Influencing Corporate Governance of Non-Listed Companies: Regulatory vs Non-Regulatory Approaches (Discussion Group 1)

Ms. Maria Isabel Cañón *Deputy Superintendent, Supersociedades, Colombia*

Summary: In Colombia Corporate Governance of non-listed companies has been approached in both a regulatory and non-regulatory manner. The experience has been quite interesting because Colombian mercantile law, which includes corporate law has many regulations regarding corporate governance. Some provisions are mandatory, some are non-mandatory. The Superintendencia de Sociedades (Superintendence of Societies), a government agency in charge of the surveillance of privately-held companies and mixed economy companies and the private sector, through Confecamaras (Colombian Confederation of Chambers of Commerce) have jointed efforts in order to influence the adoption of better corporate government policies by Colombian companies.

Mr. Jose Luiz Osorio, *Partner, Jardim Botanico Partners, Brazil*

Summary: The path for any approach has to take into account the costs and benefits. Creating too much regulation will impose unnecessary costs to companies, and Brazilian companies have plenty of this. Therefore, the best solution, noting that there is no “one size fits all”, is to have a dynamic, attractive capital market where good governance is perceived as a requirement. If companies believe they will benefit by good governance, they will naturally do it.

There may be minimum macro requirements for better governance, specifically in relation to transparency for NLCs. The best example would be the posting of their audited financial statements on the internet. However, it would be preferable to limit it to companies above a certain size. Any other requirement should be on a voluntary basis. If the perceived future benefits are clear, e.g. lower cost of capital, companies will probably do it.

On a micro level of regulation, investors have to believe that good governance brings value. We at Jardim Botânico Investimentos share this opinion. It should be on a voluntary basis rather than a requirement by associations or organized groups. Therefore, the best manner is to show what we have been implementing in our invested companies: MZ Consult; Superbac; Elba and Ferrolease.

Moderator/Rapporteur

Mr. Andrés Oneto *Competition Executive, Andean Development Corporation (CAF)*

Discussion Questions:

1. *Should there be a separate corporate governance benchmark for non-listed companies than for listed companies? If so why?*
2. *What role do regulatory-driven approaches play in promoting non-listed companies' better corporate governance practices? What are they? What are their advantages and drawbacks for NLCs, investors and regulators?*
3. *What non-regulatory approaches to promote/ influence better corporate governance have shown promise in your country? What are the main features? Who have promoted these? And what instruments are available to influence these approaches?*
4. *What are the effects of regulatory or non regulatory approaches in terms of: minimum standards, level of compliance, costs for companies, costs for investors, flexibility?*
5. *Should regulatory requirements only focus on NLCs with certain characteristics (such as size, ownership structure, etc..)? If so what are these characteristics (and why are these relevant)?*