

G20/OECD Principles of Corporate Governance

Principle I.H: Clear regulatory frameworks should ensure the effective oversight of publicly traded companies within company groups. (new section.)

- *The prevalence of company groups in many jurisdictions has therefore heightened the need for regulators to ensure that the corporate governance framework provides means to effectively monitor them. If not, the extensive and complex structures of company groups may pose risks to shareholders and stakeholders of publicly traded parent or subsidiary companies within group structures, including through abusive related party transactions.*
- *To this end, jurisdictions are encouraged to develop a practical definition and criteria for the oversight of company groups focusing on aspects such as the controlling relationship of group companies and their parent, companies' domicile, and appropriateness of inclusion in consolidated financial reporting, among other aspects. In some jurisdictions, companies have adopted protocols and governance guidelines at group level as a tool to self-regulate group activity.*

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Principle II.G: Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress. Abusive self-dealing should be prohibited.

- *Company groups are often complex structures that involve several layers of subsidiaries, including across different sectors and jurisdictions. These structures may limit the ability of non-controlling shareholders of the parent and subsidiary companies to influence corporate policies and understand the risks involved, and may allow controlling shareholders to extract private benefits from group companies.*
- *Given the potential of these mechanisms to redistribute the influence of shareholders on company policy, and also its relevance for the enforcement of takeover regulation, **the disclosure of such capital structures, group structures and their control arrangements should be required.** Disclosure about such schemes also allows shareholders, debtholders and potential investors to make better informed decisions.*

Principle IV.A.3: Capital structures, group structures and their control arrangements.

- *A particular issue arises in some jurisdictions where groups of companies are prevalent and where the duty of loyalty of a board member might be ambiguous and even interpreted as to the group. In these cases, some jurisdictions have developed sets of rules to control negative effects, including by specifying that a transaction in favour of another group company must be offset by receiving a corresponding benefit from other companies of the group.*
- *A key underlying principle for board members who are working within the structure of a group of companies is that even though a company might be controlled by another company, **the duty of loyalty of a board member is related to the company and all of its shareholders and not to the controlling company of the group.***