Review of the G20/OECD Principles of Corporate Governance

March 2024

The OECD has recently reviewed the principles of corporate governance of the G20/OECD, this being approved by its Ministerial Council in June 2023 and ratified by the G20 leaders in September that same year.

The principles are characterised by their non-binding nature as they do not intend to substitute national regulations, but to be of aid to and supplement these to establish a uniform system with homogeneous criteria that are accepted internationally.

These principles constitute the main international reference of good corporate governance, reflecting the experiences and ambitions of a large variety of jurisdictions with different legal systems and different levels of development.

Similarly, these principles highlight that regulators, international organisations and those participating in financial markets all play important roles in laying the foundations and consolidating business practices that are respectful with good corporate governance. In fact, they intend to aid those responsible for public policies to assess and improve the legal and institutional framework of corporate governance, together with reinforcing a corporate governance framework that helps companies access the necessary financial resources to finance their production activities.

In principle, the natural target of these principles are financial and non-financial listed companies, without prejudice to the convenience of their expansion to non-listed companies.

With regard to the review performed, this reflects the will of the OECD and G20 member countries to offer listed companies guidance and standards regarding sustainability and resilience, social and environmental risk management, new corporate information disclosure requirements, the role of shareholders and stakeholders, together with the responsibilities of company boards.

The new principles related to sustainability particularly stand out in this review, highlighting that the efficiency of capital markets increases if investors can compare the information on sustainability provided by companies, especially between those listed in different jurisdictions. On the other hand, it is advised that the boards of directors ensure the existence of internal and governance controls to improve the reliability and credibility of the information provided.

Pregunta

What are the basic aims of the review of the G20/OECD principles?

Respuesta

Two aspects inherent to the nature of the new and reviewed principles are their flexibility and proportionality. In fact, there is no single treatment for corporate governance; the variety of legal regimes, typology and size of the companies makes this necessary.

The basic aims sought by this review are the following:

A) The promotion of access to financing, innovation and entrepreneurship.

B) The protection of investors.

C) The promotion of sustainability and resilience of companies.

A) The promotion of access to financing, innovation and entrepreneurship

Capital markets are facing great transformations. The most significant facts in this new reality of financial markets can be summarised as follows:

A flight from markets is occurring, that is, the exclusion of admission to trading of companies, with special incidence on more developed securities markets.

Institutional investors enjoy growing relevance in the shareholding structure of listed companies.

Cross-border activity is growing in significance. Internationalisation is inherent to financial markets.

This being the fact, review of the G20/OECD principles proposes the following:

I) A clear and defined treatment of the groups of companies.

II) The use of stewardship codes and appropriate information disclosure policies by institutional investors, particularly regarding their voting policies.

III) An adequate development of the rights and obligations of the holders of corporate bonds.

IV) An adequate treatment of conflicts of interest between proxy advisors, ESG rating providers and other financial data and rating providers.

B) Investor protection

Certain capital market trends recommend greater investor protection, regarding specific situations (such as conflicts of interest and inside information) and the need for a complete, adequate and timely corporate information report.

The review of the G20/OECD principles proposes the following:

I) The active participation of shareholders in the approval of external auditors of companies.

II) The promotion of remote participation of shareholders in General Meetings.

III) An increase in the transparency of information, particularly regarding the groups of companies.

IV) An increase in the protection of the holders of corporate bonds.

C) The promotion of sustainability and resilience of companies

The new obligations regarding suitability require homogeneous criteria regarding the materiality concept, commonly accepted international standards and reliable metrics on associated risks and opportunities.

The new G20/OECD principles propose the following:

I) The existence of specialised committees within the boards of directors.

II) The interests of stakeholders being considered when making business decisions.

III) The defence of the business judgement rule as safe harbour, for directors and top management, regarding actions related to the management of listed companies.

IV) The use of sustainability indicators in the remuneration of board members and/or key executives of companies.

Pregunta

What is the structure and contents of the document?

Respuesta

The principles are structured into six chapters:

1. Chapter I: Ensuring the basis for an effective corporate governance framework
2. Chapter II: The rights and equitable treatment of shareholders and key ownership functions
3. Chapter III: Institutional investors, stock markets, and other intermediaries.
4. Chapter IV: Disclosure and transparency
5. Chapter V: The responsibilities of the board
6. Chapter VI: Sustainability and resilience

Chapters I to V have been briefly modified for them to be in line with the new Chapter VI on sustainability and resilience, together with the aspects regarding promotion of markets and investor protection. Below is a summary

of the main contents of the chapters of the document.

Chapter I establishes that adequate corporate governance should promote transparent and fair markets, together with an efficient allocation of economic resources.

On the other hand, the regulatory, supervisory and enforcement authorities should have the authority, integrity and capacity to fulfil their duties in a professional and objective manner.

This same chapter defends that new digital technologies can ease the supervision and implementation of corporate governance requirements, without prejudice to the obligation authorities have to pay due attention to the management of associated risks.

Similarly, it states that cross-border activities should be carried out using bilateral and multilateral arrangements for exchange of information. Chapter II establishes that the corporate governance system should facilitate the exercise of shareholders' rights and ensure the equitable treatment of all shareholders, particularly minority and foreign shareholders.

Similarly, it defends the elimination of any impediment to exercise cross-border voting, the need for adequate regulation of conflicts of interest with related parties, and the convenience of the markets for corporate control being allowed to function in an efficient and transparent manner.

Chapter III highlights the importance of facilitating institutional investors' engagement with their investee companies. Institutional investors should disclose adequately and completely on the management of conflicts of interest that may affect the ownership rights they represent.

On the other hand, proxy advisors, analysts, brokers, ESG rating and data providers should disclose on conflicts of interest that might compromise the integrity of their analysis or advice, while also minimising these as far as possible. In particular, it suggests that the methodologies they use should be transparent and publicly available.

Chapter IV indicates that corporate governance should ensure that companies timely and accurately disclose all material matters regarding the financial situation, performance, sustainability, ownership, and governance of the companies.

Likewise, it recommends an improvement in the disclosure of related party transactions, particularly in complex group structures.

On the other hand, the same chapter recommends the disclosure of material information on debt contracts, including the risk of non-compliance with covenants that were subscribed.

Chapter V develops the responsibilities of the boards of directors and states that corporate governance should ensure the effective monitoring of management by the board and its accountability to the company and the shareholders.

Similarly, it recommends a growing use of different committees in the boards, allowing these to be established in a flexible manner, together with the diversity in the structure, composition and functioning of the board and the top management of companies.

On the other hand, it recommends the responsibility of the boards in relation to digital security risk management is not neglected.

New Chapter VI recommends that the corporate governance system provides incentives for companies and investors to manage their investments and risks, always considering the sustainability and resilience of the companies.

It also recommends promoting specific sustainability-related disclosure and the use of internationally recognised standards allowing them to be homogeneous and comparable.

material sustainability risks and opportunities should be duly considered by the boards, together with strengthening the dialogue on sustainability between companies, their shareholders and stakeholders.

On the other hand, this chapter highlights the increasing importance of corporate debt and the role of bondholders in the resilience and sustainability of companies. Furthermore, it recommends the promotion of material information on debt contracts, including the risk of non-compliance.

Link of interest: G20/OECD Principles of Corporate Governance 2023 | OECD