



مركز المشروعات الدولية الخاصة

ملحوظة

في حالة ظهور رموز غير مفهومة في النص الذي بين يديك يرجع هذا إلى خطأ في الطباعة وبيعادة طباعته بصورة سليمة يرجى زيارة الرابط الآن www.cipe-arabia.org/pdfhelp.asp

Note: The following is an example of a corporate governance improvement program designed and negotiated by IFC with a large, publicly-listed Latin American industrial concern. It was included in the final documentation for the transaction. The content and sequencing of any corporate governance improvement program will vary depending on the nature of the client, the particularities of the legal framework, the business environment, and the company's future operational and financing plans. This example is presented solely for illustrative purposes.

CORPORATE GOVERNANCE IMPROVEMENT PROGRAM

Part A - General Requirements

The Company (or Sponsors, where applicable) shall undertake the following actions:

Board of Directors

The Sponsors shall nominate a sufficient number of principal and alternate (*suplente*) directors, each meeting the definition of Independent Director, to be members of the Board for election by the Company's Shareholders in accordance with the procedures for election of directors set out in the Charter. It is anticipated that a total of at least [three] principal or alternate directors meeting the definition of Independent Director will be required. The Sponsors shall vote all of their Shares in the relevant Shareholders vote on the election of directors, and shall take all other actions otherwise necessary, to ensure the election to the Board of the Independent Directors so nominated. In the event of vacation of office for any reason by such Independent Director, the Sponsors will nominate a replacement Independent Director as a Board member in accordance with this Section.

Standing Committees

The Board of Directors will establish standing committees of the Board responsible for independent oversight in (a) conflicts of interest (particularly related-party and intra-group operations) and (b) accounting and audit. Each of these committees will be composed of at least three directors. For the period running from the date of this agreement, up to the first Board meeting following the next Annual General Meeting of Shareholders, such directors will be selected by the Board from among its current members, taking into account the importance that such members be as independent as possible from links to management or the Sponsor. Following the next Annual General Meeting of Shareholders, such committees shall be composed entirely of Independent Directors.

The responsibilities of the **audit committees** shall include:

- (a) Periodically reviewing the work of the internal auditors, overseeing the adequacy of the Company's internal controls and reporting on them to the full Board; and
- (b) Reviewing the Company's financial statements and the work of its external audit and reporting on their adequacy to the full Board (and the Shareholders Meeting).

The responsibilities of the **conflicts of interest** committee shall include:

- (a) Reviewing the terms of all material transactions between the Company and its Affiliates to ensure that these were made on an arms-length basis and conducted at fair market prices;
- (b) Developing and articulating the company's policy with respect to transactions with related parties and overseeing compliance; and
- (c) Disclosing material intra-group and related-party transactions and conflicts of interest.

Recommendations to the full Board of Directors of the audit committee and the conflicts of interest committees on matters within their respective competencies, as well as what actions the Board takes in response to such recommendations, will be disclosed on a periodic basis to shareholders to the extent that such recommendations or actions are material.

Minority Rights

The Company shall adopt in its Code of Good Governance (and/or where appropriate, its Charter) provisions for the protection of minority shareholders, including:

- (a) Shareholders representing 5% of the outstanding shares shall be empowered to add items to the agenda of a General Shareholders Meeting;
- (b) Lowering the threshold required to call a General Shareholders Meeting or request a special audit to 15% of the outstanding shares;
- (c) Agreement by the Company to submit to private arbitration of disputes with shareholders; and
- (d) The external auditors of the Company (and its reviser fiscal) shall be an internationally recognized auditing firm.

Subsidiaries

The Company and the Sponsors shall ensure that those Subsidiaries that are not wholly-owned by the Company adapt their practices to those reflected in the Company's Code of Good Governance. Such Subsidiaries shall incorporate into their own Codes of Good Governance provisions with respect to the composition and function of the board of directors and protection of minority shareholders that are similar to those in the Company's Code of Good Governance.

Miscellaneous

The Company and the Sponsors shall undertake to incorporate into the Company's (and, where applicable, the Subsidiaries') Constitutive Documents (and/or those of its Board) all the necessary dispositions or changes in order to fulfill the obligations above. The Code of Good Governance and the Rules of the Company's Board of Directors shall be in form and substance reasonably satisfactory to IFC.

The Company's Board of Directors will periodically review the Code of Good Governance and the Rules of the Board of Directors in light of evolving best international practice in corporate governance, and revise their content in order to keep the Company and its Subsidiaries in line with such practice.

Part B - Proposed Timeline of Corporate Governance Changes

Stage One (To Be Completed Before Next Board Meeting)

- (A) Finalize the Code of Good Governance and the Board Rules, Covering All the Key Points of the Program Agreed with IFC, Including:
- (1) Definition of Independent Directors;
 - (2) Establishment of Audit; Conflicts/Corporate Governance; and Human Resources Committees (Composed of Existing Directors);
 - (3) Code of Good Governance to Recite That the Conflicts/CG and Audit Committees Will be Eventually Composed Entirely of Independent Directors; and
 - (4) Initial Terms of Reference/Charter Approved for All Board Committees.

The Code and the Rules of the Board Shall be in Form and Substance Acceptable to IFC.

- (B) Establish the Temporary Committee Described Below.

Stage Two (To Be Carried Out Within Six Months - So As to Be Ready for Full Implementation By Next Annual General Meeting of Shareholders)

- (A) Temporary Committee Formed, Including Representatives of Management, Existing Board and Controlling Shareholder to Implement in Full the Governance Structure Set Forth in the Code and Rules of the Board. Terms of Reference of the Committee will be:
- (1) Select Required Advisors to Assist the Committee (Legal/Human Resources/Corporate Governance, etc.);
 - (2) Define the Ideal Mix of Capacities/Competencies for the Company's Board;
 - (3) Conduct a Review of the Capacities/Competencies of Existing Board (Thumbnail Board Evaluation) to Determine Professional Requirements/Profiles of New Directors (With External Advisors and IFC as Required) to Provide What is Missing;
 - (4) Develop a Recommended Director Compensation Policy for Presentation to Board/Shareholders;
 - (5) Develop a Timetable for Filling New Board Seats (and Vacated Seats) with Independent Directors with the Above-Referenced Capacities/Competencies;
 - (6) Agree on a Process for Sourcing/Vetting Board Candidates (With External Advisors/Headhunters, IFC as Required); and
 - (7) Submit Such Proposal to Board for Approval.
- (B) Designated Parties Carry Out The Process Agreed to Above.

Stage Three (Next Annual General Meeting of Shareholders)

- (A) Shareholders Approve the Director Compensation Policy.
- (B) Shareholders Elect New Directors.

Stage Four (First Meeting of Board After Next Annual General Meeting of Shareholders)

- (A) Board Fully Implements the Code of Good Governance and Rules of the Board.
- (B) New Board and Committees Review, Revise, Ratify Code of Good Governance and Rules.
- (C) Board Develops its Own Process for Independent Board Member Identification/Selection, to be reflected in Rules of the Board.

Operative Document in Covenants Section of Agreements:

X. CORPORATE GOVERNANCE

X.1 Corporate Governance Improvement Program

The Company and the Sponsors hereby covenant and agree that for so long as IFC holds Shares in the Company, each of the Company and the Sponsors will, and the Company and the Sponsors will also procure that the Co-Borrowers will, fulfill and comply with the Corporate Governance Improvement Program.

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