ASBA

Association of Supervisors of
Banks of the Americas

WORKING GROUP NO. 4

Corporate Governance in Bank Supervisory Agencies

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Mission

To develop, disseminate, and promote
banking supervisory practices throughout the Americas,
in line with international standards.

To support the development of banking supervision
expertise and resources in the Americas,
through the effective provision of training
and technical cooperation services

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Executive Summary

In past decades, several countries in the region experienced a financial crisis. These crises had multiple causes and were generally attributed to macroeconomic imbalances, weaknesses in the financial and government structure of the supervised entities and even to financial regulation more focused on the implementation of accounting standards than on risk management.

Although these crises had multiple causes, a common element in most of these cases was the inadequate action —or the lack of it— from some of the supervisory agencies, which failed to take the right measures to prevent them. On the one hand, this was the result of outdated regulation structures, mainly focused on implementing prudential standards instead of on risk management and mitigation, limiting the supervisory agency's efforts. On the other hand, weaknesses in the financial situation of some supervision units prevented them from having the personnel needed to carry out a more comprehensive supervision of the sector.

With the aim of helping avoid or reduce the occurrence of financial crisis situations —by combating one of the known causes and to the effect of improving the quality of supervision— and consistent with the objective of the Association of Supervisors of Banks of the Americas (ASBA) of providing its members with a forum for the exchange of experiences, knowledge, ideas and supervision practices, ASBA's Board of Directors created the Corporate Governance in Bank Supervisory Agencies Working Group with the mandate of preparing a document that could be used as a guide on this subject by ASBA members.

The specific purpose was to become familiarized with the corporate governance practices of supervisory agencies of member countries and take advantage of the vast and diverse experience in corporate governance of the representatives of the 12 member countries of the Working Group and ASBA's executive team, in order to make recommendations on sound principles and adequate practices that could be considered and implemented by the region's supervisory agencies.

This document is the result of the Working Group's efforts, which in 2007 carried out research on the topics here covered and held several meetings to discuss and analyze them, concluding its activities at the beginning of 2008. The document consists of five chapters. Chapter 1 analyses the objectives and the corporate government structure of supervisory agencies. Chapter 2 addresses the composition of supervisory agencies' governing bodies, while Chapter 3 analyses the importance of transparency and accountability in said bodies. Chapter 4 addresses the importance of the supervisory agencies' independence, while Chapter 5 analyses the legal protection of bank supervisory agencies.

The Working Group's basic recommendations are as follows:

> The main objective of a supervisory agency should be to promote the stability of the financial system and the confidence of the financial consumers in this system, bearing in mind the different mandates of the region's supervision units.

> The structure of the supervisory agency should contribute to reach its objectives and to clearly define the responsibilities of each part of the organization.

> The mechanism to elect the members of the governing bodies should contribute to its independence and to the purpose of the members having the technical qualifications that each position requires, unquestionable reputation and no conflicts of interest.

> The supervisory agency should design a clear process of accountability and be transparent regarding the objectives it pursues, its functions, strategies, performance, and provide relevant information to all stakeholders.

> The duties of the supervisory agency should not be affected by public bodies, political interests, interests of the supervised sector or by the users themselves.

> The law should provide for legal protection to the Superintendent, high-level personnel and other employees against lawsuits for actions taken or omissions carried out in good faith while performing their duties.

ASBA considers this topic of vital importance and highly relevant for the banking supervision and regulation process. In line with its objective of disseminating best practices, ASBA expects that this document be used as reference by those supervisory agencies that want to adopt measures to improve their corporate government structures.

Introduction

The Association of Supervisors of Banks of the Americas (ASBA), taking into account the recommendations of the Basel Committee on Banking Supervision and other leading authorities, and in light of the dynamics and increasing complexity of the risks in the financial system, constantly promotes better training for financial supervisors of the region. However, trained human resources and sophisticated risk measuring models are not enough for a supervisory agency[1] to reach its objectives. To that aim, it is essential for it to have a solid and adequate corporate government structure.

But, what exactly is corporate governance? OECD corporate governance principles define it as "a set of relationships between an entity's management, board, employees and other stakeholders with an interest in the entity's activities. Corporate governance provides a structure through which the objectives of the entity, the means to attain them and the ways to monitor the entity's performance can be set. Good corporate governance should provide the right incentives so that the board and management pursue the objectives relevant for the entity and its shareholders, and should also facilitate effective monitoring of the entity. An effective system of corporate governance in a company and in the economy as a whole, contributes to an adequate degree of confidence in the functioning of the market economy.

In past decades, several countries in the region experienced a financial crisis. Although these crises had multiple and complex causes, they were generally attributed to macroeconomic imbalances, significant failures in the legal systems and weaknesses in the financial and government structure of the supervised entities and even weaknesses in the financial authority itself.

According to the OECD principles, corporate governance consists of a set of relationships between an entity's management, board, employees and other stakeholders with an interest in the entity's activities; corporate governance

[1] From now on, the term "supervisory agency" will be used for entities carrying out supervisory activities in a country.

provides a structure through which the objectives of the entity, the means to attain them and the ways to monitor the entity's performance can be set.

In this regard, it would be worth noting whether the absence or weakness of corporate governance in supervisory agencies prevented the financial supervisor from taking necessary measures on time. Were the supervisors able to make actual independent decisions? Did they have the necessary resources to fulfill their mission? Did the fear of legal consequences affect their judgment to make the decisions? Was an adequate government structure in place to promote control and critical debate on the measures to be implemented? Were the proper incentives in place and were supervisors accountable for their actions?

In some of these crises, there were supervisory and corporate governance weaknesses, which had negative consequences in the financial system and in the economy as a whole. Therefore, strengthening supervisory agencies should be a priority for a country.

It is worth mentioning that many times legislators and employees of different institutions are not completely aware of the importance of having a strong bank supervisory agency, and in many cases they show doubts regarding the need and importance of having an independent supervisory agency. Proper corporate governance can be the answer to this reticence, by allowing the functioning of mechanisms that operate as a highly effective counterpart to this strength and independence.

The Association of Supervisors of Banks of the Americas, acknowledging the importance of strengthening corporate governance at supervisory agencies, created the Working Group 4, whose objective was to discuss with a critical view the different elements that should constitute the corporate governance of those agencies and to identify good practices and recommendations to consolidate the corporate government structures of ASBA member countries' supervisory agencies.

The Working Group expects that this document help supervisors assess the strength, weakness or absence of corporate government structures in member countries, whose basic elements, according to the Basel Committee on Bank Supervision and other authorities, are an important base for effective supervision. Likewise, it is expected that the recommendations of this document be adaptable, to the extent possible, to the circumstances of the member countries.

The document consists of five chapters. Chapter 1 analyses the objectives and the corporate government structure of supervisory agencies. Chapter 2 addresses the composition of supervisory agencies' governing bodies, while Chapter 3 analyses the importance of transparency and accountability in said bodies. Chapter 4 addresses the importance of the supervisory agencies' independence, while Chapter 5 analyses the legal protection of bank supervisory agencies.

1. Objective and Government Structure

The goal of applying corporate governance measures in a supervisory agency is to identify, measure, monitor and manage elements of the organizational structure and the processes and practices that might be hindering the achievement of its objectives.

Therefore, a logical first step is to clearly identify the objectives of the agency and assess if the government structure in place is the proper one to achieve them.

1.1. Objectives of a Supervisory Agency

In different areas, it has been widely discussed what the objectives of a supervisory agency should be. The most usual ones include promoting financial stability, protecting the financial consumer, and making financial intermediation more efficient.

Table 1.1 shows a compilation of the objectives of some country members' supervisory agencies.

Table 1.1

Country	Objective
Argentina	One of the basic goals of Argentina's Central Bank is creating the necessary conditions to develop and strengthen financial stability by means of an appropriate regulatory framework.
Bahamas	Foster and maintain safety, soundness, and integrity of the banking and financial system of Bahamas and of every institution belonging to the system. Foster reliability on the financial system by implementing policies and standards that comply with the best international practices for supervision and regulation.
Bolivia	Keep the confidence of the public in the financial system, through regulation and supervision geared towards achieving a transparent, efficient, and sound functioning of financial entities that guarantee: • the protection of people's savings; • the rights of financial clients and consumers; and, • the provision of top-quality service.

Brazil	Assure the soundness of the financial system and regulate the supervised entities.
Canada	Contribute to public confidence on Canada's financial system.
Chile	Supervise banks and other financial institutions in order to protect depositors or any other creditors and public interest.
Colombia	Supervise the Colombian financial system in order to preserve its stability, safety, and reliability, as well as foster, organize, and develop Colombia's stock market and protect investors, depositors, and insured people.
Costa Rica	Assure the soundness and stability of the financial system.
Dominican Republic	Assure the stability, solvency and efficiency of the financial system and protect users of financial institutions by means of an efficient and integral supervision, contributing in this way to the socio-economic development of the Dominican Republic.
Ecuador	Monitor and control with transparency and efficiency the institutions of the financial system, insurance companies and social security institutions, so that economic activities and the services they provide comply with the law and respond to the general interest. Contribute to deepening the market by giving users access to financial services, as a contribution to the economic and social development of the country.
El Salvador	Supervise compliance with provisions applicable to institutions and individuals, within the scope of their authority, in order to maintain confidence in the financial system and its stability.
Guatemala	Promote stability and confidence in the financial system.
Mexico	Supervise and regulate financial institutions, within the scope of their authority, in order to assure their stability and adequate operation, as well as maintain and foster a healthy and balanced development of the financial system as a whole, to protect public interests.
Panama	Strengthen and foster stability, confidence, and competitiveness of the banking system, maintaining and deepening the international financial integration and the efficiency and safety of financial intermediation and the monetary system.
Paraguay	Assure solvency and stability of financial institutions and groups and of the system as a whole, within a framework that promotes the efficiency of the financial intermediation process, therefore, achieving a greater protection of depositors and users of financial services and contributing to a balanced development of the economy.
Peru	Create the conditions to maximize the value of financial, insurance and private pension systems, thus increasing confidence and adequate protection of public interests, through preventive supervision, transparency, truthfulness and quality of information, safeguarding the stability and solvency of the institutions that are part of the systems.
United States (FDIC)[2]	Maintain the stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions, and managing receiverships.
Uruguay	Assure the defense of the less sophisticated depositors and the maintenance of

[2] The answers of the United States only represent the answers of the FDIC to the survey.

	public confidence in the supervised institutions, promoting its soundness, solvency and adequate operation.
Venezuela	Carry out supervision and regulation activities by inspecting the entities under its control, in order to strengthen the stability and transparency of the financial system of the country, responding to the social, economic, and justice needs of all the citizens, achieving in this way the supreme goals of the State and the Nation.

When a supervisory agency pursues many objectives, it becomes difficult to achieve them, risking the possibility of achieving the main objective. The pursuit of multiple objectives can cause the dispersion of efforts and resources, and, moreover, can overlook a possible conflict among them.

The efforts to achieve one objective may affect the accomplishment of others. For example, it is difficult to promote regulatory and control measures and, at the same time, promote measures to foster growth of the financial market. If a central bank carries out bank supervisory activities, it could be tempted to keep interest rates low to prevent certain weak banks from having financial problems, even when this measure might not be the most suitable one to curve inflation.

Bearing that in mind, the Working Group discussed which the main objective of a supervisory agency should be. It concluded that the main objective of a supervisory agency should be to promote stability and confidence of the users in the financial system. The agency should foster the adequate and smooth operation of the system and the effective functioning of financial intermediation, helping to prevent financial institutions from creating situations that can induce a financial crisis. The main argument is based on the fact that the lack of stability in the financial system has a very significant negative impact on the economy as a whole and on people’s lives. Also, it is considered difficult for a supervisory agency to fulfill other objectives in the absence of financial stability.

The Working Group agreed that the achievement of secondary objectives should be the result of an effort that does not affect the attainment of the main objective. The secondary objectives can include:

- Promote risk management best practices in the institutions.
- Foster competition and innovation in the financial system.

It should be mentioned that some supervisory agencies have multiple mandates, which can be set by an external institution. In these cases, the supervisor should establish an adequate process to prioritize the objectives and develop an adequate plan to achieve them.

Once the main objective of the agency is clearly identified, it should be assessed whether the government structure is the most suitable to achieve the objectives.

1.2. Agency Problems in Achieving Objectives in a Banking Supervisory Agency

The achievement of the supervisory agency's objectives is framed within an agency problem. There is an agent (the supervisory agency) that works on behalf of an unclear principal, who may be defined as depositors or the society as a whole, since the problems derived from a poor financial supervision management may become systemic financial problems, adversely affecting savers and investors and the proper functioning of the economy.

The principal has little power to take direct action, and unlike a private company, the principal does not even have a collective mechanism for decision making, like a regular shareholders meeting, which can eventually change the Board of Directors if it does not comply with the objectives set by the company's owners. The "shareholders meeting" meets once every four or five years during elections. However, it is unlikely that it will give an opinion regarding the supervision issue.

Therefore, it is important to have mechanisms in the government structures that can mitigate these problems. One way to do this is by aligning the agent incentives with those of the principal, so the agent focuses his efforts towards achieving the main objective of the supervisory agency. In this regard, the demands for periodic transparency and accountability become relevant to serve as a mechanism that the principal can use to issue a vote of confidence or lack of confidence in the work of the agent.

1.3. Government Structure in a Banking Supervisory Agency

The government structure of a supervisory agency is an important factor in achieving its objectives, given that it has an impact on the powers that the employees of the agency have and in the human and technical resources of the agency.

The adoption of a given government structure should not be the ultimate goal, but a means to achieve the objectives of the supervisory function in the most efficient way. Therefore, the suitability of a specific government structure should be assessed against its contribution to a timely and independent decision making and the efficiency of the different processes of the supervisory function, as well as the way agency problems are solved within the agency.

It is worth mentioning that the structures of supervisory agencies vary among the countries in the region and that the institutional traditions in every country and the different lines of thought at different times, regarding the convenience of adopting certain structures, have influenced the design and the modifications that the government structures have had.

1.3.1. Government Structures of Bank Supervisory Agencies in the Countries of the Region

Based on the responses provided by the members of the Working Group, two basic models of bank supervision organization can be identified within the region.

In the first one, there are separate supervisory agencies for every type of financial market. In other words, there is a specialized supervisor for banks, another one for insurance and securities, and another one for non-banking institutions. It may be argued that under the specialized agencies scheme, each one of them could be more sensitive to the needs of each segment in the financial market, which can facilitate the supervision task, given that these agencies have specialized knowledge of the characteristics and important issues of these segments.

In the second model, the supervision of the several financial markets is carried out by one institution, which in theory facilitates the coordination among the different participants of the supervision. A variation of this model is one in which the supervision of some financial markets is conducted in one organization while others are kept separate. An example of this variation is the Canadian model, which integrates bank and insurance supervision under OSFI and leaves supervision of securities to the provinces. In the case of Canada, this structure is effective because it is a reflection of the financial conglomerates that dominate the financial spectrum.

In the majority of the supervisory agencies of the region, there are two main structures with small variations, which are shown in Figure 1.1.

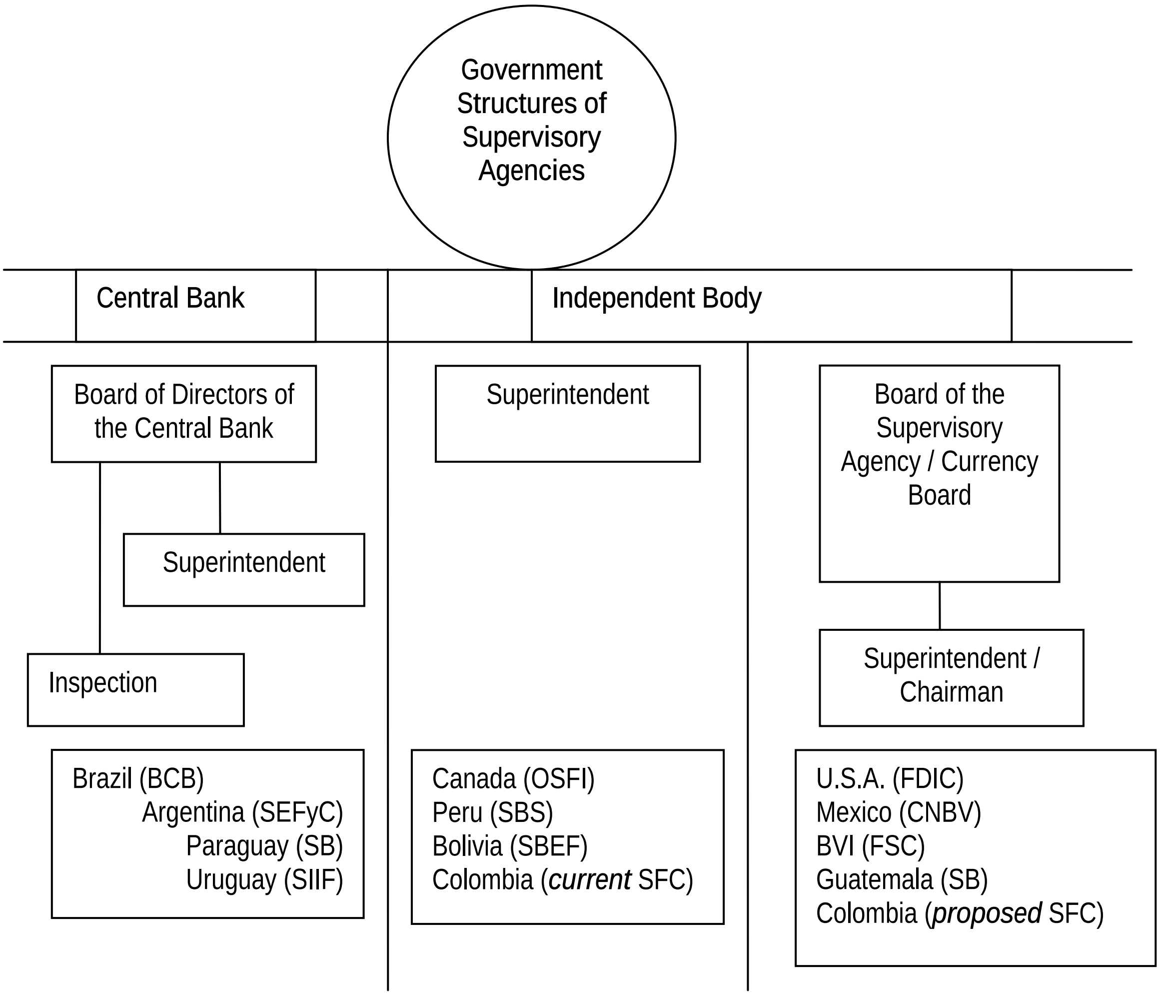
The first structure has a Central Bank led by a Board and an Executive President, which incorporates a supervision organization with different degrees of independence, usually called Bank Superintendent's Office. The Superintendent has the responsibility of assessing the situation of the financial system and its institutions, and of adopting, or suggesting the adoption of, measures to foster the solvency and soundness of banking institutions and of the banking system as a whole. This type of structure is followed by the *Superintendencia de Entidades Financieras y Cambiarias* of Argentina (SEFyC), the U.S. Federal Reserve, the *Superintendencia de Bancos* of Paraguay and *Superintendencia de Instituciones de Intermediación Financiera* of Uruguay. In the case of Brazil, the Central Bank carries out directly all supervisory functions.

In the second type of structure, there is an autonomous supervisory body (typically, the Superintendent's Office) whose top authority is the

Superintendent, who is usually appointed by the country's President. In some cases, a legislative body participates or ratifies this appointment.

This type of structure has two important variants. The first one is when the autonomous body has a Board of Directors as the highest level of collegiate authority within the organization. The *Comisión Nacional Bancaria y de Valores* of Mexico, the U.S. *Federal Deposit Insurance Corporation* (FDIC), and the *Financial Services Commission* (FSC) of the British Virgin Islands belong to this group. In the second one there is no Board of Directors as the highest governing body. That is the case of *Superintendencia de Bancos y Entidades Financieras* (SBEF) of Bolivia, *Superintendencia de Banca, Seguros y AFPs* (SBS) of Peru, *Superintendencia Financiera* (SFC) of Colombia, the *Superintendencia de Bancos* (SB) of Guatemala and the Office of the Superintendent of Financial Institutions (OSFI).

Figure 1.1



1.3.2. Advantages and Disadvantages of Keeping Supervision within the Realm of the Central Bank

The different structural arrays evident among ASBA members' supervision bodies suggest that there may be several supervisory structures that can be suitable for countries. Ultimately, the supervisory framework that is employed will reflect the unique characteristics of each country, including the country's legal, financial, banking, and regulatory experiences, background, and institutional arrangements. Likewise, the suitability of certain structure will depend on the circumstances of a country at a particular moment.

The convenience of keeping supervision within or outside the realm of a Central Bank has been long debated due to the topics and policies that it involves, without reaching consensus. In this debate, the following arguments in favor and against have been put forward:

Arguments in favor:

a) Usually, the Central Bank has independence, which can also protect the supervisory agency.

b) The Central Bank is typically independently financed and, therefore, it often has financial resources to effectively meet its supervisory objectives, including the capacity to hire, train, and maintain quality personnel.

c) The information obtained while supervising the banks may be used as an input for the monetary policy. In this way, the Central Bank can better monitor the banks and anticipate problems in the financial system.

Arguments against:

a) There could be conflicts of interest between the objective of an effective financial supervision and the objectives of monetary policy.

b) Failure in a supervised entity may damage the Central Bank's reputation and have an effect on its ability to conduct monetary policy.

c) During situations of crisis it will be difficult to focus on both activities and one of them could be neglected (monetary policy / bank supervision).

It can be said that each of the two banking supervisory structures has a different degree of control and different access to resources and independence, which can vary depending on the specific institution. The structure selected by each country will depend on its specific circumstances, as well as on its legal and institutional structure.

1.3.3. Good Practices and Recommendations

As mentioned before, a supervisory agency's structure should be an element that helps the agency to achieve its objectives; therefore, it should be assessed whether it actually helps to achieve them or not. To this effect, the following recommendations are made:

1. The supervisory agency's structure should be such that it helps the agency to achieve its objectives and to clearly define the responsibilities of each element of the organization.

2. The agency's structure and established procedures should contribute to the development of activities with operational and budgetary independence, without interference from the government, the banking sector, or any other entity.

3. The structure should facilitate the establishment of adequate selection processes of human resources that help ensure that the ideal persons are chosen based on technical criteria.

4. The supervisory agency's structure should contribute to make a clear distinction between the execution and control processes (clear definition of the roles and responsibilities of every party) and to the existence of the necessary weights and counterweights, so that one of them does not have an excessive amount of power over the other.

5. The agency's structure should contribute to proper accountability and transparency. There is no specific structure that automatically assures them.

6. It is important that the structure includes entities dedicated to the organization's internal control, such as internal audits, external audits, and an audit committee.

1.3.4. Considerations Regarding Changes in the Government Structure

A careful analysis may lead to the conclusion that a certain structure is more suitable than other for a given country at a certain moment. Once this is determined, it is necessary to analyze and assess the integral cost of transforming the structure of a supervisory agency.

A structural change involves a substantial reorganization of functions which, in turn, entails adaptation costs. This change can cause a period of uncertainty among personnel and the possibility that supervision may not be carried out properly for some time. In addition, part of the personnel, some of them with considerable experience or special skills, might leave the institution as part of the reorganization process.

The costs of a change could be lower if after an event of negative consequences the agency's credibility was put into question. In those cases, reorganization may possibly be the only solution to rebuild an effective agency. However, the possibility of making marginal changes and arrangements to the existent structure should be considered before trying a complete reorganization.

In sum, it can be stated that there is no ideal government structure for a supervisory agency. The proper structure is the one that helps to achieve the objectives of the supervisory activity in the most effective way, in a given country under certain circumstances. In any case, the costs and benefits of making a structural change in a supervisory agency should be carefully assessed.

2. Composition of the Governing Bodies

The composition of the governing bodies of a bank supervisory agency is a responsibility of utmost importance. The soundness of the supervisory agency's leadership and the organizational culture —as well as the proper execution of all necessary tasks to reach supervisory objectives— will depend on the chosen authorities.

2.1. Appointment, Length of Tenure and Removal of Authorities of Government Bodies

An important element of good corporate governance in a supervisory agency is the proper selection of its authorities. The good performance of a Board of Directors depends largely on having skilled members able to make valuable contributions and adequately fulfill their responsibilities. Boards that have unsuitable individuals or with poor decision-making power may affect the institution's interests considerably, either due to lack of competence, lack of commitment to achieve supervisory objectives or due to interference of personal or political interests.

A supervisory agency's governing body should be made up of people with wide experience on supervisory and financial regulation issues and with unquestionable reputation. Therefore, transparent and effective mechanisms should be established to appoint authorities and they should include the above criteria. These mechanisms should be clearly established in laws or regulations and they should be transparent and clearly communicated. Also, it is important that the reasons for removing employees from the government bodies be clearly specified in laws or regulations.

2.1.1. Analysis

Selecting governing bodies at a supervisory agency without transparent processes that ensure the suitability of the people appointed is not acceptable, given that the activities that are carried out in the agency require people with very specific technical knowledge and special management skills. These individuals should have the experience and knowledge to make decisions under pressure and in complex situations. Therefore, their appointment should follow a very meticulous process.

In addition, the selected authorities should have strong support and respect from the country's economic and political authorities, whose involvement should be limited, so that the authorities are able to fully carry out the agency's duties. A structured, transparent, and fair selection contributes to achieving the above.

The achievement of the objectives at a supervisory agency requires that, from the beginning of their tenure, the executives and authorities know for how long they will remain in their position. In this way, they will be able to carry out proper strategic planning at the entity and take up management commitments. If the period of the tenure is not well defined, they may tend to seek for short-term objectives, which generally are not the most beneficial for an institution.

Obviously, there will be situations that justify removing authorities. However, removals for unjustifiable causes or for political or personal reasons should be avoided, given that it can lead to the loss of persons that make valuable contributions or that are strong leaders. The removal of authorities should follow criteria explicitly established in laws or codes.

2.1.2. Situation in the Region

The processes for appointing and removing authorities are unique to each jurisdiction represented by the Working Group member countries. However, a common element in all cases is the influence of political power, generally represented by the country's President or Congress. The involvement of political actors in the appointment and selection process puts the autonomy and independence of a supervisory agency at risk. This risk can be mitigated if transparent mechanisms for effective accountability are in place.

Table 2.1 presents practices for the selection and appointment of authorities in the region:

Table 2.1

Selection and Period of Responsibility					
Country	Is Supervision within the Central Bank?	Who proposes the governing body?	Is there any authority that endorses the appointment?	Period and renewal of the position.	Are there objective causes for removal?
Argentina	Yes	The Superintendent is proposed by the President of the BCRA (Central Bank) from among the appointed Directors (which were appointed by the Nation's President and ratified by the Senate).	The Executive Branch.	Three years. The renewal is not expressed in the law.	Yes. See Article 9 of BCRA Charter.
Bolivia	No	President	Yes, the Senate submits a list of three candidates.	Six years	In view of the national jurisdiction, the Superintendent of Banks cannot be removed, nor judged, without a process at the request of the Ministry of Finance at the Supreme Court of Justice followed by the Public Ministry.
Brazil	Yes	President	Yes, the Senate should approve it.	The tenure period is not defined in the case of the members of the Central Bank's Board of Directors. Only the President of the Republic can remove them.	No. However, there are general rules for public administration employees.
Colombia	No	President	No. The appointment from the President of the Republic	There is not a defined period. The Superintendent can remain in the position for as long	The ones stated in the Disciplinary Law (Law 734 of 2002) in case of sanctionable fault.

			suffices.	as the President determines so.	
Guatemala	No	The Monetary Board proposes three candidates, with the favorable vote of three quarters of all the members of such Board.	No, once appointed by the President of the Republic the appointment is confirmed.	Four years. The mandate can be renewed.	Yes, he can be removed by the President of the Republic if a) he has been convicted in a penal court, b) he has been declared by a competent judge to be interdicted or bankrupt, c) if asked by the Monetary Council by decision of three quarters of all the members, when he is responsible for acts that are clearly opposed to the objectives, nature, functions and interests of the Superintendence of Banks, or other justifiable cause.
Mexico	No	(2)	No	Not defined	Not defined. There are some removal causes expressed in the *Ley Federal de Responsabilidades Administrativas de los Servidores Públicos.*
Paraguay	Yes	The President, from a group of three people suggested by the Board of Directors of the BCP (Central Bank).	No	The norm is not taxative but the Central Bank Chairman should be in agreement. Five years	Yes
Peru	No	President	Yes, the Congress should approve it.	The same as the President of the Republic.	Yes, the Congress removes the employee.
United States (FDIC)	No	(1)	Yes, the Senate should approve it.	Six years. Generally, each Director can	No specific criteria exist.

				continue working after his tenure is over, until his successor is appointed. See 12 USC 1812(c) (3).	
Uruguay	Yes	Board of Directors of the Central Bank.	The appointment of the Superintendent is made by unanimous decision of the Board of Directors of the Central Bank.	Eight years. It can be renewed.	No. The removal should be unanimously decided by the Board of Directors and should be justified.
1. PC= Constitutional President, OCC (1) and OTS (1)					
2. Finance Ministry (five directors and the president), Bank of Mexico (three directors), National Insurance and Bonding Commission (one director) and the National Commission for the Retirement Savings System (one director)					

2.1.3. Good Practices and Recommendations

Regarding the appointment, tenure and removal of authorities the following practices are recommended:

1. The mechanism to select the members of governing bodies should contribute to their independence, assuring that members have the required technical qualifications, unquestionable reputation and that they do not have conflict of interest.

2. A coherent, fast, and transparent appointment methodology should be established. It should assure that the potential authorities comply with what was specified in the previous paragraph.

3. The law or corresponding codes should have a full list of the selection criteria, specifying, when necessary, the minimal elements or conditions to comply with each of them. In addition, the methodology should specify the degree of importance of each selection criterion.

4. The members of the governing bodies should have a fixed tenure, which should be long enough for them to carry out their responsibilities. It is

advisable that this period differs from that of the authority that appoints them, in order to minimize the possibility of electing or removing employees due to political or personal reasons. Also, the appointment period of the Board members should expire at different dates.

5. It is advisable that the executive and legislative powers participate jointly in the process of appointing the governing bodies.

6. The removal of the directors or members of the governing bodies should be done in an open and responsible way, avoiding personal or political criteria while doing so. The reasons for removing an authority, as well as the authority empowered to make such a decision, should be clearly specified on the appropriate laws or codes. An employee should only be removed if it has been found that he has failed to comply with relevant laws or codes and his removal should be done following the procedures established in the appropriate law.

7. The Board of Directors should have a clear mandate and be fully responsible for the performance of the entity.

2.2. Requirements That Should Be Met by the Authorities of the Governing Bodies

Supervisory agencies should abide by high quality standards when performing their duties, and have the ability to improve their performance continuously. This is only possible if the employees have the adequate professional skills and relevant experience.

2.2.1 Analysis

A candidate’s technical skills and experience should prevail at the time of selecting the authorities of the governing bodies, in order to increase the possibility of them having a successful tenure and complying with the established institutional objectives.

In addition to the professional quality of the authorities that are part of the governing bodies, it is important to demand from them high ethical standards so that their tenure is transparent and independent from external interests. Likewise, criteria such as leadership, integrity and commitment to the entity should be considered.

Laws or codes should explicitly establish the criteria that directors should fulfill in order to be appointed, as well as the criteria they should follow to remain in their position.

2.2.2. Situation in the Region

Table 2.2 shows the situation in the region regarding the requirements that the authorities appointed to governing bodies should fulfill.

Table 2.2

Requirements for Authorities of Governing Bodies			
Country	Is specialized formal education required?	Is experience in financial activities required?	Are there reputational requirements?
Argentina	No	Yes –See article 6 of the BCRA Charter.	No
Bolivia	Yes (1)	Yes (3)	Yes (2)
Brazil	No	Yes (1)	Yes (2)
Colombia	Yes (4)	Yes	Yes
Guatemala	Yes	Yes (5)	Yes (2)
Mexico	No	Yes. See the “Normatividad” section in the institutional web page: www.cnbv.gob.mx	Yes
Paraguay	Yes	Yes (1)	Yes (2)
Peru	Yes	Yes (1)	Yes (2)
United States (FDIC)	Not defined.	Yes (1)	Not defined.
Uruguay	Yes	Yes (1)	Yes (2)

1. Considerable knowledge on supervision and bank topics.			
2. Unquestionable reputation.			
3. Law No. 1600, *Ley de Regulación del Sistema Financiero* (SIRESE), establishes that Sector Superintendents should have at least 10 years of experience (although it does not specify that it should be in the supervision field).			
4. The law requires a professional degree, postgraduate studies and regulations on years of professional experience.			
5. Article 6 of Ley de Supervisión Financiera establishes that the Banks Superintendent should have at least, a bachelor's degree in the field of accounting, auditing, economics or law and social sciences.			

2.2.3. Good Practices and Recommendations

The requirements or procedures that should be met in the appointment of authorities are:

1. The criteria and requirements to be appointed Superintendent or Director should be stated clearly in the regulations and they should avoid, to the extent possible, ambiguities that would demand interpretation from the authorities in charge of assuring their compliance.

2. The members of the governing body should have unquestionable experience in bank supervision, in the banking industry or in financial activities. Therefore, it is advisable that the laws or codes clearly specify the minimum number of years of relevant experience. They should also identify the types of activities and experiences that are desirable and relevant for the position. Relevant experience is one of several criteria that will be used to assess a candidate. Therefore, it is not advisable to set a minimum number of years of relevant experience that is too high, because viable candidates for the position might be excluded.

3. Formal educational and academic accomplishments provide or expose the candidate to a minimum level of knowledge. Therefore, it is advisable that regulations establish clear specifications as to the level of education a candidate should have in order to be eligible for a position. It is important, however, to point out that the educational level does not guarantee that an individual will have certain skills. Therefore, the minimum requirements should point out fields of knowledge and type of

studies instead of specific names of programs or courses, so that the universe of potential candidates is not excessively limited.

4. An individual's reputation is an important element to analyze at the time of deciding the suitability of a certain candidate to fill a position. However, the term reputation is quite subjective, hence difficult to assess. In this regard, it is advisable to verify, to the extent possible, that the candidate does not have a documented background of behavior contrary to established regulations or ethics in previous positions.

5. The adequate skills and areas of experience for the positions in the governing bodies should be specified. It is important to have a balance between skills and areas of experience, with the aim of taking into account different points of view in decision making. This does not imply that quotas for certain skills or areas of experience should be set.

2.3. Dealing with Conflict of Interest

A conflict of interest typically arises when an individual is in a position of trust that requires using his judgment and making decisions on behalf of other parties (individuals or institutions) and who also has certain interests or responsibilities that might interfere with that power. Conflicts of interest occur often and are likely to have negative consequences if improperly controlled or managed.

In the context of a supervisory agency, it is very important to minimize these conflicts, in order to contribute to the credibility, independence, objectivity, and commitment of the governing body's members.

2.3.1. Analysis

Employees of the governing body of a supervisory agency, just like any other individual, may be exposed to undue pressures from individuals or institutions from outside the agency, which may influence their judgment in certain situations.

In a supervisory agency, this matter is of special importance because people with the most experience and knowledge on the structure, problems and dynamics of the financial markets are the ones suitable for positions within the government bodies, because usually they have worked at supervised institutions or at governing agencies related to the financial system. Many of these individuals often establish close professional and personal relationships within the bank industry. Therefore, it may be difficult for them, even if they had been away from the bank industry for some time, to be fully detached from contacts, investments, activities, events or circumstances that may give rise to conflicts of interest.

Therefore, it is difficult to try to completely eliminate any potential conflict of interest when selecting an individual for a governing body at a supervisory agency. Rather, an appropriate and perhaps more achievable goal is to minimize this conflict by establishing clear protocols, including periodic financial and personal disclosures, that the members of the governing body should comply with before they are hired, during their tenure, and for a reasonable time after they leave the institution.

2.3.2. Situation in the Region

Table 2.3 shows the situation in the region regarding conflict of interest.

Table 2.3

Dealing with Conflict of Interest			
Country	Is there quarantine for the members of the governing body that leave their positions?	Is the quarantine paid?	Is there any restriction for a person to become a member of the governing body?
Argentina	Yes	No	Yes – See article 8 of the BCRA Charter www.bcra.gov.ar/pdfs/marco/carta_organica.pdf (1)
Bolivia	Yes (2)	Not available	Yes (3)

Brazil	Yes (4)	When an ex-member cannot find an activity that is compatible with his previous position, the Government can authorize a paid quarantine.	Yes (3)
Colombia	Yes	No	Yes. Constitution of Colombia (Article 126-129), Law 734 (Article 35-41), Law 80, Law 190, Decree 1170 (specific for the *Superintendencia Financiera* of Colombia).
Guatemala	No	Does not apply	http://www.sib.gob.gt/es/normativa/normas_reforma_financieras/Decreto_18-2002.pdf
Mexico	No	Does not apply	Yes (5)
Paraguay	No	Does not apply	Yes. www.bcp.gov.py/supban/DNP/dnp07001.htm Articles: 33, 11, 13 y 14
Peru	Yes	Not available	Yes (3)
United States (FDIC)	Yes	No. Directors of FDIC generally are not compensated for the time they are banned from working in an insured institution.	Yes. Besides being a U.S. citizen, it is required to have experience supervising state banks. Although the FDIC Act contains no other specific requirements, past FDIC directors have usually had substantial supervisory, business, or legal experience in the U.S. banking industry.
Uruguay	No	Does not apply	There are no restrictions other than not working in a supervised institution that is listed in the *Estatuto del Funcionario*.
1. Civil servants in general, individuals related to financial institutions (shareholders, managers, service providers) or those disqualified by the Financial Entities Law.			
2. In Bolivia, article 32 of the LBEF bans the Bank Superintendent from becoming director or internal auditor of supervised financial institutions for a period of up to a year after the end of his tenure. 3. Individuals with concerns in supervised institutions.			
4. The Public Ethics Commission (CEP), which is under the authority of the President of the Republic, establishes a period of four months for members of the Board of Directors of the Central Bank of Brazil to remain professionally inactive (quarantine). CEP decides whether the quarantine is mandatory or not.			
5. Individuals with an interest in the supervised institutions; individuals sentenced to more than one year in prison; impossibility to fill other public positions or be popularly elected at the same time as the President of the CNBV.			

2.3.3. Good Practices and Recommendations

The following practices are recommended in relation to conflict of interest:

1. Before starting working at a supervisory agency's governing body, a nominee should end any connection he may have with supervised

institutions and announce it publicly in order to strengthen the commitment. However, a legal framework that makes it mandatory to demonstrate a “reasonable separation” from such institutions should be in place; in addition, this legal framework should explicitly contemplate the corresponding sanctions in case of non-compliance.

2. After leaving a position in a governing body, a former member should subject himself to a waiting period (quarantine), in which he should not have any professional or advisory connection with supervised institutions. It is advisable that this be disclosed to the public. Each entity should discuss if the member should be compensated for this waiting period.

3. There should be a mechanism in place that allows agency employees to receive specific guidelines regarding the activities that may result in a conflict of interest.

4. The members of the governing body should not be involved in political activities during their tenure (except for voting). In addition, they should be subject to a waiting period (quarantine) before and after their tenure, in which they should not participate in any political party, if this entails a clear conflict of interest.

5. Exemplary sanctions should be established for members of the governing body in case improper relationships are discovered among them and supervised or public institutions.

2.4. Codes of Conduct

One of the ways to deal with conflict of interest and to keep high ethical standards in a supervisory agency is to establish a code of conduct and to communicate its importance within the agency. All of the employees, regardless of their position, should understand and accept the rules established on this code, as well as the consequences of non-compliance.

2.4.1. Standard of Conduct

According to the Nolan Committee's First Report on Standards in Public Life, the following principles are the ones that should guide the work of civil servants:

- **Public interest.** Civil servants should make decisions based on public interest. Their decisions should not aim at making a financial profit for themselves, their relatives or friends.

- **Integrity.** Civil servants should not have financial obligations or any other kind of obligations towards individuals or organizations that may influence them in the performance of their duties.

- **Objectivity.** Objectivity should be considered as a merit factor in the performance of public activities, including appointing employees, awarding contracts or recommending individuals for awards or benefits.

- **Accountability**. Civil servants are responsible to the public for their decisions and actions and should subject themselves to relevant scrutiny by the institution where they work.

- **Openness**. Public servants should be transparent regarding their decisions and actions. They should provide the reasons for their decisions and restrict information, except in the cases when the public interest clearly demands it.

- **Honesty.** Civil servants are forced to declare any private concern related to public activities and take the proper steps to solve any conflict that may arise, in order to protect public interest.

- **Leadership.** Public servants should take leadership in promoting and supporting these principles based on setting an example.

2.4.2. Situation in the Region

Table 2.4 shows the situation in the region regarding codes of conduct.

Table 2.4

Codes of Conduct		
Country	Is there a code of conduct of the supervisory function applicable to the Governing Body?	Are members of the Governing Body required to formally adhere to the code of conduct? In which way?
Argentina	No (1)	Adherence to the Code of Ethics for the Public Function is required.
Bolivia	Yes	Yes
Brazil	No	No
Colombia	Yes. *Circular Básica Administrativa de la Superintendencia* (Numeral 2, Preliminary chapter).	Yes, it is in the law.
Guatemala	Yes	Yes
Mexico	Yes	Yes. Its compliance is mandatory by law.
Paraguay	Yes	Yes, although currently it is not clearly enforced.
Peru	Yes	No
United States (FDIC)	Yes	Yes
Uruguay	In addition to a code of conduct of general application to the public function, ethic principles have been approved and they should govern the Superintendence function.	No
1. Code of Ethics for the Public Function.		

2.4.3. Good Practices and Recommendations

The following practices are recommended regarding codes of conduct:

1. The supervisory agency should develop and maintain an updated code of conduct, which should guide employees at all levels regarding their tasks, duties, ethical behavior, as well as the consequences for non-compliance.

2. The code of conduct should demand periodic disclosure of information and financial reports from directors, with the aim of identifying inappropriate activities, sources of income and potential conflicts of interest.

3. As part of the process of appointing individuals, every member of the supervisory agency, regardless of their rank, should formally express adherence to the code of conduct.

4. There should be a unit in the supervisory agency responsible for providing guidance and enforcing the agency's code of conduct.

5. Any change or update in the code of conduct should be made public and all agency members, regardless of their rank, should express adherence to the change.

3. Accountability and Transparency

Financial markets play a very important role in social and economic development, which makes it vitally important for banks, as well as their supervisors, to be guided by strong and sound corporate governance reference frameworks. The collapse of major international companies due to failures in corporate governance shed light on the importance of maintaining effective internal controls, audit programs, and disclosure practices. Because of the critical role banks play in the everyday lives of citizens and the close scrutiny from stakeholders, the Basel Committee on Banking Supervision[3] declared that banks are highly sensitive to potential difficulties arising from ineffective corporate governance. Indeed, effective corporate governance in banking institutions is key to gaining and preserving the public confidence in individual banks and the banking system in general, which, in turn, promotes stability throughout the financial sector.

Bank supervisory agencies share a responsibility for fostering the public's confidence in the banking system, and have the added responsibility of promoting confidence in the country's supervisory authorities. It is therefore equally important for bank supervisory agencies and all members of a country's financial safety net to operate and be guided by strong corporate governance principles. A sound governance reference framework in supervisory agencies, supported by strong accountability mechanisms and appropriate levels of transparency, will help promote stability in the financial sector and reinforce the supervisor's credibility and legitimacy among banks, depositors, investors, researchers, the government, and the public at large.

3.1. Background

Recognizing the importance of an effective governance reference framework, the Basel Committee on Banking Supervision explicitly emphasized the importance of transparent processes and accountability arrangements as key

[3] "Enhancing Corporate Governance for Banking Organisations." BIS. February 2006

features for sound supervisory operations in the recently revised document called Basel Core Principles for Effective Banking Supervision and Methodology.[4] Principle 1 in the Core Principles document and Principle 1.2 in the related Methodology highlight the importance of transparency and accountability. These principles are included in this paper as reference for the reader.

3.2. Definition of Accountability and Transparency

As described in the Basel Core Principles, two key components of a sound corporate governance framework are accountability and transparency. Because these concepts can be interpreted in different ways, it is important to define them. In the context of this report, accountability refers to the responsibility of the bank supervisory authority to give account to the different stakeholders, that is, those with a legitimate interest or concern in the affairs of the bank supervisory agency. Stakeholders could include the government and its agencies, bank customers, the media, and the general public.

In turn, transparency can be defined as the act of providing relevant, timely and truthful information to several stakeholders, on the objectives, strategies, activities and the results of the supervisory agency.

Basel Core Principles

Principle 1 – Objectives, independence, powers, transparency and cooperation: An effective system of banking supervision will have clear responsibilities and objectives for each authority involved in the supervision of banks. Each such authority should possess operational independence, transparent processes, sound governance and adequate resources, and be accountable for the discharge of its duties. (…) Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.

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[4] Basel Committee on Banking Supervision, Core Principles for Effective Banking Supervision, October 2006; and, Core Principles Methodology, October 2006.

Basel Core Principles – Methodology

Principle 1(2): Independence, accountability and transparency

Each such authority should possess operational independence, transparent processes, sound governance and adequate resources, and be accountable for the discharge of its duties.

Essential criteria

1. The operational independence, accountability and governance structures of each supervisory authority are prescribed by law and publicly disclosed. There is, in practice, no evidence of government or industry interference which compromises the operational independence of each authority, or in each authority's ability to obtain and deploy the resources needed to carry out its mandate. The head(s) of the supervisory authority can be removed from office during his (their) term only for reasons specified in law. The reason(s) for removal should be publicly disclosed.

2. The supervisor publishes objectives and is accountable through a transparent framework for the discharge of its duties in relation to those objectives.

Source: Basel Committee on Banking Supervision, Core Principles for Effective Banking Supervision, October 2006 and Core Principles Methodology, October 2006.

3.3. Analysis

3.3.1. Accountability

It is important to recognize that accountability is not synonymous with control and that independence is never absolute.[5]

A supervisory agency should, and can, be simultaneously independent and accountable for its actions—the two concepts are not mutually exclusive.

A bank supervisory agency should make an effort to be operationally and financially independent, so that it can effectively perform its responsibilities without undue interference. Ideally, an accountability regime should strike a balance between providing the bank supervisory agency with enough freedom to achieve its purpose and giving it complete autonomy. This balance should allow the bank supervisory agency to pursue its objectives with minimal interference from external forces, while remaining within the scope of appropriate oversight.

The groups to which a bank supervisory agency is accountable often varies between countries, but generally include “official” and “unofficial” stakeholders. Given that a bank supervisory agency’s powers and authorities are usually delegated to it by an executive or legislative body, it stands to reason that bank supervisory agencies should give account of its actions to those authorities which empowered them with their mandate. These official stakeholders, which often include government bureaus or agencies, have the obligation to hold the bank supervisory agency responsible for its actions and are empowered to alter, broaden or limit the bank supervisory agency’s authority, as necessary.

Bank supervisory agencies often voluntarily hold themselves accountable to other market participants, as a way of promoting broad understanding of the role the bank supervisory agency plays in the country’s financial system and as a way of communicating the state of the banking sector to the general public. While unofficial stakeholders cannot to hold the bank supervisory agency responsible for its actions to the same extent as official stakeholders can, they may nonetheless exert their influence and voice their concerns about the

[5] Hupkes, Quintyn, and Taylor: “The Accountability of Financial Sector Supervisors: Principles and Practice.” IMF. (2005).

situation of the bank supervisory agency through other channels. Bank supervisory agencies should provide a feedback mechanism to all stakeholders through which their comments and concerns could be expressed.

Being accountable does not imply losing independence. In fact, the bank supervisory agency's consent to a sound accountability regime is what validates its independence, legitimacy, and credibility. That is, periodic communication with stakeholders and disclosure of its objectives, achievements, and activities provides a signal to the public that a system of checks and balances is in place and that the supervisor, while independent, is held accountable for its actions.

There is a risk that without an appropriate accountability framework, the bank supervisory agency could become an ungoverned agency, which fails to serve the public interest. Likewise, without independence the agency runs the risk of being beholden to special interest groups. In both cases, a bank supervisory agency's credibility will likely be undermined, and its ability questioned, whether its stakeholders believe it is not accountable or that it lacks true independence.

An appropriately designed accountability framework provides the bank supervisory agency the opportunity to regularly communicate with its stakeholders. Within the framework of accountability, the bank supervisory agency can keep the public informed of its role in the country's financial system and the actions it has taken in fulfillment of its mandate. Bank supervisory agencies often provide stakeholders with a feedback mechanism through which they can voice their questions and concerns and through which they can hold the bank supervisory agency accountable for its actions.

The bank supervisory agency should be mindful that many of the information it publishes may be too technical to be easily understood by certain groups of the population. Although all the relevant information should be published, the supervisor should make an effort to ensure that all stakeholders are provided with information that they can understand and that meet their needs.

Supported by a sound corporate transparency philosophy, bank supervisory agencies could demonstrate their moral or civic obligation to hold themselves accountable to all stakeholders by regularly providing information about its objectives, activities, governance arrangements, strategies, and performance.

When adequately structured, an accountability regime can play a critical role in reinforcing the bank supervisory agency's legitimacy and credibility, as well as improving its performance and governance.

3.3.2. Transparency

It is important to highlight that transparency is deeply linked to accountability and that it is a vital element of an effective government structure. Independence, accountability, transparency and integrity constitute the core pillars that any supervisory agency should have in place in order to implement an adequate governance framework.[6] Just as independence is not a goal in itself but rather part of an optimum government arrangement, transparency, in its many forms, is a critical part of this arrangement, which when properly practiced can strengthen market discipline, foster confidence in the bank supervisory agency, and promote stability in the financial sector.

Clearly, bank supervisory agencies should prudently find a balance between the public's interest in the transparency of the bank supervisory agency's operations and the bank supervisory agency's need to maintain the confidentiality of certain aspects of its operations. Confidence in the bank supervisory agency's ability to ensure the confidentiality of certain types of information could facilitate its ability to obtain and share relevant supervisory information with other banking supervisors and obtain important information from financial institutions.

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[6] Das and Quintyn (2002), *"Financial Crisis Prevention and Crisis Management: The Role of Regulatory Governance"*. 2002.

As transparency approaches will vary from country to country, due to differences in laws, practices, and culture, when designing the transparency program bank supervisory agencies should bear in mind that the degree of supervisory transparency should not be fixed or unlimited, and that confidentiality, when it is in the public interest or when required by law or prudence, should be preserved.

The report of the Basel Committee on Banking Supervision on *Enhancing Bank Transparency* (1998) highlights the important role that transparency and disclosure play in the banking sector. The document provides general guidance to banking supervisors and regulators and encourages them to foster transparent banking systems in the interest of promoting long-term stability in both individual institutions and banking systems, by providing the market with the necessary tools to encourage safe and sound banking practices.

In addition to encouraging banks to publicly disclose information about their financial position, risk management practices, and governance arrangements, bank supervisory agencies can directly strengthen market discipline and improve general awareness by disclosing information on banks and the banking system, based on its sources of information and research. Armed with timely, credible, complete, and accurate information supplied by banks and their supervisors, investors, depositors, and other stakeholders will be better equipped to make informed assessments of a bank's condition which could strengthen the market's ability to exercise discipline over financial institutions.

Bank supervisory agencies could also provide a valuable service to stakeholders by informing them on the general financial condition and the risk profile of the banking sector. Such information could be transmitted through different channels and ways, allowing the stakeholders to better understand the situation of a banking system in a given country, which could promote confidence in the financial system and its stability. Access to this kind of information could be useful for other regulators of the financial system, investors, researchers, scholars, and individuals interested in the proper functioning of the country's banking system.

Creating a transparent corporate environment can also help bank supervisory agencies to foster public confidence in the mission and abilities of bank supervisory agencies. In many jurisdictions, Bank supervisory agencies are currently providing transparent views of its operations, activities, and financial position. The most transparent bank supervisory agencies provide information about their corporate governance arrangements, strategic planning and budgeting processes, financial and audit reports. In addition to providing the public with information about banks and the banking system, bank supervisory agencies should also explore ways to promote a transparent corporate environment within their own organizations.

3.4. Experience and Situation in the Region

There is consensus among Working Group members that bank supervisory agencies should be held accountable and should create transparent supervisory environments. The Working Group also recognized that accountability regimes throughout the region vary and that they reflect the legal and organizational framework under which each bank supervisory agency operates. While almost all Working Group members are legally obligated to give account for their actions to a higher authority, the practices they use to give account to other stakeholders vary greatly.

The Working Group also recognized that bank supervisory agencies in the region sometimes operate without a clearly understood and legally founded mandate. There was consent on the fact that a clear and widely understood knowledge of the bank supervisory agencies' role within the banking system is critical in creating an effective accountability framework. In order to promote that understanding, a bank supervisor's mandate should be clearly and sufficiently based on the law and should also be clearly and effectively communicated to all stakeholders.

The Working Group also acknowledged that many supervisors are often responsible for carrying out multiple mandates. In some cases, these mandates may compete with one another or create conflict among them, requiring a careful judgment by bank supervisory agencies in prioritizing these mandates.

While the scope of accountability practices varied among the Working Group members, virtually all are legally obligated to provide an account of their operations, practices, achievements and financial position to a higher authority. In practice, bank supervisory agencies in the region are almost universally accountable to the government authorities that created them or which have delegated their authority and responsibility for supervising financial entities in said agencies.

Most countries are accountable to the Congress, the Parliament, the Central Bank, the Ministry of Finance, or other executive or legislative bodies, agencies or bureaus. As required by law or practice, most countries are required to submit periodic or annual reports and provide testimony to these government authorities. Several Working Group members are required to consult with the sector when making rules and providing reports on the situation of the banking sector. Few members are subject to external audits. However, the agencies to which the bank supervisory agencies are accountable are typically authorized to increase, restrict, or otherwise alter the bank supervisory agency's mandates and responsibilities.

The Working Group agreed that a well informed public that understands the mission of the bank supervisory agency can contribute to a well functioning financial system. The members also noted that while bank supervisory agencies recognize their duty to be accountable to official authorities, this practice varies greatly among countries in the case of giving account to unofficial stakeholders.

In addition, members agreed that a more concerted effort should be made among members to educate the public about the role and responsibilities of the bank supervisory agency in a country's financial system. Currently, the bank supervisory agency's role in public outreach and education varies greatly among the member countries; therefore supervisors should develop comprehensive public awareness programs. Existing programs include traditional and nontraditional communication channels such as the Internet, press conferences, consumer call centers, public hearings and town hall meetings, as well as partnerships with bureaus of education. Members agreed that bank supervisory agencies should consider including public outreach programs within their strategic planning process.

It was recognized that official and unofficial stakeholders may vary from country to country, but generally would include the general public, depositors, bankers, the media, researchers and scholars, investors, the Congress and other government bodies. Unless required by law or policy, most of the authorities of the region's countries provide very little information to the unofficial stakeholders. The Working Group members agreed that creative and sometimes unconventional communication channels should be explored by bank supervisory agencies to educate and inform these stakeholders and to communicate the supervisor's role, mandate, and responsibilities to audiences who may often have diverse interests, levels of education, and familiarity with the banking system.

There are a few Working Group members that provide a great amount of information to unofficial stakeholders, as a way of informing and accounting to the public for their operations. While providing the public with information is not required by law, some supervisors—guided by a sense of moral or civic responsibility—provide the public with information about their operations and activities, as well as information about the banking system at large. Often, this information includes the bank supervisory agency's financial statements, audit reports, strategic plans, background information supporting the supervisor's regulatory process, policy decisions and official testimonies. In turn, relevant information about the financial condition of the banking system might range from reports and analysis prepared by the supervisor to access to databases of financial data and indicators, compiled using information provided by the banking sector.

Regarding transparency, the Working Group members agreed that its importance has to do with the impact that a transparent supervision environment can have on the credibility and legitimacy on the supervisory agency, which is fundamental to maintaining a stable and sound financial sector.

3.5. Good Practices and Recommendations

The following practices are recommended in relation to accountability and transparency:

1. The bank supervisory agency's mandate should be precisely articulated in the law and should be clearly and effectively communicated to all stakeholders. Where multiple, competing or conflicting mandates exist, bank supervisory agencies should implement procedures to ensure that these mandates are appropriately prioritized.

2. In addition to the formal accountability regime to official stakeholders that is prescribed by law, bank supervisory agencies should expand their accountability regime to include unofficial stakeholders. Such comprehensive regime, which takes into account the needs of official and unofficial stakeholders, should be guided by carefully considered strategic plans and objectives. Bank supervisory agencies should at a minimum consider the following practices when designing their accountability regime:

    - Identify to whom the bank supervisory agency is accountable; how this accountability should be exercised; and the type of information that should be provided to stakeholders.

    - Take into consideration the existence of multiple stakeholders, both official and unofficial, and address the often unique informational needs of each group.

- Explore traditional and non-traditional alternatives to educate the public and communicate the supervisor’s role, mandate, and responsibilities to a variety of stakeholders.

- Be aware of the fact that stakeholders may have different informational needs, as well as ability to interpret financial information. Public outreach efforts and disclosures should take this into account.

- Provide a feedback mechanism to stakeholders whereby they can express their comments, questions, and concerns to bank supervisory agencies.

- Ensure that the bank supervisory agency’s accountability requirements are sufficiently clear so that they can be easily followed and compliance easily assessed.

3. Specific stakeholders may vary from country to country and bank supervisory agencies should identify the relevant stakeholders in their jurisdiction, with whom they should communicate. While there is no universal list of stakeholders, bank supervisory agencies should at least take into account the specific needs of:

    - Depositors
    - The general public
    - The financial services sector
    - The press and mass media
    - Researchers and scholars
    - Investors
    - National and international government authorities

4. Bank supervisory agencies should provide transparent and relevant information on their financial condition and operations, as well as on the

banks they supervise. With this in mind, a well designed transparency program should at least aim at the following:

- Combat moral hazard.

- Carefully balance the amount of information made public against its legal and moral requirement to maintain certain information confidential.

- Consider the extent to which bank supervisory agencies should modify their financial reports, accounting standards, and regulatory framework to better ensure financial transparency and protect and inform stakeholders within the banking system.

- Provide stakeholders information about the soundness and condition of the banking sector since that information is of critical importance to them.

- Promote market discipline by giving stakeholders the ability to assess risk at the macro- and bank-specific level, thereby leveraging the market's power to complement regulatory oversight.

- Provide stakeholders with a transparent and significant view of the bank supervisory agency's financial corporate operations, which when exercised properly can promote public confidence in the bank supervisory agency. At least, this information should include annual reports, financial statements, audit reports, and strategic plans.

- Provide stakeholders access to information directly affecting supervised institutions. At least, this information should include access to bank review manuals, policies, decisions made, orders made by the bank supervisory agency, and sector performance reports.

4. Independence

Independence at a supervisory agency refers to a situation where its purpose, structure, organization, and operation are free of undue external interference. Independence at a supervisory agency is an essential element for adequately complying with supervisory activities, since it contributes to the pursuit of its objectives without interference or deviations.

4.1. Importance of Independence in Bank Supervisory Agencies

The independence of supervisory agencies has been gaining considerable relevance in the international agenda. Good results in the application of central banks' autonomy and measures to increase their independence have been an element that has encouraged interest in the independence of supervisory agencies.

Generally, a bank supervisory agency is considered independent if:

- The government and the sector do not unlawfully interfere with the work it carries out.
- The supervisor is fully authorized to regulate the bank system to the extent it deems advisable for it to work properly.
- The supervisor fully exercises the authority and functions entrusted with, without any unlawful interference within the scope of its competence, making use of its authority to penalize entities if necessary.
- The bank supervisory agency has budgetary independence to plan its activities.

Independence at the supervisory agency contributes to the achievement of its objectives due to the fact that:

- **The supervisory agency follows technical criteria.** Effective bank supervision is supported by monitoring compliance with technical criteria and by analyzing different types of risk scenarios. Therefore, the supervisory agency should resist any kind of external influence and should follow the prescribed criteria, which will allow it to make an objective assessment of the financial sector and to adequately and timely respond to the different situations that arise.

- **Institutional direction is strengthened.** Independence contributes to achieving continuity and consistency in the application of supervisory guidelines and strategies. This helps to direct all efforts towards achieving supervisory objectives.

- **The supervisory agency gains access to skillful human resources.** Independence of a supervisory agency allows the supervisor to hire technically and morally qualified people, increasing the possibility that supervisory activities will be executed in the most effective way.

The bank supervisory agency's independence is desirable in itself, since it favors technical aspects over those elements that are susceptible to being influenced or that can respond to motivation or to political interest or groups, therefore distorting the execution of a technical function and risking the achievement of the agency's main objective.

In spite of that, independence does not exclude adequate communication and coordination between the bank supervisory agency and other financial authorities or fluent communication with members of the sector, in order to take into consideration their points of view.

Having an independent bank supervisory agency increases the possibility that it will adopt the necessary measures to maintain stability and the proper functioning of the banks and the banking system as a whole and protect the public interest.

Finally, it is worth mentioning that the importance of the supervisory agency independence has been acknowledged in the Basel Principles for Effective Banking Supervision, when it states that every authority that participates in bank supervision “should have operational independence, transparent processes, sound governance and proper resources, and will have to be accountable for the performance of their duties.”

4.2. Independence and Autonomy

The concept of independence is different to that of autonomy. Independence refers to the institutional, budgetary, legitimacy and credibility environment that guarantees free and timely exercise of the powers given to the bank authority. On the other hand, autonomy refers to the institutional condition that is granted to a bank supervisory body as to its hierarchy in relation to other public branches, specifically the Executive branch and Congress or Parliament.

Experience in the region shows different schemes in the structure of the supervisory function of a country, which might have different degrees and types of autonomy. However, the members of the Working Group agree on the fact that, under different schemes, it is possible to apply a series of measures to strengthen the supervisor’s independence, which will contribute to the proper and timely compliance with its most important mandate.

In practice, a supervisor’s independence does not necessarily go hand in hand with autonomy, as is the case with a bank supervisory agency that is a functional part of a Central Bank or the Ministry of Finance. However, in these cases recommendations can be made, so appropriate measures are taken within these institutions to protect or strengthen the independence of the bank supervisory agency.

4.3. Analyzing the Principle of Independence

The execution of the tasks entrusted to the supervisory agency should be only geared towards the objective it was created for, without being unduly affected, directly or indirectly, by public authorities, political interests, the supervised sector's interests or by the users of the financial system. In this way, the prestige and credibility of the supervisor will be maintained.

The Principle of Independence is based on four basic elements:

1) Institutional independence.
2) Regulatory independence.
3) Supervisory independence.
4) Operational and budgetary independence.

In addition, other elements that may indirectly affect the supervisor's prestige and credibility should be born in mind.

4.3.1. Institutional Independence

4.3.1.1 Definition

Institutional independence is defined as the condition of the bank supervisory agency in which its authority, government structure and human resources policy do not depend on any external authority or agent, or on direct or indirect interests different from the best interests of bank supervision, taking always into account the three-sided balance represented by the bank supervisory agency's technical interest, the interest of the users and the interest inherent to the activities of supervised institutions.

4.3.1.2. Situation in the Region

Table 4.1 shows some aspects of the experience with institutional independence in several member countries.

Table 4.1

Institutional Independence	
Argentina	The Superintendent's Office is a decentralized body that reports to the Central Bank of Argentina.
Bolivia	The supervisory agency is decentralized. The Superintendent is appointed by the country's President from a list of three candidates proposed by the Legislative Branch (*Honorable Senado Nacional*).
Brazil	The supervisory function is executed within the Central Bank. In formal terms, the Central Bank is not an independent institution.
Canada	The Office of the Superintendent of Financial Institutions (OSFI) is an independent government agency.
Colombia	Within the government's organizational chart, the Financial Superintendent's Office of Colombia is attached to the Ministry of Finance. The Financial Superintendent is appointed by the President of the country, not by the Finance Minister.
Guatemala	The Superintendent's Office is a body of the Central Bank; it is essentially technical, works under general direction from the Monetary Board (*Junta Monetaria*) and enjoys functional independence for the achievement of its goals. The Superintendent is appointed by the country's President for a period of four years and it is selected from a list of three candidates proposed by the Monetary Board.
Mexico	The National Bank and Securities Commission (CNBV) is a decentralized body of the Finance Ministry (*Secretaría de Hacienda y Crédito Público*). Its President is appointed by the Finance Ministry, whose head may remove him if he deems it necessary. CNBV has technical autonomy and executive powers under the terms of the National Bank and Securities Commission Act.
Paraguay	The Superintendent's Office is a technical body within the Central Bank's structure. It reports directly to the Central Bank's Board, whose members are appointed by the Executive Branch, with previous agreement with the Senate. The Superintendent is appointed by the Executive Branch from a list of three candidates submitted by the Central Bank's Board of Directors.
Peru	The Superintendent's Office is an autonomous body; therefore, it does not report to any other public entity. The Executive Branch appoints the Superintendent for a period equal to that of the President's constitutional term. The Superintendent is then ratified by Congress.
United States (FDIC)	The Federal Deposit Insurance Corporation (FDIC) is a government agency independent from the Federal Government. Its independence is reflected in several key institutional arrangements, including enjoying an independent source of funding; legal protection for bank supervisory agencies that promote unbiased bank evaluations and decision making; a strict code of ethical conduct that ensures responsible decision making and accountability in the handling of private matters by, for example, restricting having stocks from a supervised institution or bank holding company. Besides, strict observance of US laws, that prohibit political activities in a federal institution contributes to an environment of institutional independence.
Uruguay	The Central Bank supervises and oversees public and private institutions that are part of the financial intermediation system through the Superintendent's Office, which in turn reports to the Central Bank's Board and operates with technical and operational autonomy. A Superintendent is in charge for a period of eight years, and his appointment and removal should be unanimously agreed upon by the members of the Central Bank's Board.

4.3.1.3 Good Practices and Recommendations

In order to be independent at the institutional level, the bank supervisory agency should have:

1. A clear definition and regulation regarding the tenure and the process to appoint the highest authority within the supervision agency. In this regard, there should be a tenure legally established for the mandate of the agency's president, as well as the requirements for the appointment and the causes for removal of the main employees. In addition, it is essential to establish the hierarchy levels that should be protected through provisions on permanence and stability, in order to provide certainty to their work and, in this way, protect the independence of bank supervision.

2. The government structure of the supervisory agency should include government bodies or subcommittees made up of several individuals with adequate technical skills. This avoids the prevalence of a personal or partial view in the decision making process, and facilitates the adoption of corporate governance best practices.

3. Authority to make decisions freely regarding the selection, hiring, development, training, and dismissal of human resources.

4.3.2. Regulatory Independence

4.3.2.1 Definition

Regulatory independence is defined as the condition when the bank supervisory agency has the necessary and sufficient power to set up prudential regulation, in a way that the regulatory function is free from direct or indirect influence that goes against the best interests of bank supervision, taking always into account the three-sided balance represented by the bank supervisory agency's technical interest, the interest of the users and the interest inherent to the activities of supervised institutions.

4.3.2.2. Situation in the region

Table 4.2 shows some aspects of the experience in relation to regulatory independence in several member countries.

Table 4.2

Regulatory Independence	
Argentina	The Central Bank establishes most of the basic norms that regulate the financial system.
Bolivia	The Superintendent, as per the Law of Banks and Financial Entities (*Ley de Banco y Entidades Financieras*), oversees the compliance with the financial intermediation legislation and norms, approving and regulating the internal and external control norms, as well as developing the manuals and controlling their application within the financial system.
Brazil	The National Monetary Council (CMN) and the Central Bank (through authorization of the CMN) establish most of the norms that regulate the financial system. Within the Central Bank, the areas in charge of the supervisory function are responsible for assuring that the norms are feasible.
Canada	OSFI establishes the regulation that is considered necessary, as well as all the secondary norms. Such legislation is contained in the Office of the Superintendent of Financial Institutions Act and the Banks Act.
Colombia	The legislation that is considered most important is established by the Ministry of Finance (*Hacienda*). The agency in charge of the supervision can establish secondary legislation.
Guatemala	The Monetary Board (*Junta Monetaria*), following a proposal by the Superintendency of Banks (SB), establishes all the norms that regulate the financial system of Guatemala. The SB has full capacity to acquire rights and obligations, has the necessary functional independence to verify that the entities it supervises comply with their legal obligations and that they observe the applicable regulation on liquidity, solvency and capital soundness.
Mexico	The CNBV is empowered to establish prudential regulations geared towards maintaining liquidity, solvency and stability among financial entities. Also, according to Article 4, Sections XI to XIII of the National Bank and Securities Commission Act, this agency is granted several powers, such as the one to authorize the incorporation and operation of entities, as well as to warn, suspend, remove, and disqualify employees. In addition, CNBV is granted the power to intervene, suspend, and investigate entities.
Paraguay	The Central Bank's Board is the body empowered to establish important prudential norms and regulations, usually as a result of a proposal from the Superintendency of Banks (SB). The SB establishes general norms regarding internal control systems, management information, account plans, bookkeeping, content and design of statistical or accounting statements that people under supervision should submit for evaluation, fiscalization of operations and publication of information.
Peru	The Superintendency has supervision capabilities and can establish the necessary norms, within the framework of its attributions stated in the General Law. In the case of topics that go beyond its scope, the Superintendency can draft bills related to the topics of its legal competency, channeling them through the Presidency of the Council of Ministers (*Consejo de MInistros*).
United States (FDIC)	The Federal Deposit Insurance Corporation (FDIC) is a government agency independent from the Federal Government. Its independence is reflected in its government structure, availability of financial resources, and its rulemaking process. Several statutory restrictions protect the FDIC from

	external influence and interference. With respect to regulatory independence as defined in this section of the paper, the FDIC, like other US bank supervisory agencies, is authorized by law to establish and enforce regulations. The FDIC's regulations are included in different legal mandates, including sections 301 – 369 of the Federal Deposit Insurance Corporation Rules and Regulation. Also, under the FDI Act, the Board is restricted to five members of which no more than three directors may be members of the same political party, thereby protecting the FDIC from potential external influence, minimizing the likelihood that any one political party exercises excessive control over the Board. The FDI Act also protects the FDIC from external influence by prohibiting board members from holding stock in any insured depository institution or depository institution's holding company. This limitation protects the FDIC from external influence or conflicting interests by preventing members of the Board from obtaining or maintaining financial interests in institutions the FDIC insures. The FDIC is a financially independent government corporation not subject to the Executive Branch budget review process. The FDIC's independent source of funding protects the agency from political intervention and initiatives that are often associated with Federal appropriation.
Uruguay	By legal mandate, the *Superintendencia de Instituciones de Intermediación Financiera* establishes prudential regulation. The Board of Directors of the Central Bank can take up this function. Currently, a decision of the Board of Directors of the Central Bank is in force, which establishes that it can exercise this right, within the first 30 days from the moment the Superintendency adopts a decision. In case it does not exercise this right, the regulation approved by the Superintendency becomes in force, or otherwise, the regulation will become in force with the modifications made by the Board of Directors.

4.3.2.3. Good Practices and Recommendations

In order for the bank supervisory agency to be considered independent at the regulatory level, it should have:

1. A minimum number of elements which allow the bank supervisory agency to design and organize prudential regulations and other financial norms (in topics like capitalization, risk management, internal controls, related loans, etc.), covering the complete regulatory cycle (from the authorization process to revocation), without undue interference of interests different from the bank supervisory function.

2. In cases where the supervisor should somehow coordinate with other authorities in the financial sector or communicate with the sector's members or users, as part of the process to establish secondary norms or prudential regulations, mechanisms and standards should be established to ensure that the coordination or communication will not

affect the supervisor's independence and technical criteria for the establishment of the referred regulations. Otherwise, there is a risk that the banking regulation function does not rest completely with the supervisor, or that it is conditioned by elements different from the supervisor's technical interest.

4.3.3. Supervisory Independence

4.3.3.1. Definition

Supervisory independence is defined as the condition when the bank supervisory agency has all necessary and sufficient authority to plan, design, prepare and carry out his supervisory activities, free from direct or indirect influence that goes against the best interests of bank supervision, taking always into account the three-sided balance represented by the bank supervisory agency's technical interest, the interest of the users and the interest inherent to the activities of supervised institutions.

4.3.3.2 Situation in the Region

Table 4.3 shows some aspects of the experience related to supervisory independence in several member countries.

Table 4.3

Supervisory Independence	
Argentina	The Superintendent approves the supervisory handbooks, composed of a section of inspection procedures, a guide for follow-up and qualification of entities, and a guide for other supervisory procedures.
Bolivia	The Superintendent, by the mandate of the Law of Banks and Financial Entities, oversees compliance with legislation and regulation, as well as the proper enforcement of all the internal and external control norms. The policy for supervision is established by the supervisory agency, which is included in the appropriate handbooks.
Brazil	The National Monetary Council (CMN) and the Central Bank (by authorization of the CMN) establish most of the norms. Within the Central Bank, the areas in charge of the supervisory function are responsible for assuring that the norms are feasible.
Canada	OSFI establishes supervisory criteria and policies including primary and secondary supervisory norms. It is also empowered to impose disciplinary measures.

Colombia	The *Superintendencia Financiera* of Colombia has the necessary authority, established in the charter of the financial system (Decree 663) and in Law 964 to plan, design, formulate, and perform supervisory activities with independence. Supervisory and risk manuals are prepared and published by the *Superintendencia Financiera* of Colombia, which is empowered to establish criteria for imposing disciplinary measures, as well as the disciplinary measure itself.
Guatemala	The Financial Supervision Law (LSF) establishes that the Bank Superintendency (SB) has functional independence to comply with its objectives and to assure that the people under its supervision and inspection comply with their legal obligations and with the applicable regulation on liquidity, solvency and capital soundness. In addition, the LSF establishes that among the functions of the SB are the following: to propose to the Monetary Board regulation and norms that the board should dictate in relation to issues of its competence and according to the law; to regulate the minimum requirements that entities subject to supervision should demand form external auditors or auditing firms when they audit them; and to dictate the necessary provisions in order for the supervised entities to submit reports, data, background information, statistics and other documents regarding their financial condition, specifying the deadline and way that this information should be submitted. In addition, the SB can impose sanctions and disciplinary measures.
Mexico	CNBV carries out its supervisory activities (inspection, supervision, and mandatory programs) and it is authorized to impose fines and administrative penalties.
Paraguay	The Bank Superintendency can exercise the inspection and supervision functions that are assigned to it by law and the resolutions of the Board of the Central Bank of Paraguay (BCP). It can apply measures of mandatory enforcement (Regularization Plans). Even if these enforcement mechanisms exist, the independence of supervision is limited given that the authority to apply sanctions rests with the BCP.
Peru	The process of supervision is governed by manuals and application guides, approved by the Superintendent. The process aims to be transparent and responsible to achieve a systematic and disciplinary application.
United States (FDIC)	Financial institution supervisors in the United States are authorized to establish regulations and performance standards, establish criteria for granting and revoking licenses, supervise and examine financial institutions, evaluate compliance with norms and regulations, take timely corrective measures, and enforce regulations and supervisory requirements. These supervisors are authorized to plan and design supervisory approaches and strategies, and execute supervisory activities, free of direct or indirect influence that goes against the best interests of bank supervision.
Uruguay	The Superintendent has the supervision authority (approval of manuals, banks' qualification, sanctions). The Superintendent reports to the Central Bank's Board. The Board may decide on the intervention proposed by the Superintendent, apply penalties for amounts larger than 10% of the institutions' capital, penalize public banks and has the capacity to rule on regulating matters and on specific instructions.

4.3.3.3 Good Practices and Recommendations

In order for the bank supervisory agency to be considered independent regarding supervision authority, it should have:

1. Authority to exercise its own judgment and the power granted on matters such as authorizing and revoking permits for all the institutions it supervises, in-situ and extra-situ inspections, sanctions and law enforcement, preventive mechanisms and corrective programs, as well as to apply all of the secondary and prudential norms, so that it can assure and verify full and timely compliance with the legal framework.

2. Protection against interference from other authorities or government entities, sector's members, politicians, and public opinion.

3. Essential tools and mechanisms to avoid the previously mentioned interference, to help it promote a strong financial system. Therefore, it is very important for the supervisor to have:

    a. Regulatory discretion mechanisms (but not arbitrary).

    b. Authority to guarantee that the exit of institutions from the sector is based on technical arguments and enough evidence and not on political or arbitrary decisions.

    c. Full legal protection and competitive salaries for employees in order to attract people with the adequate skills and minimize corruption.

4. Authority to establish and maintain the necessary international cooperation mechanisms to carry out its activities properly, including supervision of self-regulated institutions (institutions for which the relevant supervision authority only supervises their operational criteria).

4.3.4. Operational and Budgetary Independence

4.3.4.1 Definition

Operational and budgetary independence is defined as the condition when the bank supervisory agency has all the necessary and sufficient powers to design, develop, plan, and carry out its institutional policy by means of a guaranteed independent budget. This implies that the supervisor can make decisions about income and expenditures free of undue direct or indirect interference in the best interest of bank supervision.

4.3.4.2 Situation in the Region

Table 4.4 shows some aspects of the operational and budgetary independence experience in several member countries.

Table 4.4

Budgetary Independence	
Argentina	The supervisory agency's budget depends on the Central Bank (Article 44 of the Charter), although it has autonomy to determine its budget and manage supervision expenses. The Executive Branch approves the budget every year.
Bolivia	The guidelines for preparing the SBEF budget are established by the Ministry of Finance. The SBEF prepares its annual work plan, which is sent to the Ministry of Finance so that it is then part of the Nation's General Budget, which is approved by Congress through the Financial Law.
Brazil	The budget of the Central Bank of Brazil is part of the Federal Government's general budget. In strict sense, there is no autonomy, given that the budget has to be approved by authorities outside the Central Bank. Moreover, after the budget has been approved, authorities different from the Central Bank can reduce it.
Canada	OSFI's budget is approved by Parliament through the Finance Ministry. However, OSFI recovers costs through several sources, mainly through service fees.
Colombia	According to the law, the *Superintendencia Financiera de Colombia* (SFC) has administrative and financial autonomy. However, from a budgetary point of view, as an agency that depends on the Ministry of Finance and, in general, as part of the Executive Branch, SFC's budget is part of the country's General Budget (*Presupuesto General de la Nación*), an therefore subject to all the controls set out in the General Budget Law (*Ley General de Presupuesto*). It is important to notice that the budgetary organic law demands that entities submit a draft budget to the Ministry of Finance in April of every year, which will be an input for the country's general budget, approved by Congress every year. The Minister of Finance, which is responsible for fiscal matters, adjusts said draft budget taking into account macroeconomic scenarios and the resources available, giving SFC less autonomy and independence to program its budget consistent with its supervision plans and programs. The expenses budget of the SFC is basically financed through the contributions imposed to the supervised entities, which are integrated to the country's General Budget under the item "*Superintendencia Financiera de Colombia*". Ninety five percent of the financial resources of the SFC come from contributions of supervised entities. The rest of the resources come from financial returns, among other sources.
Guatemala	The *Superintendencia de Bancos* (SB) has full capacity to acquire rights and obligations, and has

	the necessary functional independence to comply with its objectives. The expense budget of the *Superintendencia* is covered by annual fees that should be paid by the organizations subject to supervision and inspection. The SB prepares its income and expense budget draft and submits it to the Monetary Board for its approval. There are no restrictions regarding the distribution of the budget.
Mexico	The CNBV can prepare its income and expense budget draft and charge fees for supervising, but its budget depends on the resources allocated by the Finance Minister, based on the country's expense budget (*Presupuesto de Egresos de la Federación*), annually approved by Congress.
Paraguay	The Superintendent of Banks has the responsibility of preparing and executing the annual budget of the Superintendency of Banks, which should be approved by the Board of Directors. The budget will be part of the annual budget of the Central Bank of Paraguay. The Superintendence of Banks does not have external sources from the private sector and is highly dependent on the Board of Directors and other areas of the Central Bank as regards to budget execution.
Peru	The *Superintendencia* enjoys economic and administrative functional autonomy, and its budget is financed with quarterly contributions made by the supervised companies.
United States	The FDIC is financially independent, which reflects the fact that the FDIC generally finances its operations with deposit insurance premiums paid by insured institutions, and investment income generated by the deposit insurance fund. The FDIC's Operating Budget is developed to support the FDIC's mission and strategic objectives. The FDIC's Board is ultimately responsible for approving the budget and should exercise a prudent management of the insurance deposit fund, including the management of the investment program of the agency, its liquidity and the approval of expenses. The FDIC uses an integrated planning process, guided and led by senior management and input from program personnel. Despite this independence, the FDIC is accountable to official and unofficial stakeholders for its prudent management of the FDIC's resources.
Uruguay	The *Superintendencia* does not have budgetary independence, given that its budget is obtained from the Central Bank's budget. The Central Bank's budget is approved annually by the Executive Branch.

4.3.4.3. Good practices and Recommendations

In order for a bank supervisory agency to be considered independent at the operational and budgetary level, it should have:

1. Autonomy to allocate financial and material resources, as well as to establish priorities when it comes to spending, according to the needs of the institution.

2. If the supervisor's funds are managed through the Central Bank, the Ministry of Finance, or any other authority, schemes through which these

institutions could condition the delivery of the necessary budget resources to perform its duties should be avoided or corrected.

3. Freedom to grant payment, benefits, and salaries for employees and general personnel, according to the capabilities of each institution.

It should be clear that budgetary independence does not imply that the supervisor should not be accountable for the use of the resources.

Carrying out effectively all the aspects inherent to institutional, regulatory, supervisory, and operational independence strengthens the credibility of the work performed by the banking supervisory agency and eventually creates a favorable opinion to provide it with a strong and adequate institutional presence.

Nevertheless, it is important to acknowledge that independence regarding supervisory activities may be indirectly affected by a series of institutions or persons, among which we can mention the media, who shapes public opinion. That is the case when a financial entity is linked to the media (press, radio, television), which can be used to influence the public opinion, with the aim of exerting pressure on, or discrediting the supervisor, in relation to the work it should carry out or to question activities or norms issued by supervisory authorities. Although this situation puts the independence of the supervisor at risk, it should firmly use technical criteria to support its decisions.

4.4 Independence, Accountability and Scope of Competence of the Bank Supervisory Agency

The independence of the bank supervisory agency necessarily requires a proper system of transparency and accountability. Without such system, independence is not effective. With or without autonomy, the bank supervisory agencies and the supervisory function should be strengthened in their independence and their technical work should at all times remain visible and open to the scrutiny of the sector and the public at large, as part of an integral system of accountability.

As in many other processes of institutional reform, the initiatives to provide independence and/or autonomy to the supervisory function are subject to the creation of an objective and well-informed public opinion and of a legislative body convinced of its benefits. This supervisor should assure that in any case an adequate system of transparency and accountability is in place.

Finally, it is essential that the bank supervisory agency's scope of competence and its relationship with the scope of competence of other financial authorities within the same jurisdiction remain clear, especially in those matters or functions in which there is concurrence, with aim of 1) guaranteeing an adequate communication and coordination among authorities, and 2) avoiding that the mentioned coordination becomes distorted, resulting in inappropriate controls.

5. Legal Protection for the Supervisor

Any type of profession requires minimum conditions of legal safety and that there are no inappropriate pressures in the execution of the tasks assigned. This is also true in the case of employees of a supervisory agency.

The adequate performance of a supervisory authority requires proper legal protection against legal action for activities carried out in good faith as part of the regulatory and supervisory tasks. It is essential that supervisory authorities have adequate legal protection to allow them to perform their duties without fear of civil or criminal reprisals from third parties or from the entities they supervise.

5.1. Analysis

Legal protection for the supervisor is established on Principle 1 of the Basel Committee's Core Principles for Effective Banking Supervision. The Core Principles Methodology establishes the essential criteria in this regard:

1. *The law provides protection to the supervisory authority and its staff against lawsuits for actions taken and/or omissions made while discharging their duties in good faith.*

2. *The supervisory authority and its staff are adequately protected against the costs of defending their actions and/or omissions made while discharging their duties in good faith.*

There are jurisdictions in the region where a proper mechanism for legal protection is not in place, although some countries have made progress in adopting different protection schemes in order to provide the supervisor with the necessary support to make decisions in an independent and adequate fashion.

It is important for countries in the region to ask themselves whether there exists institutional or personal protection; what is the extent of that protection in the organization; whether there are courts specialized on financial matters, and who covers the costs to defend employees in case a lawsuit is brought against them.

There are certain elements that help to establish the degree of protection for supervisors:

- The **legal presumption of validity** regarding the decisions of employees at supervisory agencies implies that these decisions are legal and cannot be modified, unless there is a mistake or evident bad faith. In this case, it is advisable that legal action is not taken against supervisors' decisions, unless there is a judicial resolution declaring it null.

- The **period of protection** is important, since it is necessary that a supervisor is protected not only during his tenure, but also after he has left his official position. If legal protection is not provided after his official tenure, the supervisor may be subject to reprisals after his tenure ends, which may influence his behavior during his tenure.

- The **cost of defense** of a supervisor who has been sued, including legal fees and lawyer's expenses. It should be made clear that the provision of legal assistance and legal cost coverage by the supervisory agency is an essential principle, although it should be understood as a complement of the primary legal protection, which is the basic "umbrella" for the supervisor.

- In several countries of the region regular judges find it difficult to fully understand financial and banking issues. Therefore, it would be convenient to have specialized judges in charge of judging supervision issues or that they have access to specialized training.

5.2. Situation in the Region

Table 5.1 shows different legal frameworks and legal protection practices for the supervisor in the region.

Table 5.1

Legal Protection for the Supervisor					
Country	Framework of Legal Protection	Type of Protection	Scope of the Protection	Special courts[1]	Coverage of Defense Expenses
Argentina	Financial Entities Law. (LEF)	The supervisor's actions can only be revised in court when there is evidence that these actions were arbitrary or irrational.	President and Board of the Central Bank; Superintendent, auditors and employees in general.	No	Loan from the Central Bank. When the result is unfavorable, the loan has to be reimbursed.
Bolivia	Law of Banks and Financial Entities (LBEF)	Actions enjoy legal presumption of validity. The burden of proof relies on the one who claims irregularities. No legal actions may be attempted before there is a judicial resolution declaring the decision null.	All current or former employees of the Superintendent's Office.	Yes, the Superintendent has to be judged at the Supreme Court of Justice.	The Superintendent's Office pays for defense fees for all current or former employees of the Superintendence. It will have the right to restitution if the employee is found personally responsible of an illegal action.
Brazil	General Legal Framework	The President of the Central Bank has legal protection, due to the fact that the position is equivalent to that of a State Minister. The President is judged in a specialized court and the rest of the employees have defense cost coverage.	President of the Central Bank.	Yes, at the Higher Federal Court for the President, due to the fact that the hierarchy of his position is equivalent to that of a Federal Minister.	Central Bank pays lawyers fees, regardless of the hierarchy of the employees.
Canada	OSFI Act	Legal support for any actions done in good faith as part of the personnel's responsibilities.	Institutional protection. It covers all FSC employees.	No	The Government, through the Treasury, covers all defense expenses if the employee is exonerated.
Colombia	Does not exist.	Does not apply.	Does not apply.	Does not apply.	Colombia's Financial Superintendent's Office (SFC) gets an insurance policy to cover defense fees for managers.
Guatemala	Financial Supervision Act (LSF).	Legal support for any action carried out as part of the official responsibilities.	Superintendent and Intendents.	No	The Bank Superintendent's authorities and employees that face judicial processes or

					lawsuits derived from acts and decisions taken in accordance with the law as part as their duties, functions, and obligations have the right to be covered by the Superintendence of Banks for all the expenses generated for their defense.
Mexico	Law of the National Banking and Securities Commission (LCNBV)	Legal support against actions executed in good faith and within the framework of their responsibilities.	All the employees of the CNBV and employees that intervene in supervised entities.	No	CNBV provides technical and legal assistance services and covers the necessary expenses if the employee is exonerated.
Paraguay	Law 2334/03 – Deposits Guarantee and Bank Resolution.	Employees of the Central Bank or the Superintendence, as well as employees that intervene in supervised entities cannot be subject to trial for actions carried out during a bank resolution process. These actions can be subject to judicial revision after the resolution process has concluded, due to possible deviation in the fulfillment of their responsibilities.	All Central Bank employees and auditors of the Superintendent's Office, during the resolution process.	No	The Central Bank of Paraguay provides technical and legal assistance services to the employees. The request for an insurance policy to cover the expenses for the protection of employees and managers is under way.
Peru	Law of Financial Entities.	Criminal lawsuits are directed to the Country's Attorney General. It goes to the Supreme Court only if it has a strong basis.	Superintendent and associates.	Yes, at the Supreme Court in the case of the Superintendent and his associates.	The Superintendent's Office covers defense fees for authorities and employees (current and former employees) for legal actions deriving from their decisions.
United States (FDIC)[2]	Federal Torts Claims (FTCA) Act. Securities Act.	Legal support for any action taken while performing official duties.	All FDIC employees.	No	The U.S. Department of Justice takes over the defense. If the employee has acted within the framework of his responsibility, he does not have to reimburse the expenses. FDIC pays

					for defense fees if the employee is exonerated.
Uruguay	The Constitution	Civil lawsuits cannot be placed against an employee, but against the institution, which can act against the employee in case of malpractice.	All the employees.	The Constitution.	Civil lawsuits cannot be placed against an employee, but against the institution, which can act against the employee in case of malpractice.
1. Can only be tried at special or higher rank courts.					
2. Reflects FDIC information only. Other U.S. regulators may be similarly protected, but these responses are specific to FDIC.					

5.3. Good Practices and Recommendations

Within the framework of legal protection for the supervisor, there should be precepts to protect the supervisor for acts carried out in good faith as well as precepts that deny protection to the employee in case of abuse of power. That is, there should be a proper balance between immunity and impunity.

After analyzing the experiences of the countries in the group and discussing the advantages and disadvantages of the different measures, the Working Group recommends the following practices:

1. Legal protection for the Superintendent, personnel, and other supervisory employees should be clearly established in the law, in case of legal suits brought against them for acts or omissions carried out in good faith during the performance of their duties, whether they are current of former employees of the institution.

2. In as much as the legal system of a country allows it, the law should establish that no personal, civil or criminal action may be taken against the supervisor and his employees without previously getting a legal resolution that cannot be appealed declaring a certain employee’s act or decision as null. The burden of proof lies on the plaintiff.

The law should establish that the parties that begin legal action lacking the aforementioned may be brought to trial by the Attorney General for prevarication, at the request of the authorities of the institution at which the sued employee is working.

3. The Superintendent should only be judged by the highest legal authority or by judges specialized in financial issues. Likewise, senior employees of the Superintendence should also be judged by judges specialized in financial issues. This does not imply that the Superintendent or his employees should enjoy favorable treatment or an undue advantage.

4. Supervisory agencies should pay for all legal costs, lawyers' fees and other expenses incurred on for the defense of the supervisory agency's employee. Given the case, the supervisory agency shall carry out legal action against the failed plaintiff to compensate for damages to the sued employee. If the judgment is not favorable to the sued employee due to willful misconduct, he will have to reimburse the expenses to the supervisory agency. Also, internal regulations at supervisory agencies should provide for the hiring of legal advisors with the skills and experience necessary to properly defend the Superintendent and his senior employees.

5. A sanction regime of automatic application should be in place in order to avoid discretionary decisions and inappropriate behavior by the supervisor.

6. A code of ethics establishing values, principles, and ethical standards that the Supervisor and his senior employees should comply with should be in place. The ethical value of the responsibility of being accountable to superiors (or when it is legally mandated) for the decisions made —procedures and methods used in the performance of duty—should be highlighted among the employees.

7. It is important that the procedures and tools used by the Supervisor and his employees in case of conflictive issues, closing of institutions, and crisis situations are well defined and disclosed, with the aim of minimizing any discretionary behavior by them in those situations and to reduce, to the extent possible, judiciary procedures against the Supervisor and his senior employees.

8. The protection mentioned in this section should only be applied to personnel with supervisory functions and not to human resources from other important areas.

9. Finally, in order to implement these recommendations, it is essential that supervisory agencies make an impartial assessment of the supervisor's legal protection status, so that there is an enabling environment to make the necessary legislative changes.

6. Final remarks

Banking supervisors in the region, in an effort to contribute to the stability of the financial system in their countries, should oversee that the entities they supervise operate based on sound management practices and adequate internal control mechanisms, according to laws and codes. They should also verify that the Board of Directors, senior management and employees of the supervised entities have the proper incentives to pursue the interests of the institution, that the institution is accountable to its stakeholders and has a transparent relation with economic players, and last, but not least, that the institution protects the interests of the depositors.

With the idea of setting an example, the Members of the Working Group prepared a document with recommendations regarding the structuring of an effective corporate governance system in the supervisory agencies of the region. The implementation of these recommendations is of crucial importance, since it will establish adequate mechanisms, practices, and incentives so that all the members of the supervisory agency focus on the achievement of the institutional goals and on maximizing the chances of achieving them.

As mentioned in the text, the promotion of a corporate governance culture in public entities and supervisory agencies is an essential task, given that this effort will have a positive impact on the confidence of economic players and the general public in the entities that are part of the financial market and in the institutions that regulate and supervise them.

Taking this into account, and considering that one of the objectives of the Association of Supervisors of Banks of the Americas is to disseminate good banking supervisory and regulation practices among its Associate Members so they can strengthen their banking supervision frameworks through the adoption of policies and practices in line with international standards, ASBA expects for this document to be of great help for all its Members, to have a positive impact in the understanding of corporate governance and the strengthening of their institutions, and to contribute to the soundness of the regional financial system.