

Message from Daniel Blume and Mike Lubrano, co-moderators of the RPT Task Force

Dear members of the Roundtable Related Party Transactions Task Force:

We are sending you this note to thank you for your participation in the Related Parties Transaction Task Force meeting of June 19th (and the Roundtable), to briefly summarize main conclusions from the meeting and next steps, and to reconfirm our interest to receive your written comments on the Task Force discussion paper by **Monday, July 29th** (attached for reference).

Key Conclusions

- Countries participating in the Task Force pointed to a number of **actions taken in their countries to strengthen their frameworks for oversight of related party transactions**. The possibility was mentioned **to update and re-publish a new version of the report that takes into account these latest developments, with an annex that could include new, best practice recommendations or options that are currently under consideration by the group**. In the interim, the co-moderators will develop a **summary record** to share with all Task Force members (including those who were not able to come to Quito for the meeting) that communicates these significant developments.
- It was also clear **that more work will be needed to better understand company practices and Task Force member perspectives in order to identify what may be considered good practices adapted to differing ownership patterns**. Some participants indicated that they would be willing to conduct a broader survey of companies in their own countries, but before launching such surveys, it would be worthwhile to first consider refining the set of questions to be asked to companies. These **questions could be tested on companies participating in the Companies Circle annual meeting in Buenos Aires on September 16th (and/or its Working Group on Company Groups) and circulated to the Task Force for feedback before they may be proposed for wider circulation to additional companies**.
- The issue of **related party transactions involving state ownership** was seen as particularly complex and should be explored separately, including through consideration of the issues raised in the next meeting of the Latin American Network on Corporate Governance of State-Owned Enterprises, tentatively planned to take place in late November, 2013.
- The Task Force should continue to work through written exchanges and conference calls as necessary before **reconvening back-to-back to the next Latin American Corporate Governance Roundtable meeting in 2014**. Its ongoing work and findings are also expected to feed into the OECD's review and update of the *Principles of Corporate Governance*.
- For your written feedback to Mike Lubrano and Daniel Blume by **29th July**, the discussion paper asked the following questions:

Group privileges and responsibilities

- Should the Rozenblum doctrine be applied in Latin America, providing some flexibility for RPTs to favour one company over another in the interests of the group for a

particular transaction, as long as a quid pro quo or overall balance is maintained? How could this best be implemented?

- Should the parent company in a group be vested with the right (or duty) to manage the group and its constituent companies in accordance with the overall interest of the group? If so, how should minority shareholders whose interests in a particular company are diminished in favour of the group be compensated for this loss (if at all)?
- Should groups, or even individual companies within groups, be permitted to decide for themselves whether they will or will not avail themselves of a Latin American version of the Rozenblum doctrine?

Compensation (this may take the form of cash, services or other value provided to the company)

- Should there be a compensation principle? (i.e. if directors of a company are permitted to approve transactions in the interests of the group rather than the individual company, they must also require compensation for minority shareholders negatively affected by the transaction)?
- Is it reasonable to expect that in such cases, directors will have the capacity to evaluate both the disadvantage caused the company by the RPT and the value of the compensation (if not in cash)?

Techniques for ensuring fair transactions or compensation

- Should independent directors be given specific rights to request compensation for minority shareholders when RPTs are not conducted according to market conditions? Should this be in the form of cash compensation, or may services rendered also be considered compensation, and if so, how should the value of such services be assessed?
- Should audit committees or individual board members be given specific rights to request independent valuation reports for transactions when they suspect it is not being undertaken at prevailing market rates?
- Should the establishment of a fiduciary duty of controlling shareholders to all other shareholders of the company group that they control be considered (as done in Israel)?

State-owned companies

- Defining what constitutes a related party to the state can also raise difficult questions: should the relationship be defined solely in terms of institutions that the state controls through ownership? If the relationship is based on political connections (e.g., if the owner of a company involved in a transaction with a state-owned company is a major donor to the political party controlling the government, is this an RPT?), what thresholds can be established to define and determine what constitutes a significant political relationship with the state?

Overall

- Are the questions raised above for possible legal and regulatory requirements and best practices for different types of companies the right ones? Are there additional recommendations or distinctions that should be considered?