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This paper was prepared by Mr. Guillermo Fretes, Partner with Fretes & Arieu – Abogados, with the benefit of review and comments from Dr. Emilio Ferré, Commissioner, Comisión Nacional de Valores, and representatives of the Center for Financial Stability and the Instituto Argentino para el Gobierno de las Organizaciones (IAGO). It is published under the responsibility of the OECD Secretariat.

Based on the reform priorities of the Latin American White Paper on Corporate Governance, this report provides comments regarding progress over the past three years, key developments, obstacles to progress and priorities for further improvement. At the outset, it is important to note that this has been in Argentina a time of turmoil and deep crisis, as is very well known. Needless to say that implementation of improvements in corporate governance has not been among the priorities for corporation leaders nor even for the government. Survival has been the exclusive goal for a wide range of corporations during the period, or at least during the first half of it. Consequently the answers and the judgments regarding Argentina's situation should be considered against this background. Many of the comments below refer to the enactment of Argentina's capital markets reform regulation, Decree 677/01, which took effect in June, 2001. Though technically this reform dates prior to the three-year period which this progress report addresses, it remains relevant because it has taken additional time to implement the law through regulations and other follow-up initiatives.

Issue 1 Taking Voting Rights Seriously. ***White Paper Recommendation:*** Steps should be taken to facilitate shareholder participation in General Meetings and voting of shares. Institutional investors that in many cases have taken too passive a role should be encouraged to exercise their ownership rights in a more active and informed manner. If the legal framework allows shares with different voting rights, this needs to be fully justified and accompanied by commensurately stronger and more effective protection of minority shareholders.

Has there been progress on this issue over the past three years?

Voting rights have not been seen in Argentina as a problem. Though the Corporations Law allows shares with different numbers of votes, typically 5 votes, while preferred shares have no vote (except situations of default), these two instruments have not been utilized often. In the case of companies already listing their shares, new shares issued after the company is listed cannot have differential voting rights.. There are very few public corporations with shares with plural votes (5 votes), and preferred shares are rarely used in the market[1]. Moreover there are not sensitive cases where a shareholder with plural votes shares control of the company with a small capital investment, as was the case in Brazil for example where this issue was a material problem. This is not the case in Argentina and for that reason this issue is not, in general, perceived as a real problem, although there have been a number of transactions where multiple vote-shares have been used to affect exchange offers, which enhanced the voting power of certain controlling groups, arguably to the detriment of minority shareholders.

Also, institutional investors' participation as minority shareholders should be carefully analyzed in order to consider ways to strengthen their role as corporate governance monitors.

What have been the key developments?

Decree 677/01 (which has the force of a Law, being a so-called "Decreto Delegado"), introduced an extension in the minimum period of advance notice of a shareholders meeting, in order to facilitate shareholder participation in shareholder meetings, especially the foreign shareholders. The term of notice was extended from a minimum of 10 days to a minimum of 20 days, counted as of the last day of the five days of publication of the notice (article 71, Decree 677/01). The Decree also allows the public solicitation of proxies to attend the meeting and vote (article 70 (c)) and the introduction of initiatives and comments of shareholders representing at least 2% of the issued capital to be presented by the board to the meeting for their consideration (article 71 second part). We think that these regulations are relevant to the recommendation, since allowing more participants and more initiatives in the meeting is facilitating the use of voting power by shareholders beyond the controlling group power.

[1] See Table 4 in the publication prepared by the Center for Financial Stability (CEF), "Corporate Governance in Argentina," Political Note No. 5, Buenos Aires, Argentina (www/cefargentina.org).

What have been the obstacles to progress?

Institutional investors have not been as active as desirable. Different from other countries with similar pension regimes (such as Chile for instance), pension funds in Argentina are not legally obliged to attend meetings and to vote therein except when holdings exceed 2% of the total stock. The prevalent culture has been so far not too inclined to have a real active role, and, as it has been noted, change in culture is not induced through legislation alone. Moreover, regulations allow pension funds – by far, the most important institutional investors in Argentina - to only invest in investment grade stocks as rated by credit rating agencies. The important participation of public bonds in institutional investors' portfolios also precludes them from having a higher proportion of private securities in their portfolios. Therefore, they have relatively little incentive to invest in building institutional capacity to more closely monitor the firms in which they have invested.

Efforts to equalize voting rights (one share, one vote) have been limited due to the perception that this is not a significant problem, and the absence of any major problems arising on this issue within the scope of public companies.

What should the priorities for further improvement be?

One view is that regulations should be enacted to make attendance at meetings and voting mandatory in all cases, and for all institutional investors (pension and investment fund managers, and insurance companies). This could provoke a turning point in the prevailing abstention culture. However, others, including the Center for Financial Stability, have argued that it would be preferable to rely on better disclosure practices and the use of market forces to encourage the more active involvement of institutional investors. They suggest that institutional investors should be required to publish their record of attendance to shareholders meetings and the implementation of their voting rights, and that these publications should be made available to individual investors in institutional investor plans. In addition, corporate governance practices should be adequately taken into account by credit rating agencies.

Issue 2. Treatment of shareholders during changes of corporate control and de-listings. ***White Paper Recommendation:*** The legal and regulatory framework must provide for clear and *ex ante* rules regarding how minority shareholders are to be treated when there is a change in corporate control. Improvements should also be made to ensure a fair, practical and predictable system for valuing the shares of minority investors in cases of de-listings or exercise of withdrawal rights.

Has there been progress on this issue over the past three years?

Argentine legislation has progressed by the regulation of the "0ferta Pública de Adquisición Obligatoria" through Decree 677/01 and regulations established as a consequence by the Comisión Nacional de Valores (OPA´s regime). These regulations determine the execution of what is called "a mandatory tender offer", when the stake involved is what the regulation defines as a "significant participation" (35% or more of the stock). In those cases the tender offer shall be made open to all shareholders proportionally to their holdings. Bellow that level of stock involved, the principle of free negotiation between parties prevails.

The regulation leaves to the offeror the determination of the price (which may also consist of an exchange for securities of another open company), though there are some criteria in order to determine its fairness, which are not mandatory but rather guidelines to be taken into account. Anyhow, the regulator may object to the price if the regulator considers it not to be fair. Additionally, there shall be a public opinion of the Board with respect to the offer, to advise the shareholders. The members of the Board, if shareholders, shall inform their own decision regarding the offer.

Regretfully, the Decree left flexibility to companies to determine whether they will abide by it. Companies that already were admitted to the public offering regime by the time it entered into force had for a period of time now elapsed, the right to exclude themselves from the application of the OPA´s regime. New companies can also choose not to abide by the OPA´s regime. Those decisions shall be stated expressly in the bylaws of the company and are published by the Stock Exchange and the Comisión Nacional de Valores. As a consequence, in practice, the principle has not been generally applied. The bulletins of the Buenos Aires Stock Exchange usually show the hybrid characteristic of the Argentine system by means of a chart including companies obliged to launch a tender offer to reach control and those exempted from it. 77 out of 102 companies have opted not to abide by the OPA´s regime.

What have been the key developments?

In addition to those developments described above, it is interesting to add that the mechanism of the OPA regime and its guidelines and the Commission's right to object to the price because of its unfairness has been extended by the decree to cases of delistings. In these cases, the company delisting its shares or its controlling shareholder shall make a public and open tender offer to all shareholders of the company, subject substantially to a similar regime as the one for takeovers described above (article 32 of Decree 677/01). The significant difference with the takeovers regime is that the OPA´s regime application is mandatory in all delisting cases.

What have been the obstacles to progress?

As mentioned above, the "optional" nature of the OPA´s regime for takeover cases has meant that it is only applied in a few cases. The absence of a "capital market culture" has meant that, in spite of many companies choosing to opt out, there has not been an evident negative effect in the value of those companies.

Another and somehow connected obstacle is the lack of liquidity and depth of the market for most of the listed companies. This plays a role in two aspects. First it is difficult in many cases to objectively determine a fair price, because there is not a recent market price, or there is not a market price whatsoever, or the market price may not be a fair market price, because it can be affected easily, with little effort. So in most cases, there is not a reliable benchmark in the market for comparison. Second, as there is not liquidity, the market is not an essential tool for financing for most of the companies and, hence, the impact of corporate governance behaviour on the market is not highly appreciated (i.e. there is little prestige or expected benefit in opting to apply the OPA´s regime).

What should the priorities for further improvements be?

The OPA´s regime should be established as mandatory for all companies in the public offering regime with no exceptions.

The delisting mechanism for valuating the companies contained in Decree 677/01 and its guidelines should be extended to all other cases of application of the right of withdrawal contained in section 245 of Law Nº 19.550 (Corporations Law).

Ways and mechanisms to reinforce the liquidity and depth of the market should be pursued.

Issue 3: Improving the integrity of Financial Reporting and Improving the disclosure of transactions with related parties. ***White Paper Recommendation:*** National accounting standards should be brought into compliance with International Financial Reporting Standards and the quality of the financial reporting process should be assessed with a view to eliminate conflicts of interest. The disclosure of related party transactions and potential conflicts of interest in such transactions should also be improved and supported by better information about corporate ownership and control structures.

Has there been progress on this issue over the past three years?

Some progress has been made during these three years in pushing accounting standards in Argentina to reach international standards, particularly in relation to the disclosure of transactions with related parties, and the kind and extent of the relation with related parties.

Also there has been improvement through the legal definition, brought by Decree 677/01, of what should be considered a related party and how the Board and the Company should proceed in carrying out a transaction with a related party, providing for the intervention of the Audit Committee (with a mandatory majority of independent directors) and eventually for independent appraisals. It is also stated that this is a material event which, as such, must be disclosed and made public, including in the disclosure the report of the Audit Committee, and if that is the case, the report of the independent appraisal firms.

Finally regulations dealing with holdings of shares of members of the Board and its disclosure, and the disclosure of changes in controlling groups, though existing by previous regulations of the Comisión Nacional de Valores, have been fine-tuned by Decree 677/01 and modified in the legal hierarchy in order to facilitate their enforcement.

What have been the key developments?

The Comisión Nacional de Valores adopted Resolution General Nº 459/04 which incorporates to its Regulations the "Technical Resolution Nº 21" issued by the "Federacion Argentina de Consejos Profesionales de Ciencias Económicas" (FACPCE, the association that groups accountant professional associations from throughout Argentina). This association issues professional standards that shall be followed by accountants in Argentina. In its "Technical Resolution 21" the "FACPCE" adapts the content of the International Accounting Standard "IAS 24" on related party disclosures as a professional standard in Argentina.

Again in this regard, the Decree 677/01 and its regulations towards related parties and towards disclosure of holdings of the Board members and changes in controlling groups have been key developments.

What have been the obstacles to progress?

There have not been real obstacles to the improvement of the Integrity of Financial Reporting and for the disclosure of information with related parties, as the Federación Argentina de Consejos Profesionales de Ciencias Económicas ("FACPCE") has the ability to introduce regulations as mentioned above that incorporate the "IAS 24".

What should the priorities for further improvements be?

As the Argentine standard-setter is in line with the convergence toward International Standards, it would be considered extremely useful to have an Argentinian representative on the Board of the IASB in the future.

Issue 4. Developing Effective Boards of Directors. ***White Paper Recommendation:*** Laws and practices reflect that all directors, individually and collectively, should act independently in the interest of the company and all of its shareholders. There should be greater specificity concerning the procedural steps for fulfillment of the director's duties of care and loyalty and an explicit ambition by boards to clearly define their work procedures as well as those of special board committees. Boards should also improve their ability to manage conflicts of interest and ensure compliance with laws and ethical standards.

Has there been progress on this issue over the past three years?

There has been progress in this regard. Audit Committees have been established in boards of open companies, with a majority of independent directors. Regulation RG 402/02 required the creation of the Audit Committee (with a majority of independent directors) by 28 May, 2004, and had a significant impact on the number of independent directors (See CEF (2005) page 35). Now in shareholders meetings when there is an election of board members, the proponents have to provide information for the meeting on whether the proposed appointees are independent or not, in accordance with the definition of independent director that is contained in the regulations of the Comisión Nacional de Valores.[2] Though it is not necessary to fulfil that condition to be appointed a member of the Board, the majority of the Audit Committee must be independent. Hence the information is relevant for these cases, and also for the public to evaluate information and opinions that the board members and/or the Board are obliged by regulation to make public in certain circumstances.

Duties of loyalty and diligence, an old parameter under our Corporation Law, have been specified in certain cases (and the reversal of the proof burden in case of doubt) by Decree 677/01, bringing light to a somewhat diffuse concept. This is important because the boundaries of the concept were to some extent unpredictable through an erratic jurisprudence constructed during the 30 years elapsed since the enactment of the Corporations Law in 1972 and mostly based in not open companies' cases.

Related party transactions have been legally defined and subject to procedures with the intervention of the Audit Committee and independent advisors.

Legal actions against board members to make them liable for their wrong actions have been facilitated by allowing shareholders to claim their own damage individually, and if it is the case, to keep the indemnification for themselves. Before the enactment of Decree 677/01, the shareholder was obliged to make a claim for the total damage of the company, and the company had the legal mandate to retain for it the indemnification if awarded. Though the small amount of time that has elapsed since the enactment of the Decree does not permit visible results yet, it is clear that the reduction of risks of costs will encourage shareholders to pursue their rights against board members. Taxes on legal proceedings (3% of the amount

[2]Determining whether a member of a board of an open company (hereinafter the Company) is independent or not has been most recently defined by the Resolution 400/2002 (which was dictated as a regulation of Decree 677/01) of the Comision Nacional de Valores, following the precedent of Resolution 330/99 of the same Commission. In accordance to article 11 of Resolution 400/2002, a member of the Board is not independent in any of the following cases:

- is also a member of the Board, or employee, of a shareholder holding a significant stake of the capital stock of the Company ("participación significativa") or of another company in which, the shareholder holding a "participación significativa" in the Company, holds also directly or indirectly a "participación significativa" or has a significant influence in such company,
- is an employee of the Company or has been an employee of the Company during the preceding three years,
- has professional relations with the Company or is a member of a firm which in turn maintains professional relations with the Company or in any manner collects fees or any other kind of consideration (other than those received as a member of the board of the Company) from the Company or from shareholders having directly or indirectly a "participación significativa" or significant influence in the Company,
- has professional relations with a company or is a member of a firm which in turn maintains professional relations with a company, in which shareholders having directly or indirectly a "participación significativa" in the Company have a "participación significativa" or a significant influence, or in any manner collects fees or any other kind of consideration (other than those received as a member of the Board of such company) from such company,
- holds directly or indirectly a "participación significativa" in the Company or in another company, which in turn has a "participación significativa" or significant influence in the Company,
- sells or supplies, directly or indirectly, goods or services to the Company or to shareholders having a "participación significativa" or significant influence in the Company, in amounts materially exceeding the amounts collected as a remuneration for his or her participation as member of the Board of the Company,
- he or she is a spouse or is a relative, up to the fourth degree of consanguinity or second degree of affinity, of persons who being members of the Board of the Company, would not qualify as independent members.

It is worth recalling that "participación significativa" is considered the holding of not less than 35% of the capital stock of the company or a minor participation if such holding gives the right to elect one or more members of the Board of the company or if there are shareholders agreements related to the governance of the company, or related to the governance of the controlling company of the company, to which those holdings are a party.

involved) and lawyers fees (15-20% on the amounts involved) were clearly discouraging for a minority shareholder if calculated on the total eventual damage of the company, while the benefit of the shareholder under such initiative, if successful, was limited to his or her indirect interest in the company.

The disclosure of board members' compensation policies (e.g. their remuneration and remuneration policy, the fees to which the members of the board are entitled, options, percent of dividends paid, etc.) or agreements has also improved over the last three years. Before the enactment of Decree 677/01, this was not mandatory and was rarely performed by the boards of open companies.

What have been the key developments?

The key development has been the enactment of Decree 677/01 and the regulations consequently established by the Comisión Nacional de Valores to implement the Decree.

The Instituto Argentino para el Gobierno de las Organizaciones (IAGO) has published a code of best practices on corporate governance, available on their web site www.iago.org.ar, and is currently working with the Comision Nacional de Valores on the development of a questionnaire regarding the code, intended to be addressed by quoted companies.

There also appears to be an increasing awareness of corporate governance in non-traded and family-owned companies. Some of these companies are increasingly recognizing that effective application of best practices of corporate governance can play an important role in achieving corporate aims and generation succession.

What have been the obstacles to progress?

The major obstacle to progress has been the culture. The idea that a member of the Board owes loyalty to all shareholders and not just to the shareholders that have voted his appointment has not been commonly shared. Actually, the general understanding has been the opposite. Moreover, it has been common to understand the appointment more as an honorific acknowledgement than as a job or a responsibility. These concepts have coloured all behaviours and judgements. Though the Decree has mandated better corporate governance practices, previous ideas are "still in the air" of our culture, and this is in our view the major obstacle.

What should the priorities for further improvement be?

The priority should be the enforcement of all these improvements. As has been said repeatedly, the culture is a major obstacle and the regulations are the tool to influence change. We understand that the legal framework is correct and enough to orient things toward a more positive trend, so enforcement is the key factor.

Issue 5. Improving the quality, effectiveness and predictability of the legal and regulatory framework.
White Paper Recommendation: Parallel to strengthening the capacity of rule-making and enforcement bodies, steps should also be taken to ensure that the framework supports effective use of private actions. Depending on the legal context, this may include the introduction of class action suits and mechanisms for alternative dispute resolution, such as private arbitration in the areas of company law and corporate governance.

Has there been progress on this issue over the past three years?

There has been progress in developing alternative dispute resolution mechanisms and in facilitating investors' access to legal actions to enforce the responsibility of Board Members.

The Buenos Aires Stock Exchange has a long tradition of Arbitration Panel resolution of conflicts, based on more than 40 years of performance of a permanent panel, with a sound reputation for addressing disputes.

Decree 677/01 has opened the scope for broader application of this tool, making these kinds of Panels mandatory for all exchanges and markets.

Also, as was mentioned under Issue 2, legal actions to enforce responsibility of Board members for their wrongdoings have been facilitated by allowing single investors' damage claims.

What have been the key developments?

Article 38 of Decree 677/01 provides for both the regulatory encouragement of arbitration panels as alternative dispute resolution mechanisms, and supports private actions by making them less expensive and at the same time, quicker. Within six months following the publication of Decree 677/01, self-regulated organizations, exchanges and markets, were mandated to create a permanent Arbitration Panel (or adhere to an existing one), to which all entities whose shares, bonds, forward contracts, futures contracts and options are listed or negotiated shall be subject in their relations with the shareholders and investors. All actions derived from Act No. 19,550 (the corporations law), are required to be submitted to the arbitration panel, including claims objecting to resolutions of corporate bodies and liability claims against its members or other shareholders, as well as actions claiming nullity of clauses of by-laws or regulations. Self-regulated organizations shall act similarly regarding claims brought by shareholders and investors with respect to intermediaries acting within the relevant market, except as regards disciplinary power of the market (as a self regulated entity) or of the regulator. In all cases shareholders and investors in conflict with the entity or agent maintain their right to bring the case to the ordinary courts instead of bringing it to the arbitration panel. Companies and agents do not have such a right and are obliged, because of their incorporation or listing on the respective market or exchange, to accept the panel jurisdiction. Those making a tender offer in a particular market or exchange shall be also subject to the arbitration panel solution of disputes system acting in that market or exchange.

The following stock exchanges[3] and markets have already installed Arbitration Panels:

BUENOS AIRES Stock Exchange;
CORDOBA Stock Exchange;
LA RIOJA Stock Exchange.
MENDOZA Stock Exchange;
ROSARIO Stock Exchange;
SANTA FE Stock Exchange;
MERCADO ABIERTO ELECTRÓNICO S.A.[4]

All these panels with the exception of Buenos Aires are new and established because of the Decree 677/01 mandate. So there has been very little time to have cases brought before them. Also most investors are largely ignorant of this mechanism.

What have been the obstacles to progress?

[3] Argentina has a federal system similar though not identical to the United States or Brazil. As a consequence of this federal culture, exchanges have been created in several different provinces. All these exchanges are self-regulated organizations that do not necessarily have the same structures and rules, though all of their regulations are subject to the opinion of the Comisión Nacional de Valores, and the approval of the National Executive Power through a Decree. In practice, most of their respective regulations are very similar and inspired by the regulations of the Buenos Aires Stock Exchange, which is the oldest and the most important by far in terms of volumes traded and companies listed. Once approved by the National Executive Power, the exchange is subject to the control of the Comisión Nacional de Valores. There have been many proposals but relatively little effort to merge all these exchanges, or at least to interconnect them, especially in recent years, but none of these have been successful.

[4] Mercado Abierto Electrónico is a particular case because it is not an exchange as this term is defined by law 17811, but is a market that was approved by the Comisión Nacional de Valores as a self-regulated body.

Investors' lack of knowledge of their rights and mechanisms is one of the main obstacles.

Lack of knowledge among the ordinary courts of the particular institutes and mechanisms of the capital markets, length of legal procedures and costs have also been a great obstacle for their enforcement. Lack of investor awareness of their new rights under Decree 677/01 remains an obstacle (as previously mentioned, this refers to their right to make a claim for damages to them individually rather than on behalf of the whole company, reducing their risk exposure to legal fees and taxes levied in proportion to damages).

What should the priorities for further improvements be?

Capacity-building programs for judges and members of the judiciary should be a priority. Improving the understanding of issues relates to all the "public offering" aspects of listed companies and particular institutes and mechanisms of the capital markets.

References

Center for Financial Stability (CEF), "Corporate Governance in Argentina," Political Note No. 5, Buenos Aires, Argentina (www.cefargentina.org).