

Peru

Corporate Governance Institutions, Practices and Developments

1. Key Institutional Features of Corporate Governance and Company Profile in Peru

1.1 Background

The General Corporation Law sets the guidelines about governing the organization of the economy's enterprises. In addition, the companies that participate in the public securities market are subject to the transparency requirements of the Securities Market Law (L.D. No861).

In July 2002, the Principles of Good Governance for Peruvian companies were published. This document included the participation of CONASEV, the National Supervisory Commission for Companies and securities, the Lima Stock Exchange and other organizations interested in the developments and discussions related to the societies' good corporate governance. The goal was "to make Peruvian companies reach international standards", as well as offering greater confidence to local and foreign investors, especially to the minority shareholder.

The document included the five most important principles recommended by the Organization for Economic Cooperation and Development OECD for Latin America, as well as the Peruvian society's characteristics in relation to their shareholder structure and the legal framework in which they develop.

The publication of the Principles of Good Governance for Peruvian companies was intended to establish guidelines in order to promote a culture of good practices within organizations.

In December 2003, CONASEV issued the General Management Rule N° 096-2003-EF/94.11, whereby societies with registered securities at the Public Security Market Registry are obliged to inform to the market about the scale of implementation of the 26 principles. To this date, CONASEV has issued reports about the accomplishment of the Principles of Good Governance for the years 2005, 2006, 2007 and 2008.

1.2 Trends

	2005	2006	2007	2008	2009
Capitalization (US\$ million)	36,196	60,020	108,220	57,231	107,325
Issuers with variable rate securities listed at the Lima Stock Market	231	235	232	231	254

1.3 Key Corporate Governance Rules and Practices

See Key Corporate Governance Rules and Practices in Peru's Economy, p. 173.

Development, Enforcement and Assessment of Implementation of Corporate Governance Rules

2.1 Development of Corporate Governance Rules⁸⁵

In Peru's economy, there are two main institutions responsible for the implementation of regulations related to the enterprises' corporate governance. These are CONASEV and the Superintendency of Banking, Insurance and Private Pension Funds Administrators.

Besides regulating the above, CONASEV requires the issuer companies with registered securities at the Public Security Market Registry (RPMV) to hand in together with their Annual Report, an Annex entitled "Information about the Accomplishment of the Principles of Good Governance for Peruvian Companies". CONASEV issues a summary annually, including the declared information on its website.

CONASEV's annual report identifies areas of improvement for corporate governance, thereby promoting adherence to the implementation of CG principles.

The Superintendency of Banking, Insurance and Private Pension Funds Administrators (SBS) is the body responsible for regulating and supervising the financial, insurance and administrators' private pension funds market. Through various policy measures the SBS incentivizes good corporate governance practices for companies in the private pension system. The Superintendent's Compendium of Regulatory Standards of the Private Pension Fund Administrator System has been established to encourage good corporate governance practices, including in those societies that invest in managed portfolios.

2.2 Enforcement of Corporate Governance Rules

CONASEV's regulation is based on the obligations of societies registered in the Public Securities Registry to provide the market with regular and timely information. In addition, CONASEV has the authority to call a general assembly or a special shareholder meeting, if the company does not fulfill its obligations according to the law or the company's statutes.

In 2008, CONASEV imposed 104 penalties, and slightly more in 2009 (106). Furthermore, the number of complaints lodged with the respective administrative court statement and prompted by investors and by CONASEV was 378 in 2008 and 253 in 2009.

There are no cases in which companies have been delisted for failing to comply with good corporate governance.

2.3 Assessment of Corporate Governance Practices

Each year, CONASEV issues a report regarding adherence to the principles of good corporate governance by companies in Peru. In the 2009 report, 10 principles were examined, 14 deeply examined, one was partially examined, and one was materially not examined. A modification in the questionnaire to make more specific the display of breaches is being undertaken.

⁸⁵ "Rules" refers to requirements for corporate governance however they are designated; e.g., laws, regulations, stock exchange listing requirements, or principles in obligatory codes.

3. Awareness and Advocacy for Good Corporate Governance

3.1 Company Directors

In Peru, Procapitales is a private-sector entity that seeks to contribute to the development of the Peruvian capital market. It has a Corporate Governance Committee, which aim is to promote and disseminate the concepts and benefits of good corporate governance, in order for companies to adopt these good practices. One important activity of this Committee is the Competition of Good Corporate Governance. In this way, the directors of the most important companies of the economy can obtain the benefits from the Good Corporate Governance implementation. Procapitales has 69 partners, including stock brokers, audit firms, fund administrators, securitization firm, universities and law firms.

The securities market regulator organizes workshops for the company's directors listed on the stock exchange, in order to comply, adequately, with the requirement of disseminating the accomplishment of the principles of good corporate governance. This dissemination is held through a survey that belongs to the annual report of the issuer.

3.2 Media

CONASEV proactively interacts with the media, in order to promote the securities market and to inform the public about the new regulations. The compliance with the Principles of Good Corporate Governance is one of the several topics to be promoted. Among the financial press, the issue of corporate management is extremely important.

3.3 Educational System

Topics about corporate governance are mainly addressed by universities, and in professional training. It is not mandatory on the high school syllabus.

At a postgraduate level, especially in relation to Masters of Business Administration degree courses (MBA), this topic is addressed, given the need for minority shareholders protection and transparency in the management of the company, among other CG issues.

In the judicial scope, the judges have commercial expertise but are not specialized in good corporate governance.

3.4 Stock Exchange

The Lima Stock Exchange, although not delegated with any regulatory function, is developing various practices to boost corporate governance. Thus, the Lima Stock Exchange has created the Corporate Governance Index (IBCG) in order to identify the companies that best apply these principles. Each year, the stock market recognizes companies that obtain the highest scores on the rating of Principles of Good Corporate Governance.

4. Corporate Governance of State-Owned and Family-Controlled Enterprises

4.1 State-Owned Enterprises

The National Fund for the Financing of State Entrepreneurial Activities (FONAFE) is the entity responsible of regulating and directing the commercial activity of the State. Under its purview are companies with a majority state participation, whether such companies are active or in the

process of liquidation. There are also under its area, the companies that have been delivered to them by request.

The companies that are controlled by the State have the same corporate governance requirements as the private sector. There are no important issues of corporate governance, regarding the way in which companies with majority public ownership are governed. All state companies with listed securities obey corporate governance guidelines.

4.2 Family-Controlled Enterprises

Among family-owned businesses, it appears that there is very limited participation of independent directors and that there are problems with the transactions between related companies.

The main disincentives are the costs associated with CG. To the extent that companies develop more and consider the advantages of participating in the market, this pattern must change.

5. Role of Professional Service Providers in Corporate Governance

None of the professional service providers has a role to inform their clients about corporate governance.

6. Recent Developments in Corporate Governance

6.1 Corporate Governance Developments

The main contributions of the amendments to the Securities Market Law related to Good Corporate Governance are as follows:

Regarding the Rights of Minority Shareholders:

A company's shareholders representing at least 25% of the share capital may request registration of its shares in the Public Security Market Registry from CONASEV, creating a new type of shares. Thus, the minority shareholders can access the secondary market and get a better price for their shares.

The Article 21-A (vote by e-mail or post), which was included in the General Corporation Law (LGS), stipulates that shareholders or members may exercise their right to vote by electronic means to determine the quorum, the vote and establishment of agreements. Procedurally, a digital signature (when submission is by e-mail) or legalized signature (when submission is by post) are required.

This remedy was implemented so that members can discuss a society's issues and approve agreements without meeting face to face, thereby providing them the possibility to reduce operating costs, especially for those companies that have a significant number of shareholders or those that usually list their shares on the Stock Exchange.

In the LGS, CONASEV is the only body competent to call a general assembly of shareholders, when this has been denied by the society, or when the legal deadline is overdue, or when the board has called a general assembly with insufficient notice. The applications for a plea require 5% of the registered shares entitled to vote.

The 262-A Article was included in the LGS (minority shareholders protection procedure) and establishes that an Anonymous Society is not obliged to publish in El Peruano, the official economy-wide newspaper and its website, the total number of unclaimed shares and their total value, the total amount of uncashed dividends, the list of shareholders that have not claimed their shares and/or dividends. It is sufficient to publish this information on the society's website and the Securities Market website.

6.2 Enforcement of Corporate Governance Rules

On 22 July 2010, the members of the Investors Committee in an institutional investor were punished, as well as the employees of a stock broking company because the securities buyers used privileged information.

On 22 July 2010, a bank was punished because it did not submit its financial information on time.

The typical cases involving punishment by CONASEV are related to the lack of timely regular information.

6.3 Current Issues and Challenges for Corporate Governance

6.3.1 Challenges

The main challenge is to improve the perception of both issuers and investors about the benefits of achieving good corporate governance accomplishment.

6.3.2 Priorities for Reform

The priorities are to improve the rules on the use and abuse of the privileged information and the price manipulation, so it can allow the institution to have all the necessary tools in order to apply the appropriate penalties.

We will continue to study the good corporate governance among Peruvian companies. There are not any priorities about the enforcement.

In relation to the protection of the minority shareholders' rights, there will be continued efforts to improve current rules and monitoring methods.

6.3.3 Financial Crisis

CONASEV is studying the new international regulatory controls that have come about as a consequence of the subprime crisis in the US, with the aim of evaluating their possible application in the local market.

Key Corporate Governance Rules and Practices in Peru's Economy

Element	Yes	No	Source(s) of Rule	Comments
RIGHTS OF SHAREHOLDERS				
1. Do shareholders add items to the agenda for shareholders' meetings?		X		Normally, the board of directors is responsible for preparing the agenda.
2. Do shareholders ask questions of directors at shareholders' meetings and do	X		CL	They can always ask, if the questions are related to the agenda.

Element	Yes	No	Source(s) of Rule	Comments
they receive answers?				
3. Must company transactions with its insiders be on a non-preferential basis?	X		SL	The people with access to privileged information are being monitored.
4. Is a super majority vote required for major company acts affecting shareholder rights?	X		CL	The General Corporation Law requires shareholder majority of two-thirds of the voting capital; however the companies' statutes can mandate a higher proportion. Business decisions affected by this requirement are the following: <ul style="list-style-type: none"> • Amendment of Statutes • Increase or decrease in the share capital • Alienation, in one transaction, of the assets that have a book value more than 50% of the capital • The transformation, merger, division, reorganization and dissolution of the society, as well as its termination
COMPOSITION AND ROLE OF BOARDS OF DIRECTORS				
5. Must boards have independent directors? What percentage?	X		CL	For companies in the non-financial sector, this is up to each of them. In the case of Banks, Insurance Companies and Private Funds Administrators, at least one independent director is required.
6. Do independent directors have significant influence over (a) internal and external audit and (b) executive compensation?				For companies in the non-financial sector, this depends on the decision of each. In the case of banks, insurance companies and private funds administrators, it has been established by the regulator's general law that it has to be at least one independent director in the Audit Committee.
7. Do independent directors decide what information the board receives from management?		X		The independent directors in agreement with the other directors decide what information to receive.
8. Are the chairman of the board and chief executive officer different persons in the majority of listed companies?	X		CL	
9. Are all board members elected annually?		X	CL	Depends on each company's decision.
10. Does the board oversee enforcement of a company code of conduct?	X		CL	Depends on each company's decision.
TRANSPARENCY AND DISCLOSURE OF INFORMATION				
11. Do financial statements comply with International Financial Reporting Standards (IFRS)?	X		SL	Normal.
12. Are the identities of the five largest shareholders disclosed?	X		SL	Normal.
13. Is compensation of company executive officers disclosed?		X	CL	
14. Are extraordinary corporate events disclosed?	X		SL	Normal.
15. Are risk factors disclosed in securities offering materials?	X		SL	Normal.
16. Are transactions of a company with its insiders disclosed?	X		SL	Normal.

Note: CL – company law; SL – securities law; CGC – corporate governance code; SLR – stock exchange listing requirement, GP – general practice but not obligatory