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Rights and Equitable Treatment of Shareholders: Recent Advances in Latin America

by

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I´d like to anticipate that I will be dealing briefly with the latest trends of rights and equitable treatment of shareholders, so that no one gets disappointed. It is not my intention to get into the details of each new law or bill but, as I said, to point out a trend.

When talking about the recent advances made in Latin America as regards Corporate Governance, or good practices, and the rights and equitable treatment of shareholders, we wonder: "Recent; since when?"

How long does "recent" mean? One, two, three, five years?

In this respect, the answer is very simple. Within the legal and regulatory frameworks in our continent and in the whole world and, in particular, within the framework of this round table organized by the World Bank and the OECD, the issue of recent advances in Latin America in the field of the rights and equitable treatment of shareholders takes us back at least to April 1999, when the Council of Ministers of the OECD approved the Principles of Corporate Governance.

I said that the issue takes us "at least" to those principles because their genesis can be found almost simultaneously in the Asian crisis of 1997. Why is this so?

Because the Asian crisis of October 1997 had a contagious effect at a regional level and it reached Russia. I do not know if you remember that when the Russian crisis arose in 1998, all Europe shook due to the great exposure of its own banks to those of Russia and its former republics. This affected not only emerging markets but also the most developed markets in the world, although the effects on the latter lasted just a few days.

These two crises brought about strong disapproval of the international financial institutions (IFI´s) that is, the World Bank and the International Monetary Fund, and these institutions and the countries which form the G-7 reacted and created the Financial Stability Forum (FSF), together with the Bank for International Settlements (BIS), the International Organization of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS) .

The purpose of this FSF is to analize the general world conditions in order to avoid the systemic crises which originate in a certain sector of a country and may have a contagious effect at a regional or even at a world level.

It is worth mentioning that the G-7 countries are represented in the FSF by three institutions of each one of these countries: Central Banks, Treasurers and regulators. As regards regulators, four out of seven countries of the G-7 have appointed their securities regulators as representatives to the FSF.

At the beginning of 1999, the FSF identified four areas of interest to try to avoid the future recurrence of systemic crises and created "Working Groups" to analize each of them. One of these dealt with the "Harmonization of International Standards", standards which include banking regulation, securities regulation, insurance regulation, international accounting and auditing rules, and ..."Corporate Governance".

And it is precisely here that we get to our subject and to the starting point of the "recent advances in Latin America."

As I have already said, in April 1999 the OECD approved the Principles on Corporate Governance. At the annual IOSCO meeting, Mike Lubrano, from the IFC, who is here today, distributed a copy of those principles to the participants in the Working Group on the Implementation of the Principles for Securities Regulation, one of whose members is Argentina.

For that reason the CNV, who chairs one of the five working groups of the Committee of Emerging Markets of IOSCO and the Council of Securities Regulators of the Americas (COSRA), proposed to make a comparative report on the laws and regulations of the different member countries.

The CNV made up a questionnaire taking into account the titles and items contained in the Principles of Corporate Governance approved by the OECD. The questionnaire includes: 1) Rights of Shareholders; 2) Equitable Treatment of Shareholders; 3) The Role of Stakeholders in Corporate Governance; 4) Disclosure and Transparency; 5) Responsibilities of the Board of Directors (or management body).

Brazil, Chile, El Salvador, Mexico, Paraguay, Peru, Uruguay and Venezuela submitted their responses, which were tabulated to make a simple comparison between them. The result was the following:

1) The laws and regulations of most Latin American countries protect minority shareholders to the extent of the principles adopted by the OECD;
2) In most countries it is the securities regulators who are primarily responsible for the regulation and promotion of corporate governance practices.

Most of the laws and regulations of Latin American countries do protect minority shareholders; however, securities regulators are conscious of the advances made in the field of corporate law, or corporate governance, and of the greater protection that institutional investors demand. Therefore, they have begun to legislate or regulate this issue in a more detailed manner, considering the rights of minority shareholders, their representation in the management and supervisory bodies, their interests in the distribution of profits and in tender offers (*Ofertas Públicas de Adquisición*, also known as *"OPAs"*).

This was a consequence of the role that privatisations played in Latin America, where companies which went public later delisted through an exchange of shares or other mechanisms. This led the president of one of the Securities and Exchange Commissions of the region to say that he could do nothing but accept such behavior, which, though legal, was morally unfair.

More than a month ago, after two and a half years of supporting the bill in Congress, the Superintendence of Securities and Insurance of Chile succeeded in having the law on tender offers passed.

This law, whose fundamental purpose is to include the principles of good corporate governance and the defense of minority shareholders, included amendments to Law no.18045, on Securities Markets; Law no. 18046 on Corporations; Decree Law no. 1328 on Mutual Funds; Law no. 18815 on Investment Funds; Law no. 18657 on Foreign Capital Funds; Law no. 18876 on Custody and Deposit of Securities; and Decree Law no. 3538/80, Organic By-laws of the Superintendence of Securities and Insurance of Chile.

This is to say that the Chilean law on tender offers amended seven laws in order to award more protection to minority shareholders.

It is promising that the name given to this law is "Law on OPAS", which makes a reference to tender offers (*Ofertas Públicas de Adquisición).* In Spanish, "*opa*" means "foolish". Now then, this law will prevent minority shareholders from being fooled and will grant them more corporate governance rights.

As regards Brazil, another of our neighbor countries, today Bill no. 3115 is being discussed in Congress. It amends Corporate Law no. 6404 and the Law on Securities and Creation of the *Commissao de Valores Moviliarios* (CVM), no. 6385. Today José Luis Osorio, chairman of CVM, is in Congress to sponsor it.

The bill remarkably improves the protection of minority shareholders and defines corporate governance as the "means by which shareholders protect their interests by seeking to guarantee a return on their investments". Also, it awards the CVM a more active role in the protection of corporate governance practices.

I will not get into the details of the changes which were sponsored in Chile and are being sponsored in Brazil, since those subjects will be dealt with by Álvaro Clarke and José Luis Osorio.

In Argentina, opinions are being received on the changes contained in the "Bill on Transparency and Better Corporate Governance Practices" which was submitted to all interested parties for the sake of transparency. I will therefore pass the microphone to the people who participated in the formation and development of this bill. Thank you.