

Latin American Corporate Governance Roundtable

Task Force on Corporate Governance of Company
Groups – Main outcomes
OECD World Bank/IFC joint initiative

Pablo Souto
Senior Associate – Global Outcomes
OECD Consultant

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I. The context

On institutional investors (2011)

- Encouraging but not imposing activism (balanced approach)
- Distinguishing better governed companies for investment purposes (prudential regulation vs economic regulation)
- Promoting the exercise of IIs' rights beyond voting; e.g. identification and nomination of qualified independent directors
- Encouraging open communication processes (two dimensions)
- Ensuring the integrity of external advice (CRA, proxy-voting)
- Influencing the perception of CG in the market, including the role of the media

I. The context (2)

On related-party transactions (2013)

- Immediate and adequate disclosure (materiality)
- Board primary responsibility
- Resorting to shareholders approval only in exceptional cases
- Ensuring the independence of external assessments
- Enforcement needs to be strengthened
- Mechanisms for prompt and fair compensation for damages should be in place
- Companies' policies on RPTs should be meaningful
- The extensive presence of SOEs calls for a particular approach

I. The context (3)



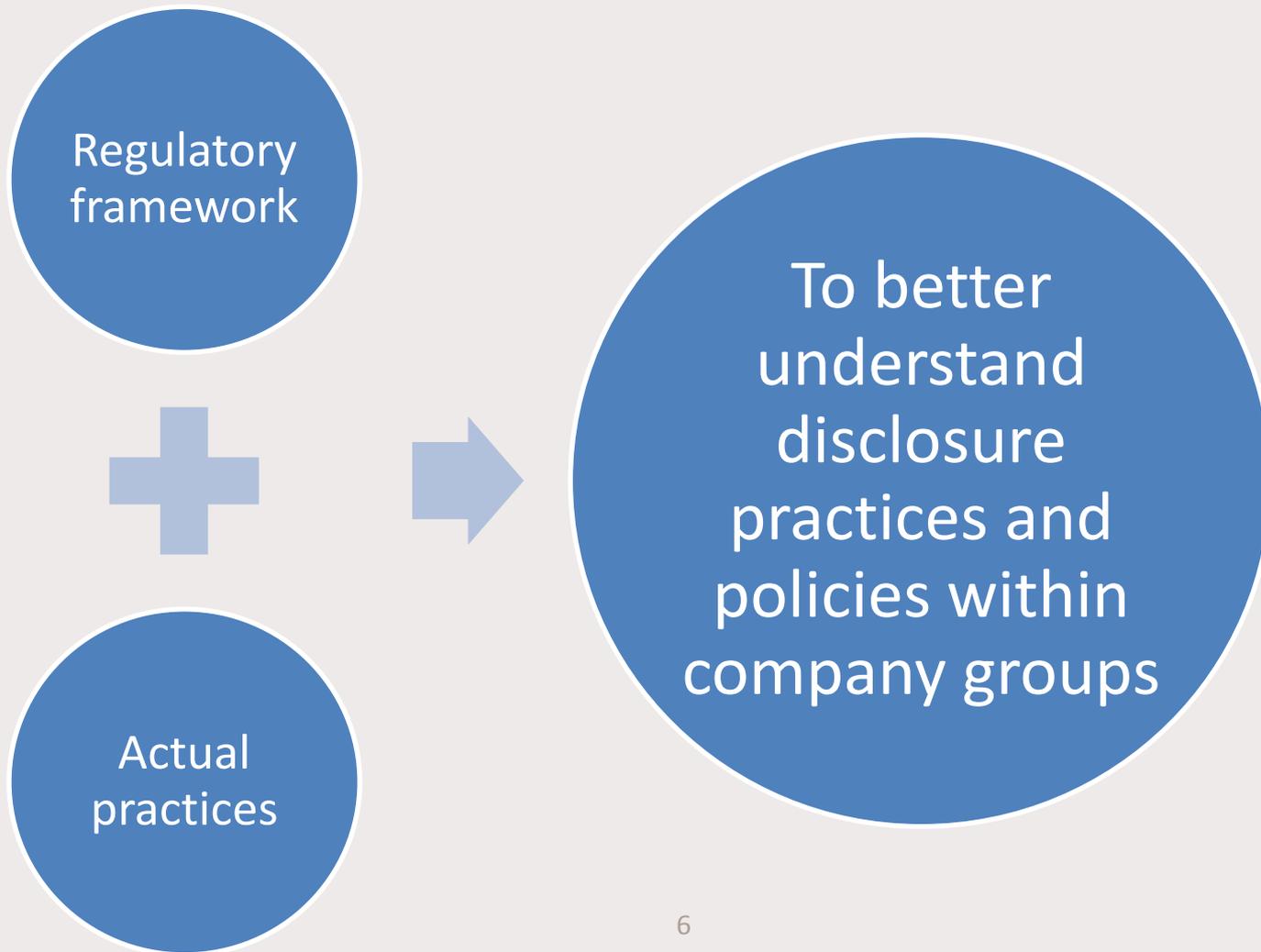
On the overall framework for company groups (2014)

- Principles-based frameworks (e.g. codes) should be encouraged, rather than additional regulations
- Other market participants (IIs) should be more active
- Coordination and/or harmonization at the regional level is needed given the particularities of company groups in the region
- The regulatory framework should ensure that the structure of the group is transparent and well-understood, and that mechanisms to address conflicts of interest are in place
- There is a key role for the board in the case of groups
 - The duty of loyalty, group vs subsidiary interest
 - Certain board functions (governance, control, remuneration) should be a responsibility of the board of the holding company

I. The context (4)

- ❑ After the 2014 RT meeting, a mandate was issued to go further into the analysis of groups by going deeper into the analysis of disclosure policies and practices
- ❑ Why? Because disclosure and transparency have been identified as a cost-effective and market-driven mechanism to foster the protection of minority shareholders interest (and of other stakeholders as well)
- ❑ Not only traditional groups are becoming increasingly complex in their structures and expanding into other countries, but also new groups of smaller size are being created at the local level

II. Our approach



III. Three areas of interest

A. Group structure

- ❑ More qualitative information will be desirable; rationale of the group, its strategy, the role of each member, etc.
 - ❑ Also including information on the non-listed members of the group
- ❑ Consolidated financial statements (following IFRS) should be complemented with less aggregated information
- ❑ The simpler the structure of the group, the simpler becomes monitoring by the market and the regulator
- ❑ Standardized reporting on the structure of groups facilitate comparison and strengthens compliance through reputational effects (market discipline)

III. Three areas of interest (2)



B. Ultimate beneficial ownership

- ❑ Established thresholds are OK, but more is needed to go deeper into intermediary arrangements to get the full picture
- ❑ Increasing the obligations of regulated entities to provide information up to the UBOs
- ❑ Cooperation is crucial in a context of increasing integration (MILA) and geographical diversification (multilatinas)
 - ❑ There is a natural tension between cooperation and competition across jurisdictions
 - ❑ Trade-off between increasing regulation and market development

III. Three areas of interest (3)



C. Related-party transactions

- ❑ Conflict of interest should be the analytical driver, while RPTs are an example of that
- ❑ Quantitative information of transactions follows international standards, but little is provided on the qualitative aspects (nature, objective, corporate interest)
- ❑ External assessments (fairness opinion) are important as one element in a broader framework but not determinant
 - ❑ Concentrated interest could affect the true independence of the assessment
 - ❑ Usually leaning towards the safe position (large quantitative ranges)

IV. Some new, old issues

- To balance regulations and voluntary adoption
 - But some case studies indicate that the balance should lean towards the former
 - But supervision is mostly focused on formal compliance rather than content and accuracy
- To impose higher sanctions
 - Its effectiveness requires enhanced enforcement (budgetary restrictions) to increase expected loss
 - More detailed information on the administrative process and sanctions to induce reputational effects
- To make use of a more transparent world where opacity is penalized by the market and public opinion (reputational effects)
 - There is a role for the traditional and social media to further good practices

IV. Some new, old issues (2)

- ❑ To strengthen the role of the board, particularly that of independent directors
 - ❑ Fiduciary duties, accountability and personal responsibility
 - ❑ Lack of a "market" of truly independent directors
- ❑ To analyze how compensation policies within a group sets incentives for board and managers
- ❑ To further a more active role of investors, particularly institutional investors
 - ❑ Would complement regulator's oversight
 - ❑ But some of those IIs are part of groups
- ❑ There is room for regional harmonization on a principles-based approach but more difficult on regulation
 - ❑ A minimum standard could be envisioned