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**CORPORATE GOVERNANCE OF  
NON-LISTED COMPANIES IN ARGENTINA**

**BY**

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## I – WHAT IS THE LEGAL FRAMEWORK FOR NON-LISTED COMPANY CORPORATE GOVERNANCE-RELATED REQUIREMENTS IN YOUR COUNTRY?

Argentina is a federal country composed of 24 provinces and a federal district. The legal framework for non-listed companies is defined by the following rules:

- Law 19,550 (as amended, the Argentine Companies Act or “ACA”), which applies nationwide.
- Resolution 7/2005 issued by the Superintendency of Corporations (*Inspección General de Justicia* or “IGJ”), which applies to companies domiciled in the city of Buenos Aires.
- For companies domiciled other than in the city of Buenos Aires, provincial regulatory rules often emulate the disclosure principles established by the Superintendency of Corporations for the city of Buenos Aires.
- The Code of Best Practices for Corporate Governance promoted by IAGO (Argentine Institute for the Corporate Governance), which affects both public and non-listed companies.

## II – WHAT ARE THE PRACTICES AND TRENDS REGARDING DISCLOSURE BY NON-LISTED COMPANIES?

Although not originally intended to define good corporate governance practices, the Argentine Companies Act assures minority shareholders essential information rights and other protections.

### Minority Shareholder Rights:

This briefly reports on the main rights enjoyed by minority shareholders under the Argentine Companies Act:

1. Information Rights. Shareholders holding 2% of the share capital are entitled to request information concerning the financial condition and other fundamental matters of the corporation from the statutory auditor (*síndico*) charged with overseeing corporate affairs. (Section 294, subsection 6, ACA).
2. Right to Petition the Statutory Auditor. Shareholders holding at least 2% of the share capital have the right to compel the statutory auditor to investigate matters within his purview, openly refer to them in a shareholders’ meeting, and opine on the same. In addition, the statutory auditor may immediately call a shareholders’ meeting when he determines that the matter subject to petition has not been properly treated by the board. (Section 294, subsection 1, ACA).

3. Right to Convene a Shareholders' Meeting. Shareholders representing at least 5% of the share capital have the right to petition for calling of a shareholders' meeting by the board or the statutory auditor, upon notice to either that includes a proposed agenda. The shareholders' meeting must be held within 40 days of receipt of the petition. If the board or statutory auditor fails to act, the meeting may be called upon request to the administrative agency with jurisdiction over the entity (i.e., the IGJ) or the courts. (Section 236, ACA).

4. Severance of Directors' Liability. Shareholders representing at least 5% of the share capital may defeat a resolution to approve the services of a director and make immune such director against claims of shareholders. (Section 275, ACA).

5. Removal of Statutory Auditor. Shareholders representing at least 5% of the share capital may defeat a resolution to remove a statutory auditor without cause. (Section 287, ACA).

6. Petition for Heightened Government Scrutiny. Shareholders representing at least 10% may petition the administrative agency with jurisdiction over the entity (i.e., the IGJ) to intervene in (closely scrutinize) the affairs of the company. (Section 301, ACA).

7. Cumulative Voting. The ACA provides that cumulative voting shall apply to elections of directors and statutory auditors whenever the by-laws provide for three or more members for such positions. Cumulative voting rights do not apply when by-laws create classes of stock. (Section 263, ACA).

#### Quorum and Majorities:

The ACA also contains specific rules on quorum and majorities required for shareholder action, which also protect minority shareholders.

1. Quorum. For **ordinary** shareholders' meetings. Quorum on the first call is achieved upon 51% of the total voting shares; failing the first call, the ordinary shareholders' meeting may be held by any number of shares then present. For **extraordinary** shareholders' meetings, quorum on the first call is 60% (unless the by-laws specify a greater number); failing the first call, the extraordinary shareholders' meeting may be validly held only upon the presence of at least 30% (unless the by-laws specify a greater number).

2. Majorities. Shareholders' resolutions may be passed in both an **ordinary** and **extraordinary** shareholders' meeting upon the favorable vote of a majority of the shares present or represented at the meeting. Nonetheless, shareholders' resolutions on certain fundamental matters may only be passed in an extraordinary shareholders' meeting upon the favorable vote of a majority of the total voting shares of the company.

#### Disclosure Requirements:

Argentine corporate law requires non-listed companies to comply with certain disclosure requirements.

Section 299 of the ACA subjects certain specifically-enumerated companies to a regime of enhanced scrutiny as a means to protect shareholders. These “Section 299 companies” are defined as follows:

- 1) Corporations with publicly listed stocks or bonds;
- 2) Corporations with capital stock greater than AR\$10 million;
- 3) Corporations dedicated to insurance, pension, banking or finance activities, or otherwise engaged in the solicitation of funds from the public in exchange for future services or benefits;
- 4) Public services (utilities) corporations;
- 5) Parent companies or subsidiaries of companies falling within any of the foregoing categories.

This special regime requires subject companies to have at least three directors and a Supervisory Committee consisting of at least three statutory auditors, unless the only basis for the company’s qualification for the special regime is its capital stock (greater than AR\$ 10 million), in which case the company may appoint only one statutory auditor.

The IGJ requires Section 299 companies and limited liability companies with capital stock greater than AR\$10 million to disclose the following at least 15 days before the annual shareholders’ meeting:

- Annual audited financial statements;
- Board minutes approving the financial statements;
- Auditor’s report;
- Statutory auditor’s report;
- Board of Directors’ Report (which must include a detailed statement of the company’s future prospects, an opinion on the company’s capital resources, its future capital needs and whether additional capital contributions from the shareholders will be needed).

Once the shareholders’ meeting takes place, these companies are required to file with the IGJ (or other relevant regulator) the minutes of the meeting approving the financial statements and a copy of the shareholders’ registry of attendance.

### **III – WHAT FURTHER CHANGES TO LEGAL AND REGULATORY REQUIREMENTS MAY BE DESIRABLE, AND WHAT WOULD BE THEIR COSTS AND BENEFITS?**

It would be desirable to amend the ACA to extend the disclosure requirements to all corporations and limited liability companies, including those not included in the enhanced scrutiny regime. Adherence to these rules would facilitate transparency and the companies' access to credit. [Many would argue that seeking extensive disclosure of all corporations and limited liability companies would be more costly than it is worth. The interest is strongest in companies seeking investment financing or involving multiple shareholders. It would be good if you could justify your thinking here more fully.]

### **IV – HOW THIS SHOULD BE BALANCED WITH VOLUNTARY EFFORTS TO PROMOTE BETTER CORPORATE GOVERNANCE OF NON-LISTED COMPANIES?**

The Code of Best Practices for Corporate Governance for the Argentine Republic is an initiative of the IAGO (Argentine Institute for Governance of Organizations), an entity created by two local non-profit organizations, FUNDECE and IDEA. The Code includes guidelines and recommendations for good corporate governance according to the new international practices, adapted to the Argentine environment and the practice of Argentine companies.

The Code is mainly addressed to public companies, although not exclusively. Its guidelines are in line with the Companies Law, Decree 677/01 and the CNV's regulations, and are based on principles suggested by the Organisation for Economic Co-operation and Development (OECD) in the Latin American Roundtable's "White Paper for Corporate Governance in Latin America".

Among its recommendations, the Code calls for:

- An audit committee.
- A compensation committee. Each member must be well versed in human resources, compensation policies and risk management.
- A nominating/corporate governance committee. This committee shall be responsible for establishing the rules and process for selecting the directors and key executives of the company, determining the company's corporate governance rules and supervising its compliance.
- A finance committee responsible for supervising the company's financial transactions.

The above mentioned committees must be composed of a majority of independent directors.

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## **NEGRI & TEIJEIRO ABOGADOS**

Negri & Teijeiro Abogados (N&T) is a full-service law firm with over 50 legal professionals. The firm was founded in July 1990 by a group of partners and senior associates that withdrew from a prominent firm where they had chaired three of its most active practice areas. From its inception as a five-attorney firm, N&T has grown to become one of Argentina's largest legal service providers in terms of practice areas, number of attorneys and number of clients.

N&T offers its clients high-quality advice and service commensurate with international standards. The firm's culture is largely defined by professionals trained abroad and accustomed to working with international clients. Attorneys are highly motivated by a merit-based organizational structure that fosters dedication and attention to client service.

The firm provides comprehensive legal services focused on business activities in Argentina. Its senior attorneys have particular expertise in international banking and finance, tax planning, debtor-creditor proceedings, labor and administrative law and business litigation. The firm's client range from large international corporations to individuals; from governmental agencies (including multi and bilateral organizations) to small and medium size businesses.

The firm emphasizes efficiency and accurate processing and maintenance of information consistent with international standards. The firm is fully bilingual and able to communicate and prepare documents with equal ease in Spanish and English. Several professionals are fluent in other languages including Italian, Portuguese, German and French. The firm's technological capabilities place it among the most advanced automated offices in Argentina.

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