Prioridades de la ESMA para los informes anuales de 2021

En octubre de 2021 la Autoridad Europea de Valores y Mercados, (ESMA por sus siglas en inglés), emitió su Declaración Pública Anual en la que estableció las prioridades europeas respecto a los informes financieros anuales de 2021 de las sociedades cotizadas.

El objetivo de esta declaración es fomentar la aplicación uniforme de las normas Internacionales de Información Financiera (NIIF)[1] además de los requisitos de información específicos de la UE; y una de las materias más significativas sobre las que se hace hincapié es la importancia de la información financiera y no financiera sobre cuestiones climáticas.

Al igual que en la Declaración emitida el año pasado, el impacto de la pandemia de la COVID-19 sigue siendo una de las prioridades de los informes anuales. En este sentido, se reclama transparencia en el desglose de información sobre sus efectos en los resultados financieros y en la cuantificación de las pérdidas esperadas para las entidades de crédito.

El documento contiene además una sección en la que se recuerda a los responsables de preparación de la información los requisitos en sus directrices sobre medidas alternativas de rendimiento (APM) y otra acerca de la necesidad de utilizar el formato electrónico único europeo (ESEF) para la presentación de los informes financieros anuales.

[1] IFRS *International Financial Reporting Standards*

SME Digital Innovation Programme

On 3rd July 2017 the State Department for Entrepreneurs and Small & Enterprises (SEPyME) published its 260-E/2017 Resolution creating the SME Digital Innovation Programme.

SME Digital Innovation Programme

This programme targets the Micro, Small and Medium-sized Enterprises (MSMEs) filed on the MiPyME Companies Register to help promote their technological development.

In order to speed up digitisation and digital infrastructure processes, the programme, backed by the Argentine government, makes it easier for MSMEs to access technological products and services with the aid of price discounts and financing tools, in order to encourage competitiveness. The programme makes technology resources available, offering financing facilities and with prices substantially below market rates.

Procedure

Supplier companies interested in taking part in the programme –whether they are manufacturers, importers or distributors of the products and services in question -, should sign up to the relevant Industry agreement with the State Department for Entrepreneurs and Small & Enterprises (SEPyME), and then offer the technology products and services included in the programme framework through a website. This Industry agreement comprises Appendix II of the Resolution and sets the necessary parameters for implementing the programme.

Those MSMEs wishing to benefit from the plan should open a

session on the Portal, select the product or service they need and download the relevant coupon. The supplier will check that it is valid and then proceed with the sale process.

Regulation about Financial Conglomerates

The House of Representatives has approved the bill to create the legal framework for regulating and supervising financial holdings on its fourth reading.

Because of the differences between the text passed in the Senate and that passed in the Chamber, the bill will be reviewed by an arbitration committee to define the definitive text, which will be submitted for presidential sanction.

The fourth version, which consolidates the three earlier versions passed of this bill, includes the following areas:

Financial conglomerates

The bill defines a financial conglomerate as a group of institutions with a shared controlling body that includes two or more domestic or foreign institutions carrying out an activity among those regulated by the Colombian Financial Authority, the SFC, provided that at least one of these carries out these activities in Colombia.

The bill also makes it clear that, with regard to financial conglomerates, for the purposes of this regulation only those subsidiaries that are financial institutions will form part of the conglomerate.

Financial holding

It defines “financial holding” as any legal person or investment vehicle exercising primary control over the institutions making up the financial conglomerate, defining primary control as that exercised by the legal person or investment vehicle closest to those institutions which are engaged in an activity overseen by the SFC and which has shared control over all the institutions of this nature that make up the conglomerate.

The three types of scenario in which control and subordination will be deemed to be present are:

1. When there is a shareholding majority,
2. When there is a decision-making majority in the company’s board of directors, and
3. When there is an overriding influence over the decisions made in the company resulting from a shareholder pact.

The regulation lays down that financial holdings, including those set up abroad will be subject to inspection and oversight from the SFC, unless they demonstrate to the SFC that in their home jurisdiction they are subject to a regulation and supervisory regime similar to that of Colombia.

However, it also makes clear that holdings will not be required to make contributions to the SFC’s running and investment expenses.

Supervisory powers

The bill will give the SFC the power to decide:

1. The capital adequacy required of conglomerates

2. Corporate governance standards
3. Financial risk and internal control management framework
4. Exemptions of legal persons or investment vehicles from supervision, depending on the scope of that supervision
5. Criteria for defining the nature of related-party links to the conglomerate and the holding
6. Criteria for identifying, managing, monitoring and disclosing conflicts of interest
7. Changes required in the structure of the conglomerate (when the existing structure does not enable information to be disclosed appropriately, comprehensive and consolidated supervision and/or identification of the real beneficiary of the institutions comprising it)
8. Information requirements and visits that are to be made to the entities forming part of the conglomerate
9. To revoke the regulated entity's operating licence when the information supplied by the foreign parent company is insufficient to carry out supervision.

It also establishes instruments for capital adequacy intervention, only in the case of those financial institutions, insurance companies and securities market firms that form part of the financial conglomerate, and not applicable to other institutions forming part of this conglomerate with different activities.

In this ambit of the SFC's supervision, the draft law clarifies that the instruments for intervention will only be directly applicable to the financial holding and to those institutions whose business activities entail being regulated by this Authority. For these purposes, the SFC will identify the institution that is to act as a holding in each financial conglomerate, although they may not set up sub-conglomerates for supervisory purposes inside a financial conglomerate.

Furthermore, the SFC may instruct holdings how to comply with regulation, particularly in the areas of risk management, internal control, information disclosure and corporate

governance of the financial conglomerate.

National government

Lastly, the Bill stipulates that the national government will have six (6) months, from when the bill comes into law, to regulate the powers of oversight over conglomerates.

Annual Agricultural Risk Management Programme

The National Agricultural Credit Committee (CNCA in the Spanish acronym) has approved the 2017 Annual Risk Management Programme, with a budget of five billion pesos (COP 5,000,000,000) – about USD 1,723,100-, as contained in Resolution No. 3/2017.

These resources, which will be charged to the National Agricultural Risk Fund, administered by the Agricultural Sector Financing (FINAGRO), will be used to subsidise agricultural insurance premiums (which will account for around 81% of these funds), and so that FINAGRO can develop the promotion programme for agricultural risk management (taking up the remaining 19%).

Agricultural insurance, set up in 1993, is focused on protecting and creating incentives for food production in Colombia and on improving the rural economy, striving to promote the economic organisation of the agricultural sector and protecting agricultural investments.

Thus, agricultural insurance, the premiums for which will be subsidised using the funds earmarked by the CNCA, will be available throughout the country, giving cover to those producers who insure the entire production area of a single crop in one plot, when this is included in the Agricultural Risk Management Plan.

Subsidies for the farming insurance policy cover, in principle, up to 60% of the net premium, but can rise to as much as 80% for small producers and 70% for medium and large producers when i) the crop or insured activity is part of the *Colombia Siembra* [“Colombia Sows”] programme; ii) when the crop or activity has been financed by farming loans granted with rediscounting funds or under FINAGRO-intermediary equivalent conditions, and ii) when the insured producer makes products that are subject to export quotas, tax relief or tariff reduction by third-party countries and in Colombia’s favour, according to treaties currently in force.

Farming crops, pastures, forest plantations and stockbreeding, fish farming and aquaculture can all be insured using this subsidy.

This agricultural insurance provides cover for damage caused by natural and biological risks affecting the agricultural activities specified.

Information about Economic Groups

The Securities Market Authority (SMV) has used this resolution to add a simplified formula for presenting information about economic groups. Nevertheless, due to the issues arising from the application of this system, the SMV has felt it necessary to make provisions for other practical situations in which regulated entities report information about their economic group, and has amended articles 8 and 9 of the Regulations on Indirect Property, Related Party Links & Economic Groups that cover this resolution.

The Authority stipulates that, as well as the securities issuers filed in its Public Register of the Securities Market, legal persons registered there and fund management companies with securities filed on any of the markets listed in Section I of Appendix 15 of the Regulations on Indirect Property, Related Party Links & Economic Groups or on the Stock Exchange are included as regulated entities when they present information about their economic group under the simplified system, and as such must submit:

- Details about the legal persons in their economic group wielding control, directly or indirectly, in a straight line of ownership;
- Details about the legal persons in their economic group that have an HQ or representation in the country; and
- Details about the foreign legal persons in their economic group that have a material commercial and/or financial relationship with the issuer, the legal person registered on the Fund Management Companies Register, according to the definition of “material” laid down in the internationally current International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB).

Thus, regulated entities must provide a link to the website of their foreign regulators, in order to provide access to public information on their economic groups. When an economic group belongs to the Peruvian state or to another country whose securities market regulator is a member of the International Organisation of Securities Commissions (IOSCO), it will only have to submit the information listed above, as needed.

When amendments to the information registered about the economic group have to be reported, the resolution sets a deadline of 31st March of the year after the changes have taken place, unless the amendment is classified as an important fact or major event. In these circumstances, as well as making the respective notification, the information must be updated within fifteen (15) calendar days.

Regulation to manage conduct within the financial system

The Banking, Insurance & Private Pension Fund Managers' Authority passed Resolution 3274-2017 on 21st August 2017, approving regulations to manage conduct within the financial market system and making changes to the accounting manual used by companies in the financial system, as well as the regulations applying to credit and debit cards.

The Regulations to Manage Conduct within the Financial Market System make it mandatory for companies offering financial products and services to have due regard for consumer rights,

and for approved market conduct policies and procedures. This is discussed by the Head of the Authority, Socorro Heysen Zegarra, in our interview with her published in this issue of *Progreso*.

The regulations cover the marketing mechanisms that companies must use in order to prevent consumers being misled about their financial products and services, as well as the type of information they must supply in order for the consumer to have a full understanding of the product, its advantages, risks and conditions that apply, so that they can take informed purchasing decisions. Specifically, the regulations require companies to have:

- Policies that embed ethical market conduct into companies' organisation, culture and corporate governance structures.
- Generic procedures for designing, validating, selling and monitoring products and services that are consistent with market conduct principles.
- Manual to manage market conduct, containing the targets, mechanisms and procedures to be used to meet the targets and responsibilities in the areas involved in implementing user procedures, the job description of the market conduct officer, as well as the channels of communication and coordination between them.
- Corporate codes of good practice in dealing with users that include market conduct principles.
- Annual training programme for front-line staff.

The Regulations provide for the creation of a conduct officer, to be appointed by the Board of Directors, who should be trained in matters concerning consumer protection and market conduct, and also understands their company's products and services, someone who has experience in control, monitoring and process management.

This position's responsibilities are to include: (i) proposing

company strategies and measures for managing appropriate market conduct; ii) assessing and verifying that policies and procedures are applied to guarantee appropriate market conduct in the company, and that these are reflected in how the entire organisation behaves; iii) participating in validating the design of the sales strategy; iv) verifying the after-sales procedures of products and services provided.

In order to improve the quality of information given to users, the regulations make it mandatory for credit card issuers to publish information comparing them, their features and tariffs, so that consumers access the cards that best match their interests and their profiles.

The regulations apply to banks, financial institutions, microfinance entities, firms providing financial leasing and factoring, real estate developers, providers of sureties and trust services, the central bank (Banco de la Nación) and Banco Agropecuario. These institutions are all required, in no more than sixty (60) days after the publication of the Resolution, to submit to the Authority their plans for the changes they will push through in their entities to comply with the provisions in the regulations.

Finally, the Resolution approves the modification to article 11 of the Credit and Debit Card regulation, which makes it obligatory for firms to send credit card title owners an online or paper monthly statement (when required to do so by the customer) no less than five (5) working days before the payment due date.

New classification of MSMEs

The Dominican Republic's Chamber of Deputies has passed modifications to three articles of Act 488-08, 19th December 2008, establishing a Regulatory Framework for the Development and Competitiveness of Micro, Small and Medium-sized Enterprises (MSMEs).

The Act reclassifies MSMEs so that policies, programmes and public initiatives to promote, support and regulate MSMEs are better fitted to their needs, their reality and the specifics of the sector in which they operate, as provided for in the new **article 2-bis**.

Classification of MSMEs

The amendments to **articles 1 and 2** of Act 488-08 alter the thresholds for employee numbers and the annual gross sales* figure, removing the reference to the asset volume previously stipulated in Act 488-08. The new classification of MSMEs is as follows:

- Microenterprise:
- Up to 10 employees (15 in the modified Act)
- Annual gross sales of up to RD 8mn (6mn in the modified Act)

- Small enterprise:
- Between 11 and 50 employees (16 to 60 in the modified Act)
- Annual gross sales of up to RD 54mn (6mn – 40mn in the modified Act)

- Medium-sized enterprise:
- Between 51 and 150 employees (61 to 200 in the modified

Act)
- Annual gross sales of up to RD 202mn (40mn – 150mn in the modified Act)

Business Registry

Article 22 has also been amended to create the MSME Business Registry, which will be kept up by the Ministry for Industry, Trade & MSMEs, free of charge and voluntary for companies, which will certify the classification by size of companies. Certificates issued will be valid for one year.

*NOTE: Figure annually index-linked to the Consumer Price Index.

Anti-money laundering and the financing of terrorism

On 16th June 2017, the Financial Information Unit (UIF in the Spanish acronym) passed Resolution 30-E/2017 revoking Resolution 121/2011 on anti-money laundering and the financing of terrorism (AML/FT).

Purpose

Resolution 30-E/2017 remains faithful to the spirit of the resolution it is replacing: anti money-laundering and the financing of terrorism (AML/FT), but it updates the criteria for managing AML/FT risk and the minimum requirements that regulated entities must meet when managing procedures and controls.

Regulated entities

The Resolution’s amendments do not affect the classification of regulation entities. This is covered in Art. 20 of Law 25.246.

AML/FT systems

The text makes it mandatory for institutions to implement an AML/FT system that has been prepared by the Compliance Officer and approved by its board of directors.

Institutions must draw up a technical document laying out their methodology for internally identifying and assessing risk, to be submitted to the UIF by 30th April every year. This self-assessment will evaluate a number of AML/FT risk factors, such as customers, products and/or services, distribution channels and geographical area.

As well as identifying and assessing their risks, institutions must set up mechanisms to mitigate them and form an AML/FT committee to support the Compliance Officer.

The regulation requires there to be an annual training plan to instruct staff about all norms and procedures for the AML/FT system. It also provides for the approval of a Code of Conduct, designed to ensure that the system is working properly, the writing of an AML/FT Manual and the review of the system in place at two levels: both external and internal.

The board of directors or the institution’s highest authority, if different, will be responsible for this prevention system.

Policy of identifying and knowing your customer (KYC)

In chapter III of the Resolution, institutions are required to have policies and procedures that enable them to know their customers, verify the information supplied by them and monitor their transactions. These stages, known as standards of due diligence, must be carried out according to the risk profile assigned to each client. In other words, the procedures are

followed depending on AML/FT risk classifications, which have three levels: high, medium and low. Each of these levels has different degrees of due diligence measures that have to be kept updated at all times, at least every 5 years for low-risk customers, and every 1 or 2 years, for high-risk and medium-risk customers, respectively.

Transaction monitoring and reporting regime

One of the changes introduced since the 2011 Resolution is that of carrying out transaction monitoring. This requires institutions to create a prospective transaction profile for each customer, based on the institution's own risk analysis, which allows it to detect unusual and suspicious transactions.

Another important new feature is a reporting regime under which institutions are obliged to make three types of online reports systematically: on high figure* cash transactions, international transactions and a systematic annual report on their own institution.

Furthermore, the regulation requires suspicious** transactions to be reported to the UIF, provided that there are reasonable grounds for classifying them as such, as well as mandating that specific criteria should be borne in mind in the case of electronic transfers and cash deposits.

Finally, provisions are made for sanctions in the case of non-compliance with the requirements of the resolution, specified in article 23 of Act 25.246, with financial penalties commensurate with the value of the goods involved in the crime.

* Transactions completed in local or foreign currency involving the transfer of cash sums of TWO HUNDRED THOUSAND PESOS (ARS 200,000) or more.

** Attempted or completed transactions that may give rise to AML/FT suspicions or, having previously been identified as unusual, whose anomalies cannot be accounted for in a subsequent analysis and assessment.

Agricultural sector and rural development

The General Agricultural Sector and Rural Development Bill received a reading in the Senate in June 2017, in order to work towards compliance with Law 1-12 setting out the National Development Strategy to 2030, which requires new legislation to regulate the Dominican agricultural sector.

The Bill sets out the structure, organisation, scope, powers and operations of the bodies and institutions working in the agricultural sector, as well as defining the activities of the different stakeholders in the sector, and the roles and the reach of its institutions.

Agricultural sector

The agricultural sector is defined as covering cereal farming, livestock breeding, beekeeping, poultry-rearing, rabbit production, hunting, salt and freshwater fisheries, as well as agribusiness, agro-industrial and agricultural export services.

The Bill has identified the following priorities and measures necessary to tackle them:

- Increasing productivity and food product quality,
- Raising technical levels and generally modernise the

food production system,
- Promoting cooperation between institutions,
- Developing infrastructures and modernise irrigation systems,
- Extending short- and medium-term funding,
- Existence of a State guarantee for the insurance on agricultural production investment, as a transversal instrument across the whole gamut of production,
- Incorporating unexploited farming areas into production,
- Incentives for all production stages,
- Redefining supporting institutions.

National Agricultural Board and Ministry of Agriculture

This piece of legislation provides for the creation of several public institutions to articulate the strategic priorities listed above:

- **Ministry of Agriculture**, to be the central structure in the agricultural sector, to which all other sector departments, divisions, sections and units will report. Articles 12 to 34 of the regulation define the ministerial departments that will be controlled by the Ministry of Agriculture, their heads and their functions; articles 35 to 189 describe the sector's 26 farming institutions, which will also report to this Ministry.
- **National Farming Board**, the main body for debate, approval, coordination and issuance of agricultural sector policy, comprising a number of civil servants and chaired by the President of the Republic.

The bodies above will have the powers to carry through plans, programmes and projects focusing on developing the agricultural sector to overcome rural poverty.

Role of the State in rural development

The Bill gives the state primary responsibility for

guaranteeing food security, and as such it must make the necessary progress in technology and set aside enough resources to cover the procedures in production, processing, marketing and consumption required to stimulate all areas of the agricultural sector and encourage efficiency, progress and rural development.

To this end, it is creating the **System to support agricultural, agroindustry and rural modernisation.** This will focus on innovation in technology, qualification of human resources and creating the best conditions for producers. The system will be in charge of coordinating the Ministry of Agriculture's activity and that of the other institutions in the agricultural sector, and will concentrate on raising agricultural and rural Gross Domestic Product (GDP) and on rural welfare.

The State must guarantee various services, including research, technical aid, education and training, organisation, technology upskilling, mechanisation, sowing materials, chemical and natural inputs, financing, marketing, risk compensation, guaranteed free professional training, land conservation, land ownership deeds, industrialisation and poverty reduction.

The new regulation also provides for the option of awarding state grants for special policies that support modern, high-quality and profitable farming at competitive prices for the consumer that help to open up international markets.

The regulation stresses the importance of professional resources and technology in supporting areas of the agricultural sector, and creates the **Dominican College of Agricultural Professionals** (CODOPA in the Spanish acronym); with legal personality under public, non-state law, whose operations will be defined in a specific law. The College will operate on national territory, representing professionals of all specialisations in the agricultural sector, and take part

in their training and upskilling. It may also participate in research conducted in the state agricultural sector.

The Bill is awaiting a hearing in the current legislature, which opened in August.

Voluntary code of corporate governance

A few months after the national financial system supervisory board, Conassif, published its Corporate Governance regulations containing the international principles and standards that regulated entities should incorporate into their strategies, Costa Rica's Corporate Governance Institute (IGC in the Spanish acronym), has taken the next step in the country's drive to promote best corporate governance practices throughout business with the publication of this code.

The Voluntary Code uses the OECD's Corporate Governance principles as its template, taking these to formulate specific good practice recommendations. It gives organisations greater flexibility to achieve compliance, so that each institution can adopt its own policies and practices, even if these are not covered in the code, to fulfil the same purpose.

The new edition contains the following general principles:

Shareholder rights

- **Equitable treatment. – Guarantee fair treatment for**

shareholders in the same category, and particularly minority shareholders.

- **Participation in meetings.** – Ensure that shareholders can take part and vote in General Meetings, and have appropriate information channels for accessing the information they need to cast informed votes on the agenda motions (at least 15 calendar days before meetings).
- **Access to information.** – Guarantee their right to receive and ask for timely, clear and accurate information, including mechanisms that enable them to express their opinion about the institution's activities.
- **Ownership.** – Define procedures for filing share ownership securely and reliably and keeping these updated.
- **Information transparency.** – Provide shareholders with sufficient information, which must be accurate, timely and given to all. Ensure there is an investor relations policy in place.

Board of Directors and its members' responsibilities

- **Composition. –** The Board of Directors should be sufficiently numerous to enable directors to perform effectively and fully participate in meetings. Members of the Board will be appointed for a maximum term of three years, and at least two should be independent.
- **Integrity. – Directors should fulfil the requirements of probity, integrity, ethics, diligence and availability needed to perform their duties with an independent criterion, acting always in the interest of the institution and of its shareholders.**
- **Duties and rights.** – New directors should be given an induction course so that they can learn about the business, their powers and responsibilities.
- **Structure, operations and functions.** – The institution

must have procedures, work plans and regulations covering the Board of Directors, so that it can perform its duties properly. Committees can be constituted (at the very least, the Audit committee and the Remuneration & Compensation Committees will be mandatory) to support the Board in fulfilling its responsibilities. Every committee should have its own set of regulations, governing its composition and operations.

- **Management.** – There should be a clear separation of powers between the board of directors and management. Management must implement the institution's internal control mechanisms, within the framework of the guidelines approved by the board, and report regularly to the board about the institution's financial and operating performance. Its performance will be assessed every year by the board.
- **Related parties.** – Policies and procedures must be put together to evaluate, approve and disclose certain transactions between the institution and related parties.

Family companies

The Code dedicates an entire chapter to good practice recommendations for family firms. Specifically, they should have a defining framework (family protocol) for the relationship between the family and the company, set out in a formal document that states the family vision, values and principles.

It also recommends that governance bodies (Family Council and Family Meeting) be created, enabling the family and the company to communicate.

Other issues

The document contains a number of appendices with simple policies that can be adopted voluntarily. These include

attachments on investor relations, buying and selling directors' and senior management's shares, what constitutes important information, audit committees and compensation & remuneration committees.

The audit committee, in particular, must comprise a majority of independent directors and the Chair of the board of directors may not sit on it.

Adopting the code

Institutions' boards of directors will have to adopt a resolution to uphold this voluntary code, and inform the General Meeting of the resolution. Adopting it will mean that the institution will have to write its own corporate governance code, taking as a reference the principles and practices recommended in this code.

Once adopted, if the institution decides not to apply the code, it must inform the General Meeting, indicating the reasons for this decision.

Annual Compliance Report

Every year, the institution must publish an Annual Compliance report, to consist of a review of compliance with the principles and practices in the voluntary code. The Report (Appendix 6 of the Code) must be made available to shareholders and other stakeholders, and should be signed off by the Board of Directors.

In the event of non-compliance with any of the principles in the code, the institution must explain the reasons it did not comply and the actions it intends to take to achieve compliance.

Financial Inclusion Coordinating Council

On 27th July, the Argentinian government passed Resolution 121-E/2017 creating the Financial Inclusion Coordinating Council (Council), which will be part of the Finance Ministry. Argentina joins the list of countries such as Chile, Uruguay, Colombia, Peru and Mexico that are all committed to significantly increasing financial inclusion.

Purpose

The Council, whose composition and operations will be duly regulated, must design and implement a financial inclusion strategy in the country and develop policies to achieve universal access to financial and banking services. These policies may be short, medium or long-term and will facilitate effective universal access to these services.

The roles of the Council

The Council's roles include: i) articulating participative processes among the various public and private players, ii) proposing plans to drive credit, microcredit and financial literacy, and iii) designing regulations that make it easier to implement the plans and programmes approved, ensuring that consumers' rights are protected.

In addition, the Council will have to advise the Argentinian government on financial inclusion issues, and design databases on access to, use and quality of financial services in order

to assess the progress made by the government's programmes and plans. All this will help to promote a more efficient and transparent financial system that makes the most of leading-edge technology.

Transposition of European data protection regulations

In April 2016, the European Parliament passed regulations on personal data protection and the free movement of this data, revoking Directive 95/46/EC (General regulation on data protection).

The regulation, applicable from 25th May 2018, not only represents an update to EU standards, but is also a reinforcement of legal certainty and transparency in recognising "*the right of member states to specify or restrict their rules as they wish in order to remain consistent and so that national provisions are understandable to those to whom they apply*".

In July, the Council of Ministers published the Personal Data Protection bill. Once passed, it will revoke the current Organic Personal Data Protection Law 15/1999, 13th December, and whatsoever national provisions existing at the same or lower levels that might be contrary to or incompatible with the General data protection regulations. The bill is currently

at the public consultation stage.

The following are some of the bill's new features:

Deceased persons

The first section, as well as describing the purpose of the law (adapting Spanish legislation to the General regulation on data protection), also circumscribes its area of application: any processing, wholly or partially automated, of personal data, and the non-automated handling of personal data in a data file or that will be included in one in the future. It also mentions those scenarios where it will not be applicable.

There are now provisions in an area where there had previously been no regulation, that of **deceased persons.** Heirs (or anyone expressly so authorised by the deceased) may ask the person in charge of data processing, the controller, for access to, and rectification or elimination of the data about the deceased, unless the deceased had explicitly forbidden this, or it is prohibited by law. If the deceased is a minor or is legally incapacitated, these powers may be exercised by the Prosecution Service.

Express consent

The Bill sets out in section II that data obtained directly from their owners are understood to be **exact and up to date**.

There is an explicit reference to **consent** being necessary to legitimate processing. This must be in the form of a statement or clear positive action by the affected party, and does not include what has been termed as "tacit consent". The regulation also accepts boxes that have not been pre-selected when a contract is being arranged or negotiated.

Specifically, article 8 states that the age at which a **minor** can give consent is thirteen.

There are also provisions in this section that apply to

particular processes: contact data and data on individual business owners, data clearly publicised by the data holder, credit rating systems, data for the purposes of video surveillance, advertising opt-out systems, whistle-blower information systems in the private sector, as well as data processing in the arena of public statistics and criminal justice. The common denominator in all these is that a balance of interests or a weighting of legitimate interest should exist as a legal starting point for data processing.

Blocking data

The principle of **transparency** in data processing has been added, so that the controller must provide information that is clear, concise and easily accessible to the data holder; this should have a basic level of content, depending on whether the information has been obtained from the party concerned or not.

This section also covers the right to access, rectify, erase ("be forgotten"), oppose, and set limits to processing, as well as data portability; the requirement to block data in the scenarios covered by the Regulation and when, by default, data should be rectified or erased are both new additions. Data that has been blocked will be available only to the corresponding public body, in order to guarantee appropriate application and oversight of compliance with data protection standards.

Data protection officer

In line with the principle of **accountability**, a new feature of the regulation requires a preliminary assessment by the controller of the risk that personal data processing can pose and for measures to be adopted in consequence. This section of the law defines accountability measures, regulates the position of controller (head of data processing) and that of the data protection officer, and references the relevant codes

of conduct and certification.

Certain organisations covered in article 35 will be obliged to appoint a **data protection officer**. The officer may be a part of the controller's organisation or not, and be a natural or legal person. In any event, they must satisfy the requirements contained in the Regulations and demonstrate visible knowledge of the subject, showing their credentials, including certification.

The controller or person in charge must provide the officer with the material and personnel wherewithal necessary and may not remove them except in the event of dishonesty or serious negligence.

One-stop shop

Section VII deals with the "one-stop shop" model which the Regulation is introducing, under which organisations with subsidiaries in several member states will only have to deal with the data protection authority where they have their main headquarters. The Spanish Data Protection Agency (AEPD in the Spanish acronym) will decide where the competence lies at the beginning of proceedings, establishing whether the institution is domestic or international, sending the claim on to the relevant authority if international.

Updated criteria for defining SMEs

On 15th August 2017, the government department for Entrepreneurs and Small & Medium Enterprises (SEPyME) published Resolution 340-E/2017 updating the criteria defining SMEs, setting out a single, clear definition for both general and the special categories.

Quantitative limits: total annual sales revenues by sector

The first classification under this regulation for whether an enterprise is recognised as a micro, small or medium sized company is a financial threshold that varies depending on the company's activity (agriculture, industry and mining, trade, services, construction).

Total annual sales revenues must not exceed the sums specified in Appendix I of the regulation; total annual sales will be understood as the average over the last three tax years, excluding taxes that may apply, and bearing in mind that up to 50% can be deducted from export sales.

Should the company not have been operating for three years, total annual sales revenues will be calculated by taking the average from the tax year just ended. In the absence of such information, a proportional ratio will be calculated on the basis of accumulated monthly sales to date.

The regulation establishes the following brackets of annual sales for a company to be considered micro, small or medium:

- Micro enterprise:

Agricultural, ARS 3 million; Industry & mining, 10.5 million; Trade, 12.5 million; Services, 3.5 million and Construction, 4.7 million.

- Small enterprise:

Agricultural, 19 million; Industry and Mining, 64 million; Trade, 75 million; Services, 21 million and Construction, 30 million.

- Medium (T1)

Agricultural, 145 million; Industry and Mining, 520 million; Trade, 630 million; Services, 175 million and Construction, 240 million.

- Medium (T2)

Agricultural, 230 million; Industry and Mining, 760 million; Trade, 900 million; Services, 250 million and Construction, 360 million.

Specific provisions for quantitative thresholds:

If its business is conducted in more than one of the sectors listed, the enterprise must be categorised in the business sector with the highest sales as per the brackets above. In addition, it must be borne in mind that if annual sales in any one of the enterprise's activity sectors exceeds the thresholds described above, the enterprise can no longer be considered a micro, small or medium enterprise.

Enterprises registered in the Federal Administration of Public Revenues (AFIP)

A limit of ARS 100 million is applied to those enterprises whose principal activity, as registered in the AFIP, is related to financial intermediation, insurance services and real-estate services.

Included and excluded activities

It also determines which activities should be included or excluded from the scope of the regulation.

Thus, it lists the activities by the sector to which the enterprise belongs. It recognises the agriculture, industry & mining, services, construction and trade sectors, expressly including the following activities: crop farming, stockbreeding, hunting, fishing, mining exploitation, manufacturing industry, information and communications (this with some restrictions), electricity, gas, water supply and waste management, transport and accommodation services, financial intermediation, real estate and professional services, administrative services, teaching and healthcare.

However, it excludes domestic services supplied to private households, the services of extraterritorial organisations and bodies, the Civil Service, Defence and social security from those activities that are subject to the regulation, as well as services relating to gambling and betting.

Controlled and/or related enterprises

Enterprises which, whilst complying with the thresholds in terms of their volumes and sectors of business, nevertheless control, are controlled by and/or have a link with other domestic or foreign companies that do not meet the stated conditions, will not be considered as micro, small or medium sized companies.

The regulation defines a related enterprise as one which has a stake of at least 20% in the capital of another, and a controlled company as one in which another firm owns at least 50%.

Procedure

Enterprises must submit a sworn statement providing the information requested in the corresponding form and if the response from the government department is favourable, the firm will be filed at the MSME Company Registry and be issued a certificate of accreditation as a micro, small or medium enterprise.

Female Farmers Programme

On 1st August, Puerto Rico's legislative assembly passed Law 58 creating the Farming Women Programme, run by Puerto Rico's Agriculture Department, to promote and develop the participation of women in farming, providing help, guidelines and making it easier for those women farmers defined in the regulation as *bona fide* to access essential services.

Bona fide female farmers

Article 2c) of the regulation covers any natural or legal person who, during the tax year for which they are claiming the deductions, exemptions or tax advantages provided for under Law 225-1995 on Agricultural Contributory Incentives in Puerto Rico, has a valid certificate issued by the Department of Agriculture. This document has to validate that, during the period in question, the person has been engaged in an activity classified as a Farming Business and that the person takes at least 50% of this enterprise's gross revenue as its operator, owner or lessor, as stated on their income tax return.

Farming business

To define the scope of application, the law describes the category of Farming Business. Any operation or exploitation in the Associated Free State of Puerto Rico in businesses such as: working and farming land to produce fruit or vegetables, whether as animal fodder or for human consumption; animal

stockbreeding for meat, milk and egg production; horse breeding; agro-industrial and agri-business operations; activities relating to fishing and flower farming, among others, are classified as a farming business.

The regulation leaves the definition open to include any business that is recognised as a farming business by the Puerto Rican Secretary of Agriculture.

The Programme

The Programme will offer seminars and workshops that are directly related to the needs that have been identified in the farming sector over the years, such as: marketing, production, quality, security and managing this type of business. These activities will be organised through cooperation agreements between the State and Federal Departments, together with other institutions such as the University of Puerto Rico's Farming Sciences College or the Department of Work and Human Resources' Training for the Businesspeople of the Future.

Furthermore, in order to facilitate financing for these farming programmes led by women, the bodies listed above and the Puerto Rican Economic Development Bank will grant incentives and aid and it will be possible to receive contributions and donations to collect funds for the programme.

Research, studies and reports

This programme to stimulate the efficiency, productivity and marketing of local farming products sold by women must be supported by an annual report on the progress made. In addition, research and studies that deal with the particular needs of these producers should be promoted.

Strengthening Municipal Savings and Loan Unions

On 13th July 2017, the Peruvian Congress passed a law amending and strengthening the manner in which Municipal Savings & Loan Unions (hereinafter, "MSLUs"), adapting Supreme Decree 157-90-EF published in 1990 into line with the modernisation process that these institutions have been going through, by creating mechanisms and conditions similar to those applying to private microfinance institutions. This project was already analyzed in number 11 of Progreso.

The main regulatory changes are as follows:

Capital, reserves and profits

Article 4 of the Supreme Decree sets the minimum capital required for setting up and operating MSLUs at PEN 4,050.00 (100 tax units). The new law raises this sum to PEN 7,500,000.00, the same as the minimum capital required for a company under the General Financial and Insurance System and Organic Law governing the Banking & Insurance Authority (hereinafter, "General Law").

On the subject of profits, this law makes it obligatory to capitalise at least fifty per cent; the remainder may be (i) distributed in the form of dividends to the municipality in question, (ii) capitalised, (iii) set aside as discretionary reserves, or (iv) left to accumulate on the income statement.

In the event of the MSLU opting to distribute profits in the form of dividends, the municipality will be obliged to spend this money on social programmes.

The modified rule also touches on corporate governance and risk management in MSLUs, indicating that, in the event of these not meeting the standards required by the Banking, Insurance & Private Pension Fund Managers Authority (hereinafter, the "Authority"), the minimum capitalisation ratio may be raised to seventy five per cent.

Transactions

The law broadens the range of transactions MSLUs may conduct, in line with the remit given in the General Law, giving them greater operational flexibility.

Governing Bodies

As discussed by Superintendent Socorro Heysen Zegarra in the interview conducted in this issue of Progreso, the law seeks to strengthen corporate governance in MSLUs

The Supreme Decree considered the Steering Committee and Management Committee as the MSLUs' governing bodies. However, the new regulations, while still considering the Management Committee as a governing body, changes the name of the Steering Committee to Board of Directors and includes the General Shareholders' meeting, whose powers are described in each MSLU's statutes, which must be approved by the Authority.

Similarly, the law has altered the composition of the Board of Directors. standardising the positions on the Board and mandating it to have representation from seven groups: the majority party on the Municipal Council (2), the minority party on the Municipal Council (1), COFIDE (1), the Chamber of Commerce (1), the Clergy (1) and the Small Tradespeople and Producers in the region where the MSLU operates (1). Whereas members of the Steering Committee used to be in office for

one-year terms, members of the Board are elected for three-year terms, giving this body greater stability.

The Supreme Decree stipulated that board meetings should be held once a quarter; now, with the amendment, the Chair of the Board must convene meetings twice a month at the most and hold meetings at least once a month; Directors shall be paid a maximum of three allowances a month for their participation on the Board and/or on the committees required by legislation current at the time.

The Supreme Decree laid down that the Management Committee should be made up of two or three natural persons, meeting once a week over a four-year term of office. This disposition has been modified in the new law, which indicates expressly that the Management Committee should henceforth comprise three members appointed by the Board of Directors for an indefinite period who should meet once a month, and that the position of General Manager should be created, after authorisation from the Authority.

The law is also about of Peruvian Federation of Municipal Savings & Loan Unions – FEPCMAC that represents and coordinates the activities of the MSLU system in Peru and abroad.

The amendment to the law that affects the Federation and differs from the Supreme Decree, allows for a period in which the Authority can oversee FEPCMAC until 2019, and also extends its functions to include:

- Articulating the development of initiatives and/or programmes within the MSLU system, to help to make it more competitive and financially sustainable.
- Handling centralised hiring and procurement and supporting the optimisation of synergies between them.
- Providing services to the MSLUs in accordance with existing legislation.

- Making financial investments on its own account or at the request of the MSLUs.
- Having representation on the MSLU Fund's Board of Directors.

As to FEPCMAC's General Meeting, the amendments have excluded the Provincial Mayor from being a participant, accepting only that each MSLU send a delegation, to include the Chair of their board and a member of the management committee.

The Board of Directors is FEPCMAC's administrative body and comprises the Chair of the Federation of Municipal Savings & Loan Unions and a representative from each MSLU, who has to be the Chair of his/her respective Board or a Manager of the MSLU in question.

As to senior management, under the Supreme Decree, Boards made appointments for a four-year term, which has been modified by the new law, which extends appointments for an indefinite period.

The Supreme Decree required FEPCMAC to have an Audit department whose Director needed approval from the country's Comptroller General to be appointed or dismissed. However, the amendment to the law has made this more flexible, granting the Board of Directors the power to appoint and dismiss the Head of the Internal Audit unit.

The law also refers to the Municipal Savings & Loan Unions Fund – FOCMAC who coordinates the flow of financial resources from domestic and foreign institutions to the MSLUs.

The law recognises FOCMAC as a non-state legal person under public law operating within the legal framework of a limited company, whose employees are subject to private sector labour law and whose organisation, leadership and administration is the responsibility of shareholders, the Board of Directors and the management board.

The Supreme Decree took into account the contributions to FOCMAC’s capital made by the MSLUs and the sums disbursed by foreign institutions. However, the amendments classify nominative shares as capital, and permit both domestic and foreign investors to participate.

Those of FOCMAC’s transactions that were designed to obtain resources from third parties have been changed so as to provide profits and support to MSLUs. In addition,profits earned by FOCMAC transactions will have to be used in the first instance to set up a legal reserve, and the amended law sets out a protocol for the percentage of profits remaining whether third party investors have taken part or not.

The supplementary clauses prohibit MSLUs from financing political campaigns or paying expenses linked to their shareholders. It also requires MSLUs and FOCMAC to have their own Internal Audit units and to be responsible for choosing and hiring external audit companies.

Finally, the provisions exclude MSLUs, FEPCMAC and FOCMAC from the effects of any law or regulation pertaining to the National Budget System, or the State Hiring Law, its regulations and standards, so that MSLUs may have greater liberty when hiring third parties, and can design their own hiring regulations.

National “Your Enterprise” Programme

On 24th August 2017, the Council of Ministers passed a Supreme Decree creating the National “Your Enterprise” Programme, in response to the high levels of business not reported to the tax authorities but appearing among micro and small enterprises registered on the 2015 National Household Survey.

The programme will run for ten (10) years and aims to help raise productivity and sales in micro and small enterprises, making it easier for these firms to join the financial system, access formal lending, digitise their activity and develop entrepreneurial skills, using the Entrepreneurial Development Centres authorised by the Ministry for Production.

The programme’s beneficiaries include micro and small enterprises led by women, by people suffering handicaps, older adults and families with at-risk children and adolescents.

The Programme’s Operating Manual will be issued in no more than thirty (30) days after the Decree becomes law.

Mutual Guarantee System

On 6th June 2017 the Senate passed the Bill creating the Mutual Guarantee System which makes it easier for Micro, Small and Medium-sized Enterprises (MSMEs) to access formal financing, as well as helping them with hiring and procurement

of public and private goods and services.

The law creates two legal entities to mitigate the difficulties faced by MSMEs in accessing formal financing at a lower cost. They are “Mutual Guarantee Companies” and “Bonding Companies”, whose partners can be legal or natural persons, public or private, Dominican or foreign, and may be classified as shareholders or patrons.

Mutual guarantee companies extend guarantees for their shareholders, to back up obligations relating to their productive, professional and commercial activities, as well as providing technical, economic and financial advice to their shareholders, either directly or through third parties, and managing the credit facilities.

A company of this nature must have at least one (1) patron and at least twenty-five (25) shareholders; its corporate capital must be made up of their monetary contributions, with subscribed and paid up equity of at least DOP 50 million (DOP 50,000,000.00). The nominal value of each share should be DOP one hundred (DOP 100.00).

Mutual guarantee companies are to have general meetings and a board of directors as their governing bodies, as well as an audit committee, whose functions will be:

(i) To verify on a regular basis the investments, guarantee contracts and the situation of corporate capital, reserves and risk coverage.

(ii) Attend to the requirements and requests for clarification that may be received from the Banking Authority.

Bonding companies provide counter-guarantees for mutual guarantee companies, inasmuch as they offer additional cover for the risk taken on by these when granting guarantees to their shareholders. Their equity may be public, private or

mixed, and should not be lower than DOP 75 million (DOP 75,000,000.00), while the nominal value of each share should be DOP one hundred (DOP 100.00).

Put simply, we could say that mutual guarantee firms will provide guarantees by issuing sureties, called guarantee certificates, to MSMEs, while bonding companies will underwrite the mutual guarantee companies to cover the risk from the sureties they have given.

Both types of company are bound by the regulations of the Monetary Board which in turn sets the rules on authorising, opening, operating, winding up and liquidating these companies.

The regulation distinguishes between three types of guarantee and surety:

- Financial guarantees: these give access to financing, issuing negotiable obligations and short term securities, discounting invoices, leasing and other transactions on the capital market.

- Commercial guarantees: guaranteeing transactions between companies, especially companies with links to one another, by using value chains.

- Technical guarantees: guaranteeing that obligations with government bodies and departments and other public entities, private customers and suppliers will be met, including those that are required by law over procurement and hiring of goods, services, building works, concessions and their modification.

The mutual guarantee contract will be considered as an enforceable instrument for the amount of the principal debt, interest and incidental charges, as well as the sum of the guarantee issued, and will be formalised in the presence of a public notary.

Similarly, the regulation establishes the infractions that can be penalised in the case of those companies and/or people holding positions as directors in these in the event of their non-compliance with the law or its regulations. These infractions may be quantitative if they involve a discrepancy, above or below, in the amount of funds required as per the regulations, or they may be qualitative in the event of non-compliance with the legal provisions that does not involve a sum of money; all this is in addition to the administrative sanctions.

The law's regulations and the modifications it implies in other regulations must be published within one hundred and eighty (180) days of the law being enacted.

Reforms to the corporate governance system

As reported in Issue 10 of *Progreso*, on 17th February the consultation period for the Green Paper presented by the British Prime Minister Theresa May's government ended. The Green Paper proposes the reform of certain areas of corporate governance in order to strengthen market confidence in the country's private sector.

At the end of the consultation period, the British government published this document, which analyses the feedback received on the Green Paper from nearly 400 companies. The government is making nine proposals for reform to British companies'

corporate governance system. The proposed measures include actions that would have to be taken by industry and regulatory bodies, as well as changes to the UK's Corporate Governance Code and in upcoming legislation.

The proposals on the three key issues raised in the consultation are summarised below:

Executive pay

The government proposes to strengthen the hand of shareholders when decisions are taken about executives' salaries and to increase transparency on this issue:

1. It invites the *Financial Reporting Council* (FRC) to review the UK's Code of Corporate Governance and to bear the following considerations in mind:

- To define the measures that companies must take when there is significant shareholder opposition to executive salaries and bonuses.
- To give remuneration committees greater powers to supervise their company's pay and incentives, and to explain whether their executives' pay **is in line with the** corporate remuneration policy. In addition, it adds that, in order to chair this committee, the chairperson must have sat on a remuneration committee for at least 12 months, unless there is a clear and cogent reason why this would not be appropriate or feasible, according to each specific case.
- To extend from three to five years the minimum vesting and post-vesting holding period for executive share awards.

2. To modify the secondary legislation so that listed companies:

- Issue an annual report disclosing the ratio of CEO pay (counting the entire pay package) to the average pay of

their UK workforce, explaining the annual changes to this ratio.
- Explain clearly and in detail remuneration policies that involve complex, long-term incentive plans.

3. To invite the *Investment Association* to maintain a public registry of companies that received "no" votes from at least 20% of their shareholders when their executive pay awards were approved; require them also to keep a record of the measures that companies adopt to address their shareholders' questions and concerns.

Representation of employees and other stakeholder groups in business decisions

Company directors must comply with the duties described in section 172 of the 2006 Companies Act about taking into account the views and needs of their stakeholders (employees, customers, suppliers, etc.) to foster companies' long-term success for the benefit of their shareholders. To strengthen this compliance, the government proposes:

4. To review the Code of Corporate Governance in order to highlight the importance of strengthening the voice at board level of employees and other stakeholders, which it deems a critical component of sustainable business management. Specifically, it requires companies with a premium listing to adopt, on the basis of the "comply or explain" principle, one of these three employee participation mechanisms: designating a non-executive director to ensure that employees are considered when decisions are taken, appointing a director from the workforce, or having an employee advisory council.

5. To introduce new secondary legislation to oblige all companies of a significant size, whether they are public or private, to explain how their directors comply with the requirements in section 172.

6. It has asked the *Investment Association* and the *Institute*

of Chartered Secretaries and Administrators (ICSA: The Governance Institute) to advise companies on practical ways to commit to their employees and other stakeholders. It also invites the General Counsel of the largest listed companies (the GC group in the FTSE100) to publish new advice and guidance on the practical interpretation of directors' duties in complying with section 172.

Corporate governance standards for major privately held companies

Although the highest standards of corporate governance in the United Kingdom are to be found in limited companies, in which on the whole the owners or shareholders are not the executives running the firm, the Green Paper considered the option of extending the mentioned principles to major privately-owned companies. Addressing the comments received on this issue, the government proposes:

7. To invite selected bodies (the FRC working with the *Institute of Directors*, the *Institute for Family Business* and the *British Venture Capital Association*, among others) to develop a voluntary set of corporate governance principles for large privately-held companies, under the chairmanship of a business figure with relevant experience.

8. To introduce new secondary legislation to require all firms of a significant size to disclose their corporate governance arrangements in their Directors' Report and on their website.

Other issues

The Green Paper included a section which invited suggestions on other corporate governance issues not dealt with in earlier sections. After the consultation, certain concerns were seen to exist as to whether the FRC has sufficient powers, resources and status to perform its duties effectively.

9. To deal with these questions, the government asked the FRC,

the *Insolvency Service* and the *Financial Conduct Authority* to revise their memoranda of understanding or conclude new ones before the end of the year, to ensure that they can enforce disciplinary measures on directors whose conduct does not meet the principles and guarantee the integrity of corporate governance reporting.

Next steps

The British government intends these reforms to become law in June 2018. The secondary legislation bill is scheduled to be laid before Parliament prior to March 2018.

We provide a global perspective of the most relevant regulations on microfinance and corporate governance

Funding facilities for Mipymes through factoring and discounting

Law 30308 forms part of the National Plan for Productive Diversification approved by the government of Peru in July 2014. Its main aim is to improve financing conditions for micro, small and medium-sized enterprises (MSMEs) and increase their productivity.

Factoring is a funding instrument that recognises invoices as representing the monetary amount billed, so that they can be assigned and endorsed, empowering their holders to obtain liquidity through factoring companies or financial institutions.

This legislation aims to bring down the barriers preventing MSMEs from entering the market for factoring, encouraging competition between institutions offering such services. The SUNAT (*Superintendencia Nacional de Aduanas y de Administración Tributaria*) is placed in charge of overseeing compliance with the obligations set forth in the law.

SUNAT-authorised printing presses will have to issue a third copy of all commercial invoices, to make it easier for MSMEs to transfer them more simply and quickly to third parties in exchange for money. This will give them access to the financial system and to short-term liquidity without needing to borrow, and at more competitive discount rates

Greater flexibility and access to finance for SMEs

Law 5/2015 was enacted in Spain on 27th April, with the intention of encouraging access to funding for SMEs. Issue 2 of Progreso already described the core points in the bill. It aims to give SMEs easier access to more flexible funding. Thus, the law regulates methods of non-bank funding, such as crowdfunding and crowdlending, so that direct investment can be raised over internet.

There are some aspects that the law brings in relating to crowd finance that are different from the bill originally put to parliament:

- The Spanish securities exchange commission (CNMV) is established as the body charged with supervision, inspection and sanction of projects financed this way.
- A minimum share capital of €60,000 is required to set up a crowdfunding platform. This must be fully paid up in cash.
- The reporting requirements for such IT platforms are limited, so that they must only make the information available on their websites.

The limits for investment in projects financed through crowdfunding have been pushed back. The amounts that professional or registered investors may invest have increased from €2m to €5m. Limits for unregistered investors have increased from €6,000 to €10,000 for any one-year period.

Investing in projects through crowdfunding in Spain is still a relatively new activity. However, the latest precepts brought in by parliament represent a major step forward in giving

SME’s easier access to such finance.

The latest in specific regulation for microcredit

In the second issue of Progreso we referenced Act 9274, the Integral Reform of the Law on the Banking System for Development. On 9th March 2015, the Republic of Costa Rica enacted the Regulation to implement this law.

The main developments it introduces relating to the microcredit industry are:

- It defines microcredit as credit requested by small farming producers, micro-firm operators or entrepreneurs, presenting production projects whose total financial requirements are not more than 40 minimum wages (approx. US$ 750).
- It establishes that both the Fondo de Financiamiento para el Desarrollo and the Fondo de Crédito para el Desarrollo, must earmark at least 11% of their total loan-book to microcredit borrowers. This percentage must be increased by 5% a year until it reaches a minimum of 25% of such funds.
- It indicates that the microcredit portfolio must be rated in line with the proportion of non-performing credits it contains. It also establishes that microcredit must be arranged, assessed, approved, disbursed and administered using a special credit methodology, different from that applicable to traditional business loans and credit facilities.

This Regulation recognises microcredit as a specific kind of

credit which requires the public authorities to apply a specific set of rules more in line with the needs of the microfinance industry.

Mi Casa Ya: encouraging social housing

The 2015 Decree 0428 is a new governmental proposal providing incentives for the construction of social housing, within a programme called "*Mi Casa Ya*". In Colombia the term "social housing" is applied to housing development designed to safeguard the right to a home for those on the lowest incomes. It is defined as a living unit which meets quality standards in urban, architectural and building design, but which does not cost more than one hundred and thirty five minimum monthly legal wage packets – SMMLV (COP 86,987,250, or about US$ 34,540; in 2015, 1 SMMLV=COP 644,350).

The central government has set up a stand-alone trust fund to roll out the "*Mi Casa Ya*" programme, which will be managed by a company chosen by the government for this purpose. It will be responsible for administering the programme's resources, which will come from:

1. allocations from the National Budget earmarked for housing support programmes,
2. financial returns from the resources deposited in this trust fund, and
3. donations to the trust fund made by individuals or legal entities.

The programme provides for a state subsidy which will put down for the initial payment on the home. This will be granted to

households whose income does not exceed a certain level.

Another financial advantage included in this programme is access to hedging of the interest rate granted through the FRECH Reserve Fund to stabilise the Mortgage Portfolio [1]. This system not only helps low-income households in Colombia, but also offers more secure conditions to financial institutions granting housing loans.

Notwithstanding the above, we should bear in mind the negative effects which a free-for-all in governmental subsidies might have. Some worry about economic dependence on the government on the part of the population at large, a culture of not paying, as well as asymmetries in information. This is particularly true when there are no accompanying instruments or policies in support of the creation of production units or jobs to enable households to sustain themselves.

[1] The FRECH Fund (Reserve Fund to stabilise the Mortgage Portfolio) is a fund expressly authorised in the 1999 Colombia Housing Law, Law 546. Its purpose is to provide interest rate hedgingspecifically in order to promote lending for social housing in urban areas, through loans to buy or lease housing. The hedge provided by the fund is a swap calculated against the interest rate agreed for new housing loans or leasing contracts originated by the credit institutions. It is available to borrowers meeting certain conditions required by law. The hedge will only be applicable in the first 7 years of the loan, counting from its disbursement, or from the date on which the housing lease starts. The FRECH Fund is administered by the Banco de la República.

Banking correspondents and Financial Inclusion

One of the mechanisms to encourage financial inclusion among low-income sectors of the population, which has been rolled out in several Latin-American countries, is the networking of credit institution correspondents. Thus, the “Correspondent Banking and Financial Inclusion: Business models in Latin America” study, prepared together with the Multilateral Investment Fund (MIF), member of the Inter-American Development Bank (IDB) Group, and the CAF-Development Bank of Latin America, has reported that banking correspondents are one of the key tools being used by the financial sector to set up channels to connect with people and provide services which offer inclusive financial solutions.

The research analysed the development of correspondent networks in Brazil, Mexico, Colombia, Guatemala, Peru, Ecuador and Chile, and found that banking intermediaries in these countries have created an extensive network of correspondents, which has made a significant contribution to increasing the banking footprint in places where it would otherwise not have one.

The study points to issues that as yet are still unresolved: the enlargement of the banking correspondents’ network has been executed more as a response to the requirements of traditional banking, than as a solution for excluded markets. Nevertheless, the study highlights the enormous potential of this type of channel for financial inclusion.

In the case of Colombia, banks have been using correspondents to offer certain financial services since 2006. Since then, additional institutions have broadened the ranks of those authorised to operate as banking correspondents; insurance companies are also now allowed to sell their products and

services through the correspondent channel.

Fight against money laundering

On 18th February, Law 20818 came into force, fine-tuning the mechanisms for preventing, detecting, monitoring, investigating and bringing to court the crime of money laundering. It brings in significant changes to Law 19913, which created the Financial Analysis Unit (UAF) in 2003, and which had not been updated since 2006.

This law not only increases the state’s power to prevent and impede money laundering in the Chilean financial system, but also develops rules to combat the financing of terrorism.

The main innovations in the text of the law are as follows:

- An increase in the number of individuals required to report to the UAF activities or transactions which they come across in the exercise of their working activity, and which have the potential to be money laundering. Security exchanges and product exchanges are included in the scope of the legislation, as well as any other exchange that might be subject to oversight from the Securities & Insurance Authority in the future. Likewise, professional sports organisations will be required to report to the UAF, as will savings and loan cooperatives, local offices of foreign banks and safe deposit companies.
- It reduces the threshold on suspicious cash transactions which regulated private institutions must report to the UAF. The threshold of 450 Unidades de Fomento has been

reduced to USD 10,000, or the equivalent in other currencies.

- To combat the financing of terrorism, the assets of people on the United Nations Security Council lists may be frozen and confiscated. These measures will have to be ratified by the Justice Minister, within 30 days, which may be extended by means of a reasoned ruling handed down by the Justice Minister or by the pertinent court.
- It adds to the list of crimes that form the basis of, or proceed from, money laundering: contraband, crimes against intellectual property, fraud and other deceptions, illicit association, tax crime for improper return of tax credits, selling pornographic material and bribery of a foreign public-sector employee.

These additions reinforce the Chilean system in the area of prevention, inspection and penalising of money laundering and the financing of terrorism. They also bring the country's legislation into line with the highest international standards in this area.

Encouraging productive business and social housing

On 23rd January 2015, the Ministry for the Economy and Public Finances published its Ministerial Resolution 031, which, by virtue of article 66 of the Financial Services law, sets out the targets which must be met by commercial banks, small and medium- sized enterprises (SME) banks and savings and loan institutions, for loan origination in the production sector and for social housing.

The regulation develops the formula which each financial intermediary will have to use when adjusting its loan book to the goals laid down in the Financial Services Law. Commercial banks will have to allocate at least 60% of their credit portfolio to the production and social housing sectors, with this minimum threshold being set at 50% in the case of SME banks and home financing institutions.

Non-compliance with these targets will be penalised in line with the Financial Oversight Authority (Asfi) rules, with this body being mandated to suspend certain operations, in order to ensure compliance with these credit ratios.

These credit portfolio targets have been designed in line with Bolivia's Financial Services Law, which requires the portfolio to give priority to the allocation of funds for social housing and the production sector, principally for micro, small and medium-sized companies, artisans and community economic organisations whether in the urban or rural environment.

Reaching these credit ratios will have a major impact on Bolivia's financial system, since the financial institutions that have allocated their loan book to micro-credit will be forced to change their lending strategy and concentrate on originating credit not only to the production sector, but also to social housing.

Access to credit: non-conventional collateral

This Circular was issued by the Financial System Authority (Asfi) on 6th March 2015, in order to establish the criteria and requirements to be taken into consideration when a

borrower is providing guarantees to secure their application for a loan.

The regulation establishes which non-conventional collateral are acceptable to finance production activities, as well as the criteria which should be applied when assessing them:

1. Guarantee Fund;
2. Agricultural insurance;
3. Documents proving ownership of real property;
4. Assets not covered by the property register;
5. Contract or binding document of future sale;
6. Guarantees or certifications from community institutions or local organisations;
7. Product stock;
8. Livestock;
9. Intellectual property patent.

This list of collateral notwithstanding, the Regulation considers the borrower’s capacity to pay is the crucial factor in originating a loan. For the financial institution such security will only be of secondary importance.

One of the principal innovations in this regulation is the security relating to the “creations of the human mind” (intellectual property patent). This means that a borrower’s invention, literary or artistic work, symbol, etc, can serve as a guarantee when accessing credit, provided that it is registered in the National Property Service (Senapi).

Corporate Governance: the

challenge facing the microfinance industry

Olga Lucía Calzada, Responsible for Legal Department Bancamía

Many Colombian companies have been rolling out changes to their corporate governance systems since External Circular 024/2014 came into force. This legislation was enacted by the Colombian financial supervisor and discussed in the first issue of "*Progreso*". In this editorial we want to highlight the importance for any organisation, and very particularly for the microfinance industry, of optimising the operations of such systems by adopting the principles of good corporate governance.

With this circular, the Colombian government has demonstrated its interest in bringing Colombian business into line with worldwide best practices, as employers serve as opinion leaders in the take-up of values. It also highlights the importance of transparency in its most active form: the timely, comprehensive disclosure of key information for investors.

This point is something worth focussing on. For information disclosure has traditionally been perceived as a duty, arising from best governance practices that were perceived as external to the companies and in some cases only there to help the investors in their decision taking. The importance disclosure has in generating value for the company has not really been much appreciated.

The structuring or adjustment of a good governance system should thus also focus on ensuring that the best principles,

measures and recommendations are mainstreamed into all the different instances where decisions are made, and not only its decision-making organs.

It is easier to identify how this might be done if we consider two specific issues:

1. The operation of the company's decision-making bodies

Several measures contained in the Circular focus on guaranteeing that shareholders and directors (board members) receive comprehensive, accurate information with enough time prior to their meetings to be able to evaluate it in depth, to gain a critical, strategic understanding of matters about which they should be aware and, in many cases, make decisions.

In the same way, it makes sense for companies' internal committees, responsible for generating information for the governing bodies, to be subject to the same measures for their meetings: sufficient advance notice, an agenda defined beforehand, with all members receiving comprehensive information in good time. At committee level, the one member/one vote rule should be followed, and the key aspects of all decisions should be duly minuted. The same rules regarding disclosure, risk mitigation, traceability of decisions and monitoring of their implementations should also apply.

2. Diversity

The Circular lays down measures to encourage the creation of collegiate governing bodies, bringing together people with different academic backgrounds and different professional profiles in such a way as to guarantee a balance of experience and expertise and ensure the independence of their decision making. Thus these bodies are able to take a multidisciplinary

approach to their business, understanding the environment in which each company operates, while being aware of the applicable regulations governing it and having genuine insight into the markets in which they work.

The same rules ought to be adopted for all internal committees at whatever level, whether their purpose is to formulate proposals or simply to make recommendations that are taken up at a higher level.

Finally we must not omit the crucial role which company directors play in rolling out a system of good corporate governance.

The directors must oversee the implementation of good governance principles and measures. They are responsible for ensuring the incorporation of these principles into everything done in the company and for establishing an unwavering commitment to them throughout the corporate culture. This undoubtedly requires their commitment, time and effort in the appropriate performance of their duties: reviewing and analysing the reports submitted to them, active participation with decisive input on the committees supporting the board, defining policies and structures, and formulating strategic plans, among others.

Furthermore, directors are required to stand accountable before the shareholders that have appointed them to control and direct the management of their organisations, all this without forgetting the remaining stakeholders.

In conclusion, the greatest challenge in establishing and strengthening good corporate governance in any enterprise, and especially in microfinance institutions, is in implementing and complying with recommended best practices at all levels of the organisation, as well as the transparent articulation of the duties, functions and roles of all those participating in the governance system.