



ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND DEVELOPMENT



The 2009 Meeting of the Latin American Corporate Governance Roundtable

1 – 2 December, 2009
Santiago, Chile

Survey of Corporate Governance Practices in Selected Latin American Countries. Draft Country Reports (Argentina, Colombia, Mexico and Peru)

These country reports on Argentina, Colombia, Mexico and Peru were commissioned by OECD and prepared by Marcos Bertín (IAGO)-Argentina, Andres Bernal –Colombia, Roberto Danel-Mexico and Carlos Eyzaguirre-Peru. Please note that all annexes to these documents have been compiled in a separate document which can be found on www.oecd.org/daf/corporateaffairs/roundtables/latinamerica . The reports included in this document have been left as they were submitted to the OECD (without the annexes). After the Roundtable these reports will be revised as necessary. The opinions expressed within these reports are those of the authors. Country specific questions or comments should be addresses to the corresponding authors..

Table of Contents

Contents

Argentina	3
Colombia.....	10
Mexico	24
Peru	42



ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND DEVELOPMENT



Argentina

1. Brief explanation of nature of the Code

a. Basis of reporting

The reporting basis is set against 28 statements that are included in the CNV resolution N ° 516. Those statements are mentioned in the 1.d and detailed in the Annex I.

b. Who reports on this?

The companies that must comply with this regulation (Res 516) are the listed companies, except Medium and Small Companies.

For this exception, Medium and Small companies are the ones who have at least average Net Sales (considering the last 3 fiscal years or less):

Size / LOB ⁽¹⁾	Agricultural	Industry and Mining	Commerce	Services	Construction
Small	6.080.000	15.000.000	22.200.000	6.732.000	6.000.000
Medium	36.480.000	120.000.000	177.600.000	44.880.000	48.000.000

The amounts are in Argentine pesos

(1) LOB: Line of Business

Additionally, the (20%) or more of the capital must not be property of other entities that are not classified in this framework.

c. Type of code. E.g. comply or explain? How often do companies report on this?

The resolution 516 states that the company must inform, with annual frequency, if it complies with each one of the 28 statements and how, or in the other case, should explain the reasons why it doesn't comply totally or partially with those statements, and if it is planned to comply in the future.

d. What are the areas covered by the code?

Following there is a summary of the code. In the Annex I¹ is the entire text.

Global Framework

- 1 Operations within the economic group.
- 2 Inclusion of the provisions of this code in the statutes of the company.

Regarding the Board

- 3 Responsibility for the strategy of the company.
- 4 Management control.
- 5 Risk Management
- 6 Audit Committee

¹ This annex is to be found on a separate document that OECD has compiled with all annexes from these reports. This can be found at www.oecd.org/daf/corporateaffairs/roundtables/latinamerica.

- 7 Quantity of Board members.
- 8 Designation of ex-executives in the Board.
- 9 Limitation of numbers of others Boards to attend for the Directors
- 10 Assessment of Board Performance
- 11 Training and development of Directors

Directors independence

- 12 Directors independence
- 13 Designation of the Management
- 14 Proportion of independent Directors
- 15 Independent Directors meetings

Regarding the shareholders

- 16 Information for the Shareholders
- 17 Shareholders information request
- 18 Attendance of minority Shareholders to the Shareholders Meeting
- 19 Public Acquisition Offer
- 20 Dividends policy

Communication with the Community

- 21 Communication via Internet.
- 22 Website requirements

Committees

- 23 Presidency of the Audit Committee
- 24 Change of External Auditor and “Sindicó”
- 25 Double assignment: “Sindicó” and External Auditor
- 26 Compensation systems
- 27 Nomination and Corporate Governance Committee
- 28 No discrimination policy

e. What areas (if any) overlap with legal requirements?

The main overlappings of these statements and other laws or regulations are as follows:

Overlapping with the Decree 677/2001:

- 1 - Operations within the economic group.
- 2 - Inclusion of the provisions of this code in the statutes of the company.
- 6 - Audit Committee
- 12 - Directors independence
- 14 – Proportion of independent Directors
- 19 -Public Acquisition Offer

16 - Information for the Shareholders

17 - Shareholders information request

19 - Public Acquisition Offer

Overlapping with the Commercial Companies Law N° 19550

3 - Responsibility for the strategy of the company.

4 - Management control.

13 – Designation of the Management

16 - Information for the Shareholders

17 - Shareholders information request

18 - Attendance of minority Shareholders to the Shareholders Meeting

With other laws

28 - No discrimination policy

f. Does a detailed analysis of company reporting against the code exist? Where is it posted? What entity is responsible for reviewing responses? (If so how often) Who enforces (if anyone) it (for instance for incomplete returns, unsatisfactory returns)?

There is no detailed analysis of company reporting against the code. The entity that is responsible for reviewing responses is the National Regulator - CNV (Comisión Nacional de Valores). CNV is preparing a report, due date to be informed.

g. How many sanctions (or alternatively, warning letters) have been given in 2008, 2007 and 2006 (if any) for reporting deficiencies/or failures in reporting), and for what reasons?

There were no sanctions because of, the obligation for reporting started in 2009.

2. Executive summary of findings of CG practices

As an executive summary of the responses sent by the listed companies to the requirements of CNV Res 516, it can be said:

- There was high formal compliance, by means of timely and reasonably completed responses to the information required by law.
- In general terms, actual implementation of corporate governance best practices treated by CNV rule among listed companies is low, mostly focused in those topics that are mandatory by other CNV rules or Corporations Law.
- However, there are some companies that implemented additional corporate governance best practices. Those cases correspond to:
 - Companies that are also listed in US markets, and are therefore subjected to SEC oversight, which regulations are wider and stricter.
 - Certain companies that clearly perceive value-added as a consequence of a specific corporate governance best practice implementation.

3. Analysis of the reports to the Code.

Resolution CNV 516 establishes that the companies should include a specific section in the Management Annual Report (Memoria), a Corporate Governance Code report. The first application of the requirement was in the event of the fiscal years starting on or after January 1st, 2008.

Considering that, this year was the first in which the applicable companies had to comply with this requirement. From a universe of around 80 companies, we have taken a sample of 30 cases, in order to analyze the degree of compliance with the resolution's statements.

We have found that almost 90% of the companies included in the sample had given the required information. The rest of the companies had not yet submitted the required information.

As it was said in section 1, CNV rule is based in "comply or explain" principle. Therefore, from a formal point of view, we can say that the companies that submitted the report have complied with the requirement. That's because, in general terms, all companies have given information about all the points included in the abovementioned rule, although in many cases the information given only consists in explanations regarding why the specific corporate governance best practice is not followed by the Company.

Different conclusions arise from the analysis of the actual implementation of corporate governance best practices included in CNV rule, in accordance with the information submitted by the companies. There are some areas in which the adoption of corporate governance best practices is more widespread. Those areas are:

- Definition and extend of Board of Directors responsibilities and functions
- Rules for Directors nomination
- Existence of an Audit Committee with majority of independent members
- Existence of written policies regarding transactions with controlling parties.

It is important to take into consideration that these areas correspond to topics that are mandatorily required by other CNV rules or Corporation Law.

On the other hand, there are other areas in which the adoption of corporate governance best practices is inexistent or very low. The main are:

- Policies to promote and facilitate minor shareholders access to information and their participation in Shareholders meetings.
- Dividends distribution policy.
- Board of Directors self-assessment
- Board of Directors organization in committees other than Audit Committee.
- Policies regarding the election of former managers as Directors
- Adhesion to tag-along rules
- Policies regarding Board of Directors integration by independent members, beyond law requirement

From the returns we can say regarding the general status of corporate governance that the Companies subject to CNV regulation in this matter formally comply with the rule, by means that generally prepare and present the information required.

Regarding the actual implementation point of view, we have seen that companies tend to implement corporate governance best practices that are mandatory by other CNV regulations or Corporations Law (i.e. existence of an Audit Committee integrated by a majority of independent members).

Additionally, there are certain types of companies that implemented additional corporate governance best practices. Those cases correspond to:

- Companies that are also listed in US markets, and are therefore subjected to SEC oversight, which regulations are wider and stricter.
- Certain companies that clearly perceive value-added as a consequence of a specific corporate governance best practice implementation (i.e.: financial institutions usually have strong risk management policies and procedures)

In the rest of the areas and Company types, our perception is that the implementation of corporate governance best practices is low or inexistent. Hopefully, we expect a higher degree of compliance and implementation of corporate governance best practices in the future.

4. Conclusions.

The general conclusions are that:

- The companies formally complies with the rules (reporting requirements), but there is not yet interest in actual implementation of corporate governance best practices.
- The stock market is small, and there are no tangible benefits for compliance (for example: access to lower loans rates) so this is one reason for the lack of value-added perception, from the company's perspective.
- IAGO have issued two educational codes (one complete and one in a short version) which, although have been heavily promoted between business and academic participants in Seminars, Web page, Universities events, is not yet widely implemented by Argentine Companies.
- New CNV regulations regarding Corporate Governance (Res 516) have limited influence as a tool to promote corporate governance best practices as they are based in "Comply or explain" principle and apply only to certain listed companies.
- Actual implementation of corporate governance best practices is in general low. Exceptions exist principally regarding topics that are mandatory by other local regulations or international regulations that apply to certain companies (i.e. SEC registrants), and certain practices in which some companies perceive the existence of tangible added value as a consequence of its implementation.

There is the IAGO Code – minimum requirements- that is exhibit in the Annex II².

²This annex is to be found on a separate document that OECD has compiled with all annexes from these reports. This can be found at www.oecd.org/daf/corporateaffairs/roundtables/latinamerica.

These are the provisions that are not considered in the Enforcement Code or legal regulation:

General Responsibilities of the Board – only partially

Existence of Committees within the Board, other than Audit Committee

Board's remuneration – only partially

Responsibility of the President of the Board

Best practices of the Audit Committee and Internal Audit, (i.e. Presidency of the Audit Committee by an Independent Director)

Annual Report of Corporate Governance – only partially



ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND DEVELOPMENT



Colombia

Corporate Governance in Colombia 2009³ “If Comply, Explain – The Colombian Model”

Colombia adopted a Corporate Governance variation “comply or explain” model by the end of 2007, this system can be better described as “If Comply, Explain”. Since 2008, local issuers have presented to the market two annual questionnaires with 80 answers about its governance. This new governance era has permitted a more flexible and uniform approach to corporate governance; but it is presenting facing challenges to provide proper and opportune information to market.

This article presents statistics of the latest governance reports; as well it describes the particular “comply or explain” model adopted in Colombia. Also, this document proposes to rethink timing of annual governance reports; and to consider a complementary set of questions/practices to provide better governance information in Colombia.

Economic Background: Colombia 2008 – 2009

- The Colombian economy has not been strongly affected by the global financial crisis. Although GDP growth fell from 7.5% of 2007 to 2.5% in 2008; and is projected to be 0.7% in 2009, it remains in “black” numbers and the economic outlook is very optimistic for subsequent years.
- The Colombian banking sector is strong: total assets are over US\$112billion⁴ (11.2% growth year on year); deposits exceed over US\$98billion; and aggregate loans are over US\$73billion (63% to local corporations)⁵.
- Recent economic disruptions are linked to exports. Due to recurrent political disagreements with Venezuela and Ecuador; and the revaluation of the Colombian Peso⁶, Colombian exports have fallen from US\$37 billion in 2008 to US\$30 billion 2009 [projected]⁷.
- The weakest economic index continues to be unemployment at about 12%. Inflation is under control with only currently about 3.3% inflation year on year. The Colombian Central Bank benchmark rate has recently been fixed at 4.0% (it was 8% in September 2007)⁸. This permanent downward interest trend has positively affected the market for corporate debt.

³ This report was developed by Andres Bernal, Partner at Governance Consultants in collaboration of Matthew Sullivan and David Lopez members of the firm. For further information or comments please contact andresbernal@governanceconsultants.com Special thanks to Jeannette Forigua, Alberto Tarquino, Carlos Bogota, Claudia Barrero and Pilar Gonzalez for providing very helpful information and insights.

⁴ All US Dollar amounts have been calculated using a constant \$2,000 Colombian pesos rate.

⁵ Data obtained of the Colombian Banking Association www.asobancaria.com

⁶ Average appreciation of Colombia peso 2009 – 14.6% - Source: Bancolombia Monthly Report Sept – Oct, 2009.

⁷ Colombian Central Bank – Banco de la Republica www.banrep.gov.co

⁸ Idem.

- The IGBC index of the Colombian Stock Exchange (BVC) has grown about 44% during 2009. In October, 09 its monthly trading volume went up to about US\$1.7 billion, an increase of almost 30% compared to 2008⁹.
- An increase in the number of debt issuers is only partly due to this new economic outlook. It also stems from projects and initiatives lead by BVC through its “Colombia Capital” Program.
- The amount of corporate debt projected to be issued during 2009 is US\$7billion, up 5% (US\$350million) on 2008. The larger issuances have been driven by state owned companies¹⁰ and by companies which are part of the “Colombia Capital” program.
- Colombian pension funds are managing assets of about US\$37billion¹¹; 25.35% increment during last year (2.2% of Colombian GDP). Pension fund’s portfolio is mainly in debt (43.5% public debt; 30.1% in variable debt; 13.5% in bonds; 3.9% foreign bonds); and only 5.6% in equity.
- The year 2010 is expected to be a good year for Colombian IPOs, driven by the energy and infrastructure sectors. Several companies are already expected to increment their free-floats or come to market through IPOs.

The Colombian reporting system of Corporate Governance

Corporate Governance Standards (Country Code, or “Código País”)

- The Colombian Corporate Governance Best Practices Code (hereinafter Country Code) has 41 practices recommended to Colombian issuers organized into four chapters: Shareholders; Board of directors; Disclosure of financial and non-financial information; and Dispute resolution¹².
- The code does not include practices already required by corporate law or financial regulations. For that reason there not overlap areas with the Colombian Corporate Governance legal framework.
- The Country Code was launched in 2007 after a joint initiative of the Financial and Securities Commission (“Superfinanciera”), the BVC and a number of business associations (representing both investors and companies¹³).

⁹ Colombian Stock Exchange www.bvc.com.co

¹⁰ For more information please see Annex (NOTE: This annex is to be found on a separate document that OECD has compiled with all annexes from these reports. This can be found at www.oecd.org/daf/corporateaffairs/roundtables/latinamerica).

¹¹ Pension funds are the main institutional investors in Colombia The source of the asset data is Asofondos – Colombian Association of Pension Funds www.asofondos.org.co

¹² To see Country Code go to: www.superfinanciera.gov.co/Codigopais/codigopais1.htm

¹³ For more information about the history of the Colombian Country Code please see “Bernal, Andres Country Report: Voluntary Corporate Governance Code in Colombia – 2007.

Reporting requirements (Annual Questionnaire)

- In November 2007, the Superfinanciera published Circular 056 which required all Colombian companies registered in the Securities Registry¹⁴ to meet the requirements of a compulsory Corporate Governance reporting system.
- The Circular requires an annual questionnaire for each calendar year to be filed with the Superfinanciera between 8 and 30 of the following April. The questionnaire responses have to be certified by the company's legal representative. The company is not under any obligation to make the response public, only to file it with the Superfinanciera and to report the filing to the public.
- The questionnaires shall be uploaded by the company on its own web-page¹⁵, however only about half of companies are disclosing their responses¹⁶.
- The compulsory questionnaire has 80 questions drawn from the Country Code. The Colombian "If Comply, Explain" system requires a Yes/No/NA response¹⁷. As opposed to the European "Comply or Explain" model¹⁸; the Colombian system only requires an explanation of the practices that are complied with, not an explanation of failures to comply.
- Corporate governance practices adopted by Colombian issuers increased from 41.4% in 2008 report to 51.4% in 2009 report¹⁹.
- Six months after the reporting deadline for companies, by the end of September, the Superfinanciera makes public its annual consolidated report and every individual company report.

Compliance and Enforcement initiatives

- The Superfinanciera has been granted a range of powers by the Public Markets Law²⁰. These include: the power to require additional information; imposition of fines;

¹⁴ Registro Nacional de Valores e Intermediarios in Spanish.

¹⁵ Circular 056, Superfinanciera.

¹⁶ This number is product of internal analysis of Governance Consultants. No objective studies, or surveys can support this number.

¹⁷ This N/A response is possible only when the question is presented through a supposition of the occurrence of a corporate decision that it can have happened or not during the year evaluated.

¹⁸ In words of the European Forum "The 'comply or explain' principle forms the basis of the European code-based approach to corporate governance. It provides for more flexible and effective market-led regulation. However, there is agreement that 'comply or explain' can work only if its surrounding regulatory framework ensures that companies respect the obligation to give reasons for deviations from the applicable corporate governance codes". 2006.

¹⁹ Superfinanciera Corporate Governance Report, 2008 (Resultados Encuesta Codigo Pais, 2008). This statistic refers only to practices adopted and correctly explained. Available in <http://www.superfinanciera.gov.co/Codigopais/informe2008.pdf>

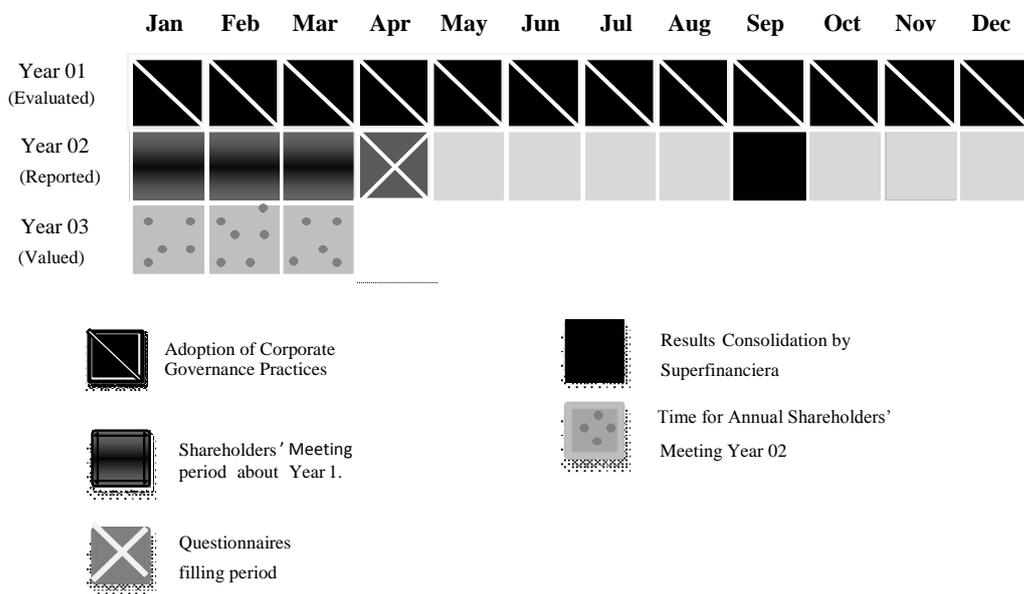
²⁰ Colombian public markets law is Ley 964 de 2005. Available at: http://www.secretariassenado.gov.co/senado/basedoc/ley/2005/ley_0964_2005.html

disqualification of legal representatives; or even, suspension of the registration of an issuer for filing failures or for filing misleading information. As yet, it is not entirely clear that these sanctions will be applicable for the questionnaire.

- The Superfinanciera is presently visiting and working directly with companies on the matter. Superfinanciera is the only institution empowered to evaluate and impose sanctions related with the Country Code and its questionnaire. Superfinanciera has imposed 6 sanctions connected with corporate governance reporting during the last years²¹.

How the Corporate Governance reporting system actually works

- The diagram below shows the chronology of reporting for the first two years:



- As the diagram makes clear, the creation and filing of the Corporate Governance reports comes immediately after the annual shareholders assembly. This has been criticized for failing to deliver timely accountability to shareholders.
- Shareholders are only having a voice on corporate governance after 15 months²² that company has disclose its report. There is no public analysis of results, nor rankings or reputational mechanisms for improving corporate governance.

²¹ Data provided by Superfinanciera, 2009.

²² 15 months is the next annual shareholders meeting in which shareholders can have a voice on the corporate governance practices of the company.

Results of Corporate Governance Areas reported by issuers in Colombia report 2009

Table 1. Number of Issuers in Colombia

Non Financial Issuers	2008	2009²³
Investors (non-financial)	14	14
Food & Beverage	17	18
Construction	13	14
Commerce	5	6
Public Utilities	29	27
Others	44	44
Total	122	123

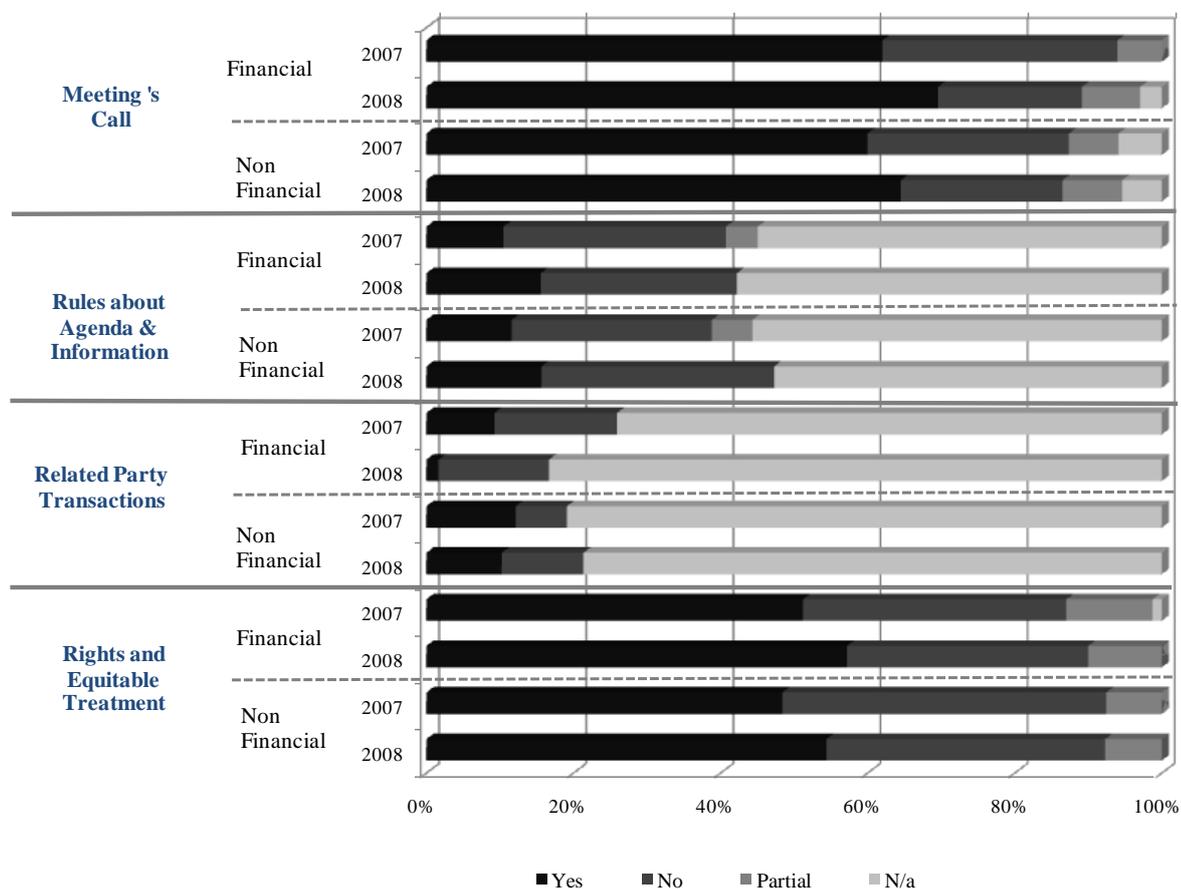
Financial issuers	2008	2009
Banks and Financial Corporations	19	20
Commercial Finance Companies	22	24
Other Financial Institutions	13	16
Total	54	60

Data from: Superfinanciera, 09

²³ Number of issuers at April, 2008 & 2009. Data collected of Superfinanciera report- 2009.

Shareholders Meeting

The Shareholders' Meeting is defined by the Country Code as the supreme organ of governance and the main mechanism for accountability to shareholders. The Country Code dictates 11 recommendations for calling shareholders meeting; rules about agenda and information; shareholders authorization of related-party transactions; and rights for equitable treatment.

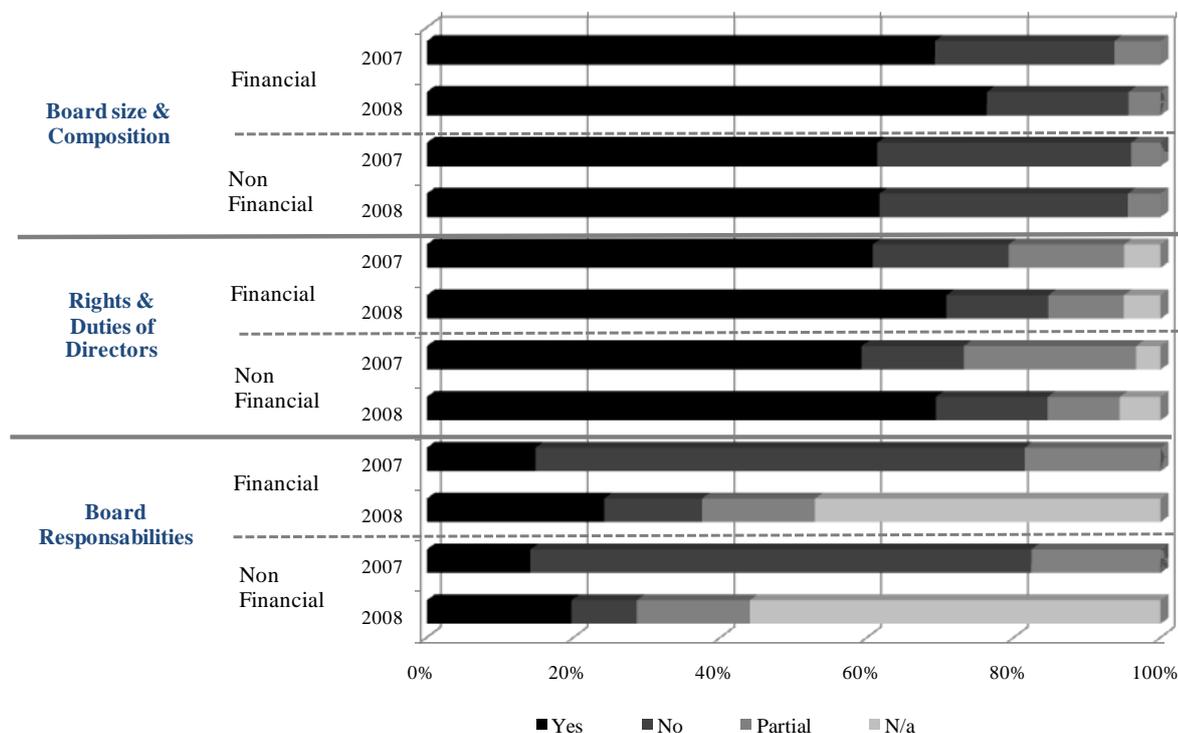


- The 4 practices that composed Meeting's call chapter increased during last year. Disclosing of information previous to general assembly (R:1); and agenda disaggregated (R:4) are in the group of most adopted practices. The practice with greatest increase was the use of corporate websites as a mechanism to call for meetings (R:3).
- Questions about *rules of Agenda* and *Related Party Transactions* are conditioned to be answered only if the company suffered specific corporate transaction during the year evaluated. Consequently, there is a high percentage of N/A to these questions.
- The growth of "Shareholders *Rights and Equitable Treatment*" chapter was mainly driven by the implementation of Shareholders Charters²⁴ in 27 issuers, 13.5% more than 2007 report.

²⁴ Rules for Annual Shareholders meetings. In Spanish: "Reglamento de Asamblea General de Accionistas".

Board of Directors

The Board of Directors is defined as the main communication vehicle with shareholders and investors; and it is expected to protect shareholders, certify the information provided to the market and verify the compliance of corporate governance commitments²⁵. This chapter contains voluntary recommended practices to complement compulsory governance practices in Colombia²⁶: audit committee; 25% of independent directors; a mandatory definition of independence; and boards' composition between 5 to 10 members.



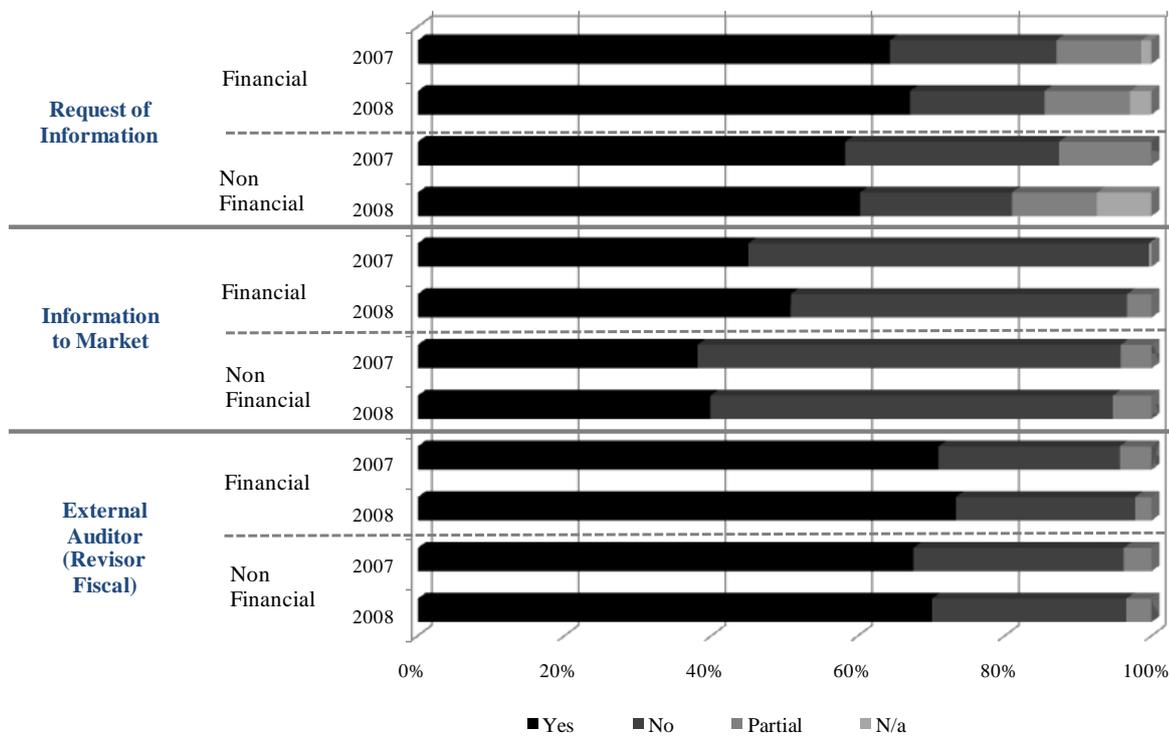
- Majority of Colombian boards has an odd number of members (90% average). A clear tendency for having monthly board meetings (most of financial sector has monthly boards; and 58% of non financial issuers). And there are a wide percentage of issuers without Board's Charter (50%).
- Board practices are well recognized and implemented in Colombian market; however, the implementation of board committees (compensation and governance) requires special attention. This area has one of the lowest levels of implementation. Most of Colombian issuers are not implementing these non-compulsory committees.

²⁵ Colombian Country Code. Chapter Two: Introduction of Junta Directiva. Superfinanciera, 2007.

²⁶ Law 964 / 05 http://www.secretariasenado.gov.co/senado/basedoc/ley/2005/ley_0964_2005.html

Disclosure of Financial and Non-Financial Information

The practices recommended in this chapter complement the shareholders rights²⁷ vested by corporate law.



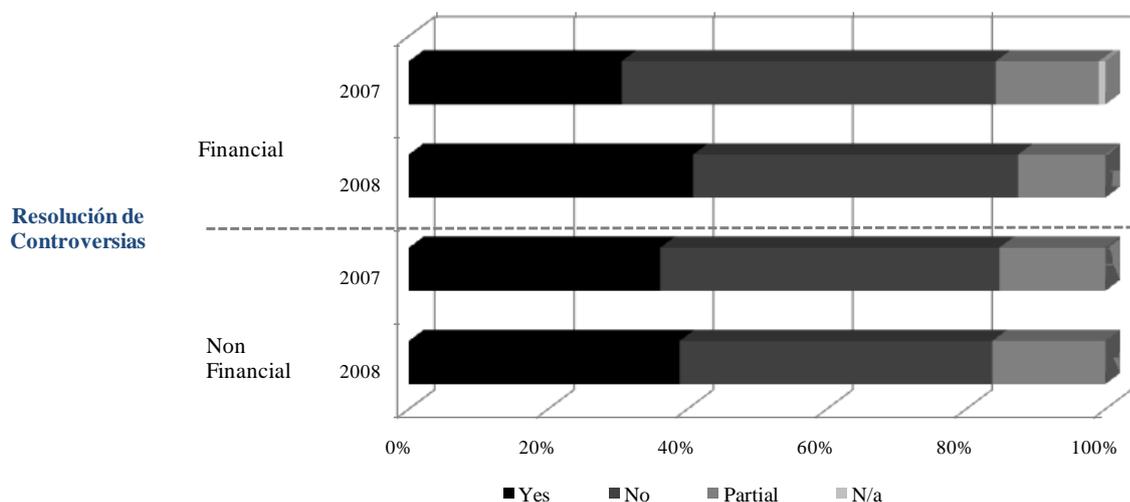
- Disclosure of *Information* has a great level of compliance. Most of Colombian issuers have an investor relation office (92%); and, implemented mechanisms to prevent asymmetric information within investors (65%). However, only 18% of issuers have established/informed the required conditions to permit special audits of shareholders.
- Some basic governance information remains undisclosed in the market. Colombian issuers are not publishing CVs (65%) or remuneration criteria for directors and key officers (83%). Also, there are a high number of issuers that do not disclose the criteria used for securities negotiations of its directors and key executives (53%).
- Issuers are opting for more independence of external auditors²⁸. However, formal rotation policies have not yet implemented (only 21% of issuers have a rotation policy).

²⁷ In Spanish “Derecho de Inspeccion”. A shareholder right protected by Colombian corporate law to audit or require information from the company within 15 days before annual shareholder meeting.

²⁸ More than 90% of Colombian issuers does not hire auditors with strong economic strings with the company and do not hire additional services.

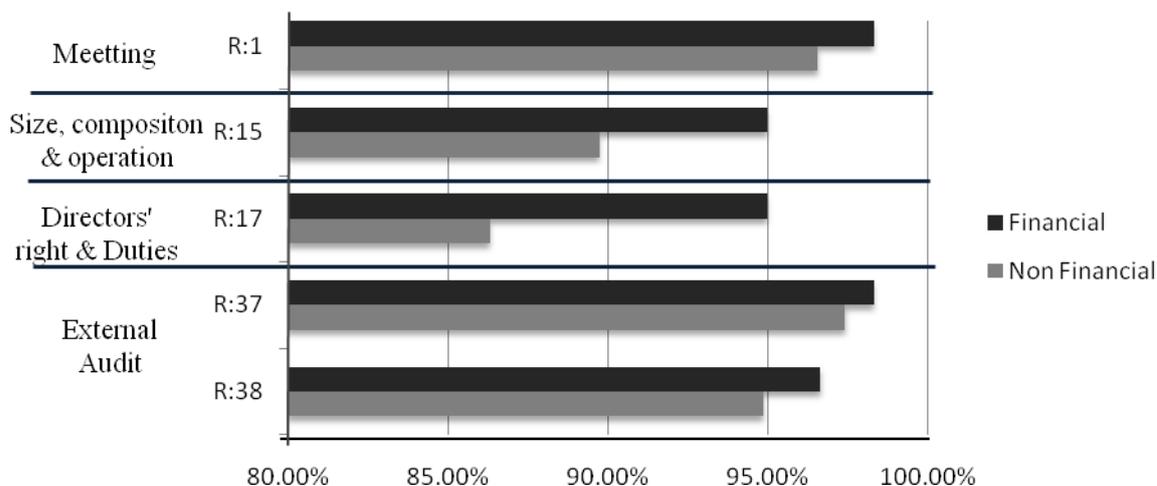
Dispute resolutions

There are two practices recommended in the Country Code to improve disputes resolution: i. permanent disclosure of the rights and mechanisms available in Superfinanciera to protect shareholders interests; and, ii. To implement alternative dispute resolution mechanisms for conflicts between issuers v. shareholders; shareholders v. directors/key executives; and, shareholders conflicts.



Key Findings of the 2009 report

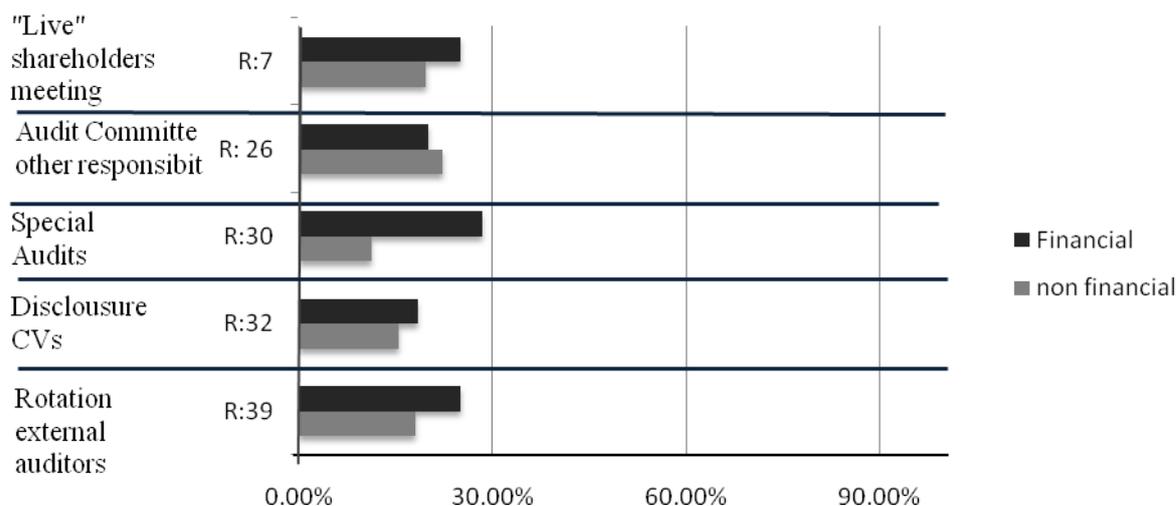
Five most adopted practices – Report 2009



Why these governance practices are the most adopted? Several hypotheses can be drawn to explain this tendency. However, it is clear that some of these practices were instituted in Colombian business culture before recommended by the Country Code; some others are very subjective to answer allowing high compliance²⁹ and others are product of the awareness of corporate governance in the market.

²⁹ For example question for Recommendation 15 is very subjective and open question. “To select board members, issuers considers that candidate have professional and academic experience? There is not a minimum or guided criteria to frame the question.

Five least adopted practices - Report 2009



It is really difficult to explain why these practices have been the less adopted³⁰ (these practices have less than 30% of implementation). However, here are some reflections:

- Practice 7 recommends a live broadcast of annual shareholders meetings. This is an expensive governance practice that it is worthless for issuers with less than 100 shareholders (most of Colombian issuers). On the other hand, this practice has very limited legal effects³¹.
- Practice 26 recommends extra responsibilities to audit committees. In Colombia, all issuers shall have an audit committee (Law 964/05) and most of its functions are regulated by law. As audit committees are a recent governance development; this can explain the low grade of interest for adding new responsibilities.
- Recommendation 32 advocates for the disclosure of directors and top executives CV's. Some issuers argue physical security risks; but this tendency seems to be more related with a lack of a communication strategy to educate about the benefits of this practice.
- The questions related with rotation of external auditors (Practice 39) refer to the contract between external auditor and company. The questionnaire requires to answer the following questions: i. "The contract with external auditor (revisor fiscal) includes a 5 year audit team rotation policy?" ii. And, "The contract includes 2-year cooling off period?". Contracts with external auditors are yearly-basis in most cases³²; this difficult to include a clause for a five-year rotation policy.

³⁰ Please take into account that there is no statistics, nor data to support the explanations of this chapter.

³¹ Colombian corporate law only allows broadcast meetings (reuniones no presenciales) when 100% of shareholders participate. This is a high risk for companies with more than 10 shareholders; if one shareholder is absent the decision is not longer valid. Consequently this practice No.7 only makes sense if there is someone receiving instructions to vote in the meeting. A very expensive practice with limited practical use.

³² Colombian Commercial Code – article 206 mandates that Revisor Fiscal should have the same period of board members.

Three most improved practices: Report 2008 to Report 2009³³

	Non Financial Issuers			Financial Issuers		
	2007	2008	Variation	2007	2008	Variation
R. 12: Shareholders' meeting Charter	26.09%	41.88%	60%	44.44	53.34%	20%
R. 19: Information studied annexed to board minutes	17.39%	66.67%	283%	27.28%	53.33%	91%
R. 22: Specific budget to boards for hiring external consultants	12.17%	42.74%	251%	24.07%	43.33%	80%

Three practices that most decline: Report 2008 to Report 2009

Non Financial Issuers	2007	2008	Decrease
R21: Mechanisms adopted to keep informed alternate (suplentes) directors	65.22%	52.14%	(-)20%
R26: Audit Committee functions not provided as compulsory at law level responsibilities (related-party transactions; disclosure policy; and mechanisms to consolidate information)	28.70%	22.22%	(-)22%
R33: Disclosure of contracts with directors, top-executives and related.	32.17	24.79	(-)23%

Financial Issuers	2007	2008	Decrease
R8: Shareholders' approval to material transactions with related parties	35.71%	10.02%	(-) 71% ³⁴
R28: Equal information rights to all shareholders	64.82%	60%	(-) 7%
R37: Incompatibility of external auditor (auditor which receives 25% or more of its income from the issuer).	100%	98.33%	(-) 2%

³³ The prior chart shows the interest for Corporate Governance in the country. As well as the benefits of "comply or explain" model in which companies are able to improve its governance practices at their own pace. As it can be seen, the Country Code is achieving important results to improve corporate governance. Another conclusion drawn from this graph is that practices approved by board are easier/faster to implement. Normally, governance practices requiring by-laws changes or shareholders approval could take longer to be implemented by local issuers.

³⁴ Due to the structure of governance questionnaire in Colombia, this question should not be viewed as a series. The question only requires companies that have performed related party transactions during previous year, to have an authorization of shareholders. However, the number of companies can change year to year.

Conclusions & Challenges ahead

1. **Comply or Explain Model has been positively perceived by the private sector**

Colombia has successfully experienced the “comply or explain” model during the last two years. In general, the model is perceived by the market as an important advance in Corporate Governance³⁵. Also, there is a general perception that “If comply, explain” is more respectful of private sector freedom to adopt different corporate models. As it is based in voluntary basis³⁶, companies feels more secure that government supervisor will not require/question about specific practices.

2. **The Colombian model reporting system needs to be revised**

The lack of “explaining” about the non-adopted practices³⁷ affects the expected results of the model (to have premiums for well-governed companies). This is also explained for the timing of company reports (April, right after ordinary annual shareholders meetings); access questionnaire information during the year; and the vast liquidity of institutional investors that does not permit strong leverages to negotiate governance between institutional investors and issuers.

3. **The Country Code should be adapted to new issuers’ realities**

It is time to think again about the recommended Corporate Governance practices in Colombia. Current Código Pais has been focused in general practices of Corporate Governance. However new developments of the market, as well as the most common type of issuers in Colombia require a different governance approach. A new model should recognize that different corporate structure (type of securities issued, number of shareholders, economic activity, etc...) implies different agency conflicts and should be resolved/informed with specific Corporate Governance practices.

Código Pais is not providing accurate practices to mitigate agency problems to a vast percentage of Colombian corporations (highly controlled companies issuing bonds; state-owned with no shareholders or state-owned with more than 100,000 shareholders but less than 10% ownership; economic groups with local & international transactions, etc...). In the same sense, the market is not accessing to critical governance information of issuers because the questionnaire-format does not recognize these major corporate differences.

On the other hand, it is imperative to have a deep revision of current questionnaire, as well as having an informational campaign in how properly fulfill the governance questionnaire. There are questions not easy to understand; particularly, questions to only be answered if a corporate transaction was performed during the year, this creates several interpretation problems for respondents. On the other hand, there are questions that ask for a specific vehicle of implementation (e.g. charters); in several of these

³⁵ Personal appreciation of the author based in informal inquiring with companies.

³⁶ Adopted means practices that it have been respected during the evaluated year.

³⁷ This is due to the Colombian version of “comply or explain” in which only adopted practices are required to be explained.

responses companies answered that rules are in by-laws or somewhere else. In the later, there is no clearance at the company level how to answer these questions.

Colombia is seeing an important development of its capital markets. And Corporate Governance is becoming more important to create and preserve confidence in local corporations. Several Colombian companies are also testing international markets in which governance is a determinant factor for issuing. All these factors create a great momentum to rethink the system and adapt it to new realities. The institutional framework that created Country Code in 2007 is an important precedent for this new challenge and should lead the new version of Country Code in Colombia.



ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND DEVELOPMENT



Mexico

TABLE OF CONTENTS

CHAPTER I. Introduction.

1. Mexico as OECD member country.
2. Issuance and update of the Code of Corporate Best Practices.

CHAPTER II. Code of Corporate Best Practices.

1. Introducing the Code.
2. Contents of the Code.
3. Level of Compliance.

CHAPTER III. Listed societies in the Stock Exchange.

1. Introduction.
2. Securities Market Law.
3. Enforcement on Corporate Governance matters.

CHAPTER IV. Reports on progress of implementation of Corporate Governance Best Practices.

1. Listed societies in the Stock Exchange.
2. Questionnaire on Level of Compliance.
3. Illustrative graphics.
4. Non-listed societies in the stock exchange.
5. Acknowledgement of the Level of Compliance.
6. Other studies on progress of implementation of Corporate Best Practices.

CHAPTER V. Conclusions.

CHAPTER I

INTRODUCTION

1. Mexico as OECD member country.

In 1994 when Mexico became a member of the Organisation for Economic Co-operation and Development, the terms of compliance of its Codes were accepted, as well as the establishment of certain disciplines or principles when pertinent and in accordance to its regulations amongst which the corporate governance principles are found.

In compliance with such commitments, the Ministry of Treasury, being aware of the progress of the OECD survey on Corporate Governance Principles achieved by 1998, requested the National Banking and Securities Commission to initiate a research survey in order to know what other member countries had implemented on the matter of Corporate Best Practices.

At the end of 1998 a draft of what would become the Code of Corporate Best Practices had been prepared and a Corporate Best Practices Committee was created to be in charge of the issuance of the Corporate Governance Principles in Mexico, as well as of the updates and adequate diffusion.

Bearing in mind that corporate governance constitutes a matter directly related to the owners of a society, and considering the convenience to integrate the corporate best practices into their culture and way of doing business in a natural manner, it was agreed that the Business Coordinating Council, the leadership association of the private sector in Mexico, would lead the Committee.

2. Issuance and update of the Code of Corporate Best Practices.

In June 1999, a month after OECD would publish its Principles of Corporate Governance, the Corporate Best Practices Committee of the Business Coordinating Council issued the Code of Corporate Best Practices, in which recommendations for better corporate governance of Mexican societies were established.

In 2004, OECD issued the first revised version of its Corporate Governance Principles, which were taken into consideration by the Committee together with the experiences on the application of the Code's recommendations during the seven years elapsed, and it was at the end of 2006 when the first revised version of the Code of Corporate Best Practices was issued.

CHAPTER II

CODE OF CORPORATE BEST PRACTICES

1. Introducing the Code.

The Code's principles aim at establishing Corporate Best Practices that may contribute to improving integration and operation of the Board of Directors and its supporting intermediate bodies; these practices are addressed to and applicable in all type of societies, be them of mercantile, civil, or not-for-profit character, with no distinction of size or activity, and whether they are listed at the stock exchange market or not.

At the time of its publication, the Mexican societies' characteristics have been considered, including their mainly family type roots, their values and culture, their share structure and the importance that certain shareholders may have in their management.

While recommendations are applied on a voluntary basis, it is desirable that all societies could incorporate them to their own corporate governance; for this purpose, each of them shall determine the step and extent of its implementation in accordance with their needs.

Through the Corporate Best Practices recommended in the Code, the aim is at supporting the societies in their institutionalisation processes, the transparency of operations, within an adequate disclosure of information, as well as to be competitive in a global world; to access the financing sources in favourable conditions; to count on stable succession processes; and to gain permanence in time, in order to benefit the shareholders and other interested third parties as well.

2. Contents of the Code.

- a) OECD Principles of Corporate Governance have been considered into the Code's contents as the principles that we are to follow as a member state.
- b) In order to establish a common language in Mexico, a universally accepted definition for corporate governance has being considered.
- c) Ten Principles of Corporate Governance and 47 Corporate Best Practices have been detailed.
- d) Major significance of shareholders and their active participation in the governance of societies have been highlighted.
- e) The responsibilities of the Board of Directors and the fiduciary duties of the Directors have been pointed out.
- f) Four categories of directors have been determined and explained and requisites for the independent director category are given in detail.
- g) Three functions of the Board of Directors are being considered and detailed, namely: Audit; Evaluation and Compensation; and Finance and Planning.

3. Level of compliance.

Considering that as a member country of OECD, we are committed to disclose the level of implementation of the principles of corporate governance in Mexican societies, and to facilitate the measurement of the progress level in the implementation of the Code's recommendations, Annex 1³⁸ of the Code contains the Questionnaire on Level of Compliance, which may be used as a metrics by the same society; the authorities; the stock exchange and the stock-market intermediaries; the financial institutions; the analysts and investors; the rating agencies and other interested parties.

³⁸ This annex is to be found on a separate document that OECD has compiled with all annexes from these reports. This can be found at www.oecd.org/daf/corporateaffairs/roundtables/latinamerica.

CHAPTER III

LISTED SOCIETIES IN THE STOCK EXCHANGE

1. Introduction.

With the purpose of fostering the observance of the Code's recommendations by the stock-issuing societies since its publication, the National Banking and Securities Commission published several Circulars during the month of September 1999, requiring to issuers that upon submission of their Annual Report to the Mexican Stock Exchange for the year 2000 and subsequent years, the Questionnaire on Level of Compliance must be annexed in order to report on the compliance of the recommendations of the Code of Corporate Best Practices.

2. Securities Market Law.

Taking into account that the Code of Corporate Best Practices has set out the standard of corporate governance for Mexican societies, since 2001 the National Banking and Securities Commission has taken provisions on certain recommendations, and has converted them to become mandatory within the Securities Market Law's framework.

In this manner, the authority has selected the matters considered as the most relevant and which must be totally complied with by listed societies in the stock exchange, basically as a protection to the investors who are part of the minority in most of the cases.

Main issues included were the following:

- a) In regard to Shareholders' Assembly, the right of stockholders representing a 10% of the share capital to convoke the assembly; the commitment to make the information and documents related to the items on agenda available to the shareholders from the moment of calling for the assembly; requirements for representing the shareholders; the right of shareholders representing at least 15% of share capital to demand the exercise of civil responsibility against the management.
- b) Concerning the Board of Directors, which shall be integrated by a minimum of 5 and a maximum of 20 directors, of which at least 25% shall be independent; the Board shall meet at least once every three months; the Audit Committee report shall be submitted to the Shareholders' Assembly; approval of transactions with related parties.
- c) Regarding the Audit Committee, the obligation to prepare activities Annual Report; and issue an opinion to the Board over transactions performed with related parties.

In 2003, the Issuers Unique Circular was issued as a complement of the Law, which Annex "J" contained the Code of Corporate Best Practices and the Questionnaire on Level of Compliance.

Again, when issuing the Securities Market Law of the year 2005 recommendations of corporate best practices contained in the Code were incorporated to enforce their compliance.

Main issues included are as follows:

- a) For the Board of Directors, it has been provided that it shall undertake the following duties:
 - i) To oversight the conduction of the society and performance of the high level executives;

- ii) To approve policies for the use of the society's assets alter a previous opinion issued by the supporting committee; operations with related parties prior to their execution; executed operations while unusual or non recurrent; designation, compensation and destitution of the chief executive officer; policies for designation and compensation of the high level executives; internal control and internal audit guidelines; financial information standards; financial statements of the society; hiring of external audit and additional services different than those for audit purposes.
 - iii) To submit to Shareholders' Assembly the annual report of the supporting committee or committees; the chief executive officer annual report; the annual report on used financial information standards.
 - iv). To follow up the main risks to which the society is exposed to.
 - v). To approve information and communication policies with shareholders, the securities market, the directors and high level executives.
 - vi). Oversight of compliance of Shareholders' Assembly resolutions.
- h) Fiduciary duties of the directors.
- i) Concerning audit matters, to assess the external auditor performance; to discuss the financial statements of the society with the individuals in charge of its preparation; to inform over modifications of financial information policies and its effects; to report on the society's internal control and internal audit situation to the Board of Directors; to prepare the activities annual report.
 - j) As far as societary practices is concerned, to transmit its opinion on high level executives performance; to issue an opinion on transactions carried out with related parties; to give his opinion on the compensations offered to the chief executive officer and high level executives; to prepare the activities annual report.

Concepts contained in the Code about high level executives; stock-issuing society; relevant events; entrepreneurial group; significant influence; relevant information; related parties; and ruling power were precisely defined.

In 2008, upon update of the Unique Circular for Issuers, Annex "J" was left with no effect, having the Circular continue to mentioning in some of its articles that the Questionnaire on Level of Compliance must be reported under the provisions of the Mexican Stock Exchange Internal Rules.

At present, the above mentioned Rules contain the Code of Corporate Best Practices and the Questionnaire on Level of Compliance.

3. Enforcement on Corporate Governance matters.

As it may be observed, since 1999 the National Banking and Securities Commission have fostered the compliance of corporate best practices recommendations contained in the Code by all the listed societies.

In the matters considered as the most relevant ones on disclosure of information and protection of shareholders and stakeholders, the authority has enforced it by making it mandatory; while in other issues by requesting the Questionnaire on Level of Compliance as part of the Annual Report that must be submitted in compliance with the Law and the Mexican Stock Exchange requirements.

The afore mentioned means that a listed society in the stock exchange who must forcefully comply with Law provisions, will show a very high level of compliance on corporate best practices as contained in the Code.

The Annual Report is used by the authority itself, the investors, the rating agencies, the financial and stock market analysts, as well as by other stakeholders, to get to know the situation of the society over different aspects including the corporate governance amongst them.

This information shall be useful to determine, among other issues, the qualification, the grade of investment, the risk level, the recommendation for share purchasing or selling, etc.

In the case of the debt issuers' societies, the Mexican Stock Exchange requires the delivery of the Questionnaire on Level of Compliance when the term of issuance is more than one year.

CHAPTER IV

REPORTS ON PROGRESS OF IMPLEMENTATION OF CORPORATE GOVERNANCE BEST PRACTICES

1. Listed societies in the Stock Exchange

From year 2000 onwards information is available in regard to the progress in the implementation of the Code's recommendations in listed societies, or in those that have situated debt in the stock exchange.

Information is based on the Questionnaire on Level of Compliance, having been prepared by the National Banking and Securities Commission, and the Mexican Stock Exchange.

Upon reading the information the increase in the level of compliance in each and every corporate best practice recommended may be observed.

2. Questionnaire on Level of Compliance.

The Questionnaire on Level of Compliance incorporates over 300 questions and its structure responds to the order followed on the Corporate Best Practices Code; responses must be answered on a "yes or no" basis to show the level of compliance for each and every of the recommended 47 corporate best practices and it requires the necessary comments and explanation for a better understanding of responses.

After receiving the Annual Report of every issuer society, information is tabulated, data is analyzed in detail, and some graphics are prepared in order to support the presentations delivered at different fora.

At the end of the Questionnaire on Level of Compliance, there is a letter to be signed by the President and the Secretary of the Board of Directors, certifying the truthfulness of the information contained in the Questionnaire.

3. Analysis of the responses on the Questionnaire.

Analysis is done in a very detailed level, carefully, attentive and a record of statistics is carried out in order to determine the level of advance on corporate best practices implementation and to identify the problems faced by issuers when answering the Questionnaire.

"Yes or no" based responses, as well as explicative comments are significantly interrelated and a joint analysis is carried out to facilitate understanding and tabulating of data.

It has been observed that some problems occurs when questions are being responded by individuals who do not know or bear a poor understanding of the Code (40%); or they do not count with the correct information (30%); or they answer in a superficial manner (30%).

When an issuer does not seriously or correctly respond to the questions of the Questionnaire, it is returned with a call for attention and an extension for correction is given with a new delivering time limit.

Analysis of the information shows the need to review the Questionnaire structure in order to avoid confusing questions and to allow collection of more precise responses which might facilitate the tabulation. Likewise, there is the need to create conscience in people who send the information that it is accompanied with a signed letter from the Chairman and the Secretary of the Board of Directors which certify that responses and comments are truthful.

4. Illustrative graphics.

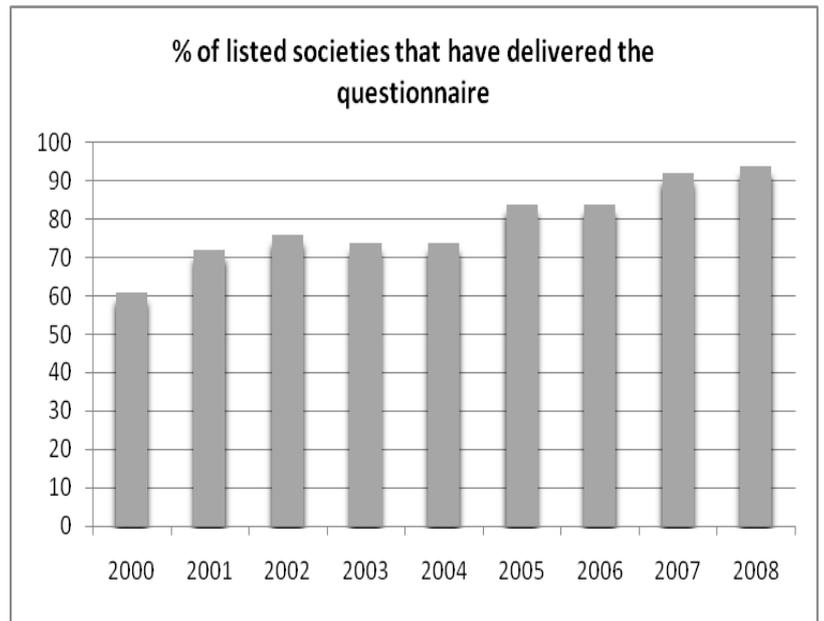
Following is a set of graphics showing the growing in the percentage of societies listed in the stock market that have delivered the Questionnaire on Level of Compliance and the percentage of observance of the main issues of the corporate best practices, over the years.

The main issues are:

- Six best practices related to the Shareholders' Meeting.
- Five best practices related to the integration of the Board of Directors.
- Two best practices related to the structure of the Board of Directors.
- Four best practices related to the operation of the Board of Directors.
- Two best practices related to de responsibilities of the Directors.
- Sixteen best practices related to the Audit function.
- Five best practices related to the Evaluation and Compensation function.
- Six best practices related to the Finance and Planning function.

Graphic No. 1

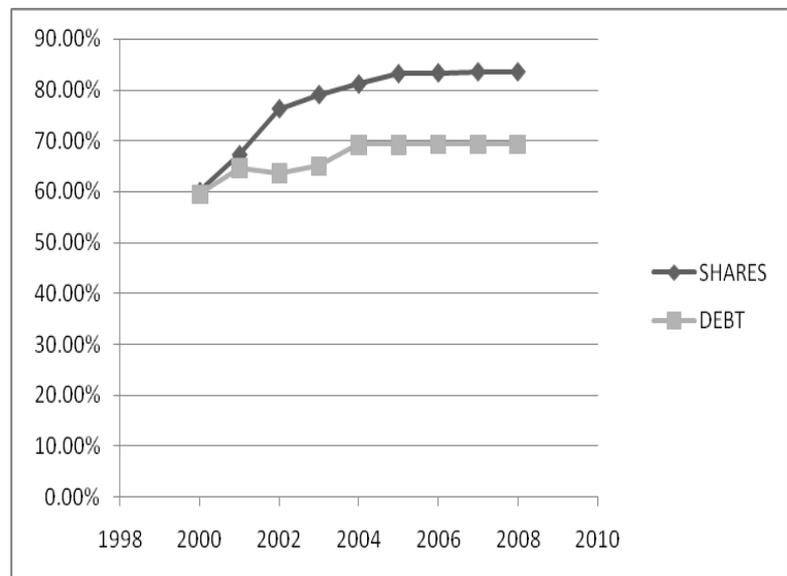
YEARS	%	
2000	61	100
2001	72	100
2002	76	100
2003	74	100
2004	74	100
2005	84	100
2006	84	100
2007	92	100
2008	94	100



Graphic No. 2

YEAR	SHARES	DEBT
2000	60.09%	59.54%
2001	67.32%	64.64%
2002	76.36%	63.64%
2003	79.13%	65.00%
2004	81.20%	69.29%
2005	83.23%	69.23%
2006	83.40%	69.32%
2007	83.60%	69.32%
2008	83.60%	69.32%

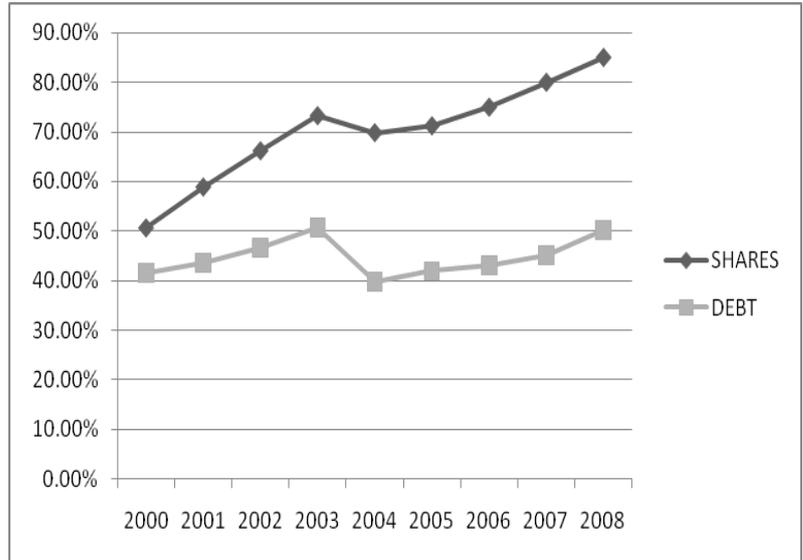
Shareholders' Meeting



Graphic No. 3

YEAR	SHARES	DEBT
2000	50.71%	41.52%
2001	58.93%	43.49%
2002	66.24%	46.62%
2003	73.30%	50.62%
2004	69.87%	39.68%
2005	71.25%	41.88%
2006	75.00%	43.00%
2007	80.00%	45.00%
2008	85.00%	50.00%

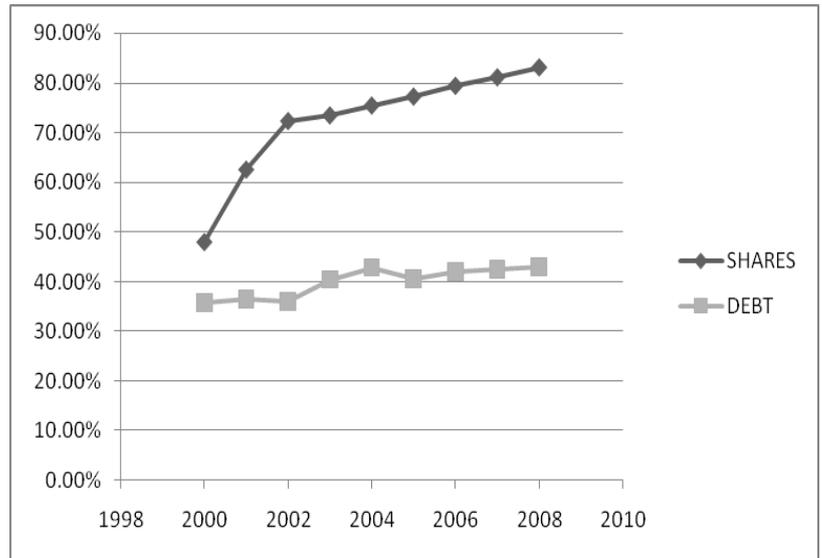
Integration of the Board of Directors



Graphic No. 4

YEAR	SHARES	DEBT
2000	48.00%	35.79%
2001	62.52%	36.57%
2002	72.25%	36.09%
2003	73.39%	40.44%
2004	75.36%	42.86%
2005	77.14%	40.51%
2006	79.30%	42.00%
2007	81.00%	42.50%
2008	83.00%	43.00%

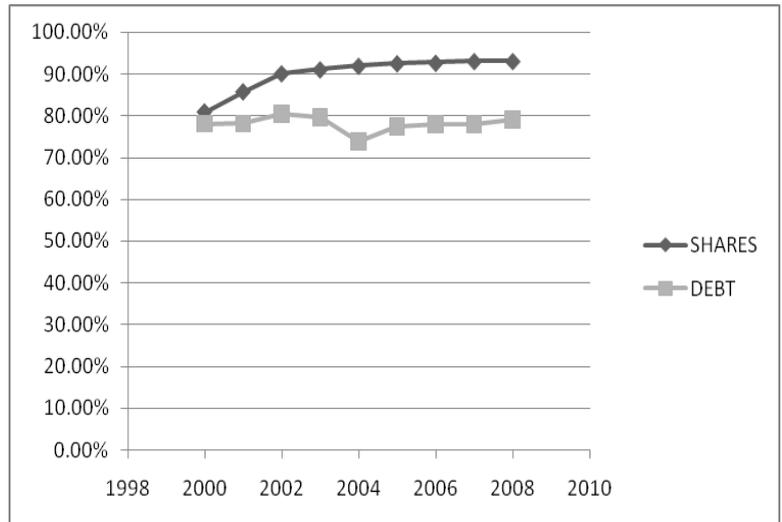
Operation of the Board of Directors



Graphic No. 5

YEAR	SHARES	DEBT
2000	80.83%	78.07%
2001	85.68%	78.10%
2002	90.05%	80.43%
2003	90.99%	79.63%
2004	91.87%	73.81%
2005	92.46%	77.35%
2006	92.60%	78.00%
2007	93.00%	78.00%
2008	93.00%	79.00%

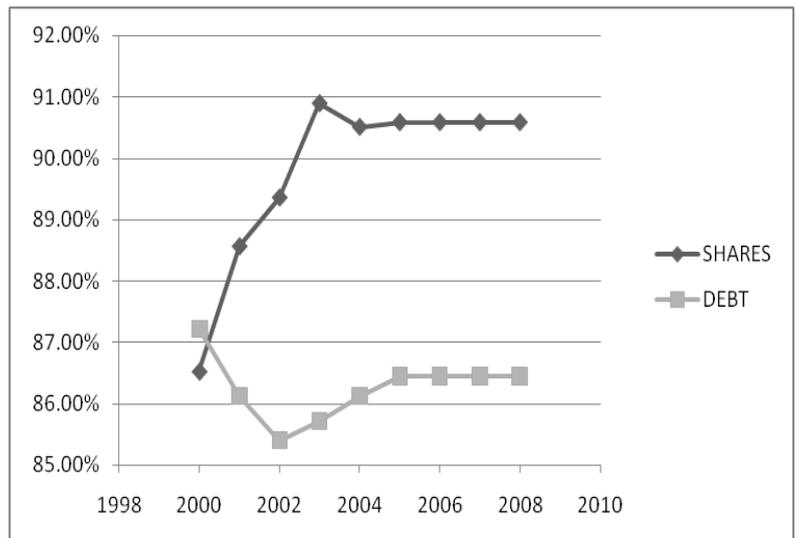
Structure of the Board



Graphic No. 6

YEAR	SHARES	DEBT
2000	86.53%	87.22%
2001	88.57%	86.12%
2002	89.37%	85.40%
2003	90.90%	85.71%
2004	90.51%	86.12%
2005	90.59%	86.45%
2006	90.59%	86.45%
2007	90.59%	86.45%
2008	90.59%	86.45%

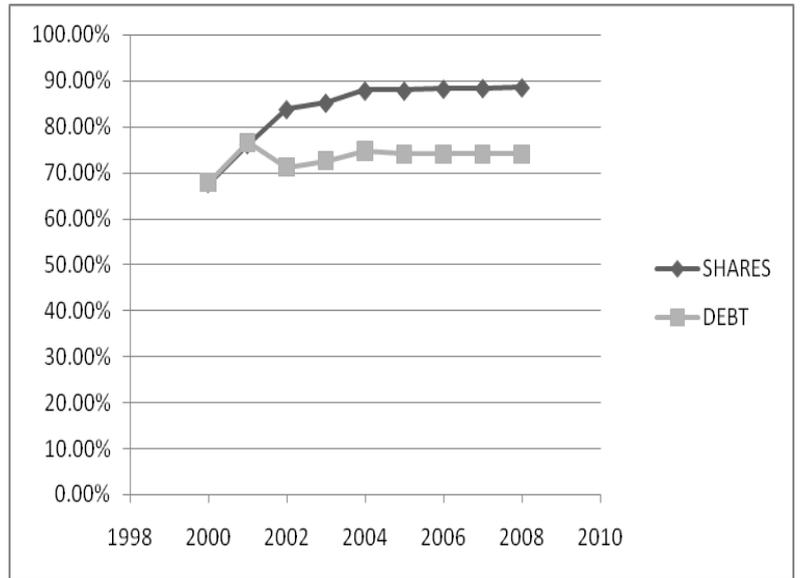
Duties of the Directors



Graphic No. 7

YEAR	SHARES	DEBT
2000	67.55%	67.86%
2001	76.08%	76.53%
2002	83.72%	71.12%
2003	85.14%	72.54%
2004	87.83%	74.69%
2005	87.81%	73.99%
2006	88.20%	74.10%
2007	88.35%	74.10%
2008	88.50%	74.10%

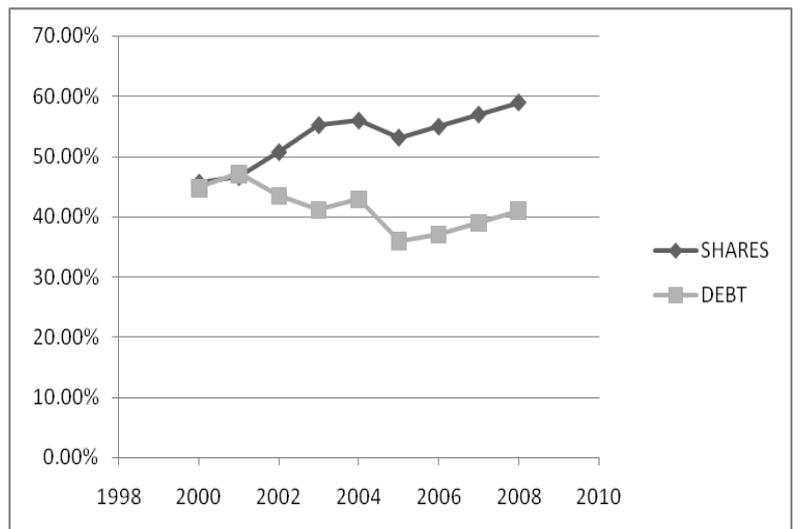
Audit Function



Graphic No. 8

YEAR	SHARES	DEBT
2000	45.72%	44.74%
2001	46.67%	47.14%
2002	50.78%	43.48%
2003	55.24%	41.11%
2004	56.00%	42.86%
2005	53.17%	35.90%
2006	55.00%	37.00%
2007	57.00%	39.00%
2008	59.00%	41.00%

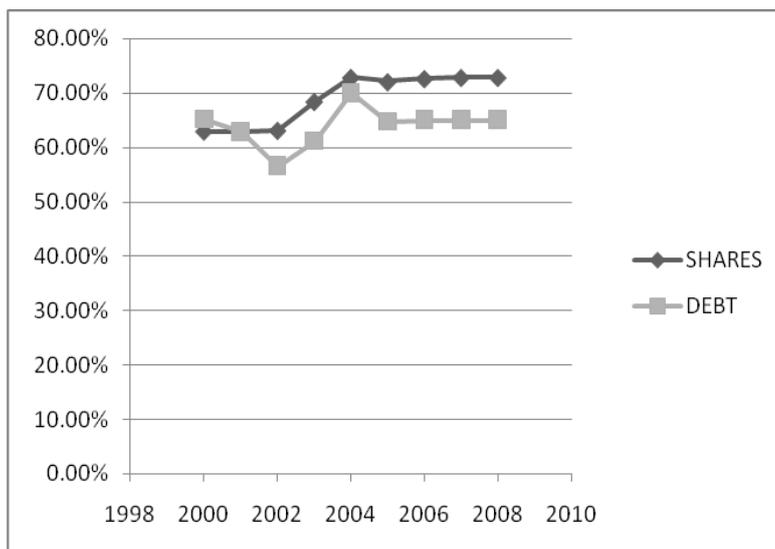
Evaluation and Compensation Function



Graphic No. 9

Finance and Planning Function

YEAR	SHARES	DEBT
2000	62.86%	65.13%
2001	62.78%	62.86%
2002	62.99%	56.52%
2003	68.35%	61.11%
2004	72.80%	70.00%
2005	72.02%	64.74%
2006	72.60%	65.00%
2007	72.80%	65.00%
2008	72.80%	65.00%



Graphs contain the outcome information resulting from the analysis of responses of Questionnaire for every reported year, independently showing stock and debt issuer societies; graphs reflect the figures listed in every chart.

Percentages point out the compliance rate average of corporate best practices related to the selected main issues of the Code in terms of their relative significance.

- a) Graphic No. 1. As it may be observed, there has been an increase over the years in the percentage of stock-issuing societies that have delivered the Questionnaire on Level of Compliance, and the difference to the 100% corresponds to those that have been suspended, or that have asked for an extension to deliver it.
- b) Graphic No. 2. In the case of the recommendations regarded to relationship with shareholders and meetings' celebration, an increase in the level of compliance has been observed. There is still the need to set deadlines to make the information available to the shareholders, and improve the representation of the vote from minorities.
- c) Graphics No. 3, 4, 5. There has been a good progress on the matters related to the Board of Directors.
- d) Graphic No. 6. And greater diffusion and practice of the directors' fiduciary duties has to be made.
- e) Graphic No. 7. Audit functions are the most advanced in their compliance rate; the analysis of the external auditor performance, the revision of operations with related parties, and the corporate social responsibility matters, including the Code of Ethics need to be strengthened.
- f) Graphic No. 8. Less progress is observed in the functions of evaluation and compensation, mainly due to the lack of a formal succession plan, the remuneration policy for directors, and because of non-disclosure of the evaluation and compensation plan to the higher level officers for security reasons.
- g) Graphic No. 9. As far as finance and planning functions are concerned, the progress has been limited, mainly due to the lack of an adequate risk management and the application of a strategic plan.

Being obliged to comply with the corporate best practices contained in the Law, listed societies by that only fact are fulfilling at a 100% with the Code's provisions in regard to respective best practices. For that reason, compliance rate is lower for those best practices contained in the Code, but not considered into the Law, since they are not mandatory, but only recommendations.

This means that complying with the Law, listed societies are fulfilling what the Code recommends but on a mandatory basis

It is clear that the Securities Market Law and the Mexican Stock Exchange Internal Rules have been of help improving the level of incorporation of the corporate best practices in the listed societies, and this constitutes a good example to be followed by the non-listed ones.

5. Non-Listed Societies in the Stock Exchange.

Every day the number of non-listed societies interested in the implementation of the corporate best practices is greater. They have answered the Questionnaire on a voluntary basis in order to know their own level of compliance and to measure their progress.

The generational succession, the entry of venture capital and the association with foreign entities are the main reasons they have had to do so. At this time there is not information about their Questionnaire and the Committee is working on that.

6. Acknowledgment of the Level of Compliance.

In order to acknowledge the progress gained by societies in the implementation of the corporate best practices, the Committee is working on the issuance of a Honour recognition that will be delivered to the civil, mercantile, or not-for-profit societies that every year have demonstrated a higher level of compliance of the Code's recommendations, with no distinction of listed in the stock market or non-listed societies.

7. Other studies on progress of implementation of the Corporate Best Practices.

Several consultancy societies and different institutions periodically carry out courses or seminars, studies and surveys on the progress of the implementation of the Code's recommendations; amongst them the Centre of Excellence in Corporate Governance and the Audit Committee Institute are worth mentioning.

Recent studies have pointed out the matters to be worked on to improve the level of compliance, namely:

- a) In addition to the Board of Directors functions, to detail in general terms those of the society's top management.
- b) To go deeper in the figure of the independent director and his/her characteristics.
- c) To abound in the matter of operations with related parties.
- d) To widen the concepts of a formal succession plan.
- e) To strengthen the risks matter.

CHAPTER V

CONCLUSIONS

A) Since the publication of the Code, over the years, certain level of resistance from the shareholders and the top management to incorporate the corporate best practices has been identified, due to the fact that there have been some consultants who have distorted the corporate governance concept, and who have transmitted the idea of a very costly implementation, that involves other issues like a new electronic systems or a new internal control, or that the family members would not be allowed to take part in their management, etc.

This has led to the decision of the Corporate Best Practices Committee to work on the following projects:

- Publication of several annexes of the Code of Corporate Best Practices that have been intended to explain and guide the reader in those matters considered as relevant and to avoid distortion of information.
- Creation of task force groups to give attention to specific subjects.
- A master diffusion plan is under preparation.
- Work is being done for the issuing of a Level of Compliance Honour Recognition.

In addition, it is worth mentioning that a second revised version of the Code of Corporate Best Practices is under preparation, as well as a revised version of the Questionnaire on Level of Compliance.

Work is being done to pursue a transparent distinction of the board of directors' functions from those of the management team of the society; to widen risks function; to better detail the characteristics of the independent director; to widen evaluation and compensation concepts, as well as those regarded to the formal succession plan.

B) Corporate practice regulation of Mexico is rooted in French Law, as it occurs in the majority of the Spanish speaking countries, while corporate governance culture is rooted in the Anglo-Saxon Law.

The Congress has not dedicated due time to the update of the corporate practices legislation, for which reason at present the Securities Market Law contains different precepts that occasionally lead to confusion. This is more evident in non-listed societies, since in practice there are some contradictions between the Code's recommendations and the Societary Law provisions.

For instance, the Societary Law assigns the oversight function to the Statutory Auditor and the Best Practices Code to the Board of Directors and the Audit Committee; the Societary Law assigns the society management function to the Board of Directors and the Code to the Chief Executive Officer and high level executives.

C) The Corporate Best Practices Committee of the Business Coordinating Council continues to move forward towards the implementation of the Code's recommendations as a measure of

competitiveness of societies, seeking their permanence towards the years to come, securing the employment sources and protecting the interests of stakeholders.



ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND DEVELOPMENT



Peru

1. The Nature of the Code.

The Peruvian code is a voluntary code and is based on the OECD Principles of Corporate Governance. It was elaborated in 2002 by a committee presided by CONASEV. The document was called The Principles of Good Governance for Peruvian Corporations (from now on the Principles). The committee decided that it was best to have a high benchmark such as the OECD principles for the Peruvian companies to follow.

a. Basis of reporting

The basis of reporting is a questionnaire elaborated by CONASEV, which is known as the Annex³⁹, which must be filed with the company's annual report.

In this questionnaire, for each principle, the company is required to answer the degree of compliance with it on a range that goes from 0 to 4.

After giving itself its own "grade", the company is asked to answer some questions regarding facts that the company must have accomplished if it has complied with the principle.

Although there is no direct correspondence between the score that a company gives itself and any particular question, questions are included to help the company validate its score. A zero means no compliance, 1-3 means some degree of compliance, 4 means full compliance. In this sense, the scoring is considered to be subjective, and the answers to the questions are considered to be objective

As shown below, first, the principle is enunciated and the company answers its degree of compliance with it. After declaring its degree of compliance, the company answers questions related to how it complies with the principle. In this example, the company is required among other things to specify the total number of directors, the number of independent directors, whether there are special requirements to be an independent director, whether those requirements are part of the company's by-laws or of any other of the company's regulatory documents, and so forth.

.

³⁹ Conasev's General Manager Resolution, No.140-2005-EF/94.11

	<i>Compliance</i>				
	<i>0</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>Principle (II.B).- A sufficient number of directors should be elected, capable of exercising independent judgment to tasks where there is a potential for conflict of interest, being able, for such purpose, to take into consideration the participation of shareholders lacking control. Independent directors are those selected for their professional prestige and who are not connected to the company management, or to the control group of the same.</i>					

- a. Indicate the number of independent directors⁴⁰.

DIRECTOR	NUMBER
DEPENDENT	
INDEPENDIENT	
Total	

- b. Indicate any special requirements (other than those needed to be a director) that are needed to be an independent director of the company.

NO SPECIAL REQUIREMENTS ARE NEEDED

- c. Indicate if the special requirements described in the previous question are regulated in any of the following company documents.

BY-LAW	INTERN	MANUA	OTHER	NAME OF THE DOCUMENT*
(...)	(...)	(...)	(...)	

* Indicate the name of the document, except in the case of the company's by-laws.

NOT REGULATED

Other questions follow in order to determine the degree of compliance with this particular principle.

b. Who reports

Listed companies must report. Also, companies doing a public offering must include the Annex in their prospectus.

c. Type of code.

It is a voluntary code and the companies must qualify their degree of compliance and answer the questions that help to explain their scoring (See example above in 1a). All listed companies have to include the answers as an Annex to their annual report and, as explained above, it must be included in the prospectus of the companies making a public offering.

⁴⁰ Independent directors are those who are not connected to the company management, or to the control group of it.

d. Areas covered by the code?

The code covers all the areas that are included in the OECD Principles of Corporate Governance of 1999. Plus, there is a special section dedicate to non-listed companies, which basically indicates that some of the principles are also applicable to this type of companies. Companies have to report on 26 recommendations and in all of them have the options from 0 to 4.

e. Areas that overlap with legal requirements

Many of the topics covered by the Principles are included either in the Peruvian Corporate Law or in the Securities Market Law and the Securities Market Regulations.

But, for example:

“Principle I.C.2.- Opportunity should be provided for shareholders to ask questions of the board and to place items on the agenda at general meetings subject to reasonable limitations.” This principles is regulated by articles 117 and 225 of Peruvian Corporate Law, however, since these articles make it difficult for shareholders to place items in the agenda, the questions in the Annex ask whether the company has other mechanisms to let the shareholders introduce items in the agenda.

So in a way, although the principles that are evaluated may be covered by law or regulation, in general the Principles go beyond what the law or regulation asks.

However, there are topics that are not required by law or regulation. For example: internal audit (only 134 companies out of 196 had internal audits in 2007), board committees (63 companies had at least 1 committee in 2007), a minimum number of independent directors (130 companies had at least 1 independent director)

See table below.

f. Analysis of company reporting against the code

A detailed analysis of company reporting is done every year by CONASEV. The analysis is posted in CONASEV’s website. The document containing the results is called “Degree of Compliance with the Principles of Good Corporate Governance”.⁴¹

CONASEV is in charge of enforcing the adequate reporting of the answers to the questionnaire.

⁴¹ (“Grado de Cumplimiento de los Principios de Buen Gobierno Corporativo Durante el Ejercicio 2006”, september 2007 and “Grado de Cumplimiento de los Principios de Buen Gobierno Corporativo Durante el 2007”, november 2008)

	2006	2007	
Reporting companies	187	196	
1.Directores			
Average	6.55 directors	6.74 directors	
2. Independent Directors			
Did not specify	1 company	1 company	
At least1 independent director	127 company	130 company	
Percent of independent directors	Varies from 0% to 100%	Varies from 0% to 100%	
Average number of independent directors	5.33 directors	2.33 directors	
Did not specify	1 company	0 company	
3.Internal audit			
Number of companies that have internal audit	125 empresas	134 empresas	
4. Board Committees			
Did not specify	2 companies	0 companies	
At least 1 committee	60 companies	63 companies	
5. Persons or areas in charge of answering shareholder´s information requests			
Did not specify	13 companies	9 companies	

g. Warning letters given in 2008, 2007 and 2006 for reporting deficiencies

There are no sanctions associated with reporting deficiencies. What CONASEV has been doing is sending letters to the companies in order for them to improve their reporting. In the letters CONASEV emphasized the cases where the “objective” answers were not validating the subjective qualification – scoring that the companies had given themselves. In some cases the companies corrected their answers, but in other cases the company stated that since the Annex had been approved by the Annual General Shareholders meeting, they couldn’t make the necessary corrections.

Most of the companies that had this problem offer to amend it the next time they had to report.

For fiscal period 2006, there were 20 letters, 140 for the 2007 period and 40 letters for the 2008 period. In 2007 a great effort was made CONASEV, since 140 companies represent about 70% of the reporting companies, and additionally about half of the companies that received letters had meetings with CONASEV that were useful for the companies to better understand the nature of the Principles and the nature of the Annex. It was also useful for CONASEV to better understand what problems the companies were having in answering the Annex.

CONASEV is working on a revision of the Annex.

2. Executive summary of findings of CG practices

a. Level of response

Fiscal period 2008, 193 out 220 companies reported in 2009.

Fiscal period 2007, 196 out 218 companies reported in 2008.

Fiscal period 2006, 187 out of 213 companies reported in 2007

Most companies report on time, since the report (the Annex) is filed with the companies' annual report.

b. Areas more/less complied with

The average scoring for 2007 was 3.28.

Topics that received low scoring were: the possibility of exchanging non-voting or investment shares for voting shares (average score 1.02), election of an adequate number of directors (average 2.72), existence of board committees (average 1.98), following clearly defined policies, the board decides the hiring of specialized consulting services (average 2.76), remuneration of management linked to company results (average 2.74).

On the positive side, the highest scores for 2007 correspond to the following topics: not including generic items in the agenda (average score 3.86), shareholder representation in Annual Shareholders' meetings should not be limited (3.84), the number of members in the board should allow for a plurality of opinions (3.79), the board must be in charge of key functions (3.77), the functions of the president and the general manager must be clearly defined (3.74).

c. Gaps in the information provided

The gaps in the information are mostly related to the difference in the subjective qualification that companies make of themselves, and the objective description of their practices.

3. Analysis of the reports to the Code.

a. Level of response

There is a high level of response as explained in section 2.a) above. However, there is a need to improve the quality of the responses in the sense that the self qualification should be more consistent with the responses the questions asked in the Annex.

b. Areas more complied with

On the positive side, the highest scores for 2007 correspond to the following topics: not including generic items in the agenda (average score 3.86), shareholder representation in Annual Shareholders' meetings should not be limited (3.84), the number of members in the board should allow for a plurality of opinions (3.79), the board must be in charge of key functions (3.77), the functions of the president and the general manager must be clearly defined (3.74).

c. Areas less complied with

Areas less complied with were: the possibility of exchanging non-voting or investment shares for voting shares (average score 1.02), election of an adequate number of directors (average 2.72), existence of board committees (average 1.98), following clearly defined policies, the board decides the hiring of specialized consulting services (average 2.76), remuneration of management linked to company results (average 2.74).

This is also consistent with the scoring for 2006.

d. Trends in the different areas of reporting

There is a trend to more transparency in the self scoring that companies give to themselves. This has been helped by the meetings that CONASEV has had with many of the reporting companies in order to explain to them the nature of the principles, the importance of them, the nature of the questionnaire (the Annex) and the need to have more transparency in their answers. For example, it seems that a better understanding of what an independent director is has led to a better reporting and as consequence the reported average number of independent directors has fallen.

There is also data available from a sample of companies that have been analysed in more detail. As we can see below there are some positive trends going on, though not necessarily at the pace we would like to see.

Like in the use of additional means to call meetings (other than article 43 of the Peruvian Corporate Law), more companies not limiting the right of shareholder representation at shareholders' meetings, a higher average of independent directors, fewer companies using the same auditor for more than 5 years, more companies with an independent audit area, more companies with at least one board committee, more companies with an audit committee, more sessions of the audit committee and more companies that have internal rules of conduct or similar document related to ethical and professional conduct.

SAMPLE			
	2006	2007	
Number of companies in sample	66	69	
Trends in governance practices			
1. Use of additional means to call meetings (other than article 43 of the Peruvian Corporate Law)	37	59	▲
2. Companies that don't limit shareholder representation	59	69	▲
3. Average number of independent directors	3,0	3,9	▲
4. Companies that have had the same external audit company in the last five years	29	26	▼
5. Companies with a dedicated corporate governance sector in their web page	22	21	▼
6. Have an independent de audit area	52	59	▲
7. Companies that have at least 1 committee	33	39	▲
8. Companies that have an audit committee	31	34	▲
9. Average number of sessions of audit committee	3.58	3.91	▲
10. Companies that have internal rules of conduct or similar document related to ethical and professional conduct	53	57	▲

Source: Conasev, "Grado de Cumplimiento de los Principios de Buen Gobierno Corporativo Durante el 2007", november 2008)

A further look at the trends: The Index of Good Corporate Governance of the Bolsa de Valores de Lima

The Bolsa de Valores de Lima (BVL) has created an Index of Good Corporate Governance (IBGC – Índice de Buen Gobierno Corporativo). Companies that want to belong to the IBGC must be qualified by a third party (a validating enterprise registered at the BVL). The companies are qualified using a scoring system which that goes from 0 to 4. The principles which are taken into account are those included in the Annex. The scoring system differs from CONASEV'S inasmuch as the points assigned in the scoring process are linked to objective criteria. For example: If there are no independent directors, the company gets 0 points, if the number of independent directors is at least 20% of the total number of board members, the company gets 2 points, and so forth.

The score for any of the companies that participate in the validating process is not made public, even if the company is included in the index.

Results for 2008 and 2009 are given in the table below. This results show an improvement in good governance practices. In order to be included in the IBGC a company must obtain at least 60% of the maximum possible score. Only 9 companies are currently included in the IBGC (no more than 10 can be included). Although the other companies made the cut they didn't have sufficient market capitalization or liquidity to be included in the IBGC.

	IBGC 2008	IBGC 2009
Number of validated firms	13	14
Average score (máximum score is 312) % is calculated	249 pts.	275 pts.
% of the máximum score	(79%)	(88%)
Average score (0-4)	3.06	3.32

Source: Índice de Buen Gobierno Corporativo, Liliana Casafra, Bolsa de Valores de Lima, November 2009

e. General status of corporate governance in the market revealed by the returns.

The results for fiscal year 2007 and the preliminary results for fiscal year 2008 reveal that there has been a more sincere disclosure in the “subjective” evaluation of the companies. This can be attributed in part to the letters with observations sent by CONASEV as well as the meetings held between CONASEV and the companies, which has led to a better understanding of the Annex and the Principles. CONASEV is working on a revision of the Annex.

There can be seen that there are areas in which little progress is being made, such as independent directors and board committees.

There are some cases in which the answers given in the annual report are not consistent with the answers given in the Annex. These may reveal that less importance is given to the Annex. There are cases where answers to questions in the Annex could be found in the annual report and however these facts weren't disclosed in the Annex. This can be due to the fact that the Annex may be generally prepared by the staff of the legal area of the company which does not necessarily participate in the elaboration of the annual report.

The IBGC shows us that there is a group of enterprises that wants to be recognized by their good corporate governance practices and its creation represents a good effort to promote good governance practices as it provides companies with an incentive to achieve higher standards. A recognition that also may help them have a lower capital cost.

4. Conclusions.

a. Strengths and weaknesses of company corporate governance practices that can be identified through analysis of company responses

A need to include practices in the companies' internal documents such as the company's by-laws, or internal rules of conduct or internal procedures.

It can be seen that there are areas in which little progress is made, such as independent directors and board committees.

The person responsible to answer the Annex should be of the same level as the person in charge of the annual report. Preferably, the general manager of the company should be in charge.

b. Important areas not covered by the code (or legal regulation)

Disclosure of ultimate beneficial ownership is not a legal or regulatory requirement and could be introduced as a requirement in the Principles.

Companies that have ADRs should have the same quality of reporting as they have in the NYSE. All of the 3 companies that have ADRs have better averages (in almost all of the areas) than the averages for all reporting companies. And whereas the general average is 3.28, the total averages for these 3 companies are 4, 3.81 and 3.73.

c. Major gaps in information

Related party transactions, conflicts of interest and ultimate beneficial ownership could have better disclosure by improving the questions in the Annex.

The other type of major gap is related to the fact that improving the quality of the answers given may go beyond the current scope of the Annex. For example, when analysing the board committees a question is asked about the number of times a committee has met. However, this does not pick up a major characteristic which is the quality of the time dedicated. For example: the audit committee of a company may have met 7 times in a year, but only for an hour, versus an audit committee from another company that has met only four times but for two days in a row, with a defined agenda and interviewing the right people and asking the right questions.