Hermes Pensions Management Limited, The Hermes Principles (October 2002). <http://www.hermes.co.uk/corporate-governance/PDFs/statement.pdf>
- Institutional Shareholders’ Committee, The Responsibilities of Institutional Shareholders and Agents – Statement of Principles (October 21, 2002). <http://www.investmentfunds.org.uk/investmentuk/press/2002/20021021-01.pdf>
- Hermes Pensions Management Limited, The Hermes Principles (2002). <http://www.hermes.co.uk/corporate-governance/PDFs/statement.pdf>
- National Association of Pension Funds (“NAPF”), NAPF Corporate Governance Handbook 2001/02 (Myners Report) (March 6, 2001). <http://www.napf.co.uk/cgi-bin/publications> *
- Association of British Insurers, ABI Guidelines, Guidance Notes and Other Relevant Material (1993-2001). <http://www.ivis.computasoft.com> *
- Pensions Investment Research Consultants (“PIRC”), PIRC Shareholder Voting Guidelines (1993 and regularly revised through March 12, 2001). <http://www.pirc.co.uk/pubserv.htm> *
- Hermes Investment Management Limited, Statement on UK Corporate Governance & Voting Policy (March 1997, revised January 2001). <http://www.hermes.co.uk> *
- Association of Unit Trusts and Investment Funds, Code of Good Practice (January 2001). <http://www.investmentfunds.org.uk> *
- NAPF, Towards Better Corporate Governance (June 5, 2000). <http://www.napf.co.uk/cgi-bin/publications> *
- Institute of Chartered Accountants in England and Wales, Internal Control: Guidance for Directors on the Combined Code (Turnbull Report) (September 1999). <http://www.ecgi.org>

* Investor viewpoint.

** Hybrid viewpoint (investors, academics and private business sector representatives).

APPENDIX I

INTERNATIONAL LISTING OF CORPORATE GOVERNANCE GUIDELINES & CODES OF BEST PRACTICE

- Law Commission & The Scottish Law Commission, Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties (September 1999). <http://www.lawcom.gov.uk/library/lc261>
- Committee on Corporate Governance (sponsored by the London Stock Exchange et al.), Final Report (Hampel Report) (January 1998). <http://www.ecgi.org>
- Study Group on Directors' Remuneration, Directors' Remuneration (Greenbury Report) (July 1995). <http://www.ecgi.org>
- Institute of Directors, Good Practice for Directors – Standards for the Board (1995).
- The City Group for Smaller Companies, The CISCO Guide: The Financial Aspects of Corporate Governance: Guidance for Smaller Companies (1994).
- Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Report) (December 1, 1992, reissued unrevised in April 1996). <http://www.ecgi.org>
- Institutional Shareholders' Committee, The Role and Duties of Directors: A Statement of Best Practice (April 1991). *
- Institute of Chartered Secretaries and Administrators, Good Boardroom Practice: A Code for Directors and Company Secretaries (February 1991, reissued unrevised 1995). <http://www.thecorporatelibrary.com/docs/index.html>

UNITED STATES

- General Motors Board of Directors, GM Board of Directors Corporate Governance Guidelines on Significant Corporate Governance Issues (January 1994, revised May 2003). <http://www.gm.com>
- The Business Roundtable ("BRT"), Principles of Corporate Governance (May 2002, revised April 10, 2003). <http://www.brt.org/pdf/704.pdf>
- The Conference Board Commission on Public Trust and Private Enterprise, Findings and Recommendations, Part 1: Executive Compensation, Part 2: Corporate Governance & Part 3: Audit and Accounting (2003). http://www.conference-board.org/pdf_free/758.pdf
- Corporate Governance Center, Kennesaw State University, 21st Century Governance and Financial Reporting Principles (March 26, 2002). <http://www.ksumail.kennesaw.edu/~dhermans/principl.htm>
- Council of Institutional Investors ("CII"), Core Policies, General Principles, Positions & Explanatory Notes (March 1998, revised March 25, 2002). http://www.cii.org/corp_governance.htm *
- Teachers Insurance and Annuity Association – College Retirement Equities Fund ("TIAA-CREF"), TIAA-CREF Policy Statement on Corporate Governance (October 1997, revised March 2000). <http://www.tiaa-cref.org/libra/governance> *
- Blue Ribbon Commission on Improving the Effectiveness of Corporate Audit Committees, Report and Recommendations (sponsored by New York Stock Exchange & National Association of Securities Dealers) (1999). <http://www.nyse.com> or <http://www.nasd.com>
- California Public Employees' Retirement System ("CalPERS"), Global Corporate Governance Principles and Country Principles for: UK; France; Germany; Japan (1999). <http://www.calpers-governance.org> *
- CalPERS, Domestic Proxy Voting Guidelines and International Proxy Voting Guidelines (February 1999). <http://www.calpers-governance.org> *
- CalPERS, Corporate Governance Core Principles and Guidelines: The United States (April 1998). <http://www.calpers-governance.org> *
- BRT, Statement on Corporate Governance (September 1997). <http://www.brtable.org/issue.cfm>
- American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), Investing in Our Future: AFL-CIO Proxy Voting Guidelines (1997). Available upon request from eking@afclcio.org
- American Society of Corporate Secretaries, Suggested Guidelines for Public Disclosure and Dealing with the Investment Community (1997). <http://www.ascs.org/ascstiles.html>
- National Association of Corporate Directors ("NACD"), Report of the NACD Blue Ribbon Commission on Director Professionalism (November 1996, reissued 2001). <http://www.nacdonline.org/publications>
- American Bar Association, Committee on Corporate Laws, Section of Business Law, Corporate Directors' Guidebook (1978; 3d ed. 2001). <http://www.abanet.org/abapubs/business.html>
- NACD, Report of the NACD Blue Ribbon Commission on Performance Evaluation of Chief Executive Officers, Board and Directors (1994). <http://www.nacdonline.org>
- American Law Institute ("ALI"), Principles of Corporate Governance: Analysis & Recommendations (1994, revised 2002). <http://www.ali.org/index.htm>

* Investor viewpoint.

** Hybrid viewpoint (investors, academics and private business sector representatives).

APPENDIX I

INTERNATIONAL LISTING OF CORPORATE GOVERNANCE GUIDELINES & CODES OF BEST PRACTICE

- BRT, Statement on Corporate Governance and American Competitiveness (1990).
- BRT, The Role and Composition of the Board of Directors of the Large Publicly Owned Corporation (January 1978).

* Investor viewpoint.

** Hybrid viewpoint (investors, academics and private business sector representatives).

APPENDIX II

Commentary On Corporate Governance Guidelines & Codes of Best Practice In Developing & Emerging Markets

Holly J. Gregory

When a firm's management is separate and distinct from the providers of the firm's capital, managers have a responsibility to use assets efficiently in pursuit of the firm's objective. Ensuring that they do so is important to a firm's successful economic performance as well as to its ability to attract long-term, stable, low-cost investment capital. This is true whether the firm is publicly traded, privately held, family-controlled or state-owned. (It is only when the managers of a firm themselves own the entire firm – and are committed to relying solely on their own capital – that managers generally are free to apply corporate assets (as their own private property) inefficiently or for non-productive uses.) The fundamental concern of corporate governance is to ensure the means by which a firm's managers are held accountable to capital providers for the use of assets.

The responsibilities and functions of the corporate board in both developed and developing nations are receiving greater attention as a result of the increasing recognition that a firm's corporate governance affects both its economic performance and its ability to access patient, low-cost capital. After all, the board of directors – or, in two-tier systems, the supervisory board – is the corporate organ designed to hold managers accountable to capital providers for the use of firm assets. The past five years have witnessed a proliferation of corporate governance guidelines and codes of best practice designed to improve the ability of corporate directors to hold managements accountable. This global movement to emphasize that boards have responsibilities separate and apart from management, and to describe the practices that best enable directors to carry out these responsibilities, is a manifestation of the importance now attributed to corporate governance generally and, more particularly, to the role of the board.

Corporate governance guidelines and codes of best practice arise in the context of, and are affected by, differing national frameworks of law, regulation and stock exchange listing rules, and differing societal values. Although boards of directors provide an important internal mechanism for holding management accountable, effective corporate governance is supported by and dependent on the market for corporate control, securities regulation, company law, accounting and auditing standards, bankruptcy laws and judicial enforcement. Therefore, to understand one nation's corporate governance practices in relation to another's, one must understand not only the "best practice" documents but also the underlying legal and enforcement framework.

APPENDIX II

Commentary

Some governance codes are linked to listing or legally mandated disclosure requirements. Others are purely voluntary in nature, but may be designed to help forestall further government or listing body regulation. In the developing nations, governance codes are more likely to address basic principles of corporate governance that tend to be more established in developed countries through company law and securities regulation, such as the equitable treatment of shareholders, the need for reliable and timely disclosure of information concerning corporate performance and ownership, and the holding of annual general meetings of shareholders. However, in both developed and developing nations, guidelines and codes focus on boards of directors and attempt to describe ways in which boards can be positioned to provide some form of guidance and oversight to management, and accountability to shareholders and society at large.

Overview

The modern trend of developing corporate governance guidelines and codes of best practice began in the early 1990s in the United Kingdom, the United States and Canada in response to problems in the corporate performance of leading companies, the perceived lack of effective board oversight that contributed to those performance problems, and pressure for change from institutional investors. The Cadbury Report in the U.K. (1992), the General Motors Board of Directors Guidelines in the U.S. (1994) and the Dey Report in Canada (1994) have each proved influential sources for other guideline and code efforts.

Over the past decade, governance guidelines and codes have issued from stock exchanges, corporations, institutional investors, associations of directors and corporate managers, and government securities commissions. Compliance with these governance recommendations is generally not mandated by law, although the codes linked to stock exchanges or government securities commissions may have a coercive effect. For example, listed companies on the London and Toronto Stock Exchanges need not follow the recommendations of the 1998 Combined Code (descended from the Cadbury Report) and the Dey Report, but they must disclose whether they follow the recommendations in those documents and must provide an explanation concerning divergent practices. Such disclosure requirements exert a significant pressure for compliance. In contrast, the guidelines issued by associations of directors, corporate managers and individual companies tend to be wholly voluntary. For example, the GM Board Guidelines simply reflect an individual board's efforts to improve its own governance capacity. Such guidelines can have wide influence, however. In the case of the GM Guidelines, institutional investors encouraged other companies to adopt similar guidelines.

APPENDIX II Commentary

In developing markets, both voluntary guidelines and more coercive codes of best practice have issued as well. Voluntary guidelines and codes are designed to build awareness within the corporate sector of governance best practices; an example is the Brazilian Institute of Corporate Governance Code. Guidelines and codes which, while voluntary, encourage disclosure on a “comply or explain” basis include the China Securities Regulatory Commission Guidelines and the Russian Federation Securities Commission Code. Those that require disclosure include the Brazilian CVM Recommendations, the Korea Stock Exchange Code, the Malaysian High Level Finance Committee Code and Mexico’s CCE/CNVB Code. Mandatory codes include the Securities & Exchange Board of India Report (as to certain recommendations), the Kyrgyz Republic’s Charter of a Shareholding Society, and the Pakistani SEC Code.

Some key elements of the governance guidelines and codes of best practice, particularly as issued in developing nations, are summarized below.

The Corporate Objective

Variations in societal values lead different nations to view the corporate objective or “mission” distinctly. Expectations of how the corporation should prioritize the interests of shareholders and stakeholders such as employees, creditors and other constituents take two primary forms. In Anglo-Saxon nations – Australia, Canada, the U.K. and the U.S. – maximizing the value of the owners’ investment is considered the primary corporate objective. This objective is reflected in a minority of developing market governance guidelines and codes that emphasize the duty of the board to represent shareholders’ interests and maximize shareholder value.

The Board of Directors represents the shareholders of the Society, and it has a duty to act in the interests of the shareholders.

Charter of a Shareholding Society (Kyrgyz Republic), § 17.1.

The main objective of the company should be to operate in the common interest of all its shareholders, thus creating shareholder value.

GIME/Polish Corporate Governance Forum Code, Principle I.

However, a majority of emerging market guidelines and codes strike a balance between the interests of shareholders and the interests of stakeholders (or the interests of the company in general). The following examples are representative.

APPENDIX II Commentary

The board ... must direct the business of the corporation with fairness and due regard for the shareholders and the value of their shares as well as for the different stakeholders and their proper stakes in the enterprise.

APEC-PECC Guidelines, ¶ 13.

[T]he fundamental objective of corporate governance is the “enhancement of shareholder value, keeping in view the interests of other stakeholders.” This definition harmonizes the need for a company to strike a balance at all times between the need to enhance shareholders’ wealth whilst not in any way being detrimental to the interests of the other stakeholders in the company.

Stock Exchange Board of India Report, § 4.2.

[The board of directors should] [i]mplement and direct the company’s policies, as well as monitor and supervise its operations to maximize economic value and shareholders’ wealth.

Stock Exchange of Thailand Code, § 2.2.

Corporate governance practice should provide for the strategic management of the company’s business by the board of directors ... and for the accountability of the board of directors to shareholders.

Russian Federation Securities Commission Code, Ch. 1, § 3.

The logic has been that shareowners are entitled to expect directors to run the company in their sole interests – the so-called shareowner dominant theory. This approach has been rejected by Courts in various jurisdictions [of South Africa].

King Report on Corporate Governance for South Africa – 2002 (King II), § 17.3.

This majority view, in which the interests of shareholders are given a central place in tandem with the interests of stakeholders, may indicate a convergence in perceptions about the corporate objective. There is, on one hand, a growing recognition that shareholder expectations need to be met in order to attract patient, low-cost capital. On the other hand, there is growing awareness of the need to address legitimate stakeholder interests in order to maximize shareholder value over the long term. As the General Motors Board of Directors Mission Statement recognizes: “In addition to fulfilling its obligations for increased stockholder value, the Board has responsibility to GM’s customers, employees, suppliers and to the communities where it operates – all of whom are essential to a successful business. All of these responsibilities, however, are founded upon the successful perpetuation of the business.” Simply put, shareholder and stakeholder interests in the success of the corporation are compatible in the long term.

Board Responsibilities & Job Description

Most governance guidelines and codes of best practice assert that the board assumes responsibility for the stewardship of the corporation and emphasize that board responsibilities are distinct from management responsibilities. However, they differ in the

APPENDIX II Commentary

level of specificity with which they explain the board's role. For example, Canada's Dey Report, France's Viénot I Report, Malaysia's High Level Finance Committee Code, Mexico's CCE/CNBV Code, the Korea Stock Exchange Code and the Russian Federation Securities Commission Code all specify board functions such as strategic planning; risk identification and management; selection, oversight and compensation of senior management; succession planning; communication with shareholders; integrity of financial controls; and general legal compliance, as distinct board functions. The Kyrgyz Republic Charter sets out a detailed list of matters requiring board approval. Other governance guidelines and codes of best practice are far less specific. For example, the Hong Kong Stock Exchange Code simply refers to directors' obligations to ensure compliance with listing rules as well as with the "declaration and undertaking" that directors are required to execute and lodge with the Exchange. The different approaches among codes on this point likely reflect variations in the degree to which a country's company law or listing standards specify board responsibilities, rather than any significant substantive differences.

The board should explicitly assume the following six specific responsibilities...:

- *Reviewing and adopting a strategic plan for the company;*
- *Overseeing the conduct of the company's business to evaluate whether the business is being properly managed;*
- *Identifying principal risks and ensuring the implementation of appropriate systems to manage these risks;*
- *Succession planning, including appointing, training, fixing the compensation of and, where appropriate, replacing senior management;*
- *Developing and implementing an investor relations programme or shareholder communications policy for the company; and*
- *Reviewing the adequacy and the integrity of the company's internal control systems and management information systems, including systems for compliance with applicable laws, regulations, rules, directives and guidelines.*

Malaysian High Level Finance Committee Code, § 2, I.

Board Composition

Most governance guidelines and codes of best practice address topics related to board composition, including director qualifications and membership criteria, the director nomination process, and board independence and leadership.

Criteria. The quality, experience and independence of a board's membership directly affect board performance. Board membership criteria are described by various guidelines and codes with different levels of specificity, but tend to highlight issues such as experience, personal characteristics (including independence), core competencies and availability.

APPENDIX II Commentary

[The board] needs to be composed of individuals with proven competence and a track record of professionalism and integrity in their fields of endeavor. They need to be committed to the principles of market competition, and responsive to the challenge of economic efficiency in open markets as well as to the demands of the common good in open economies and societies. They should also be deeply conscious of their high duties to the entire corporation, with its many interests, all of which they must serve with freedom and responsibility, independence and fairness, high standards of professional ethics and competence.

APEC-PECC Guidelines, ¶ 22.

[Board] members should have the knowledge, skills and experience required for making decisions on matters within the usual scope of authority of the board of directors, and for performing efficiently the functions of the board of directors of a particular company. Therefore, it is advisable that the charter of the company explicitly sets forth specific criteria for members of the board of directors.

Russian Federation Securities Commission Code, Ch. 1, § 2.1.3.

The Board should comprise directors who as a group provide core competencies such as accounting or finance, business or management experience, industry knowledge, strategic planning experience and customer-based experience or knowledge.

Singapore Institute of Directors Code, ¶ 2.4.

The board, as a whole, should congregate various fields of knowledge and experience.

The Brazilian Institute of Corporate Governance Code, § 2.10.

Every non-executive director must ensure that he can give sufficient time and attention to the affairs of the issuer ... and satisfy the Exchange that he has the character, integrity, experience and competency to serve as a director of a listed company.

The Hong Kong Stock Exchange Code, Code of Best Practice 10 and Guideline A.5.

Director Nomination. The process by which directors are nominated has gained attention in many guidelines and codes, which tend to emphasize a formal and transparent process for appointing new directors. The use of nominating committees is favored in the U.S. and U.K. as a means of reducing the CEO's influence in proposing the board candidates who will be charged with monitoring the CEO's performance. (See, in the U.S., the Report of the National Association of Corporate Directors Commission on Director Professionalism (1996) and the General Motors Board of Directors Guidelines (1994, reissued 2002); in the U.K., the Combined Code (1998)). The guidelines and codes of the emerging markets generally take the same position. For example, the Malaysian High Level Finance Committee Code states: "[T]he adoption of a formal procedure for appointments to the board, with a nomination committee making recommendations to the full board, should be recognized as good practice." (§ 4.4.

APPENDIX II Commentary

See also the Korean Stock Exchange Code of Best Practice, II.3.) At the same time, it is generally recognized that it is the full board that ultimately takes responsibility for the board nominees put forward by the nominating committee for election by the shareholders.

Mix of Inside (Executive) and Outside (Non-Executive/Independent) Directors. Governance guidelines and codes of best practice agree that some degree of director independence – the ability to exercise objective judgment of management’s performance – is important to a board’s ability to exercise oversight of managerial performance. In the U.S., U.K., Canada and Australia, although not required by law or listing requirements, best practice recommendations generally agree that boards of publicly-traded corporations should include at least some non-executive directors. This viewpoint is most developed in the U.S. and Canada, where best practice documents call for a substantial majority of the board to be comprised of independent directors. Elsewhere, best practice recommendations are somewhat less stringent and seek to have a balance of executives and non-executives, with the non-executives including some truly independent directors. (Although “non-management” or “non-executive” directors may be more likely to be objective than members of management, many code documents recognize that non-management directors may still not be truly “independent,” for example, if they have significant financial or personal ties to management.)

Most of the board members should be independent.

Brazilian Institute of Corporate Governance Code, § 2.10.

[N]ot less than fifty percent of the board [should be] non-executives directors.... In case a company has a non-executive chairman, at least one-third of the board should [be] independent directors, and in case a company has an executive chairman, at least half of the board should be independent.

Stock Exchange Board of India Report, § 6.9.

[I]ndependent directors ... should comprise at least one-fourth of the total number of members of the board of directors.

Russian Federation Securities Commission Code, Ch. 3, § 2.2.3.

Outside and owning members should together make up at least 40% of the Board of Directors.... [O]utside members should make up at least 20% of the Board of Directors.

CCE/CVBV Code (Mexico), Principle at I.2.

The board shall include outside directors capable of performing their duties independently from management, controlling shareholders and the corporation.

Korean Stock Exchange Code, II.2.2.

Definitions of “independence” vary. For example, according to the Brazilian Institute of Corporate Governance, a director is independent if he or she: has no link to the company besides board membership and share ownership and receives no compensation from the company other than director remuneration or shareholder dividends; has never been an employee of the company

APPENDIX II Commentary

(or of an affiliate or subsidiary); provides no services or products to the company (and is not employed by a firm providing major services or products); and is not a close relative of any officer, manager or controlling shareholder.

Outside Board members are those ... who do not fit into the following hypothetical situations...:

- i. employees or executives of the company;*
- ii. stockholders that have control over the company's directors;*
- iii. consultants to the company ... whose revenues depend significantly on their contractual relationship;*
- iv. clients, suppliers, lenders or borrowers of the company ...;*
- v. employees of a foundation, university or non-profit organization that receives substantial donations from the company;*
- vi. chief executive officers or senior management of a firm on whose Board of Directors the company's chief executive officer or an upper-level executive sits; or*
- vii. relatives of any of the individuals mentioned above.*

CCE/CNBV Code (Mexico), Principle at I.2.

[A]n independent director must meet all of the following requirements:

- i. Be independent from the major shareholders of the company or any shareholder in their group.*
- ii. Not be an employee, staff member or an adviser receiving a regular salary or other regular benefit from the company or its affiliated company, associated company or related company.*
- iii. Have no shares in their own name, or in a related person's name, representing more than 0.5% of the respective paid up capital of the company, an affiliated company, associated company or related company.*
- iv. Be able to protect the interests of all shareholders of the company equally.*
- v. Be able to prevent conflicts of interest between the company and its management or major shareholders or other companies which have the same management group, or major shareholders, as the company.*
- vi. Be able to attend board meetings to make decisions on significant company activities.*

Stock Exchange of Thailand ("SET") Code, Ch.2, §2.4, citing SET Notification Governing Qualifications of Independent Directors, 10/28/93.

In February 1998, the Korean Stock Exchange adopted a listing requirement that mandates that outside directors comprise at least a quarter of the board of every listed company. Included among the list of persons who do not qualify as "outside directors" are: controlling shareholders; a spouse or family member of a director who is not an outsider; current or recent officers and employees of the corporation, its affiliates, or of corporations that have "important business relations" with the corporation; and persons who serve as outside directors on three or more listed companies.

Korean Stock Exchange Listing Regulations, Art. 48-5.

In comparison, the Cadbury Report, the Commonwealth Association Guidelines, the China Securities Regulatory Commission Code, the Stock Exchange Board of India Report and the Philippines SEC Code simply refer to directors who – apart from their fees and shareholdings – are independent from management and free from any business or other relationship which could ma-

APPENDIX II Commentary

terially interfere with the exercise of independent judgment. And many of the best practice documents – such as the Cadbury Report and the National Association of Corporate Directors Report on Director Professionalism (U.S.) – view the ultimate determination of just what constitutes “independence” to be an issue for the board itself to decide.

Independent Board Leadership. Independent board leadership is thought by many to encourage the non-executive directors’ ability to work together to provide true oversight of management. As explained by the National Association of Corporate Directors (U.S.): “The purpose of creating [an independent] leader is not to add another layer of power but ... to ensure organization of, and accountability for, the thoughtful execution of certain critical independent functions” such as formally evaluating the CEO on a regular basis; chairing sessions of the non-executive directors; setting the board agenda; and leading the board in responding to crises.

Many guidelines and codes seek to institute independent leadership by recommending a clear division of responsibilities between board Chairman and CEO. In this way, while the CEO can have a significant presence on the board, the non-executive directors will also have a formal independent leader to whom they can look for authority on the board. Documents that place less emphasis on the need for a majority of independent directors seem to place more emphasis on the need for separating the role of Chairman and CEO. For example, the Stock Exchange Board of India Report expressly relates the two concepts – recommending that if the Chairman and CEO (or managing director) are the same person, a greater percentage of non-executive directors is necessary. (§ 6.9) Likewise, the China Securities Regulatory Commission Code provides: “[If the positions of Chairman and General Manager] are held by the same person, more than half of the directors of the company should be independent directors.” (¶ 32) The Malaysian High Level Finance Committee Code emphasizes: “Where the roles are combined there should be a strong independent element on the board.” (§ 2, II) This is in accord with the Cadbury Report, which states that, where the Chairman is also the CEO, “it is essential that there should be a strong and independent element on the board.” (§ 1.2)

Board Committees

In developed nations, it is widely accepted that many board functions are carried out by board committees. For example, a nominating committee, an audit committee and a remuneration committee are recommended in Australia, Belgium, France, Japan, the Netherlands, Sweden, United Kingdom and the United States. While composition of these committees varies, it is generally recognized that non-executive directors have a special role. Codes from developing nations likewise frequently recommend that boards form these and other committees, with particular attention paid to the functions and independence of the audit committee because of the key role it plays in protecting shareholder interests and promoting investor confidence.

APPENDIX II Commentary

Every company should have at least an audit committee.
Brazilian Institute of Corporate Governance Code, § 2.4.

At a minimum, each board should have an audit and a remuneration committee.
King II Report, § 2.7.5

Special emphasis has been placed on the need for all listed company boards to establish audit committees to ensure the effective and efficient control and review of a company's administration, internal audit procedures, the preparation of financial statements and the general disclosure of material information to investors and shareholders.
President's Message, Stock Exchange of Thailand Code and Guidelines, pp. iv-v.

The Board of Directors of every listed company shall establish an Audit Committee..... The majority of the members of the Committee shall be from among the non-executive directors ... and the chairman of the Audit Committee shall preferably be a non-executive director.
Pakistani SEC Code, xxx.

The Audit Committee shall be independent of the [management board] and external auditors and thus should report solely to the [supervisory board].
Indonesian Code of Good Corporate Governance, §IV, Principle 4.2

The Audit Committee shall be composed of ... members, preferably with accounting and finance background, one of whom shall be an independent director and another should have related audit experience.
Philippines SEC Code, II.9.A.

[T]he audit committee should include only independent directors.
Russian Federation Securities Commission Code, Ch. 8, § 1.3.1.

Certain guidelines and codes specifically recommend a minimum size of the audit committee: those from India, Korea, the Philippines, Pakistan and Singapore all recommend a minimum of three members, as in the United Kingdom. The guidelines and codes generally emphasize the financial proficiency of audit committee members (Brazilian CVM Recommendations, China Securities Regulatory Commission Guidelines, Stock Exchange Board of India Report, Philippines SEC Code) and terms of reference for this Committee, which usually emphasize the functions of selecting and interfacing with the independent outside auditors and overseeing the company's internal control systems (Commonwealth Association Guidelines, Institute of International Finance Code, China Securities Regulatory Commission Guidelines, Stock Exchange Board of India Report, Korea Stock Exchange Code, Philippines SEC Code, Pakistani SEC Code, Russian Federation Securities Commission Code, Singapore Institute of Directors Code, the Stock Exchange of Thailand Code, the Indonesian Code of Good Corporate Governance and South Africa's King II Report).

APPENDIX II Commentary

Disclosure Issues

Disclosure is an issue that is highly regulated under the securities laws of many nations. However, there is room for voluntary disclosure by companies beyond what is mandated by law. Most countries generally agree on the need for directors to disclose their own relevant interests and to disclose the company's financial performance in an annual report to shareholders. Generally this is required by law, but some guidelines and codes of best practice address it as well. Similarly, even though directors are usually subject to legal requirements concerning the accuracy of disclosed information, a number of codes from both developed and developing nations describe the board's responsibility to disclose accurate information about the financial performance of the company, as well as information about agenda items, prior to the annual general meeting of shareholders. Many codes also itemize the issues reserved for shareholder decision at the AGM. Generally, guidelines and codes of best practice place heavy emphasis on the financial reporting obligations of the board, as well as board oversight of the audit function. Again, this is because these functions are key to investor confidence and the integrity of markets. The guidelines and codes of many countries lay out the key points that the directors must comment on, whereas others do not go to this level of detail, but the distinction is not necessarily substantive since disclosure tends to be heavily regulated in many nations through securities laws.

* * * *

This brief review of the primary topics addressed by the various guidelines and codes emanating from the developing and emerging markets underscores the *convergence* among them on basic principles of "good" governance simultaneously with the implementation of these principles in a *diversity* of corporate cultures, national personalities and priorities. Each company builds on its own history, culture, goals and business cycle maturity. The primary catalyst for convergence on basic principles is the desirability of access to international capital markets. These are all factors to take into consideration when crafting the optimal governance structure and practices for any country or any company.

As regulatory barriers between national economies fall and global competition for capital increases, investment capital will follow the path to those corporations that have adopted efficient governance standards, which include acceptable accounting and disclosure standards, satisfactory investor protections and board practices designed to provide independent, accountable oversight of managers.

Report to the OECD by the Business Sector Advisory Group on Corporate Governance (April 1998) (the Millstein Report) at 83.

APPENDIX II

Commentary

The convergence on principles of corporate governance is evident, on the most fundamental level, in the consensus in both developed and developing nations that board structure and practice are key to providing corporate accountability – accountability of management to the board of directors, and accountability of the board of directors to shareholders – in the governance paradigm.

Weil, Gotshal & Manges LLP —

Worldwide Offices

767 Fifth Avenue
New York, NY 10153-0119
Tel: +1 212 310 80 00
Fax: +1 212 310 80 07

UNITED STATES

Austin

8911 Capital of Texas Highway
Suite 4140
Austin, TX 78759
Tel: +512-349-1930
Fax: +512-527-0798

Houston

700 Louisiana
Suite 1600
Houston, TX 77002
Tel: +1 713 546 50 00
Fax: +1 713 224 95 11

Boston

100 Federal Street
34th Floor
Boston, MA 02110
Tel: +1 617 772 83 00
Fax: +1 617 772 83 33

Miami

701 Brickell Avenue
Suite 2100
Miami, FL 33131
Tel: +1 305 577 31 00
Fax: +1 305 374 71 59

Dallas

200 Crescent Court
Suite 300
Dallas, TX 75201-6950
Tel: +1 214 746 77 00
Fax: +1 214 746 77 77

Silicon Valley

201 Redwood Shores Parkway
Menlo Park, CA 94025
Tel: +1 650 926 62 00
Fax: +1 650 854 37 13

Washington

1501 K Street
Suite 100
Washington, D.C. 20005
Tel: +1 202 682 70 00
Fax: +1 202 857 09 39
+1 202 857 09 40

INTERNATIONAL

Brussels

81 Avenue Louise, Box 9-10
1050 Brussels
Belgium
Tel: +32 2 543 74 60
Fax: +32 2 543 74 89

Paris

2, Rue de la Baume
75008 Paris
France
Tel: +331 44 21 97 97
Fax: +331 42 89 57 90

Budapest

Bank Center
Granite Tower
H-1944 Budapest
Hungary
Tel: +36 1 302 91 00
Fax: +36 1 302 91 10

Prague

Charles Bridge Center
Krizovnické Nám. 1
110 00 Prague 1,
Czech Republic
Tel: +420 2 21 40 73 00
Fax: +420 2 21 40 73 10

Frankfurt am Main

Maintower
Box 19
Neue Mainzer Strasse 52
60311 Frankfurt am Main
Germany
Tel: +49 69 21659 600
Fax: +49 69 21659 699

Singapore

4 Battery Road, #26-01
Bank of China Building
Singapore 049908
Tel.: +65 535 36 00
Fax.: +65 538 85 98

London

One South Place
London, EC2M 2WG
England
Tel: +44 207 903 10 00
Fax: +44 207 903 09 90

Warsaw

Warsaw Financial Center
ul. Emilii Plater 53
00-113 Warsaw
Poland
Tel: +48 22 520 40 00
Fax: +48 22 520 40 01