



COMPARED REGULATIONS SERIES

**PENSION FUNDS:
RIGHTS AND RESPONSIBILITIES OF THE PENSION
FUND MANAGERS IN THE COMPANIES IN WHICH
THEY INVEST THE PENSION FUNDS¹**

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Executive Summary

The purpose of this compared regulations report is to analyze the rights and responsibilities of pension fund managers in the companies in which they have invested pension assets, as well as the conditions, restrictions, rules and corporate governance requirements imposed for exercising such rights and meeting their responsibilities.

The description of the compared regulations begins with the presentation of the overall objectives of pension fund investments in different countries. With the exception of Kazakhstan, all laws impose general mandates on the fund managers. They are established in different ways, but in general force the fund managers to invest the social security resources in the best interests of their members and beneficiaries and/or seek to maximize total return, achieve capital preservation, diversify assets and provide liquidity for the pension funds.

It is noteworthy that some countries incorporate other objectives into the mandate that are not directly related to the investment results of the pension funds. For example, in Costa Rica, the regulations state that in addition to capital preservation, total return, liquidity and the interests of members, the Superintendency must ensure investment in instruments that will allow the participation of members in the ownership of production factors and an investment structure aimed at strengthening the financing of housing for workers. In Mexico, fund managers must also concentrate on increasing domestic savings and developing a long-term instruments market. Investments must be directed mainly towards boosting national productive activity, job creation, housing construction, the development of the country's strategic infrastructure and regional development. In the Dominican Republic, on the other hand, the investment goal must be the obtainment of total return for members (any other purpose is illegal), but total return and capital preservation being equal, the AFPs should prioritize activities that optimize the impact on the creation of jobs, housing and the promotion of industrial and agricultural activities.

Regarding the rights and responsibilities of the pension fund managers in the companies in which they invest the social security resources, nine countries of a total of seventeen analyzed have no provisions in the social security laws that address this issue. Nonetheless, there could be other laws and/or complementary laws that establish rules and regulations governing these matters.

The scope of these rules and regulations differs between countries when the pension law, or other legislation, sets out rules and regulations governing the actions of the fund managers in the companies in which they invest the funds. The main provisions embodied in some of the regulations refer to the following:

- Requirement to exercise the corresponding political rights (in some cases applies only when the investment is relevant – Colombia and the Dominican Republic).

- Definition of a policy approved by the boards of the fund managers for exercising these rights and documenting the instructions given to the representatives in the execution of such rights.
- Requirement to attend shareholder and corporate bondholder meetings and the general assemblies of the fund managers, with the duty to participate in the appointment of the boards of Directors and/or express an opinion on the matters discussed.
- Requirement to report its actions to the supervisory bodies.
- Definition of requirements and rules and regulations for the appointment of candidates to the position of company director and penalties for non-compliance.
- Establishment of a directors' registry in the supervising agency.
- Conditions that representatives of the fund managers must meet in order to prevent potential conflicts of interest.
- Authorization to act jointly in the appointment of the representatives of pension funds.
- Prohibition to interfere in the management of companies and control the decisions of the members of the boards of directors they supported.
- Right to withdraw from State enterprises if they meet certain conditions.
- Authorization to subscribe judicial and extra-judicial agreements to avoid damage to the pension funds.
- Requirement to take legal action against those who cause damage to the pension funds.
- Ensure that issuers who receive the investment of the pension funds have corporate governance standards.

Costa Rica is a noteworthy exception in that the representatives of the fund managers cannot vote and the shares owned by the funds are not taken into account in the appointment of the Board of Directors.

Finally, the document provides information regarding the corporate governance rules and regulations of companies and the degree of investor protection in different countries, based on assessments performed by the International Finance Corporation and the World Bank in 2011. In general, one could conclude that the qualification of the different countries studied is average, which shows that progress has been made, but significant progress is still

lacking for achieving a sound corporate governance environment and adequate protection for investors.

On average, the relative assessment is lower regarding the board's liability for its actions (average of 4.0 on a scale of 0 to 10), and better in the transparency of information (5.5) and power of shareholders (6.6), although there are wide discrepancies among countries. Highlights include the good overall rating of Colombia (8.3) and the poor qualifications of Honduras (3.0), Bolivia (4.0) and El Salvador (4.3).

Responsibilities of the fund managers in the companies in which they invest the pension funds (October 2011)

Subject	Bolivia	Bulgaria	Chile
Purpose of the management of the investments	Funds must be invested in the best interests of members, with the care required of the “head of a family” and in accordance with the principles of capital preservation, liquidity, total return and diversification.	Due care in accordance with principles of capital preservation, liquidity, total return and diversification, in the best interests of members.	Obtain reasonable return and risk protection, serving only the interests of members.
Responsibilities of the fund managers in the companies in which they invest the funds (1)	-	-	Attendance of shareholder and bondholder meetings of companies and the general assemblies of pension fund contributors, with the duty of expressing an opinion on the matters discussed. There are requirements and rules and regulations governing the appointment of candidates to the position of director in the companies in which the funds invest. These must be registered in a directory of the Superintendency. There are also conditions that the candidates to the position of director must meet in order to avoid conflicts of interest. Fund managers can act jointly, but cannot participate or interfere in the management of companies. There is a right to withdraw from companies controlled by the State. Fund managers can engage in transactions and judicial and extra-judicial commitments, settlements, extensions and novations to avoid damage to the funds due to non-compliance in the payment of debt securities. Fund managers must take legal action against those who cause harm to the funds, through a summary procedure.
Degree of protection to the investor (2)	General Protection: 4 Transparency of Information: 1 Liability of the board of directors: 5 Power of the shareholders to file suit: 6	General Protection: 6 Transparency of Information: 10 Liability of the board of directors: 1 Power of the shareholders to file suit : 7	General Protection: 6,3 Transparency of Information: 8 Liability of the board of directors: 6 Power of the shareholders to file suit : 5

(1) Only includes those responsibilities that are directly related to the representation of members in companies that invest the pension funds, referred to explicitly in pension laws and not fiduciary responsibilities that could be defined in other laws, except when information has been received from the same associations.

(2) Source: Doing Business, Measuring Business Regulation. International Finance Corporation and World Bank. Year 2011. Scale 0 to 10, where a higher score reflects greater protection to the investor.

Responsibilities of the fund managers in the companies in which they invest the pension funds (October 2011)

Subject Matter	Colombia	Costa Rica	Curacao
Purpose of the management of the investments	In order to ensure capital preservation, total return and liquidity of the system's assets, fund managers should invest in accordance with the conditions and limits established by the National Government, which must consider, among others, types and percentages of admissible assets according to the degree of risk.	Necessary balance between capital preservation, total return and liquidity for the benefit of investors. Notwithstanding the above, the Superintendency must seek investment instruments that will allow participation by members in the ownership of production factors and a portfolio structure aimed at strengthening the financing of worker housing.	Fund managers must invest pension funds in order to achieve a total return that increases the pensions or pension equity of members.
Responsibilities of the fund managers in the companies in which they invest the funds (1)	Although not established by law, the AFPs have the following obligations: (i) exercise the political rights corresponding to the investments made with mandatory pension funds, when the participation of the four funds is understood to be "relevant"; (ii) ensure that the interests of members always prevails and exercise political rights in accordance with a policy adopted by its Board of Directors; (iii) document the analyses and instructions imparted to their representatives for the exercising of political rights; (iv) participate in the appointment of members of Board of Directors of the issuers of securities in which they invest; (v) do not control the actions of the members of the Board of Directors whose appointment they promote or support; and (vi) ensure that issuers who receive allocations of mandatory pension funds investments have corporate governance standards that comply with the internal policies of the AFPs.	The fund manager exercises corporate rights related to the company shares belonging to the funds. None of the members or staff of the fund manager can be appointed to the Board of Directors of such companies, nor be appointed to supervise them. The fund manager's representative in the shareholders' meeting cannot vote in the appointment of the Board of Directors; the shares belonging to the funds are not taken into account.	No information available.
Degree of protection to the investor (2)	General Protection: 8,3 Transparency of Information: 8 Liability of the Board of Directors: 8 Power of the shareholders to file suit: 9	General Protection: 3 Transparency of Information: 2 Liability of the Board of Directors : 5 Power of the shareholders to file suit : 2	No information available.

(1) Only includes those responsibilities that are directly related to the representation of members in companies that invest the pension funds, referred to explicitly in pension laws and not fiduciary responsibilities that could be defined in other laws, except when information has been received from the same associations.

(2) Source: Doing Business, Measuring Business Regulation. International Finance Corporation and World Bank. Year 2011. Scale 0 to 10, where a higher score reflects greater protection to the investor.

Responsibilities of the fund managers in the companies in which they invest the pension funds (October 2011)

Subject Matter	El Salvador	Honduras	Kazakhstan
Purpose of the management of the investments	Obtain a reasonable return in conditions of capital preservation, liquidity and risk diversification; any other purpose is contrary to the interests of pension funds.	Absolute liability of the AFPs, as faithful guarantors of the financial resources entrusted to them.	Obtain total return in the interests of members.
Responsibilities of the fund managers in the companies in which they invest the funds (1)	The fund managers can enter into contracts with issuers requiring them to buy or replace the acquired securities if the agreed conditions are met; define price calculation securities substitution mechanism; and establish term and manner of implementation of the transaction.	-	-
Degree of protection to the investor (2)	General Protection: 4,3 Transparency of Information: 5 Liability of the Board of Directors : 2 Power of the shareholders to file suit : 6	General Protection: 3 Transparency of Information: 0 Liability of the Board of Directors : 5 Power of the shareholders to file suit : 4	General Protection: 6 Transparency of Information: 8 Liability of the Board of Directors : 1 Power of the shareholders to file suit : 9

(1) Only includes those responsibilities that are directly related to the representation of members in companies that invest the pension funds, referred to explicitly in pension laws and not fiduciary responsibilities that could be defined in other laws, except when information has been received from the same associations.

(2) Source: Doing Business, Measuring Business Regulation. International Finance Corporation and World Bank. Year 2011. Scale 0 to 10, where a higher score reflects greater protection to the investor.

Responsibilities of the fund managers in the companies in which they invest the pension funds (October 2011)

Subject matter	Mexico	Panama	Peru
Purpose of the management of the investments	Reasonable return and safety, exclusively serving the interests of workers. Increase domestic savings and the development of a long-term instruments market suitable to the pension system. Investment must be directed predominantly to promoting national productive activity, job creation, housing construction, development of the country's strategic infrastructure and regional development.	Fund managers must act according to the principles of capital preservation, total return, diversification, and monetary coherence (2/3 of investment must be made in the currency in which the benefits are paid).	Fund 1: preservation of capital, seeking steady growth with low volatility. Fund 2: Mixed, seeking moderate growth with average volatility. Fund 3: Capital appreciation, seeking a high level of growth with high volatility.
Responsibilities of the fund managers in the companies in which they invest the funds (1)		There are no rules and regulations governing these matters.	Appointment of representatives to exercise on behalf of the funds the rights and obligations in stocks and securities which grant property rights, subject to good corporate governance practices and encouraging their adoption in businesses. Obligation to express an opinion in shareholder meetings and record their votes. Superintendency regulates conditions for representatives, rules for appointing the boards of directors of companies and sanctions. Prohibition of voting for candidates who are shareholders, directors, managers or employees of a fund manager.
Degree of protection to the investor (2)	General Protection: 6 Transparency of Information: 8 Liability of the Board of Directors : 5 Power of the shareholders to file suit : 5	General Protection: 4,7 Transparency of Information: 1 Liability of the Board of Directors : 4 Power of the shareholders to file suit : 9	General Protection: 6,7 Transparency of Information: 8 Liability of the Board of Directors : 5 Power of the shareholders to file suit : 7

(1) Only includes those responsibilities that are directly related to the representation of members in companies that invest the pension funds, referred to explicitly in pension laws and not fiduciary responsibilities that could be defined in other laws, except when information has been received from the same associations.

(2) Source: Doing Business, Measuring Business Regulation. International Finance Corporation and World Bank. Year 2011. Scale 0 to 10, where a higher score reflects greater protection to the investor.

Responsibilities of the fund managers in the companies in which they invest the pension funds (October 2011)

Subject	Poland	Dominican Republic	Romania
Purpose of the management of the investments	Seek to maximize the investment return and capital preservation.	Obtain a real total return and increase the assets of members; any other purpose is illegal. With equal emphasis on managing return and risks, the AFPs must prioritize activities that optimize the impact on job creation, housing construction and the promotion of industrial and agricultural activities.	Manage investments in the interests of members and beneficiaries, guaranteeing capital preservation, quality, liquidity and total return, in a manner appropriate to the nature and time horizon of the rights of members and beneficiaries.
Responsibilities of the fund managers in the companies in which they invest the funds (1)	-	The AFPs must define policies for voting in the appointment of the Directors of companies, in order to avoid conflicts of interest. The AFPs, in representation of the funds, must belong to the board of directors when the investment exceeds 10% of the issuer. The AFPs must attend meetings of shareholders and holders of debt securities, and must vote unless investment is less than 3% of the issuer. Representatives of the AFPs must be appointed by the board of directors of the fund manager. The AFPs can perform transactions, legal agreements, extensions, renewals and other commitments in order to protect the solvency, liquidity and total return of the instruments. They can also participate with the right to voice and vote at meetings of creditors, or competitive procedures.	The fund managers exercise in favor of members the right to vote in the shareholder' meetings. Vote must be cast in the best interest of members and beneficiaries.
Degree of protection to the investor (2)	General Protection: 6 Transparency of Information: 7 Liability of the Board of Directors : 2 Power of the shareholders to file suit : 9	General Protection: 5,7 Transparency of Information: 5 Liability of the Board of Directors : 4 Power of the shareholders to file suit : 8	General Protection: 6 Transparency of Information: 9 Liability of the Board of Directors: 5 Power of the shareholders to file suit : 4

(1) Only includes those responsibilities that are directly related to the representation of members in companies that invest the pension funds, referred to explicitly in pension laws and not fiduciary responsibilities that could be defined in other laws, except when information has been received from the same associations.

(2) Source: Doing Business, Measuring Business Regulation. International Finance Corporation and World Bank. Year 2011. Scale 0 to 10, where a higher score reflects greater protection to the investor.

Responsibilities of the fund managers in the companies in which they invest the pension funds (October 2011)

Subject	Ukraine	Uruguay
Purpose of the management of the investments	Obtain a reasonable return and capital preservation, exclusively safeguarding the best interests of members (third pillar).	Perform investments with criteria of risk management, total return, diversification and compatibility of time horizon, in accordance with the purpose of the funds.
Responsibilities of the fund managers in the companies in which they invest the funds (1)	The second pillar is still not operative.	The fund managers must attend the regular and special meetings of the holders of negotiable obligations, representative of share parts of closed investment funds or financial bonds representative of public offer financial trustees. They must inform the Central Bank of the matters discussed and the resolutions adopted by the shareholders' meetings they have attended.
Degree of protection to the investor (2)	General Protection: 4,7 Transparency of Information: 5 Liability of the Board of Directors : 2 Power of the shareholders to file suit : 7	General Protection: 5 Transparency of Information: 3 Liability of the Board of Directors: 4 Power of the shareholders to file suit : 8

(1) Only includes those responsibilities that are directly related to the representation of members in companies that invest the pension funds, referred to explicitly in pension laws and not fiduciary responsibilities that could be defined in other laws, except when information has been received from the same associations.

(2) Source: Doing Business, Measuring Business Regulation. International Finance Corporation and World Bank. Year 2011. Scale 0 to 10, where a higher score reflects greater protection to the investor.

I. Introduction

The purpose of this compared regulations report is to analyze the rights and responsibilities of pension fund managers in the companies in which they have invested pension assets, as well as the conditions and restrictions imposed on them by the rules and regulations of corporate governance for exercising such rights, while fulfilling their obligations.

The document describes the rights and responsibilities of the pension fund managers in the companies, mutual funds, investment funds and other agencies where pension resources are invested. For each country, the description starts with information regarding the investment objectives of pension funds and the general responsibilities assumed by the fund managers. The information in the study is based on the rules and regulations as defined by the laws governing the individually funded pension systems in the different countries. Other types of legislation, such as ethics and business law, which should contain rules applicable to investors in general, including pension funds, have not been reviewed. When information is not provided, it is because no reference to the subject matter was found in the rules and regulations.

It was also decided to incorporate general comments on corporate governance in each country and an indicator of investor protection, for the purpose of providing a view of the context in which pension fund investments are performed. Finally, information is provided on the investment structure of pension assets (in the countries for which this information is available) to assess the importance of investments in variable income or equity type funds, which assign greater importance to the existence of rights and obligations of the fund managers and corporate governance.

The information provided in the study can be enhanced in future with feedback from members regarding the activities of the pension fund managers, for better controlling investments in companies, over and above what is stipulated in the regulations. For example, as can be seen in the section on Bulgaria, some companies are very active in the protection of their members' interests, even though they are not required to do so by law. A similar situation may occur in other countries.

There was feedback from different trade associations² of the different countries included in the study, which made revisions and improvements possible. We are grateful for this support.

² This report includes comments submitted by FIAP members prior to October, 2011.

II. Results

1. Bolivia³

a) Investment objectives of the pension funds

The assets of the pension funds must be managed by the AFPs in the best interests of members, with the care required of a "good head of the family", and in accordance with the principles of capital preservation, liquidity, total return and diversification. To this end, the AFPs must invest the funds under the conditions and subject to the limits set by the agency responsible for the regulation and supervision of the pension system (current Authority for the Supervision and Social Control of Pensions and Insurance - APS).

Within this context, the AFPs are obligated to seek reasonable return and capital preservation, in consideration of the principle of risk distribution, while preserving the interests and integrity of the funds' assets. The AFPs are at all times obligated to respect and promote the interests of the funds over their own interests. In case of a possible conflict of interests, the AFPs are responsible for consulting with the current APS for the approval or rejection of the cause of the conflict, before making a decision.

The AFPs must make all efforts necessary to ensure the obtainment of adequate return and capital preservation in the investment of the funds they manage. In compliance with their duties, they must primarily serve the interests of the funds and ensure that all security purchase and redemption transactions with their own assets are carried out with such objectives in mind.

b) General responsibilities for pension fund investments and the damages caused to them

It is up to each AFP to manage the funds in the manner stipulated by Law, its regulations and the general provisions issued by the agency entrusted with the supervision and regulation of the pension system (currently APS). The AFPs must carry out all its activities and comply with its unique objectives, with the required care of a "good head of the family" under the regulation and ongoing supervision of the APS.

c) Rules and regulations of corporate governance of companies.

The rules and regulations complementary to the Law define the limits of investment by generic type of instrument, issuer, category and levels of risk and liquidity, in addition to the treatment of the excessive trading, custody, conflicts of interest and unauthorized operations. However, they do not contain specific rules concerning the responsibilities and rights of the pension fund managers in the companies in which they invest the pension resources.

³ This information was received directly from the Bolivian Association of Pension Fund Managers, to whom we are grateful for their collaboration.

Moreover, according to the investor protection index compiled by the World Bank⁴, Bolivia has a score of 4.0 on a scale from 0 to 10⁵, lower than the average of 5.1 of the Latin America and Caribbean countries. The country has average ratings with regard to the power of the shareholders to file suit in case of being adversely affected by certain transactions (6) and the degree of liability the board of directors must assume for its actions (5), but a very poor score with regard to the transparency of information (1).

2. Bulgaria⁶

a) Investment objectives of the pension funds

The assets of the pension funds must be managed by retirement insurance companies in the best interests of members, with due care and in accordance with principles of capital preservation, liquidity, total return and diversification.

b) General responsibilities for pension fund investments and damages caused to them

Pension insurance companies are responsible for any losses recorded in members' savings as a result of malinvestment or ill-intentioned compliance with the obligations related to the management and representation of the pension funds.

The interests of fund members are represented by a Board of Trustees, comprising representatives of business, workers and a representative of pension insurance companies. The rights and obligations of the Board are regulated by the Council of Ministers at the suggestion of the Financial Supervisory Commission. Proposals and decisions of the Board of Trustees are of an advisory nature for the pension insurance companies.

c) Rules of corporate governance of companies⁷

According to Bulgarian legislation (referring specifically to pension funds), the pension fund managers have the right, but not the obligation, to participate in the shareholders' and bondholders' meetings of the companies in which the pension funds have invested, cast a vote and express an opinion on the matters discussed. Some pension insurance companies are aware of these rights and are very active in their implementation for protecting the interests of their members. In some cases the vote of the fund managers has been crucial for the results of shareholders' and bondholders' meetings.

In more general terms, corporate governance rules and regulations are defined in the Public Offering of Securities Law. However, the development of capital markets, investor demands, ongoing experience and access to the European Union have increased the need to make further progress in corporate governance. The national corporate governance code was drawn up in 2007, with the input of company representatives, the stock market, the

⁴ Source: Doing Business, Measuring Business Regulation. International Finance Corporation and World Bank. Year 2011.

⁵ A higher score reflects greater protection of investors.

⁶ Social Insurance Code, Part Two, Supplementary Social Insurance.

⁷ Bulgarian National Code for Corporate Governance. October 2007.

Government, the academic community, national and international experts as well as social organizations. The code took into account and supplemented existing Bulgarian legislation, providing recommendations to Bulgarian companies traded on the stock exchange, which should also be implemented by companies going public. The code was implemented taking into account the principle of "comply or explain" which is applied in the Member States of the European Union. This means that companies need to comply with the code, and if not, explain and report the reasons for their failure to do so. The rationale and structure of the code follows the principles of corporate governance of the Organization for Economic Cooperation and Development (OECD).

In summary, according to the investor protection index compiled by the World Bank, Bulgaria has a score of 6.0 on a scale from 0 to 10, similar to the average of OECD countries and higher than the average for Latin American and Caribbean countries (5.1). The country achieved the maximum rating of (10) for transparency of information and a good assessment of the power of the shareholders to file suit in case of being adversely affected by certain transactions (7), but a very poor score in the degree of liability that the board of directors must assume for its actions (1). (Appendix No. 2).

3. Chile⁸

a) Investment objectives of the pension funds

Investments carried out with assets of the pension funds must have the sole objectives of obtaining reasonable return and preservation of capital. All other purposes are considered contrary to the interests of members and constitute a serious breach of the obligations of the fund managers.

The AFPs must make all efforts necessary to ensure the obtainment of adequate returns and preservation of capital in the investment of the funds that they manage. In compliance with their duties, they must exclusively serve the interests of the funds and ensure that all transactions involving purchases and redemptions of securities with their own resources are performed in accordance with such objectives.

b) General responsibilities for pension funds and damages caused to them

The fund managers are responsible for the damage caused to any of the pension funds during the commissioning of portfolio management, and must respond even for ordinary negligence in such damages caused by the breach of any of its obligations.

The AFPs are also required to compensate the funds for the direct damage that they, any of their directors, employees or individuals who render services to them, may cause them as a result of the implementation or omission of actions corresponding to them. The aforementioned individuals participating in such actions are jointly and severally responsible for this obligation, including incidental damages and loss of earnings. For the

⁸ D.L. 3.500.

benefit of the Fund, the Superintendency may initiate the legal actions it deems pertinent for obtaining the corresponding indemnities derived from such obligations.

In order to ensure compliance with the aforementioned provisions and the prohibitions imposed by law, the Superintendency determines what information the AFPs must maintain and the records to be kept in relation to their own transactions with related parties and the funds they manage. Prior to the transaction of an instrument by a fund manager, it is required to register whether the transaction is being performed on its behalf or on behalf of the corresponding Pension Fund. The external auditors of the AFPs must rule on the internal control mechanisms they impose to ensure faithful compliance with the aforementioned provisions and compliance with the prohibitions stipulated by Law, as well as the information filing systems for recording the origin, destination and pertinence of the transactions performed with the pension fund resources.

Furthermore, the AFPs are responsible for the damages they cause to the individually funded accounts of their members due to lack of timely compliance with their legal obligations as well as the instructions given to them by their members while exercising their rights established by law. Once non-compliance has been determined with a loss of capital in any of the members' accounts, the AFP must make appropriate compensation, and if it does not do so, the Superintendency may order the restitution of such loss to the respective individually funded account. In the latter case, the fund manager can appeal against such judgment.

Finally, the directors of a fund manager, its controllers, managers and administrators, and in general, any individual who by reason of his office or position has access to information regarding the investments of a fund that has still not been officially disclosed to the market, and is by its very nature capable of influencing the quotes of the prices of such investments, must maintain strict confidentiality regarding such information. Furthermore, the aforementioned individuals are prohibited from availing themselves, directly or indirectly, of the classified information, to obtain for themselves or third parties other than any of the pension funds, benefits through the purchase or sale of securities. The individuals involved in the decisions on the purchase, sale or maintenance of instruments for any of the pension funds, cannot communicate these decisions to individuals other than those participating in the transaction on behalf of, or in representation of, the AFP or the funds.

c) Attendance of shareholder and board meetings

The AFPs must attend shareholders' and bondholder' meetings of corporations and the meetings of the contributors to the investment funds, whose bonds or shares have been acquired with the resources of the pension funds. In these meetings and assemblies, they must be represented by proxies appointed by their Boards of Directors. These proxies may not act with faculties other than those that have been conferred upon them. In such meetings and assemblies the representatives of the AFPs must always express their opinion regarding the resolutions adopted, recording their votes in the corresponding minutes.

Infringements of these rules and regulations are sanctioned by the Superintendency of Pensions. Moreover, the Superintendency will determine the cases in which the fund managers are exempt from compliance with the provisions of the preceding paragraph.

d) Appointment of candidates to the position of director in the corporations in which the pension funds invest

The fund managers must have board approved investment policies for each of the pension funds they manage, as well as policies for resolving conflicts of interest. The latter must address, among other matters, the requirements and procedures for the appointment of candidates to the position of director in the corporations in which the pension funds are invested.

The directors appointed with a majority of votes cast by the AFPs, who wish to pursue the post of director in these corporations, must be enrolled in a registry kept by the Superintendency. The latter establishes the basic criteria for the registration and its maintenance.

In the appointment of the board of directors of companies whose shares have been acquired with the resources of the pension funds, the AFPs cannot vote for individuals in any of the following situations:

- A majority shareholder or related individual, who directly or indirectly, or through agreement for joint action, can appoint the majority of the Board members.
- A shareholder or related individual that can appoint the majority of the board of directors with the votes of the AFP.
- A shareholder of the AFP, or related individual, who directly or indirectly, holds 10% or more of its subscribed shares.
- A director or Executive of the AFP or any of the companies of the corporate group to which it belongs.

Notwithstanding the foregoing, the AFPs can vote for individuals who act as directors in any company of the business group to which the company in which the board is being appointed belongs, as long as they meet the following requirements:

- That their sole relationship with the controller of the group of companies comes from their participation in the board of directors of one or more companies of the aforementioned group.
- That the individual has not been appointed to the boards with the decisive support of the controller of the business group or its related parties.

A director is understood to have received decisive support from an individual or body corporate if, when subtracting the votes cast by them or their related individuals from his total votes, he would not have been elected. In turn, the AFPs cannot vote for individuals who are not considered independent.

The directors of an AFP must always express an opinion on such matters involving conflicts of interest and, especially among other aspects, the policies and votes of the fund manager in the appointment of directors in the companies whose shares have been acquired with resources of the Pension Fund.

Furthermore, within 45 working days following the conclusion of a shareholders' meeting in which the directors of a company have been appointed, the Superintendency may rule on compliance with the aforementioned requirements, declaring the ineligibility of the directors appointed with a majority of votes cast by the AFPs and ordering their resignation through a reasoned decision.

The AFPs can act jointly between them or with shareholders that are not affected by the aforementioned restrictions. Nonetheless, they cannot engage in any activities that may entail participation or interference in the management of the company in which they have chosen one or more directors.

The AFPs must conform to the following rules and regulations governing the appointment of the board of directors of the companies in which the pension funds have invested resources:

- The board of directors of the AFP shall determine the names of the candidates for whom their representatives will vote and the respective decision must contain the guidelines they must abide by when voting for an individual other than the one agreed on, when the interests of the managed fund so requires. These agreements must be recorded in the minutes of the board of directors of the company and must be well-founded.

In cases where the AFP representative votes for an individual other than the one mentioned in the agreement, he must submit a written report in the next scheduled board meeting on the circumstances and reasons for the vote cast. This report must be recorded in the respective minutes together with the board's opinion on the matter.

- AFP representatives are always bound to express their vote out loud in the elections in which they participate, and record such votes in the minutes of the respective shareholders' meeting.

The AFPs must submit a report to the Superintendency on their attendance and participation in shareholders meetings, bondholders meetings or meetings of contributors to investment funds.

e) The pension funds are minority shareholders

The AFPs may only invest up to 7% of the subscribed shares of an issuer, so that, individually, they are restricted to being minority shareholders. Furthermore, as pointed out in the previous section, the fund managers may not perform any activities that may entail participation or interference in the management of the companies in which they have appointed one or more directors. Although the possibility of a fund manager appointing a director is low or null (proportional representation), the ability to negotiate agreements with other parties allows the AFPs to play an important role in the appointment of directors.

Furthermore, the shares in which the pension funds can invest must meet certain minimum requirements set out in the Investment Regime defined by the Superintendency of Pensions. When these requirements are not met, they can only be purchased by the funds if they have risk ratings (from at least two rating agencies) equal to or better than a certain legally established rating.

On the other hand, the assets of the pension funds may not be invested, directly or indirectly, in shares of the AFPs, insurance companies, mutual fund managers, investment fund managers, stock exchanges, brokerage companies, brokers, financial consulting firms, companies managing pension resources portfolios, or sport, educational and charitable organizations.

f) Candidate appointment policy⁹

Since 2007 the AFP has maintained specific requirements for the selection of candidates for director. The fund managers formalized the candidate selection process in the Policy Circular issued in May of that year. Apart from creating the Directors' Registry, the 2008 pension reform made it legally mandatory to establish investment policies and policies for resolving conflict of interest. In these policies, the fund managers have detailed criteria for the selection of candidates (recruiting an external consultant - Head Hunter-; maximum duration in Office of 6 years and a maximum of two directorships per candidate; candidate with strong academic background, experience, independence and absence of conflicts of interest). Appendix No. 1 presents some statistics and results of the process of appointing directors by the pension funds in Chile.

g) Right to withdraw from State enterprises

The fund managers who have invested pension fund assets in shares of companies that are directly or indirectly state-controlled, can exercise the right to withdraw from the company if, even though such shares meet the requirements for the funds to invest in them, two private rating agencies determining that the classification is second class, or without sufficient information, on the basis that some of the following negative causes materially affect total return:

⁹ The Role of Pension Funds in Corporate Governance. Solange Berstein Jáuregui, Superintendent of Chilean Pensions. Seminar: "The role of institutional investors for the strengthening of corporate governance in Chile and other countries." Santiago, May 19, 2010.

- The modification of the rules and regulations governing tariffs or prices of services or goods offered or produced, or regarding access to markets.
- The decision of their managers or the authority to fix the price of such goods or services in a manner that negatively and substantially alters them compared to those considered when approving the actions.
- The decision of their managers or the authority to acquire raw materials, or other goods and services necessary for their line of business, which affect their costs, in terms or conditions more onerous in relation to the average price at which they are normally offered on the domestic or foreign market, considering the volume, quality and specialty that the company requires.
- The implementation of promotion or assistance actions or the granting of direct or indirect subsidies by the company, which did not exist at the time of the acquisition of the shares by the pension funds, provided that adequate resources for their financing are not directly or indirectly granted by the State.
- The execution of any other similar action decided on by the company's management or the authority, which negatively affects the current or future return of the company.

h) Possible non-payment of debt instruments

The AFPs can engage in transactions, commitments, judicial and extrajudicial agreements, settlements, extensions and novations, in order to avoid damage to the pension funds that they manage, derived from the non-payment of debt instruments purchased by them. The AFPs can also participate with the right to voice and vote in meetings of creditors or any type of competitive procedures, unless the debtor is a person related to the respective AFP, in which case it may only participate with the right to voice.

i) Power to initiate legal action

The fund managers are expressly authorized to initiate all pertinent legal actions of a civil nature against those causing harm to any of the pension funds that they manage, which are dealt with through summary procedures.

j) Corporate governance rules and regulations of companies

There has been significant progress in corporate governance legislation in Chile, the most important milestones being the 2000 and 2009 reforms.

In the first one, called "Law of Takeover Bids and Corporate Governance", the majority of the amendments took into account the principles of corporate governance outlined by the OECD, and aimed at establishing better quality of the information provided by companies,

the establishment of auditing committees within open corporations, the modernization of supervision standards and the regulation of public offerings of stock acquisition (OPAS)¹⁰.

In the 2009 reform, improvements were incorporated into the legislation regulating the corporate governance of companies, and the laws of the stock market, corporations and the commercial code. These refinements were requirements that Chile had to fulfill to join the OECD. These amendments to the legislation increased the disclosure of information to the market, forcing the shareholders who control 10% or more of the shares of an open corporation and its senior executives, to inform the Superintendency and each one of the stock exchanges in the country, of any direct or indirect purchase or liquidation affecting the securities of that company. They also made the board of directors responsible for adopting appropriate measures to prevent the company information being disclosed to one or more potential investors before being made available to all shareholders and the public. Finally, rules and regulations were introduced to ensure rigorous auditing reports and the duty of auditors to attend meetings in order to answer shareholders' questions¹¹.

According to the World Bank investor protection index, Chile is rated above average for Latin America and the Caribbean, with a score of 6.3 on a scale of 0 to 10. It is the 3rd best rated country among those included in this study. Chile obtained its best score in transparency of information (8), then the degree of liability the board must assume for its actions (6), while the lowest rating is assigned to the power of the shareholders to take legal action in case of being adversely affected by certain transactions (5) (Appendix No. 2).

4. Colombia¹²

a) Investment objectives of the pension funds

The 2009 financial reform amended Law 100 of 1993, stating that the objectives of pension fund investments are to guarantee capital preservation, total return and liquidity of assets, and that for such purposes the fund managers must invest the funds subject to the conditions and limits established by the National Government, which among others, include the types and percentages of eligible assets that should be considered, based on the degree of risk.

b) General liability for the investments of the pension funds and the damages caused to them

Any director, manager, legal representative, or staff member of an institution supervised by the Banking Superintendency who knowingly infringes or allows the infringement of legal provisions, shall be personally liable for any losses that any individual or body corporate suffers by reason of such offenses, notwithstanding any other civil or criminal penalties of the law and the measures the Banking Superintendency may impose pursuant to its attributes.

¹⁰ Corporate Governance in Chile after the Law of Takeover Bids; Teodoro Wigodski S. Franco Zuñiga G., Industrial Engineering Department, University of Chile.

¹¹ Legal database of the National Congress.

¹² Act 100 of 1993.

c) Responsibilities and rights of the fund managers in the companies in which they invest the pension funds

The sole decree of the financial, insurance and stock market sector that included the regulatory decrees of the last financial reform, established the following obligations for pension fund managers in its articles 2.6.13.1.2 to 2.6.13.1.8 articles (Decree 2.555 of 2010):

- The AFPs must exercise the political rights corresponding to the investments made with the assets of mandatory pension funds, when coupled with the positions of the four (4) types of mandatory pension funds, they have relevant participation. Relevant participation is understood to be: (i) a percentage of participation equal to or greater than five (5%) of the capital of the issuing company; (ii) a percentage of participation equal to or exceeding five percent (5%) of an issuer's securities other than shares; or (iii) a percentage equal to or greater than five percent (5%) of the value of the type of mandatory pension fund that holds the investment.
- The AFPs must ensure that the interests of participants always prevail and that they may exercise their rights in accordance with a policy approved by its Board of Directors. The Financial Superintendency of Colombia must issue instructions regarding the minimum contents of the Policy of Exercising Political Rights, the frequency with which they must be reviewed and the manner in which they must be disclosed to members and the public at large.
- The representatives appointed by the AFPs to exercise political rights are obligated to comply with the agency's policy and to justify the vote they cast before the AFP when it is not recorded in the respective minutes. If an AFP votes contrary to the majority, it must submit a report to the secretary of the meeting justifying the decision, for it to be recorded in the respective minutes.

The AFPs must document the analyses and instructions imparted to their representatives for exercising their political rights, in accordance with their internal procedures. The copies must be submitted to the Financial Superintendency of Colombia, in accordance with the applicable legislation and the instructions it imparts.

The exercising of political rights for the nomination and appointment of members of the Boards of Directors of the issuers of securities by the AFPs, are subject to the following rules:

- The criteria and procedures for appointing individuals who will be nominated or voted for membership of the Board of Directors or the Administrative Council, must be established in the Policy for Exercising Political Rights of the AFPs. In any case, the AFPs, in representation of the pension funds, can act in concert.
- Should an AFP participate in nominating and appointing an individual, such individual must be independent of it and of the entities related to that fund manager.

To this end, the independence of the individual to be nominated and/or appointed is assessed through the application of the criteria of paragraph 2 of Article 44 of Law 964 of 2005, relative to the respective AFP and its related parties.

One or more individuals classify as being linked to an AFP if they are in any of the situations identified in a government decree.

- They must document the assessment of the personal qualities, suitability, career, integrity and experience of the individuals in whose nomination and appointment they participate, as well as their reasons for choosing them.
- They must refrain from requesting members of the Board of Directors who have been appointed with their votes, to provide information on the issuer of securities that is not of a public nature and/or imparting instructions as to how to do their job.

d) Corporate governance rules and regulations of companies¹³

i. Corporate governance standards for issuers of securities that receive investments from the mandatory pension funds

The AFPs must ensure that the issuers that receive investments from the mandatory pension funds have standards of corporate governance that comply with their internal policies.

For this purpose, the Board of Directors of the AFP should adopt discretionary investment criteria enabling it to assess the corporate governance of the issuer, basing its investment decision on the results of this assessment. As a minimum, such criteria should allow the assessment of the following aspects of the corporate governance of the issuers of securities: (a) proper corporate governance structure and control; (b) clear delineation of roles and responsibilities among the various departments; (c) disclosure and transparency of financial and non-financial information, including the information related to risk management controls and processes, and full disclosure of transactions with related parties; (d) mechanisms for protecting the rights of minority shareholders; (e) measures to prevent and manage conflicts of interest between shareholders, directors, managers, employees, parties related to all of them and the main interest groups; (f) others determined by the Financial Superintendency of Colombia through instructions of a general nature.

These criteria, once adopted, should be disseminated through the web pages of the AFPs and regularly reviewed and updated by their Boards of Directors.

¹³ Colombian Guide of Corporate Governance for Closed and Family Corporations; Basic Guide of Corporate Governance. Banco DAVIVIENDA.

ii. General corporate governance rules of companies

In 2001, the Superintendence of Securities at the time issued Resolution 275, which promoted the adoption of good corporate governance principles among listed companies that intended to be the recipients of the resources of the mandatory pension fund.

Subsequently, Law 964 was promulgated in 2005, introducing a series of mandatory rules and regulations for open corporations.

In 2007, the new Financial Superintendency promoted the inter-sectoral working group that issued the Country Code of Corporate Governance intended for companies registered on the stock exchange. This Code is a set of 79 recommendations of best corporate governance practices drawn up by the Financial Superintendency of Colombia for issuers of the real and financial sectors, aimed at increasing transparency and confidence in the activities of the different market players through the promotion of effective good governance practices.

The adoption of these measures is voluntary, but the companies subject to the Code are required to submit an annual survey to the Superintendency, confirming whether or not they have adopted the recommendations included therein and explaining the means and mechanisms of doing so. These companies are currently obligated to explain the reasons why certain measures have not been adopted.

The World Bank investor protection index ranks Colombia in first place of all the countries studied in this report, with a significantly higher rating (8.3) than the average for Latin America and the Caribbean. Colombia also receives a high rating (8) for transparency of information, the degree of liability the board of directors must assume for its actions (8) and the power of the shareholders to pursue legal action in case of being adversely affected by certain transactions (9) (Appendix No.2).

5. Costa Rica¹⁴

a) Investment objectives of the pension funds

Pursuant to law, the fund managers must invest the pension funds for the benefit of members, ensuring the necessary balance between preservation of capital, total return and liquidity, according to their purpose and within the limits set by the law and the rules and regulations issued by the Superintendency of Pensions.

The Superintendency must ensure that operators, with due regard to the principle set forth in the preceding paragraph, invest the assets of the funds in instruments that allow members to participate directly in the income derived from the ownership of production factors. Additionally, the Superintendent must seek a portfolio structure designed to strengthen the financing of housing for the working class.

¹⁴ Worker Protection Law N° 7.983 de 18/02/2000.

b) General responsibilities for the investments of the pension funds and damages caused to them

The authorized fund managers are jointly and severally liable for economic losses and damages caused to the members by acts of willful misconduct or negligence of the members of the board of directors, managers, employees and promoters.

The pension fund managers are also jointly and severally liable for losses that may occur to the contributions and returns of the workers who contribute to the Mandatory Complementary Pension System, derived from acts of willful misconduct or negligence performed by its officials and employees, as officiated by the courts. In these cases, the fund managers must respond with their equity, notwithstanding the administrative or criminal actions that may be pertinent due to these acts. In any case, the fund managers must respond for the integrity of the workers' contributions with their equity, and should that be insufficient to cover the losses and damages, once all the instances established by law have been exhausted, the State must make up for such shortfalls and proceed to liquidate the operator, notwithstanding any subsequent criminal or administrative proceedings.

c) Exercising of corporate rights and appointment of members of Boards of Directors

The corporate rights associated with the shares of a corporation that become part of a fund, must be exercised by the authorized fund manager. None of the representatives, officials or partners of such entity can be appointed members of the Board of Directors of such corporation, nor be appointed as supervisors. The representative of the fund manager authorized by the general shareholders' meeting may not vote in the appointment of the company's Board of Directors. The shares held by the funds are not taken into account for the purpose of the majority required for such appointment in the general meeting.

d) Corporate governance rules and regulations of companies

In Costa Rica there are corporate governance regulations whose provisions are applicable to companies controlled by the supervisory bodies of the Costa Rican financial system.

These regulations cover a wide range of matters, including the existence of government policies (appointment, remuneration, qualification and training of board members, managers, executives, internal auditors and others, relationships with customers, suppliers, dealings with shareholders, associates or similar; disclosure and access to information; rotation of board members; monitoring of policies) and conflicts of interest, annual corporate governance report, functions, responsibilities and suitability of the Board of Directors and general management; internal auditing; support committees.

Costa Rica has the lowest investor protection rating among all countries surveyed (together with Honduras), only achieving a score of (3) compared to an average rating of (5.1) for other Latin America and Caribbean nations. It also received low ratings for information transparency (2), power of shareholders' rights to legal action in cases of being adversely

affected by certain transactions (2), and an average rating in the degree of liability the board of directors must assume for its actions (5). (See Appendix No. 2).

6. Curacao¹⁵

a) Investment objective of the pension funds

The fund managers must invest pension funds in order to obtain a real return that increases the pensions or pension equity of members, within the rules and limits set by the fund's investment regulations, and safely, as established in the pension fund regulations. The law (60/40 Investment Rules) stipulates that if a fund has more than 20 million guilders in assets, 60% of the value of the technical provisions must be invested locally, and 40% may be invested abroad.

The Pension funds, and their insurers, are considered an important source of national savings and assets.

The pension funds must respond with their own equity for any investment risks undertaken. Hence, the investment policy is based on the risk profile, according to the "Management of Assets and Liabilities" study performed every 3 years. There are actuarial reserves that must be maintained to mitigate all risk, including the investment risk. The goal is to allocate the funds by regions, sectors and asset classes, within the limits of each investment.

b) Commitments to protect solvency, liquidity and total return

By Law, the pension funds must always maintain a minimum of 105% solvency. The Fund is required to maintain transparency, communication and information regarding governance and acceptance of corporate governance policies, for which audits are performed. Assessments are performed each year to take measures for improving governance. The law also maintains a code of conduct valid for the Board of Directors, the Supervisory Board and management.

c) Corporate governance rules of companies

No information available.

7. El Salvador¹⁶

a) Investment objective of the pension funds

The purpose of the investments of pension funds is to obtain a reasonable return while adhering to conditions of capital preservation, liquidity and risk diversification. Any other purpose is contrary to the interests of the pension funds.

¹⁵ Ordinance Governing Pension Funds No. 441985.

¹⁶ Decree N° 927 23/12/1996.

b) General responsibilities for the investments of the pension funds and damages caused to them

The pension fund managers must make all efforts that legal provisions allow and with the due diligence employed routinely in their own businesses, to ensure the prudent management of companies and investment funds in which they invest the pension fund they manage, with the aim of ensuring adequate return of their investments.

c) Contracts for the purchase or replacement of acquired assets

When the fund managers invest the resources of the pension funds, they may contract with the issuers of securities for the purpose of protecting the interests of the members under their following terms:

- The issuer should be required to buy or replace assets that have been acquired, if the agreed conditions are fulfilled;
- The purchase price referred to in the previous point must be established, or, failing this, the mechanism for calculating this price or substitution mechanisms;
- It is also required to define the term in which such purchase or replacement will be completed, as well as the way in which the transaction will be implemented.

The aforementioned contracts must be made known to the Superintendency of Pensions prior to their subscription, so that it can submit them to the Risk Committee for authorization.

d) Corporate governance rules and regulations of companies

There are no regulations expressly governing the participation and responsibilities of the AFPs in the companies in which the pension funds are invested. One must bear in mind that variable income instruments are not included in the portfolios of Salvadorian pension funds to date. In the past, there was a very small percentage allocated to companies, which did not involve any share in the participating company.

El Salvador receives a World Bank investor protection rating of (4.3). It is among the lowest of all the countries analyzed in this study after Bolivia, Costa Rica and Honduras. The country also ranks low in the liability the board of directors must assume for its actions (2) with better ratings in transparency of information (5) and the power of the shareholders to sue in case of being adversely affected by certain transactions (6). (See Appendix No. 2).

8. Honduras

a) General responsibilities for the investment of the pension funds and the damages caused to them

The responsibility for the investment of the fund's assets is absolute for the AFPs, as the faithful guardians of the pension assets that have been entrusted to them¹⁷.

b) Corporate governance rules and regulations of companies

The investment protection statistics drawn up by the World Bank grant the country a rating of (3.0). Along with Costa Rica, it is the lowest of all the countries analyzed in this study. It has a score of zero in transparency of information, but improves with regard to the liability the board of directors must assume for its actions (5) and the power of shareholders to file suit in case of being adversely affected by certain transactions (4). As previously mentioned, the average investors' protection index in Latin America and the Caribbean is 5.1. (See Appendix No. 2).

9. Kazakhstan

a) Investment objective of the pension funds

No direct reference to the overall objectives of the investments of the pension funds was found in the Law¹⁸, beyond it being destined to financing the pension benefits that it defines.

However, according to the Securities Market Law of July 2, 2003 (Article 69), the purpose of the management of pension assets is the obtainment of total return in the interests of clients. This means in favor of a non-State Pension Fund (NPF), if a fund manager manages the funds, or for members if the NPF itself is the manager

According to the law, the investment management of pension funds must be performed by entities managing pension investments or pension funds themselves, as long as they possess a license to undertake such activities.

The Law also establishes the organization required of the pension fund managers, the types of funds, the requirements its founders and shareholders must meet, licensing, accounting and information, auditing, obligations and limitations of the investment managers, among other matters, leaving the issue of the detailed regulation of investments under the responsibility of the supervisory entity¹⁹.

¹⁷ We would appreciate to directly receive this information from Honduras.

¹⁸ Law of the Republic of Kazakhstan of June 20, 1997 No. 136-1, on the Pension System in the Republic of Kazakhstan (with amendments and additions as of 23.10.2008).

¹⁹ These regulations are not available in English.

b) General responsibilities for the investments of the pension funds and the damages caused to them

The pension funds managers are responsible for infringements of the legislation applicable to pensions and breaches of the terms and conditions of pension contracts, according to the legislation of the Republic of Kazakhstan.

These terms and conditions that define the responsibilities of the pension funds, fund managing agencies (if the pension fund does not have a license to manage investments, it may hire a specialized fund manager that is licensed) and the custodian banks are established in other rules and regulations²⁰ and contracts between parties. In any case, the pension fund managers are responsible for their obligations with contributors only with their own assets.

c) Corporate governance rules and regulations of companies²¹

In 2004, a corporate governance working group was established in the Association of Financial Institutions of Kazakhstan, comprising representatives from the major banks, pension funds, insurers, international financial institutions, public organizations, investment funds, lawyers and auditing firms.

During 2005, the Council of Issuers adopted a Code of Corporate Governance, which has had an important role in the development of corporate governance in Kazakhstan, adopting principles that take into account specific realities of the country's own legislation and business practices. The Council of Issuers is an advisory body which was established by the Agency of the Republic of Kazakhstan for the Regulation and Supervision of the Financial Market. Some of its objectives are to improve and implement corporate governance in firms and cooperate in the transition to international financial reporting standards.

According to an assessment by the European Bank for Reconstruction and Development in 2007, legislation of corporate governance in Kazakhstan is at the midpoint of compliance with the corporate governance principles of the OECD.

Finally, according to the World Bank investor protection index, Kazakhstan earns a score of 6 in a scale of 0 to 10. The country gets good grades on transparency of information (8) and power of shareholders' legal recourse in case of being adversely affected by certain transactions (9), and a very low rating for the liability the board of directors must assume for its actions (1). The average investors' protection index in Latin America and the Caribbean is 5.1 and 6.0 in the OECD countries (see Appendix No. 2).

²⁰ These rules and regulations could not be found in the web site of the supervising agency

²¹ CODE on Corporate Governance. Financial Institutions' Association of Kazakhstan. Approved by: Council of Issuers on February 21, 2005; IFC Corporate Governance Overview; IFC and the Council of Issuers Help Improve Corporate Governance in Kazakhstan, July 2007.

10. Mexico

a) Investment objectives of the pension funds

Pursuant to Law²², fund managers must make all necessary efforts to obtain reasonable return and capital preservation of the investment companies they manage. In fulfilling its duties, they should only serve the interests of workers and ensure that all transactions carried out for the investment of the workers' assets are made for that purpose.

Moreover, the Law states that the investment scheme must have capital preservation and appreciation as its main investment objectives. Also, the investment regime should aim to increase domestic savings while developing a long-term instruments market suitable for the pension system. For such purposes, the investments must be directed predominantly, through their allocation in securities, in order to promote:

- GDP;
- Full employment;
- Housing construction;
- The development of the strategic infrastructure of the country; and
- Regional development.

b) General responsibilities for the investments of the pension funds and the damages caused to them

The fund managers are directly liable for all the acts, omissions and operations of the investment companies they operate due to their participation in retirement savings systems.

The fund managers are also directly liable for the acts performed by their advisors, directors, officers and employees, such as those incurred by the directors and managers of the investment companies they manage, in fulfilling their functions related to the retirement savings systems, notwithstanding the civil or criminal liabilities that they may have personally incurred.

Those who have committed fraudulent acts in violation of the law, which as a result directly affect the equity of workers, are required to repair the damage caused. The fund managers are also directly liable for the acts committed by their marketing and sales agents, regardless of whether they have a dependent relationship with the fund manager or are independent.

The fund manager operating the investment company must maintain a special reserve established by law, and if this proves insufficient, it must draw from its company capital when there are losses due to the breach of the authorized investment scheme due to effects other than those of valuation, or in the case of excessive swings in the valuation of securities caused by fluctuations in stock prices, or failure to submit to the National System

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of Retirement Savings (CONSAR) the application for maintaining investment defaults or excesses caused by variations in security prices.

c) Rights and responsibilities of the fund managers in the companies in which they invest the pension funds

Mexican law establishes general investment rules and regulations, such as investment objectives; the obligation of investment companies to have an Investment Committee and a Risk Management Committee; risk rating requirements; treatment of investment surpluses and losses; management of several investment companies; prospectus for the investing public; prohibitions; relations between the fund managers and financial agencies and control of conflicts of interest. The law also prohibits the fund managers from acquiring control over the companies in which they invest²³.

Moreover, CONSAR complemented the law issuing rules establishing the investment regime that investment companies specializing in retirement funds must abide by. They cover a wide range of subjects, including the credit quality of securities that may be acquired by investment companies; maximum value at risk (VAR), permitted and prohibited instruments and transactions, and the diversification of investments.

Beyond what is indicated in the previous paragraphs, from the revision of the legal provisions issued and available on the CONSAR²⁴ web site, for the regulation and control of pension funds, we were unable to identify specific rules relating to the responsibilities and the rights of pension funds in the companies in which they invest the pension funds.

d) Corporate governance rules and regulations of companies²⁵

The most important legislation related to good corporate governance is contained in the General Law of Commercial Companies, the Securities Market Law and the Sole Issuers Circular (CUE), which makes it mandatory for companies quoted on the stock exchange to publish their annual reports and the degree of adherence to the Code of Best Corporate Governance Practices (CMPC).

In the last fifteen years, there have been a large number of reforms relating to corporate governance. The Mexican authorities issued new regulations for securities during 2006, which incorporated many of the corporate governance provisions. The new legislation placed special emphasis on the duties of loyalty and due diligence, which are carried out by members of the Board of Directors and senior executives of the company, and attempted to improve the regulation of disclosure of information while also improving the protection of minority shareholders' rights. They also re-organized, and clarified the roles and

²³ Article 28 of the Law.

²⁴ National Commission for the Retirement Savings System

²⁵ Consilium Bulletin, Center of Excellence in Corporate Governance; The Regulation of Corporate Governance in Latin America & Spain. Guadalupe del Carmen Briano Turrent, Universidad de San Luis Potosí (México), Eva Argente Linares and Lázaro Rodríguez Ariza, Universidad de Granada (España); Corporate Governance and Prudent Regulation in the Development Bank. Implementation of Best Corporate Practices FIRA. Rodrigo Sánchez Mujica.

responsibilities of the Board of Directors, incorporating standards that are more compatible with international practices. In addition, the National Banking and Securities Commission (CNBV) issued provisions aimed at improving the disclosure of financial information.

On the other hand, the country has twelve years experience in the implementation of the CMPC since it was first issued in 1999. This code was a joint initiative of the authorities, the Mexican Stock Exchange and major business organizations. The aim of CMPC is to strengthen the system of governance of publicly traded companies, with the intention of increasing corporate transparency and investor confidence in Mexico.

Another area of progress is the creation of a training organization for Directors. The Centre of Excellence in Corporate Governance (CEGC) was founded in March 2004. Its objectives are to provide information to board members and executives (methodologies, best practices of corporate governance to increase efficiency and levels of transparency), facilitate the implementation of existing standards and generate greater investor confidence.

The main challenges of corporate governance in Mexico are linked to ownership concentration, the structure and control of many companies, the implementation of the rights of shareholders and conflicts of interest.

According to the Investors' protection index drawn up by the World Bank, Mexico achieves a higher ranking than the average for Latin America and the Caribbean, with a score of (6) on a scale of 1 to 10. Its best rating is obtained in information transparency (8); followed by the degree of liability the board of directors must assume for its actions and the shareholders' legal recourse in case of being adversely affected by certain transactions, with a similar rating (5). (See Appendix No. 2).

11. Panama

a) Investment objectives of the pension funds

The fund managers must act in good faith, good judgment and care, according to the principles of capital preservation, total return, diversification, and monetary consistency. Monetary consistency is understood to mean that at least two-thirds of the investments should be made in the currency in which benefits are paid.

b) General responsibilities for the investments of the pension funds and the damages caused to them

Is not stated in the regulations, but the law establishes limits of concentration by the issuer in such a way that it may not have a concentration greater than 10% of the total fund. There is also a requirement to analyze and produce a written report on the creditworthiness of the purchased debt securities.

c) Corporate governance rules and regulations of companies

Panama has a 4.7 rating on a scale of 1 to 10, according to the World Bank investor protection index. Its worst score is in transparency of information (1) and its best score in the power of the shareholders to take legal action in case of being adversely affected by certain transactions (9). The rating for the degree of liability the board of directors must assume for its actions is an average of (4) (Appendix No. 2).

12. Peru²⁶

a) Investment objectives of the pension funds

The law does not directly state investment objectives that fund managers must follow.

There are general objectives for three types of funds. Thus, investments by Fund Type 1, Capital Preservation, seek steady growth with low volatility. Investments by Fund Type 2, Mixed, seek moderate growth with average volatility, while investments by Fund Type 3, Capital Appreciation, seek a high level of growth and high volatility.

It also states that for the AFPs to offer the previously described fund types, as well as to request the authorization for offering additional funds to those described, they must have a duly defined investment policy (which must be previously submitted to the Superintendent and disclosed to the general public) in which they must explicitly indicate the return benchmark index.

b) General responsibilities for the investments of the pension funds and damages caused to them

The Law states that each AFP must manage the funds in the manner indicated by the law, its regulations and the general provisions issued by the Superintendence.

It also states that each AFP must adopt the principles of good corporate governance in the management of the funds offered to the public, as well as in their own activities.

c) Rights and responsibilities of the fund managers in the companies in which they invest the pension funds

The law of the Private Pension System defines the investment instruments in which the pension funds can be allocated; the general investment limits by fund type; the investment policy, which must include the objective of each fund and the investment diversification policy, as well as the benchmark return indices and the risk rating requirements.

On the other hand, the regulations of the law establish, among other matters, that the AFPs should appoint representatives to exercise, on behalf of the Fund, the rights and obligations arising from the investment of the Fund's assets in stocks, values representative of rights in

²⁶ Unique Ordered Text of the Law of Private System of Administration of Pension Funds.

share deposits registered on the stock exchange and other securities which grant economic rights. The aforementioned representatives must ensure the defense of the rights corresponding to the Fund, regardless of the interests of the AFP. In addition, they must conform to the practices of good corporate governance and must promote their adoption in the governance agencies in which they exercise their assignment.

Furthermore, in compliance with their assignments, the representatives are required to express an opinion on the matters discussed, register their votes in the respective minutes and report to the AFP the results of their activities. The fund manager must file these reports and have them available for the Superintendency.

The Superintendent regulates the remaining conditions that the aforementioned represents must comply with, the rules they must abide by in the appointment of directors in companies whose shares have been acquired with fund assets, as well as the penalties applicable in the event of non-compliance. In any case, in the appointment of directors, the representatives are prevented from voting for candidates who are shareholders, directors, managers or employees of an AFP²⁷.

Additionally, Chapter VI of the Compendium of Regulatory Rules and Regulations of the Private Pension Management System regulates the investments of the pension funds in detail, referring to multiple subjects, such as negotiation mechanisms, specific conditions for investment of funds; recovery; returns; limits, restrictions, prohibitions and excesses, guarantees, custody, investment policy, investment risk management, and return benchmarks. However, it does not delve into the rights and obligations of managers in companies in which funds have invested or maintain property rights.

d) Corporate governance rules and regulations of companies²⁸

Over the last 10 years, Peru's regulatory framework has been adapting to the trends in corporate governance, concentrating efforts to enable Peruvian companies to reach international standards, thereby increasing investor confidence both domestically and internationally, especially among minority shareholders.

In 2002, a committee was formed with the participation of public and private sectors, to establish good corporate governance principles applicable to Peruvian companies. The principles of the OECD were implemented and adjustments were made to reflect the characteristics of Peruvian companies. The respective document points out that these principles must constitute "a guideline for companies, in such a way that its implementation evidences a clear capacity for self-determination and self-regulation, thereby promoting a culture of good corporate governance practices." They are also a referential framework for

²⁷ It was not possible to locate the regulation that is referenced in this paragraph in the website of the Superintendency.

²⁸ Principles of Good Corporate Governance for Peruvian Companies. Julio 2002; Working document "Degree of compliance with the principles of good corporate governance during 2009". Ministry of Economy and Finance, CONASEV; Report on the observance of standards and codes (ROSC), Corporate Governance Country Assessment. Republic of Peru. June 2004.

different interest groups that measure the level of commitment of Peruvian companies to these principles.

A report by the World Bank in 2004 concluded that the main aspects of corporate governance in Peru were marked by the growing importance of pension funds in the Peruvian capital markets. The report highlights major challenges such as improvement of conflicts of interest resolution, incentives for shareholder participation at meetings, greater transparency in the approval of transactions with related parties, the establishment of a minimum number or percentage of independent board directors, the creation of auditing committees and access of directors to appropriate training programs.

The aim of the regulatory reform adopted in 2005 was to provide objective information to the market on the level of adherence to good corporate governance principles by the companies listed with the Public Registry of Companies (RPMV). The Peruvian securities market legislation does not require companies with securities registered in the RPMV to fully adopt the principles of good corporate governance, but rather to disclose and explain the degree of adoption of these principles.

The National Supervisory Commission of Companies and Securities (CONASEV) periodically issues a public report on compliance with the principles of good corporate governance, to promote the application of these principles by companies participating in the public securities market. In the latest available report of 2009, CONASEV notes that "one can see that companies are gradually adapting the practices of good governance and honest disclosure of its adoption, which will enable Peru to reach the requirements of international standards in this field". It also states that it is essential that in the coming years, more and more companies become increasingly aware of the importance of revealing this information, as well as their commitment to providing complete, reliable and transparent investor information. Furthermore, through resolution No. 140-2005-EF published in December of 2005, CONASEV incorporated as an Appendix in one of the informative prospectuses for compliance with applicable requirements on public offerings of securities, the format denominated "Information on the implementation of good governance principles for Peruvian companies", to provide investors with better information on implementation of good corporate governance practices by the corporations issuing securities that are registered in the Public Registry of the Securities Market, since this knowledge can directly influence investment decisions. Through the aforementioned document, compliance with the principles by companies is evaluated subjectively and objectively, specifically regarding the rights and treatment of shareholders, information transparency and accountability of the board.

Additionally, the Lima Stock Exchange is taking action to contribute to the implementation of good corporate governance practices in issuing companies, implementing, among other initiatives the publication of the Good Corporate Governance Index (IBGC), which is a key indicator reflecting the securities of the issuing companies that adequately apply the principles of corporate governance. This is the system through which companies are managed and controlled to comply with the principles of accountability to shareholders. It is based on transparency, trust, fairness, corporate responsibility, fluidity, integrity of

information to attract and retain financial and human capital, efficient operations, and, thus, shareholder value.

Finally, according to the World Bank investor protection index, Peru takes second place among all the countries analyzed in the report, with a score of (6.7). Peru received strong scores for information transparency (8) and power of the shareholders to file suit in case of losses and damages due to certain transactions (7) whereas, it received a lower rating for the liability that the board of directors must assume for its actions (5) (Appendix No. 2).

13. Poland²⁹

a) Investment objectives of the pension funds

The only reference found in the Law to the objectives of the investment of pension funds is the search for the maximization of the rate of return and capital preservation, proceeding in accordance with the provisions of the Law.

b) General responsibilities for the investments of the pension funds and damages caused to them

Fund management companies are accountable to the members of the pension funds for any losses suffered from faulty performance or negligence in their duties as managers and representatives of the members, unless due to circumstances not caused by, or foreseeable by fund management companies.

In Poland, depository agencies (custodians), acting in representation of members, must take necessary action against the fund managers to recover losses suffered through malinvestment or negligent performance of their duties.

In addition, depository agencies are also directly liable for any loss arising as a result of not fulfilling their duties or doing so in a negligent manner.

c) Corporate governance rules and regulations of companies³⁰

The first formal document on corporate governance was drawn up in 2002 by an experienced group of individuals and agencies from the financial system. This document entitled "Best Practices of Public Companies 2002" was sent for implementation by the Warsaw Stock Exchange (GPW).

Subsequently, and to strengthen corporate governance rules, the GPW coordinated a process for defining these rules, giving rise to the issuance in 2007 of a "Code of Best Practices for Companies Listed in the GPW" which was updated in 2010. The Code was prepared under the principle of "comply or explain", which enables the market to have clear

²⁹ Act of 28 August 1997. Law on organization and operation of pension funds.

³⁰ Code of Best Practice for WSE Listed Companies. Appendix to Resolution No. 17/1249/2010 of the WSE Supervisory Board dated 19 May 2010; Web site Warsaw Stock Exchange (www.corp.gov.pl/wydarzenia.asp?id_wyd=133); Corporate governance in Poland. Tom Mortimer. Winter 2009.

information regarding compliance with the rules and/or an explanation of why they were not met.

The code's main objectives are to increase the transparency of the information provided by companies, improve communications between them and members and strengthen the protection of shareholder rights, including those not covered by the legislation.

In spite of the development of corporate governance in Poland in the past 20 years, through the aforementioned initiatives and others, several areas still require improvements. Business ownership concentration, the need for greater supervisory powers of councils or committees and greater protection of minority shareholders are just a few examples.

According to the investors' protection index drawn up by the World Bank, Poland achieves a score of 6 on a scale of 1 to 10 - equal to the average of OECD countries and higher than the average rating of Latin America and Caribbean countries (5.1). The best scores are for the power of the shareholders to take legal action (9) and transparency of information (7), while the degree of liability the board of directors must assume for its actions receives a low score (2) (Appendix No. 2).

14. Dominican Republic

a) Investment objectives of the pension funds

The fund managers must invest the pension funds in order to obtain a real return that increases the value of the individual accounts of members, within the rules and limits established by Law³¹ and the complementary regulations. Any pension fund investment that is not explicitly specified by law is considered illegal

Notwithstanding the above, within the limits established for the investment of pension funds, risk and return being equal, the AFPs must prioritize the allocation of assets in those initiatives that optimize the impact on the creation of jobs, housing construction and promotion of agricultural, industrial and other associated activities.

Pension funds are an important source of national savings and resources. Therefore, the funds must be invested in the national territory and in the event that a percentage of them may be invested abroad, they must have been previously approved by the National Social Security Council (CNSS). The CNSS is responsible for issuing the complementary rules that regulate these types of investments.

b) General responsibilities for the investments of the pension funds and the damages caused to them

The AFPs must respond with their own equity for damages caused to the pension funds by the breach of any of their obligations, and are obligated to indemnify the fund for the direct losses and damages caused by any of their directors, employees or individuals who render

³¹ Law No. 87-01 which creates the Dominican Social Security System, dated 9/05/2001

services to them as a result of the execution or omission, as the case may be, of any of the actions referred to in the Law and its complementary regulations. The directors and managers who may have participated in such actions are jointly and severally liable for this obligation. The Superintendency of Pensions may pursue the legal action it deems pertinent, to the benefit of the pension fund, for obtaining the indemnities or compensation corresponding to it by virtue of the aforementioned obligation.

c) Appointment of directors in the companies in whose shares the pension funds have invested

The AFPs must define policies for the vote of the AFP in the appointment of directors in the companies whose shares have been purchased with the resources of the pension funds, in order to avoid potential conflicts of interest.

Moreover, under the supplementary rules on conflicts of interest issued by the Superintendency, the AFPs, in representation of the pension funds they manage, must belong to the Board of Directors of a specific issuer, when the investment assets represent a percentage greater than 10% of the total issuer's capital subscribed and paid for.

The fund managers must attend shareholder and debt holder meetings for the instruments that have been purchased with pension fund resources. Votes must always be cast on adopted resolutions in such meetings. The AFPs are exempt from the obligation to attend shareholders' meetings when the pension fund investment represents a percentage less than 3% of the total issuer's capital subscribed and paid for.

The individuals representing the AFPs in these meetings must be appointed by the Board of Directors of the AFP, and the appointed individual must be someone from the management team with an area of expertise that enables him to capably represent the Pension Fund in such meetings.

The fund managers must submit to the Superintendency a report on their participation in the Boards of Directors, shareholders' meetings and assemblies of debt title-holders.

d) Commitments to protect solvency, liquidity and total return

By law, the AFPs can carry out transactions, legal agreements, extensions and renewals and other commitments in order to protect the solvency, liquidity and total return of the acquired financial instruments. They can also participate with voice and vote in creditors' meetings or any type of competitive procedure, unless the debtor is a person connected with the respective AFP, in which case he can only participate by voice.

e) Corporate governance rules and regulations of companies³²

In December 2008, the General Law of Corporations and Individual Limited Responsibility Enterprises, which repealed and replaced the section on commercial companies of the Commercial Code, was promulgated. This Law constitutes a comprehensive reform of corporate law in the Dominican Republic. Its main objective was to modernize the legislation and issue regulations in areas not previously regulated. Among other matters, it established standards for the most important processes of corporate life, good corporate governance standards and greater transparency in corporate transactions.

Corporate Governance Regulations for financial intermediation agencies³³ were approved by the Central Bank of the Dominican Republic in May 2007. Their purpose was to set out the basic principles and guidelines that serve as a backup for adopting and implementing corporate governance practices, in accordance with international practices and the nature and scale of activities in the country. The document identifies and defines criteria and minimum standards that must be applied by financial mediation agencies for establishing an effective internal control system that includes the roles of the board of directors, and senior management in risk management, as well as the delegation of authority, the liability system and the separation of the functions of the managing bodies of such agencies.

A 2008 KPMG report identifies the following challenges for corporate governance of the financial industry in the Dominican Republic: inherent tension between governance and growth and innovation; consistent corporate governance policies regarding transparency, communication and disclosure of the governance policies of agencies; acceptance of corporate governance by conviction, not by imposition; self-regulation to improve governance; research and implementation of a governance structure befitting the strategy and scale the organization.

According to the World Bank investor protection index, the Dominican Republic has a score of 5.7 on a scale of 1 to 10, which puts the country above the average for Latin America and the Caribbean. Its best rating was for power of the shareholders to file suit in cases of losses and damages due to certain transactions (8), with a (5) in information transparency and an average rating of (4) for the degree of liability the board of directors must assume for its actions (Appendix No. 2).

³² Informative Bulletin. Headrick Rizik Alvarez & Fernández. December 2008; Rules about Corporate Governance, Central Bank of the Dominican Republic, Corporate Governance in the Dominican Financial System. KPMG, July 2008.

³³ Multiple banks: Savings and Loan banks; Credit Corporations; Savings and Loan Associations; National bank for Promoting Housing and Production; and other financial intermediation agencies that the Monetary Board may authorize in future.

15. Romania³⁴

a) Investment objectives of the pension funds

The Law stipulates that the objective of the private pension fund manager system is to provide a private pension complementary to the benefit provided by the public pension system, on the basis of investing a percentage of the social security contributions paid in by members.

The fund investment must be made in the best interests of the participants and beneficiaries, ensuring capital preservation, quality, liquidity and total return, in a manner commensurate with the investment profiles and time horizon of the investors.

The Supervisory Commission of the Private Pension System may cancel the licenses of pension fund managers that do not ensure proper protection of the interests of members and beneficiaries.

b) General responsibilities for the investments of the pension funds and damages caused to them

Failure to comply with the law by fund managers may lead to civil or criminal consequences depending on the circumstances.

The fund managers and financial auditors are accountable to the members and beneficiaries for any damages that may result from the inappropriate breach of their duties, except in the case of force majeure.

Any individual who feels aggrieved as a result of breach of the Law is entitled to legal recourse in a competent court in accordance with the legislation in force.

The custodian agency is responsible to the fund manager, the members and beneficiaries, for any damage caused to them due to lack of oversight or improper fulfillment of their obligations.

c) Voting in shareholder meetings

The fund managers exercise, on behalf of members, the right to vote in shareholder meetings of public companies in which private pension funds assets have been invested. The vote must be issued only in the best interests of the members and beneficiaries of these funds.

d) Corporate governance rules and regulations of companies

In 2001, the corporate governance code of the Bucharest Stock Exchange (BVB) was issued, and then replaced and updated in 2009.

³⁴ Law N° 411/2004 on Privately Managed Pension Funds (as modified and amended by the Government Emergency Ordinance No. 50/2005 and Law N° 23/2007.

The companies traded on the regulated market of the Stock Exchange voluntarily adopt and comply with the code. Issuers report annually to the regulator specifying which recommendations, and to what degree, were implemented and how. Satisfactory explanations should also be submitted as to why recommendations were not implemented or only partially implemented.

The rules of the code are complementary to those established in Romanian corporate law and provisions related to capital markets, accounting, etc.

According to the World Bank investor protection index, Romania gets a rating of 6 in a scale of 1 to 10, which is equal to the average score of OECD countries and higher than that achieved by Latin America and Caribbean countries 5.1. Its best score is for transparency of information (9), while achieving average ratings for the degree of liability the board of directors must assume for its actions (5) and the power of shareholders to file suit in cases of losses and damages due to certain transactions (4) (Appendix No. 2).

16. Ukraine

a) Investment objectives of the pension funds

Obtain reasonable total return and capital preservation, and exclusively safeguard the best interests of members.

b) General responsibilities for the investment of the pension funds and damages caused to them

For the time being, Ukraine is operating the third pillar of the pension system, which was created for those who wish to increase their incomes in the decumulation stage and can afford to pay higher contributions.

The second pillar could start functioning in 3-4 more years (2014-2015). A discussion on a bill of law that creates the second pillar, originally covering economic sectors with severe and unhealthy working conditions (metallurgy, chemical area and mining industry) is already under way in the country.

For this reason, it is not possible to include information referring to second pillar matters in this report.

c) Corporate governance rules and regulations of companies

According to the World Bank investor protection index, Ukraine scores 4.7 on a scale of 0 to 10. Its weakest aspect is the degree of liability the board of directors must assume for its actions (2), while the best rating is the power of the investor to pursue lawsuits when adversely affected by certain transactions (7). It receives an average score (5) for transparency of information. (See Appendix No. 2).

17. Uruguay

a) Investment objectives of the pension funds

The pension savings fund must be invested in accordance with criteria of safety, profitability, diversification and compatibility of terms, in accordance with its purposes and within the limits set by the Law³⁵ and statutory rules and regulations.

b) General responsibilities for the investment of the pension funds and damages caused to them

The fund managers, which due to their negligence, errors and omissions, cause economic losses and damages to the pension savings fund, must pay the number of lost contributions into the fund, notwithstanding any other sanctions that may be pertinent.

c) Participation in shareholders' meetings³⁶

When the pension savings funds comprise bonds, unit shares of closed-end funds or investment instruments from financial public trusts, the corresponding pension savings fund managers must attend the regular shareholder and special meetings of the holders of such securities. They must also inform the Central Bank of the topics discussed as well as the resolutions adopted by the meetings they have attended.

d) Corporate governance rules and regulations of companies

Uruguay has made progress in the implementation of corporate governance, particularly in the financial sector. The Central Bank is seeking to improve these practices through the definition of minimum management standards. However, the country is still far from adequate corporate governance practices that meet international standards.

Uruguay achieves an average overall score of 5 on a scale of 0 to 10, as ranked by the World Bank investor protection index. It receives weak scores for transparency (3) and the degree of liability the board of directors must assume for its actions (4), while obtaining a very high rating in legal recourse for investors adversely affected by certain transactions (8). (See Appendix No. 2).

³⁵ Act N° 16.713 September 3, 1995.

³⁶ Circular No. 2.074 December 10, 2010.

III. Investment structure of the pension funds

Some information is presented below on the investment structure of the different countries for which information is available as of December 2010.

INVESTMENT PORTFOLIOS FIAP COUNTRIES (DEC. 2010)							
Latin America	State	Corporate	Financial	Foreign	Other (*)	Total	Total
Obligatory System:	Sector	Sector	Sector	Sector		Fixed Income	Variable Income
Bolivia	56.94%	14.67%	26.92%	0.00%	1.47%	97.07%	1.46%
Chile	11.70%	27.19%	14.55%	45.06%	1.7%	50.3%	48.20%
Colombia	39.85%	29.65%	12.84%	12.62%	5.04%	49.91%	45.05%
Costa Rica	73.91%	2.96%	19.41%	2.42%	1.30%	92.86%	5.85%
El Salvador (1)	81.37%	0.91%	11.24%	2.55%	3.93%	96.7%	0.00%
Mexico (2)	54.35%	27.41%	1.3%	11.84%	4.66%	78.40%	16.4%
Peru	15.97%	38.24%	18.74%	26.08%	0.97%	42.96%	56.07%
Dominican Republic (3)	49.22%	5.27%	45.51%	0.00%	0.00%	100.00%	0.00%
Uruguay (4)	83.85%	8.03%	1.12%	6.14%	0.86%	99.04%	0.10%
Europe	State	Corporate	Financial	Foreign	Other (*)	Total	Total
Mandatory System:	Sector	Sector	Sector	Sector		Fixed Income	Income
Bulgaria (5)	23.41%	45.34%	23.96%	36.0%	7.29%	67.05%	25.66%
Poland	52.36%	42.84%	3.64%	0.69%	0.48%	63.10%	36.3%
Romania	67.63%	23.22%	6.90%	2.22%	0.03%	87.23%	12.74%

Source: FIAP.

(*) The instruments that cannot be classified within the analyzed sectors have been classified in "Others": (i) Bolivia, Costa Rica, El Salvador, Mexico, Uruguay and Poland: available assets; (ii) Bulgaria: short-term accounts receivable; (iii) Chile: net position in derivatives (forwards) + other instruments; (iv) Colombia and Romania: available assets + net position in derivatives; and (v) Peru: transactions in transit.

(1) El Salvador is not authorized to invest abroad; the percentage shown in the chart refers to compliance with rules and regulations governing the classification of instruments in the country.

(2) In Mexico, the Afores started investing abroad in October, 2005.

(3) The Dominican Republic is not authorized to invest abroad.

(4) As of May 2008, the Pension Savings Fund Managers in Uruguay can invest up to 15% abroad (fixed income issued by international credit agencies).

(5) The Financial Supervision Commission in Bulgaria modified the information on the foreign sector that was published as of 2008. The percentages show the foreign sector portion of total investments, without showing the diversification of instruments. The figures of the State, Corporate and Financial sectors include both domestic and foreign investments. This is why the sum of the sectors is greater than 100%.

Appendices

Appendix No. 1

Participation in the appointment of boards of directors in 2010: Chile

Appointment of directors with participation of pension funds

Size of the board	Number of Companies	Distributive Figures	Proportion
6	1	14.30%	2.33%
7	31	12.50%	72.09%
9	11	10.00%	25.58%
Total	43		100.00%

Source: The Role of Pension Funds in Corporate Governance. Solange Berstein Jáuregui, Superintendent of Pension Funds in Chile. Seminar "The Role of Institutional Investors for Strengthening Corporate Governance in Chile and Other Countries". May 19, 2010.

Conclusion: The funds of each fund manager on its own could not appoint board members in any company.

Participation of the pension funds in the companies that renewed their boards of directors

Participation %	Number of Companies	Proportion
Greater than 20%	4	9.30%
Between 10% to 20%	13	30.23%
Less than 10%	26	60.47%
Total	43	100.00%

Source: The Role of Pension Funds in Corporate Governance. Solange Berstein Jáuregui, Superintendent of Pension Funds in Chile. Seminar "The Role of Institutional Investors for Strengthening Corporate Governance in Chile and Other Countries". May 19, 2010.

Conclusions: In 60% of the cases, the participation of the funds as a whole is less than 10% of the subscribed shares of the respective company. The ability of the minority to appoint directors independent of the controller is enhanced with the participation of the pension funds.

Continuation Appendix No. 1

Participation in the appointment of boards of directors in 2010: Chile

Relative importance of voting in the pension fund elections

Sized of Board	Elected Directors	Alternate Elected Directors
Greater than 100% of the C-R	6	0
Less than 100% & greater than 50% of the C-R	27	1
Less than 50% of the C-R	11	1
Total	44	

Source: The Role of Pension Funds in Corporate Governance. Solange Berstein Jáuregui, Superintendent of Pension Funds in Chile. Seminar "The Role of Institutional Investors for Strengthening Corporate Governance in Chile and Other Countries". May 19, 2010.

Conclusions: The vote of the pension funds, including the confluence of votes from other minority votes, resulted in a total of 44 directors and 2 alternate directors in 31 companies. 72% of the directors were appointed unanimously or with decisive support from the pension funds (more than 50% of the votes).

Number of directors appointed by the funds in each company (S.A.) (1)

Participation %	Number of Companies S.A.	Proportion
None	12	27.91%
1 director	20	46.51%
2 directors	9	20.93%
3 directors	2	4.65%
Total	43	100.00%

(1) The titles of directors are only considered.

Source: The Role of Pension Funds in Corporate Governance. Solange Berstein Jáuregui, Superintendent of Pension Funds in Chile. Seminar "The Role of Institutional Investors for Strengthening Corporate Governance in Chile and Other Countries". May 19, 2010.

Conclusion: In most cases the funds appointed a director.

Continuation Appendix No. 1

Participation in the appointment of boards of directors in 2010: Chile

Relative importance of voting in the pension fund elections

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total Elected Directors	230	224	142	199	261	210	218	318	237	336	338
Directors Elected by Funds	28	29	18	26	40	28	29	42	26	34	46
Percentage %	12.2%	12.9%	12.7%	13.1%	15.3%	13.3%	13.3%	13.2%	11.0%	10.1%	13.6%

Source: The Role of Pension Funds in Corporate Governance. Solange Berstein Jáuregui, Superintendent of Pension Funds in Chile. Seminar "The Role of Institutional Investors for Strengthening Corporate Governance in Chile and Other Countries". May 19, 2010.

Conclusion: The percentage of directors appointed with the participation of the funds remained relatively constant over the past 11 years.

Appendix No. 2

Strength of the Investor Protection Index by Countries

Country	Information Transparency	Liability of the Board of Directors	Power of Shareholders	Investor Protection
Bolivia	1	5	6	4.0
Bulgaria	10	1	7	6.0
Chile	8	6	5	6.3
Colombia	8	8	9	8.3
Costa Rica	2	5	2	3.0
El Salvador	5	2	6	4.3
Honduras	0	5	4	3.0
Kazakhstan	8	1	9	6.0
Mexico	8	5	5	6.0
Panama	1	4	9	4.7
Peru	8	5	7	6.7
Poland	7	2	9	6.0
Dominican Republic	5	4	8	5.7
Romania	9	5	4	6.0
Ukraine	5	2	7	4.7
Uruguay	3	4	8	5.0
Latin America and the Caribbean	4.1	5.3	6.0	5.1
OECD	6.0	5.2	6.8	6.0

Note: The investor protection index is an average of transparency of information, liability of the board of directors and the power of shareholders. The index varies between 0 and 10, where higher values reflect greater protection of investors.

Transparency of information: What corporate body has legal power to approve the transaction? Is it required to explain the potential conflict of interest? Is immediate information of the transactions required for the public and/or the shareholders? Are transactions published in some regular journal? Should an external agency review the terms of the transaction before they occur?

Liability of the board of directors: Can shareholders sue directly or indirectly for damage that the transaction of purchase - sale caused the company? Is it possible to hold the Chairman of the Board liable for damages caused by the transaction to the company? Can shareholders hold officials liable who approved the transaction that caused damages? Can a court stop the transaction before a shareholder claim? Must those responsible for damages be held accountable to reimburse the profits if the claim and respective suit is successful? Can fines and imprisonment be levied against those responsible?

Power of the shareholders: Can the shareholders with 10% or less of the shares inspect transaction documents before filing a lawsuit? Can they require an inspector to investigate the transaction? Can applicants request any document of the defendant and witnesses during the trial? May non-specific categories of documents be required of the defendant? Can the plaintiff directly question the defendant and the witnesses during the trial? Are levels of evidence in civil proceedings less than in criminal trials? Source: Doing Business, IFC and World Bank. Ranking 2011.