

LATIN AMERICAN CORPORATE GOVERNANCE ROUNDTABLE

Session 5: Related Party Transactions Task Force Recommendations: Country Progress and Emerging Good Practices

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Mike Lubrano / Daniel Blume
Reporters
daniel.blume@oecd.org
mlubrano@articacapital.com

Background

Dec. 2009 “Legal / Regulatory and Institutional Framework for Enforcement Issues in Latin America”

- Abuse of Privileged Information and Insider Trading
- Oversight of Related Party Transactions

Nov. 2011 “Survey Report on Related Party Transactions” presented at Lima meeting of Roundtable

Jan. – March 2012 Country-Level Task Forces formed

April – May 2012 Questionnaire responses from Country-level Task Forces; Conference calls conducted

June 28, 2012 Draft Report, including country-specific recommendations discussed by Task Force in Rio

Background

July – Sept. 2012 Recommendations Report revised to incorporate comments received at Rio meeting

4th Quarter 2012 Recommendations Report presented to Companies Circle and OECD Corporate Governance Committee; published and posted on OECD website

April 2013 Questionnaire distributed to Companies Circle members

June 2013 Responses compiled; draft discussion paper sent to Task Force Members

Jun 19, 2013 Task Force meets in Quito to report progress, discuss questionnaire responses and draft discussion paper

Components of a Sound RPT Framework

1. Requirements for immediate and adequate disclosure of RPTs that meet reasonable materiality standards.
2. Board responsibility.
3. Shareholder approval of exceptional RPTs.
4. Quality and independence of auditors and valuation experts.
5. Effective enforcement and ability to seek compensation for damages.

Priorities for Continuing Effort

- 1. Collecting, sharing and analysis of data on RPTs**
- 2. Completeness and consistency of disclosure (IAS presentation)**
3. Materiality thresholds
- 4. RPTs in economic groups**
- 5. Company-specific policies**
- 6. Taxonomy of state ownership**
7. Beyond the region

Observations from Survey

- The reasons reported for conducting related party transactions were those generally cited in the Task Force's earlier work on the topic.
- Only one respondent reported that its policy is to avoid RPTs. The remainder regard engaging in RPTs as a relatively common and potentially beneficial for the company and its shareholders. One respondent noted that it accorded a preference to companies within the group.

Observations from Survey (2)

- All the respondents stated that their general standard was that RPTs should be conducted on market terms.
- Disclosure of RPT policies and IAS 24 disclosure in financial statements was virtually universal. However, no respondent reported that it makes some form of continuous disclosure of RPTs.
- All respondents lodged responsibility for reviewing the fairness of RPTs with the Board (sometimes assisted by a Board committee).

Observations from Survey (3)

- Only exceptional RPTs (e.g., mergers and acquisitions) were reported as ever having been submitted to shareholder review.
- Most respondents to the questionnaire were members of an identified company group. In general, the group had a single over-arching RPT policy, but in some cases such policies were adapted to the special requirements of a particular group member.

Observations from Survey (4)

- One respondent noted that on occasion RPTs within the group on unequal terms. In such cases, some form of compensation was accorded minority shareholders of the disadvantaged company.
- One respondent reported a system for review of transactions with members of its controlling shareholders that was specifically tailored to its ownership structure and the industry in which it and its controllers belonged.

Discussion Paper

- Are the questions we have been raising for possible legal and regulatory requirements and best practices for different types of companies the right ones? Are there additional recommendations or distinctions that should be considered?
- Is there consensus within the Task Force to issue these as recommendations?

Discussion Paper (2)

- Should the issues raised concerning RPTs for state-owned companies be brought to the Latin American SOE Network for further discussion and development?
- Should the Latin American Companies Circle be invited to further consider these issues in the context of its Working Group on Company Groups?

Questions for Speakers

- What progress has been made against the country-specific recommendations of the Report?
- What should be next steps on RPTs
 - For efforts in your country?
 - For the Task Force / RT?