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**The Summarized Evaluation of The US
and Latin America Corporate
Governance Standards After Financial
Crisis, Corporate Scandals and
Manipulation**

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Corporate Scandals and Manipulation**

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Abstract

There are many analytical papers and researches done in the field of examining and analyzing consequences of the Sarbanes Oxley Act (2002) and some done in the corporate governance in some Latin American countries. This paper chooses a different approach.

First, it selects The US, Brazil and Chile, which represents for Latin American countries, as three (3) American countries to analyze their best suitable policies and corporate governance practices, in consideration of factors after crisis and scandals.

Second, it aims to build a selected comparative set of standards for corporate governance system in the US and representative Latin American countries.

Last but not least, this paper illustrates corporate governance standards that it might give proper recommendations to relevant governments and institutions in re-evaluating their current ones.

Key Words: corporate governance standards, board structure, code of best practice, financial crisis, corporate scandals, market manipulation, internal audit

JEL Classification: G00, G3

Acknowledgement

After the previous two papers “*A Set of Limited Asian Pacific Corporate Governance Standards after Financial Crisis, Corporate Scandals and Manipulation*” and “*The Backbone of European Corporate Governance Standards after Financial Crisis, Corporate Scandals and Manipulation*”, in a series, this is an opportunity to look at the research on corporate governance in the America region.

I would like to take this opportunity to express my warm thanks to Dr. Yea-Mow Chen and Dr. Yu Hai-Chin at Chung Yuan Christian University for class lectures, also my ex-Corporate Governance sensei, Dr. Shingo Takahashi at International University of Japan. My sincere thanks are for the editorial office, for their work during my research.

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Introduction

In the light of different views on Corporate Governance after financial crisis time, here, we try to make a comparative analysis on different models in different American countries. Despite of trying to select an easy-reading writing style, there is still some academic words need to be explained in further.

This paper is organized as following. First (1st) session, as usual, is our research literature review, followed by session two (2) with theories of relevant corporate governance and manipulation subjects. The research methodology is included in session three (3). Next, session four (4) presents our main empirical findings. Fifth (5th) session turns to our conclusion and policy suggestion. After all, there are exhibit session which covers some summary of this paper's analysis and comparison. And lastly, a glossary notes is provided with information for reference and because of reducing repeating terminology.

Research literature review

Many researches so far are done in the corporate governance area in the America. Coffee, John C., (2006) identifies how professions changed their behavior through the last century and he also points that all boards of directors are prisoners of their gatekeepers and only when the board's agents properly advise it, the board could act efficiently. Romano (2004) stated that the SOA 2002 not only imposes additional disclosure requirements, but also proposes substantive corporate governance mandates, a practice that is unprecedented in the history of federal securities legislation. Englander, Ernier., and Kaufman, Allen., (2007) argue that there is a shift in corporate control from local firm managerial team to independent outside directors. They said SOA (2002) sets an authority organization, PCAOB, to assure directors recognize their public purposes. And Bedard, Jean., (2006) finds there is a decrease in the magnitude of unexpected accruals in the year of company's report, or the SOA contributes to improved earnings quality. On the other hand, Prentice, Robert A., (2007) stated SOA can be burdensome cost to corporation with adverse impact on American capital markets. Besides, OECD (2009) confirmed that the financial crisis can be an attribute to failures and weaknesses in corporate governance system, including risk management system and executives salaries. Last but not least, Leal, Ricardo P.C., and Carvalhal-Da-Silva, Andre L., (2005) supports the view that good CG practices in Brazil leads to a greater market valuation and a lower cost of capital. Furthermore, Exhibit 7 shows us different parties and components, internal and external, should be involved in a policy or system of corporate governance.

Now, what is the general standardized set of American corporate governance standards?

Theory of Corporate Governance, Scandal and Market Manipulation

Theory of manipulation

There are different views on market and stock manipulation. Wu, Guonzu., and Arggawa, Rajesh K., (2003) suggest that stock market manipulation may have important impacts on market efficiency. Allen and Gale (1992) mention trade-based manipulation as the trader buys at higher price and then sells at lower price. They also show that profitable manipulation is possible. On the other hand, Rhea, Robert., Dow Theorist, stated that manipulations are possible on the day to day movement, but the primary trends are unchanged.

Theory of corporate governance and financial crisis

During and after the crisis, there is evidence that the lack of corporate governance mechanisms to protect the owners' best interests is becoming important issue in corporate life, especially after corporate scandals such as Tyco, Enron and Worldcom. Mulbert, Peter O., (2010) shows poor corporate governance in banking system as an important cause for

financial crisis. OECD (2004) presents a view that corporate governance also provides the structure through which the co.'s objectives are set, the means to obtain those objectives and to monitor performance are determined.

In addition to, Johnson, Simon., Boone, Peter, Breach, Alasdair., and Friedman, Eric., (1999) indicate with evidence that the weakness of legal organizations and legislation vitally contribute to the depreciations and stock market declines in the Asian financial crisis. Besides, Boycko, Shleifer, and Vishny (1995) stated that the weakness of corporate governance mechanisms in Russia caused the virtual non-existence of external capital sources to companies. And Chile Code of CG (2010) refers to CG as group of relations and practices, in the exercise of regulations and self-regulations inside the company to increase shareholders' values. See Exhibit 9 shows us that there is a majority of institutional investors in favor of good corporate governance in the companies they invest. Also, please Exhibit 8 to refer to five (5) main elements in a good corporate governance structure suggested by IFC. We can see, therefore, there are different approaches and arguments on corporate governance.

Research methodology

As usual, we perform American corporate governance principles in each of two (2) different groups including: 1) The US, which have many modifications in corporate governance principles after the crisis period; and 2) Relatively good corporate governance group including Brazil and Chile because they are quickly in issuing new principles;

We also use, but not limited to, international standards of corporate governance such as: World Bank, ADB and OECD's corporate governance principles as reference.

Then, we suggest on what so-called common American corporate governance principles which is aiming to create a basic background for relevant corporations interesting in different aspects of corporate governance subject. See Exhibit 3.

Last but not least, it can be considered as the recommendation to relevant countries' government and other relevant organizations for public policy and necessary evaluation. For a summary of our standards, see Exhibit and the below table 1 and 2 in relevant sessions.

Empirical findings

A- Findings on Corporate governance issues after financial crisis, corporate scandals and market manipulation

There are several popular issues including: a weak internal control structure and systems, or not clarifying duties and roles of internal and external auditors.

We can find out another CG issue. It is, the ambiguous, unclear, division between business interests and individual own interests, or unsolved conflicts of interests; therefore, leading to business ethics troubles.

Moreover, the role of internal auditing in monitoring accurate and timely accounting and financial reporting procedures and regulations, within or not within subsidiaries in a group companies, is another important matter during and after crisis. Also, it is related to the lack of adequate internal accounting control and proper disclosure regulations.

B- Findings on Ways of Manipulation during Corporate Scandals

Several Manipulation Techniques found out during corporate scandals involve, but not limited to:

B.1 – The manipulation techniques in the income statement:

Here, the technique is used to manipulate the co.'s profits by reserves. There is an example of AIG, 2005, where the company had improperly accounted reinsurance transactions to bolster reserves to inflate its profit up to an amount of \$ 2,7 b.

B.2 - The manipulation techniques in both the income statement and balance sheet:

The Rigas family in 2002 contributed to the bankruptcy of Philadelphia, one of leading cable companies, by manipulating both business ethics and CAPEX with hidden debt. \$3,1 b is said to be an amount which presents internal corruption.

B.3 - The manipulation techniques relevant to international accounting practice code:

We can remember the case of Global Crossing, in 2002, involved in scandal, both with falsification documents according to accounting practice, and with artificially inflating sales by swaps between network and other carriers.

B.4 - Other manipulation techniques net belong to above classifications:

Manipulation can happen in a group or holding company structure where the board or management team manipulates the revenues and costs transferred among its subsidiaries or between them and the co.'s headquarter. For example, Lehman Brothers, in fiscal year 2008, is accused of using another company, Hudson Castle, for its accounting manipulation which means transferring its asset and risks.

C- Actions on Preventing or Controlling negative manipulation

Necessary actions to prevent or control negative market manipulation are, but not limited to, enhancing corporate governance mechanisms and structure, strengthening internal control and auditing procedures and reevaluating effectiveness of internal business system and business ethics.

D- Findings on Construction of a Limited Common US and Latin America Corporate Governance standards

These findings will be shown in a detailed analysis of a model indicated in the later sessions.

<D.1> - The US corporate governance standards analysis

The Sarbanes Oxley Act 2002

The SOA was born to react after corporate scandals such as Tyco, Enron and Adelphia and that is a big gap in securities legislation since the Securities Act 1933 and 1934. It has 1107 Sessions with 11 Titles. It is said that one of its significant advantages is the clarification of audit and auditor duties. Additionally, providing proper regulations on internal control activities is one among other strengths of the SOA. Besides, it also gives a definition of “non-audit services”, which, in many cases, can be used in evaluating and estimating fees of audit works.

Moreover, it is in the SOA that it mentions the duty of employee in disclosure requirement in accordance with SOA. And we can see, among important points, in the SOA is the explanation of Code of Ethics (see Exhibit 1), for reference.

And different from some other Asian and European Codes, the SOA means some people in charge, for example, CEO or CFO, or senior financial officer, when it mentions the corporate. Generally speaking, The SOA is meaningful in establishing roles and rules of the Public Accounting Company Oversight Board. Besides, it pays lots of attention to rules of disclosure of financial reporting. However, it still has many other parts, compared to above Codes, left for either further research or other regulations and policies. (see Exhibit 1).

The US Corporate Governance Principles and Other Codes

Different from most of Asian Codes, there is a focus on roles of internal system of the company and the linkage between them and the PCAOB, as well as a high legislation level. For more information, please see Exhibit 1. For a specification on Code of Ethics in US, see Exhibit 10. Besides, US’s Corporate Governance principles are researched and enhanced by various groups.

<D.2> -Group 2 – Relative Good Corporate governance group analysis

During the financial crisis 1997-1998 and 2007-2009, Brazil and Chile are two among Latin America countries which have many improvements in their Corporate governance Codes. Brazil revised Code aims to create better CG system and performance in organizations. In contrast, The Chile Code tries to clarify roles of Directors and Directors’ Committees.

Brazil’s Corporate Governance standards analysis:

Brazil CG Code has been evolved since 1999, 2001, 2004 and 2008. In this session, we focus on the latest Brazil Code of Best Practice of CG in 2009.

Good recommendations involved in the 2010 Code include, but not limited to, delivering corporate social responsibilities to the agents of governance, including boards, auditors and shareholders. Also, The Code makes another distinguished point when it suggests different guests such as technical and consulting assistants, can attend BD’s meetings.

Besides, it is more detailed than other Codes in the aspect that it involves relationship between BD and third (3rd) parties.

Another minor point might be not giving details on functions of Supervisory board to management.

For a summary on corporate governance factors, please refer to the Exhibit 4. And see Exhibit 6 for a three (3) factors decision making model in Brazil Code.

In summary, the 2009 Code pays good attention to activities of IA and BD, establishment of Fiscal Council with goals such as examining financial statements, as well as relationship with relevant bodies in the organization. But it does not analyze well roles of compliance officer.

Chile's 2010 Corporate Governance principles analysis:

In 2010, BD of Codelco Chile passed the 2010 Code with one main point, which is quite different from other previous Codes, is that it lets the president of the Republic, called P.R, approves the ByLaws of the company, names the Chairman and elect Directors.

Besides, there are three (3) levels at which the BD ensure, they are the duty of care, loyal y and privacy, which are not mentioned in other Codes.

Different from the Brazil Code, here, the organization of Committees is also including Project, MGT and CG committees.

According to the code, the clarification of Director Committees' duties such as assuring Manual Handling Information of the Corporation is another good point.

Generally, the 2010 Chile Code strengthens the roles of BD and directors' committees in creating values for the company.

On the other hand, it still needs to delegates proper duties to proper person such as the task of ensuring the minutes reflecting what was resolved at the meeting.

Please see the Exhibit 5 for more information.

Comparison of Brazil and Chile's Corporate Governance Code:

Brazil and Chile, both used to attend the Corporate Governance roundtable where the participants come from Argentina, Bolivia, Brazil, Chile, Colombia, the Czech Republic, France, Hungary, Mexico, Panama, Paraguay, Peru, Spain, Turkey, the United Kingdom, the United States and Venezuela.

Different from Chile Code, The Brazil 2009 Code identifies roles of a so-called Family Council, a group which enables to separate family and business' interests and create standards for asset protection and management of securities, as well as property. Another strong feature includes detailed descriptions of BD's qualifications, both as an individual and a team.

Besides, it also covers many critical parts in BD's operation. Additionally, it involves details for so-called Director's compensation policies. And it also specifies the operation of Board's

meeting. Lastly, it suggests the Fiscal Council establishment with proper rights to contact outside lawyers, tax or HR specialists, as well as its own Internal Regulations. (see Exhibit 2). While Chile 2010 Code mainly serves three (3) main bodies including BD, GM and Senior Administration. Its committees' composition is a different point, which delivers duties to all MGT, CG and Sustainability, and Project Committees' four (4) directors. Last but not least, it stated the duties of Sustainability Committee in supervising Sustainability Policies and Goals of the Company. Please see Exhibit 11 for reference on disclosure and audit requirements for Brazil and Chile.

The 1st Establishment of a so-called relatively Good Corporate Governance standards

This following table is built with the consideration of comparative analysis of two (2) selected above countries.

Table 1 – A relatively Good Corporate Governance standards

Subjects or parties	Main quality factors	Sub quality factors
Audit committee	Formed by independent members of Board; At least three (3) members, one with auditing knowledge;	N/A (for further research and implementation)
CEO and The Chair	CEO operate co day by day; optimize costs and productivity of resources; Chair may served as BD member;	ensure stakeholders with information of their interests; Each periodic report containing financial statements accompanied by a written statement by the CEO
Corporate Secretary	Assist Chairman in BD's agenda; Record files and publish minute of meeting;	Not a director;
Compliance officer	N/A (for further research and implementation)	N/A (for further research and implementation)
Board of Directors	MGT with respect to business, risks and people;	represents co.'s interests;
Independent director	Not a controlling shareholder; Not a partner of an audit firm at least 3 yrs;	N/A (for further research and implementation)
Supervisory board to the Management	CEO and BD;	N/A (for further research and implementation)
Supervisory to the Board of Directors	Independent members;	N/A (for further research and implementation)
Internal control	Policies and limits of authority by Board;	Compliance with operating and financial processes;
Internal audit	be accountable for their action; may cooperate with external auditor;	Examined by AC;
External audit	May report directly to shareholders	Selected and evaluated by Board;
Disclosure and transparency	Manual for Handling Information of the Co. reviewed by AC; Non-audit service disclosed to investors in periodic reports	Communication enable stakeholders to correctly understand the co.
Shareholders	Understand business and deals with social and environmental principles;	
The corporation as a whole entity	Code of Conduct and Ethics approved by BD or person in charge;	Have Code of conduct by MGT, includes contents of social and environmental duties;

D.3- The 1st Establishment of a so-called America Limited Comparative Corporate Governance standards

Comparison of corporate governance standards between <D.1> and <D.2> group

Before we come to set up a set of general limited standards of corporate governance, we need to review the standards combined in the previous two (2) groups

The advantages of American Corporate Governance standards are, but not limited to, strengthen duties of internal control and accounting practices, in consideration of the SOA Act.

On the contrary, the relative Good Corporate Governance Group standards states board of directors' tasks and its operation, as well as roles of different committees.

A so-called America Limited Comparative Corporate Governance Set of standards

Based on the above analysis, we consider building comparative standards for a limited American Corporate Governance system.

Table 2 - The America Limited Comparative Corporate Governance standards

Subjects or parties	Main quality factors	Sub quality factors
Audit committee	Formed by independent members of Board; At least one with auditing knowledge;	Overseeing financial report processes and audits;
Nominating committee	Formed by independent members of Board;	Own Internal Rules;
Numeration or Compensation Committee	Formed by independent members of Board;	Own Internal Rules; Use experts to compare co.'s compensation with others;
CEO and The Chair	CEO ensure stakeholders with information of their interests; Chair may served as BD member; assessment of BD's performance; Propose annual calendar of meeting;	CEO connects b.t BD and the co.;
CFO	Each periodic report containing financial statements accompanied by a written statement by the CFO	N/A (for further research and implementation)
Corporate Secretary	Assist Chairman in BD's agenda; Record files and publish minute of meeting;	Not a director;
Compliance officer		N/A (for further research and implementation)
Board of Directors or Management Board	MGT with respect to business, risks and people;	Ensure co.'s sustainability;
Independent director	Not a controlling shareholder; Not a partner of an audit firm at least 3 yrs; Can attend BD's meeting;	N/A (for further research and implementation)
Supervisory board to the Management	CEO and BD;	N/A (for further research and implementation)
Supervisory to the Board of Directors	Independent members; BD' Committees advise on Business and Development Plan;	N/A (for further research and implementation)
Internal control	Policies and limits of authority by Board; Developed by MGT;	Compliance with operating and financial processes;
Internal audit	proactively act on improved controls, standards;	Examined by AC;
External audit	Selected and evaluated by Board; review and assess MGT and IA practices; Assessed by BD and AC;	May report directly to shareholders
Disclosure and transparency	Have a disclosure policy which is Complete, Objective and timely.	Manual for Handling Information of the Co. reviewed by AC; Non-audit service disclosed to investors in periodic reports
Shareholders	BD and Chairman connect b.t shareholders and the co.;	Ensure co.'s sustainability;

	Understand business and deals with social and environmental principles;	
Stakeholders	Set formal reporting channel to gather opinions, complaints from stakeholders;	Board ensure a balance b.t shareholders and other stakeholders; Each situation resolved at the pertinent level;
Accountability	Formal reporting channel to gather opinions, complaints from stakeholders	N/A (for further research and implementation)
Leadership	Strategic guidelines by Board Chairman and CEO;	Performed by Chairman;
Employee	Former employee can be external or internal directors;	N/A (for further research and implementation)
The corporation as a whole entity	Recognize international standards such as accounting practice and guidelines of economic, social, financial, environmental and CG;	Establish Code of Conduct with subjects, but not limited to, of social, environmental, conflicts of interest, insider information, related parties, work safety and use of co.'s assets.
The Code	Increase values for shareholders and other stakeholders	Create a stronger, more transparent and accountable institutional environment

(Note: source are based on corporate governance standards of group <D.1> and <D.2> and the appraisal of these standards)

Conclusion

Among several key corporate governance issues is the lack of an efficient internal control and auditing systems, together with the need to build a good disclosure policy in the corporation. To do this, the Code should have certain characteristics such as its goals of increasing values for different stakeholders. While The American SOA have some certain strong features in setting up the functions of internal control division, the Brazil Code also emphasizes on duties and roles of each party in the hierarchical structure and levels of the firm, and the Chile Code is trying to enhance the organization of different Committees.

In consideration of corporate governance issues analyzed in the previous sessions, we proposed the main and sub quality factors in this paper **a set of general corporate governance standards** in a limited American model with selected countries. Though limited, It has some implications for further research and proper recommendations to relevant government and organizations.

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Glossary and Notes

AGM	Annual General Meeting, (and GM, in which can be facilitated by Internet tools)
AFG	Association Francaise de la Gestion financiere
CGB	Corporate Governance Board
GM	General Meeting (see above) or Shareholders' Meeting
AGM	Annual General Meeting
CG	Corporate Governance
DG	Directorates Governance
SB	Supervisory Board
BD	Board of Directors
SGB	Supreme Governing Body (SB and BD)
CGB	Central Governing Body (SB and BD)
CEO	Chief Executive Officer, or Chief Executive
EP	Executive President
CFO	Chief Financial Officer, or Finance Director
MB	Management Board
AC	Audit Committee
CNC	Compensation or Numeration Committee
NC	Nominating Committee
SEC	The Securities and Exchange Commission
MGT	Management
BM	Board Meeting
AR	Annual Report
IA	Internal Audit
RM	Risk Management
IC	Internal Control
HR	Human Resource
SA	Senior Administration
FAQs	Frequently Asked Questions
b.t	between

Exhibit

Exhibit 1 – The US Corporate Governance policies (a short summary evaluation)

Subjects or parties	Main quality factors	Sub quality factors	Responsibilities	Objectives	Note
Audit committee	Understand GAPP; experience in the application of such principles in connection with the accounting for estimates, accruals, and reserves; experience with internal accounting controls	Established by Boards	Overseeing financial report processes and audits; may delegate to 1 or more designated members of the AC who are independent directors of the BD; may approve an audit service within the scope of the engagement of the auditor	<u>Not mentioned clearly in the Code</u>	AC is the Board, if no committee.
Nomination committee	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Compensation or Remuneration committee	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
CEO	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	Each periodic report containing financial statements accompanied by a written statement by the CEO	<u>Not mentioned clearly in the Code</u>	Required by SOA
The Chair					
CEO and The Chair relationship	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Corporate Secretary	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Compliance officer	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Board of Directors	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	Principal stockholders required to file the statement;	Compliance with the securities laws; in accordance with GAPP;	

Executive director	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Non-executive director	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
(Senior) Independent director	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
CFO (senior financial officer)	Disclose code of ethics, if have;	<u>Not mentioned clearly in the Code</u>	Each periodic report containing financial statements accompanied by a written statement by the CFO	<u>Not mentioned clearly in the Code</u>	
Management team	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	Establish and assessment effectiveness of adequate internal control structure and procedures for financial reporting;	<u>Not mentioned clearly in the Code</u>	
Supervisory board	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Internal control	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	Evaluated by Independent Auditing or Registered Public accounting firm;	<u>Not mentioned clearly in the Code</u>	
Internal audit	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
External (Independent) audit /registered public accounting firm;	“professional standards” governed by Auditing Board’s accounting principles, quality control policies relate to issuance of audit report;	<u>Not mentioned clearly in the Code</u>	Prepare audit report; follow the scope of testing internal control structure and procedures by Auditing Board; Auditing Board also evaluate whether these procedures include records accurately and fairly reflect the transaction, and receipts & expenditures in accordance with authorizations of	Compliance with the securities laws; in accordance with GAPP; Required by SOA	As understood from the SOA

			management & directors, as well as description of material weakness in internal control; monitor ethics and independence; supervision of audit work;		
Disclosure and transparency	Non-audit service disclosed to investors in periodic reports	disclose whether or not, and if not, the reason therefor, adopted a code of ethics for senior financial officers	registered public accounting firm timely report to AC on all critical accounting policies and practices to be used, and all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials, as well as written communication and management letter with MGT;	within generally accepted accounting principles;	
Shareholders and Minority Stockholder	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	Principal stockholders required to file the statement;	In accordance to SOA;	
Accountability	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Leadership	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Employee	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	Principal stockholders required to file the statement;	In accordance to SOA;	
Note	The underlined part is describing some more works needed to be done for relevant subjects and parties. Session 302 and 404, SOA are also involved.				

Exhibit 2 – Corporate Governance system

(source: Brazil Code of Best Practice of CG)

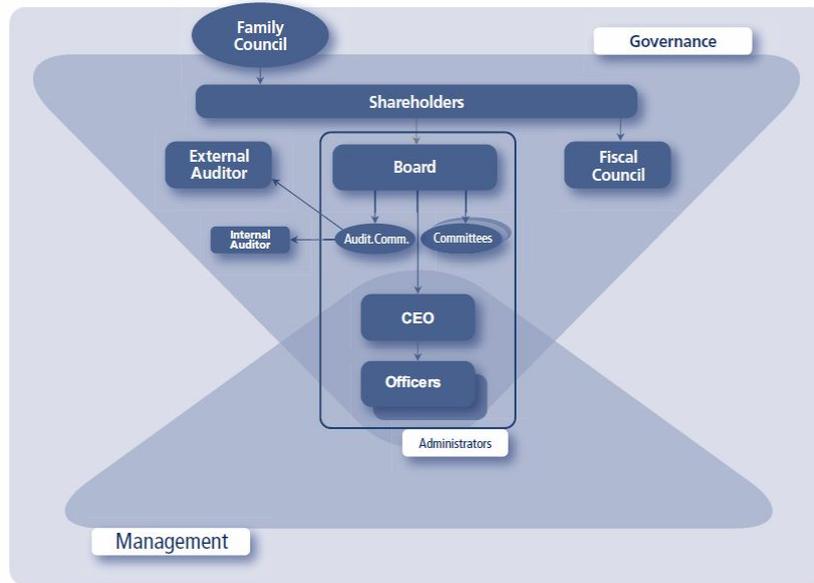


Exhibit 3 – The Model of Construction of Limited Comparative American corporate governance standards

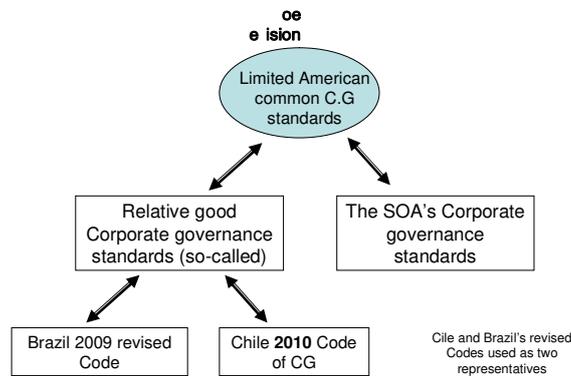


Exhibit 4 – Evaluation of Brazil 2009 Code Corporate Governance

Subjects or parties	Main quality factors	Sub quality factors	Responsibilities	Objectives	Note
Audit committee	Formed by independent members of Board; At least three (3) members, one with auditing knowledge;	Qualifications and time required by Board; own Internal regulations;	Compensation approved by GM;	Ensure quality of information from subsidiaries and affiliates;	
Nomination (HR) committee	Independent member of Board;	Use experts to compare co.'s compensation with others;	Understood in HR Committee; hire and dismiss officers; Monitor succession processes at all levels;	<u>Not mentioned clearly by the Code;</u>	
Compensation or Remuneration committee	Formed by independent members of Board; At least three (3) members;	Qualifications and time required by Board; own Internal regulations;	<u>Not mentioned clearly by the Code;</u>	<u>Not mentioned clearly by the Code;</u>	
CEO	Different from Chair, in person and in roles	Not chair of Board of another organization ;	Compensation approved by GM; Hired and assessed by Board; Attend BD's meetings as guest; Assessment made by BD; connects b.t BD and the co.; coordinate MGT; develop and implement operating and financial processes and guidelines by BD; nominate officers;	Goals set by BD; ensure stakeholders with information of their interests; Compliance with Code of Conduct;	With exceptions in the Code;
The Chair	Different from CEO, in person and in roles	Not chair of Board of another organization ;	May served as BD member; assessment of BD's performance; Propose annual calendar of meeting; Schedule for BD on major issues;	Ensure effectiveness and good performance of Board;	With exceptions in the Code;
CEO and The Chair relationship	Different Duties;	Not chair the Board of another organization	Chair may serve as member at two (2) other Boards;	Avoid power focus;	
Corporate Secretary	Not a director; professional;	<u>Not mentioned clearly by the Code;</u>	Support CG processes; Assist Chairman in BD's agenda; Record files and publish minute of meeting;	<u>Not mentioned clearly by the Code;</u>	
Compliance officer	<u>Not mentioned clearly by the Code;</u>	<u>Not mentioned clearly by</u>	<u>Not mentioned clearly by the Code;</u>	<u>Not mentioned clearly by the Code;</u>	

		<u>the Code:</u>			
Board of Directors	MGT with respect to business, risks and people; Experience as senior officer, in people MGT; Knowledge of business and markets; Own judgement; Include External and Independent directors; BD's Internal Rules;	be accountable for their action; Participate in other BDs; Financial literacy; Legal knowledge; be aligned with co.'s code of conduct; term <= 2 yrs; Meeting docs received 7 days in advance;	Operate business and deals with social and environmental principles; Compensation approved by GM; Decide business' direction; optimize long term ROI; seek a balance b.t stakeholders; Handle conflicts of interest; Approve CAPEX, Code of Conduct;	Ensure co.'s longevity; according to co.'s best interests	No. of directors suggest from five (5) to eleven (11)
Executive director		be accountable for their action; adequately compensated;	Operate business and deals with social and environmental principles; elected at GM; May serve as directors; attend BD's meeting;	<u>Not mentioned clearly by the Code;</u>	No. of directors suggest from five (5) to eleven (11)
Non-executive (external) director		Former officers and employees; adequately compensated;	Can attend BD's meeting;	<u>Not mentioned clearly by the Code;</u>	
Independent director	Not a controlling shareholder; Not a partner of an audit firm at least 3 yrs;	Not an employee for at least 3 yrs; adequately compensated;	Can serve at five (5) Councils; Lead discussions with conflicts when CEO and Chair are the same person; Can attend BD's meeting;	<u>Not mentioned clearly by the Code;</u>	No. of directors suggest from five (5) to eleven (11)
CFO	<u>Not mentioned clearly by the Code;</u>	<u>Not mentioned clearly by the Code;</u>	<u>Not mentioned clearly by the Code;</u>	<u>Not mentioned clearly by the Code;</u>	
Management team (Board)	Adopt social and environmental matters when making deals and business;	Incentive pay structure different from Directors; duties performed by each officer;	List and calculate main risks; Develop reliable internal control; provide AC with significant variations b.t budgeted and actual amounts;	Compliance with Code of Conduct;	
Supervisory board	<u>Not mentioned clearly by the Code;</u>	Independent member; temporary body;	<u>Not mentioned clearly by the Code;</u>	<u>Not mentioned clearly by the Code;</u>	
Internal	<u>Not mentioned</u>	Can be	Policies and limits of	Reliability; Compliance	

control	<u>clearly by the Code;</u>	reviewed by external auditor;	authority by Board; Developed by MGT; Developed by CEO and approved by BD;	with operating and financial processes;	
Internal audit	proactively act on improved controls, standards;	be accountable for their action; may cooperate with external auditor;	Operate business and deals with social and environmental principles; Assessed by BD and AC; report to AC or BD;	Perfectly aligned with co.'s strategy;	
External (Independent) audit	be accountable for their action;	May report directly to shareholders, if BD absence; agreement maximum 5 yrs;	Selected and evaluated by Board; review and assess MGT and IA practices; Assessed by BD and AC; Discuss AC changes in accounting standards; Determine whether financial statements reflect co.'s reality;	Whether financial statements by MGT reflect co.'s equity and financial position;	As understood from the Code;
Disclosure and transparency	Have investor relation officer; may not disclose information endangering legitimate interest of the co.	Not merely information imposed by laws; Disclose dividend policy; equal conditions to all shareholders;	The co. answers most FAQs from shareholders, investors; Transparent compensation procedure; disclose risk factors, related parties transactions in regular reports;	Provide interested parties with information that is of interest;	
Shareholders and Minority Stockholder	One share one vote; GM's agenda not include vague words: "other matters"; Encourage interaction among shareholders;	Fair treatment; Notice of GM sent 30 days in advance; use webcasting, online broadcasting, e-and proxy voting, e-signature and digital certification;	Understand business and deals with social and environmental principles; Discuss financial statements, Elect and remove Board at GM; Approve CEO and Board's compensation; BD and Chairman connect b.t shareholders and the co.;	<u>Not mentioned clearly by the Code;</u>	Provide reason for exceptions of "1 share 1 vote" concept
Accountability	Board, executives, auditors shareholders be accountable for their action;	Formal reporting channel to gather opinions, complaints from stakeholders;	Encourage debate among shareholders on composition of Fiscal Council;	<u>Not mentioned clearly by the Code;</u>	
Leadership	<u>Not mentioned</u>	<u>Not</u>	Strategic guidelines	<u>Not mentioned clearly</u>	As understood

	<u>clearly by the Code;</u>	<u>mentioned clearly by the Code;</u>	by Board;	<u>by the Code;</u>	from the Code;
Employee	Act to protect co.'s interests, if nominated;	Posses necessary skills;	Former employee can be external or internal directors;	<u>Not mentioned clearly by the Code;</u>	
Note	The underlined part is describing some more works needed to be done for relevant subjects and parties. Recommendations given to organizations such as establishing a Board and Committees like Finance, Governance.				

Exhibit 5 – Evaluation of Chile 2010 Code of CG

Subjects or parties	Main quality factors	Sub quality factors	Responsibilities	Objectives	Note
Audit committee (integrated with Compensation Committee)	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	Control IA; Examine External Auditors and purchasing procedures; review Business Policy with 3 rd parties; Review the application of Code of Conduct and Ethics;	Meeting more efficient, knowing, taking decisions on specific subjects; Recommend to BD;	Understood as Committees of Directors, from the Code;
Nomination committee	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Compensation, Remuneration (Directors') committee	<u>Not mentioned clearly in the Code</u>	Remuneration Policies approved by BD;	Monitor VP, EP, General manager's compensation policy;	Meeting more efficient, knowing, taking decisions on specific subjects; Recommend to BD;	Understood as Committees of Directors, from the Code;
CEO (Executive President)	<u>Not mentioned clearly in the Code</u>	Present at BD's meeting;	BD delegates authorities on EP; Proposals on modifications of internal norms of the Co. and Manuals of responsibilities of senior;	<u>Not mentioned clearly in the Code</u>	
The Chair	<u>Not mentioned clearly in the Code</u>	Handle relations with shareholders ;	The P.R names the Chairman of Board; Ensure BD and Committees establishing a good internal operation; Manage BD as a team; Interact with Ministry of Finance;	<u>Not mentioned clearly in the Code</u>	BD's meeting may be without EP;
CEO (EP) and The Chair relationship	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	Chairman be responsible fir the BD's Agenda;	<u>Not mentioned clearly in the Code</u>	
Corporate Secretary	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	Collaborate with Chairman to program, coordinate the monthly and ordinary meeting;	<u>Not mentioned clearly in the Code</u>	
Compliance officer	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	The P.R approves and modifies the Bylaws of the Co.	<u>Not mentioned clearly in the Code</u>	
Board of Directors	A combination of experience, competence and other abilities; independence;	Protect co. in relation to pressures from stakeholders adversely	The P.R elects sis directors; Govern and administer the Co.; Select, appoint and evaluate EP; Design and control of	Project and value co.'s long term net worth;	

	objectivity; Diversity of roles in BD;	affect its mission; represents co.'s interests;	Strategic Project; Discuss, approve Business Plan for next 3 yrs; Approves metrics of MGT control; Approves Financial statements; Constitute Committees of Directors;		
Executive/ Representative director	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Non-executive director	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Independent director	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
CFO	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Management team (<i>Senior Administration</i>)	<i>Efficiency in the use of mining, HR, and capital of the co.</i>	MGT processes designed also by the EP;	MGT metrics , Division's goals controlled by BD; MGT system related to health, safety, environment supervised by Sustainability Committee; Prove BD with all basic information; <i>Carry out resolutions of the BD; Supervise all administrative and financial policies; Propose to BD Business Plan and organizational structure;</i>	<u>Not mentioned clearly in the Code</u>	<i>Italic words are for SA</i>
Supervisory for the board	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	BD' Committees advise on Business and Development Plan;	<u>Not mentioned clearly in the Code</u>	
Supervisory for the managers	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	The Committees, as understood from the Code	<u>Not mentioned clearly in the Code</u>	
Internal control	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	Risk control policy approved by BD;	<u>Not mentioned clearly in the Code</u>	
Internal or statutory audit	<u>Not mentioned clearly in the Code</u>	Examined by AC;	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	

External audit	<u>Not mentioned clearly in the Code</u>	Examined by AC;	Proposed by BD;	<u>Not mentioned clearly in the Code</u>	
Disclosure and transparency	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	Manual for Handling Information of the Co. reviewed by AC;	<u>Not mentioned clearly in the Code</u>	
Shareholders and Minority Stockholder	<u>Not mentioned clearly in the Code</u>	Chairman and EP coordinate, by case, the most effective way;	The P.R exercises the duties of GM	<u>Not mentioned clearly in the Code</u>	
Accountability	<u>Not mentioned clearly in the Code</u>	Maintenance climate of trust which permit open discussion;	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	
Leadership	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	Performed by Chairman, understood from the Code;	<u>Not mentioned clearly in the Code</u>	
Employee	<u>Not mentioned clearly in the Code</u>	<u>Not mentioned clearly in the Code</u>	The Code mentions senior administration's roles	<u>Not mentioned clearly in the Code</u>	
Note	The underlined part is describing some more works needed to be done for relevant subjects and parties. There are CG and Sustainability, MGT, Financing of Investment Committees				

Exhibit 6 – Three (3) Factors in Board composition decision making model in Brazil 2009
Code

	Factors
The firm	Objectives
The firm	Stage and maturity
Board's Performance	Expectation

Exhibit 7 – Corporate governance parties

(Source: Loh Leong Hua & Ragayah Haji Matzin, *Corporate Governance: Theory and some insights into the Malaysian Practice*, 2007)

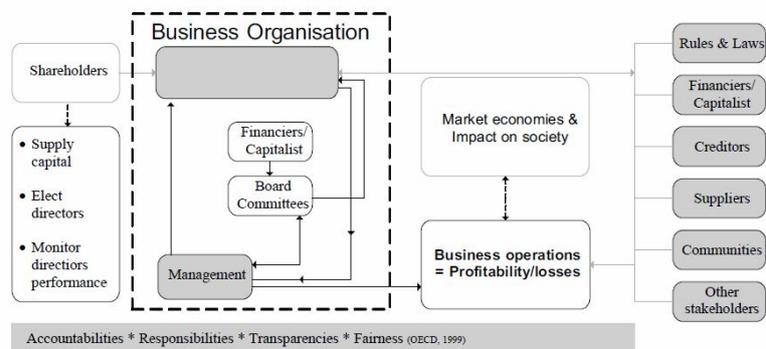


Exhibit 8 – Five (5) Key Elements in Corporate Governance

(Source: IFC, World bank group, 2006)

<p>Good board practices</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Roles and authorities are clearly defined <input checked="" type="checkbox"/> Duties and responsibilities of directors understood <input checked="" type="checkbox"/> Board is well structured <input checked="" type="checkbox"/> Appropriate composition and mix-of-skills <input checked="" type="checkbox"/> Appropriate board procedures in place <input checked="" type="checkbox"/> Director remuneration in-line with best practice <input checked="" type="checkbox"/> Board self-evaluation and training conducted 	<p>Control environment and processes</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Independent audit committee established <input checked="" type="checkbox"/> Risk management framework/structure present <input checked="" type="checkbox"/> Internal control procedures in place <input checked="" type="checkbox"/> Internal audit function in place <input checked="" type="checkbox"/> Independent external auditor conducts audits <input checked="" type="checkbox"/> Management information systems established <input checked="" type="checkbox"/> Compliance function established
<p>Disclosure and transparency</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Financial information disclosed <input checked="" type="checkbox"/> Non-financial information disclosed <input checked="" type="checkbox"/> Financials prepared according to IFRS <input checked="" type="checkbox"/> High-quality annual report published <input checked="" type="checkbox"/> Web-based disclosure and investor site in place 	<p>Shareholder rights</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Minority shareholder rights are formalized <input checked="" type="checkbox"/> Well organized general assembly conducted <input checked="" type="checkbox"/> Policy on related party transactions in place <input checked="" type="checkbox"/> Policy on extraordinary transactions in place <input checked="" type="checkbox"/> Clearly defined and explicit dividend policy
<p>Commitment</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Board discusses corporate governance issues and has created corporate governance committee <input checked="" type="checkbox"/> Company has nominated a corporate governance champion <input checked="" type="checkbox"/> Corporate governance improvement plan is in place <input checked="" type="checkbox"/> Appropriate resources are committed to corporate governance <input checked="" type="checkbox"/> Policies and procedures have been formalized and distributed to relevant staff <input checked="" type="checkbox"/> Company has developed corporate governance code or guidelines <input checked="" type="checkbox"/> Company is publicly recognized as a corporate governance leader 	

Exhibit 9 – Ratio of Institutional Investors in favor of CG

(source: 2002 Global Investor Opinion Survey, McKinsey/KIOD Survey on CG)

Percentage of respondents

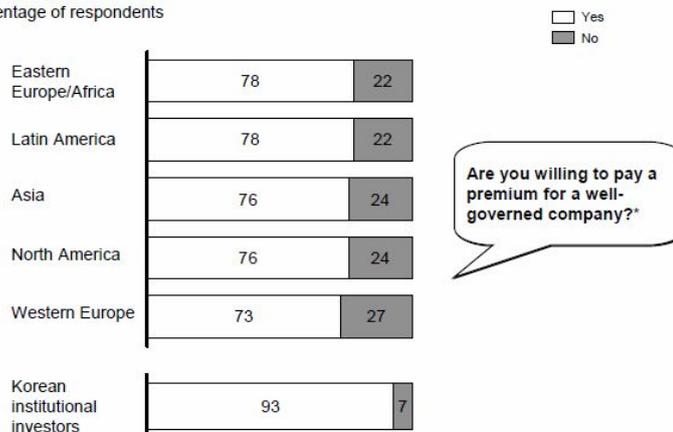


Exhibit 10 – Summary of Criteria for “Code of Ethics”, in the SOA 2002

Criteria	Note
Code of ethics	(1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
	(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer;
	(3) compliance with applicable governmental rules and regulations.

Exhibit 11 – Disclosure and audit requirements in some Latin America countries
 (source: Secretaria de Previdência Complementar, ABRAPP, and OECD 1998,1999)

	<i>Required disclosure</i>	<i>Independent audits</i>	<i>Governance structure</i>	<i>Liability of pension fund manager</i>
Argentina (Mandatory system)	<p>Monthly/annual reports to contributors</p> <p>Weekly publication of portfolio holdings and Valuations in newspapers</p> <p>Daily reporting to pension fund regulator on portfolio valuation.</p> <p>Valuation is done at cost for "investment portfolio" – about 30% of assets and at market for all others.</p>	<p>Pension fund regulator can audit the valuations</p> <p>Annual external auditing required.</p>	<p>Pension fund manager and pension fund are required to be separate entities. Banks, holding companies, foreign investors, etc. are allowed to own pension fund managers subject to certain eligibility criteria.</p> <p>Close supervision by regulator</p> <p>No requirements for worker/retiree representatives to be part of governance structure.</p> <p>Pension funds assets are independent of pension fund managers' assets.</p> <p>Custody of assets only with institutions authorized by regulator.</p>	<p>Pension funds' return is required to be within a band (plus or minus the littlest of 30% of average or 2%) of the average industry return. If return is lower, pension fund manager compensates the contributors up to the minimum. If return is over the maximum of the band, excess is transferred to a reserve fund, from which compensation to contributors to made in case of future poor performance. If reserve fund is inadequate, fund manager is required to bring in own resources, failing which fund manager is liquidated and assets transferred to another pension fund. The government makes up the loss in the last eventuality.</p> <p>No minimum performance requirement.</p>
Brazil (occupational)	<p>Not required to provide information to beneficiary</p> <p>Provide information on operations and asset allocation to supervisory authorities.</p>	<p>Audit by independent auditor.</p>	<p>Closed funds are set up as foundations and be legally different from sponsoring companies.</p> <p>Assets of funds have to be housed in independent custodians.</p>	<p>No minimum performance requirement.</p>
Chile (Mandatory system)	<p>Annual reports to contributors</p> <p>Weekly publication of portfolio holdings and Valuations in newspapers</p> <p>Daily reporting to pension fund regulator on portfolio valuation.</p> <p>Valuation is done at market for all assets for which prices are available. Else, valuation is done by rules set by the regulator.</p>	<p>Pension fund regulator can audit the valuations</p> <p>Annual external auditing required.</p>	<p>Pension fund manager and pension fund are required to be separate entities. Banks and insurance companies cannot directly own pension funds, although they can do so either through their holding companies or subsidiaries.</p> <p>Close supervision by regulator</p> <p>No requirements for worker/retiree representatives to be part of governance structure.</p> <p>Pension funds assets are independent of pension fund managers' assets.</p>	<p>Similar performance band as in Argentina and similar sanctions on fund manager.</p>

Author note: My sincere thanks go to Volker Schallehn, Darcey and editorial office for the in-need helpful work. Through the qualitative analysis, please kindly email me if any error found.