

OECD



Organisation for Economic Co-operation and Development

In co-operation with the World Bank Group

Issues for Discussion

The Latin American Corporate Governance Roundtable

**26-28 April, 2000, The São Paulo Stock Exchange,
São Paulo, Brazil**

Co-hosted by:

The São Paulo Stock Exchange

With the support of:

The Brazilian Securities and Exchange Commission

The Brazilian Institute of Corporate Governance (IBGC)

and

The World Bank / OECD Global Corporate Governance Forum

General Structure of the Sessions

Following a brief opening presentation by the Chairman, each session will start with a 15 minutes general introduction to the subject. After the introduction, panel discussants will be invited to make a first round of 10 minutes remarks that will be followed by a general discussion and questions from the floor. The panel discussants are encouraged to participate actively in this general discussion, take questions and expand on their initial comments. The Chairman will summarise the discussion and highlight the main conclusions arrived at during the session.

Session 1: The Public Policy Perspective

This session will discuss why policy-makers and regulators increasingly have engaged in promoting better corporate governance and how they perceive their role in this process. A central issue is the importance of corporate governance when developing domestic capital markets that are able to provide both existing and future companies with the capital they need. Of particular interest is the need to attract capital from globally mobile investors - both domestic and foreign. These investors increasingly consider the quality of corporate governance as an important investment criterion, which they compare and evaluate on a world-wide scale.

While the specific design of governance practices in individual companies is the prerogative of the private sector, governments are vested with a distinct and very important responsibility to design a legal and regulatory framework that supports the emergence of effective and acceptable corporate governance practices. This understanding was an important point of departure when drafting the OECD Principles of corporate governance, which represents the first multilateral agreement on basic corporate governance standards. The session will also provide a brief overview of the OECD Principles and their present use as a conceptual framework for policy dialogue in both OECD and non-OECD countries.

Issues for discussion:

1. Why should governments and regulators play an active part in promoting better corporate governance practices?
2. How do governments and regulators generally define their role in the process of improving corporate governance practices?
3. What are the principal instruments that governments and regulators rely on in their efforts to promote better corporate governance practices? What are the experiences from different approaches?
4. How is the content and direction of reform efforts influenced by the emergence of global markets and the increased international mobility of capital?
5. How can the OECD Principles as a multilateral non-binding agreement service individual countries and groups of countries in the process of developing their own internationally recognised corporate governance standards?

Session 2: The Private Sector Perspective

While governments and regulators should provide the institutional framework, actual development of sound corporate governance practices is vested with the business community. An important function of the Roundtable is therefore to provide a forum for public and private sector dialogue.

This session will, in the form of practical examples, discuss what corporations and investors have to gain from improved corporate governance. Discussants will be asked to comment on their own experiences and identify the most topical issues that need to be attended in the Latin American context. The session will also discuss different initiatives by the private sector to establish corporate governance standards both at domestic and international level.

Issues for discussion:

1. What motivates individual companies and investors to improve corporate governance? What has been the impact from efforts to improve corporate governance?
2. What are the key elements that drive company value in the Latin American context? How does better corporate governance contribute to this value?
3. What public institutions would the private sector like to see strengthened in order to support their own efforts and also improve the credibility of the overall national corporate governance system?
4. To what extent can voluntary action by the private sector substitute for, or complement, mandatory rules or statutory law in the area of corporate governance? What are the main advantages and disadvantages of the two approaches?
5. What are the most important elements that need to be in place in order to make self-regulation fully credible and efficient?

Session 3: Ownership and Corporate Governance Practices in Selected Latin American Countries

It is those parties with the most direct interest in the performance of companies and the distribution of their cash flows that typically drive corporate governance practices. Each country's experience is, of course, unique; and accordingly, the solutions to corporate governance problems are necessarily country-specific. That said, particularly in a region with important commonalities of social, political, legal and economic heritage, there is much that can be gained from understanding the patterns and practices in neighbouring countries.

The session will provide an empirical background, in the form of relatively brief factual presentations covering corporate ownership and control patterns in Argentina, Brazil, Chile and Mexico. The presenters will be asked to assess the roles and comparative importance of each of the principal actors in the corporate governance picture (owners, institutional investors, government, regulatory bodies, the public, etc.). The session's discussion of patterns and experiences across the region will help the Roundtable to discern trends and evaluate the potential impact that changes in underlying economic patterns may present.

Issues for discussion:

1. How do existing patterns of ownership and control in the region affect current practices of corporate governance? Who are the key players (domestic as well as international sources of capital) and what have been their patterns of behaviour?
2. What are the key factors that explain the differences and similarities observed across the region? Do the recent experiences of some countries provide lessons for others in Latin America?
3. How have the dramatic changes in the Latin American economies of the past decade (lifting of trade and investment restrictions, privatisation, regional integration, rise of private pension schemes, greater democratisation, etc.) affected ownership and control of the corporate sector? What are the likely responses to deepening of these trends?
4. What has been the role of the public capital markets in corporate governance? What has been the impact of greater participation by domestic and international institutional investors and foreign listings (ADR/GDRs)?
5. Who are the key potential "champions" of good corporate governance in Latin America? What possible alliances may develop among domestic as well as international groups with an interest in corporate governance?

Session 4: The Legal and Regulatory Framework – A Comparative Overview

Corporate governance practices operate within a legal / regulatory framework that is itself the evolutionary product of influences brought to bear by those parties discussed in Session 3. Likewise, the process of promoting greater transparency and improvement in corporate governance will require that such practices be embedding in, or at least accommodated by, the laws and regulations bearing on companies and capital markets.

This session will examine what the discussants regard as the key legal/regulatory issues that are currently under debate in most or all of the major markets in Latin America. The background materials for this discussion include three corporate governance assessments prepared by the discussants for the World Bank / IFC and the work of other agencies (including the Council of Securities Regulators of the Americas) to canvas the legal framework across the region. Each discussant will introduce one of the five legal / regulatory issues selected and assess the major reform proposals under discussion in his/her country on the topic. Since all the selected issues are under debate in several countries in the region, each discussant will present his/her own approach to topics introduced by the others.

Discussants will also try to explain the positions and motivations of those lined up on each side of the issues in their own country. An important focus of the discussion will be the practicality of reform. That is, are the issues under discussion appropriate subjects for a legal / regulatory response and do realistic methods of enforcement exist?

Issues for discussion:

1. Do the legal/regulatory regimes in the Region provide an adequate framework for good corporate governance? What sorts of factors explain the divergences between the intent of the legal/regulatory regimes and actual corporate governance practices in the Region?
2. What issues have emerged as subjects of legislative and regulatory reform proposals and what explains why they are salient today?
3. How important is the role of enforcement? Where is administrative enforcement (e.g., by securities regulators) most/least effective? What are the prospects for private enforcement (e.g., through shareholder suits, derivative actions, oppression remedies)?
4. What are the lessons of experience from recent and ongoing efforts at legislative and regulatory reform (notably those in Brazil and Chile)? What coalitions have formed on each side of the major issues?
5. What changes in the existing legal regulatory frameworks are likely to have the greatest impact on encouraging transparency and good practices? Given that expenditure of political capital is always required to effect change, what changes are likely to be most “cost-effective”?

Session 5: Shareholders' Rights and Shareholder Participation

Shareholders are entitled to certain specified rights. If shareholders are not assured of certain rights, or if their rights can not be exercised properly, the equity markets will rapidly lose investor confidence. Capital costs will increase and investment horizons may shorten. These are the main reasons why proper protection of shareholder rights is a central policy concern when developing solid capital markets and stimulating investment.

This session will identify and discuss the basic elements of shareholder rights, including minority protection in the presence of controlling shareholders, the use of different classes of equity and procedures for shareholder participation in corporate decision making. It will also address remedies to self-dealing and conflicts of interest.

Beyond the letter of the law, market credibility is also dependent on the quality and efficiency of the judicial system. The session will also discuss the requirements for efficient enforcement of existing rules and regulations.

Issues for discussion:

1. What rights are generally considered as most fundamental to shareholders in the Latin American context?
2. To what extent do specific country or capital market circumstances in Latin America influence the relative emphasis on different shareholder rights? Should the degree of market liquidity for example, play a role when designing the rules for minority protection?
3. How can the regulatory framework best address control structures in publicly listed companies dominated by block-holders?
4. What are considered to be the most effective voting right structures in modern publicly held corporations? How should effective protection of minority shareholders be balanced against the need to ensure the smooth and effective running of the everyday business of the firm?
5. In addition to the letter of the law, effective enforcement in case of violation of shareholder rights is also central to equity market credibility. What further steps should be taken in order to improve the regulatory infrastructure and assure effective enforcement in cases where shareholder's rights are violated?

Session 6: The Market for Corporate Control – The Rules of the Game

The market for corporate control can play an important role in the economy by facilitating an efficient re-allocation of resources. For this reason, it is a key policy objective to assure that the market for corporate control, including public offerings, can function in an efficient manner. Among other things, this requires that control transactions should occur in a transparent fashion and under fair conditions that protect the rights of all parties involved.

In addition to unfair treatment of individual shareholders, the market for corporate control can also be impeded by the existence of various anti-take-over devices, which serve to shield incumbent management from market scrutiny.

This session will discuss some of the most common concerns related to changes in corporate control, including public tender offers, take-over procedures, the role of the board of directors and the use of defensive tactics by management.

Issues for discussion:

1. What role has the market for corporate control, including take-overs through public offerings, played in the re-structuring of the Latin American corporate sector?
2. Has the outcome of recent industrial re-structures been affected by the quality of prevailing rules and procedures for changes in corporate control, including public offerings? If this is the case, what are the strengths and weaknesses of present regulations?
3. What are considered the most essential shareholder concerns during a take-over process? What is generally meant by fair and equal treatment of all shareholders?
4. To what extent are capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership disclosed? Examples of such arrangements may be cross-shareholdings and non-trivial shareholder agreements.
5. To what extent are companies in different Latin American countries able to introduce anti-take-over devices that can shield management from shareholder accountability?

Session 7: The Role of the Board of Directors

The board of directors plays a pivotal role in the strategic direction of the company and in the monitoring of executive management. In carrying out these functions the board is expected to act in the best interest of all shareholders. At the same time, the board is often vested with the task of preventing conflicts of interests and balancing competing demands on the corporation, not only between different shareholders and management, but also in relation to other constituents and society at large.

As the issues that are facing board members in modern corporations are becoming more and more complex the corporate governance debate has increasingly come to emphasise the professional skills of the board of directors and its role in corporate governance. The discussion has come to include both the composition of the board and its work methods.

This session will try to define the board's overall role in corporate governance, including its main duties and responsibilities. It will also discuss how board work can be made more efficient, the desired qualifications of individual board members, board remuneration systems and the potential merits of so called "independent directors".

Issues for discussion:

1. What are the most fundamental functions of the board of directors in corporate governance?
2. How can the board assure that they are acting in the interest of all shareholders and that the business judgement of board members is formed independent of management?
3. What should characterise an independent director?
4. To what extent do companies in Latin American countries include board members that are considered independent from management and the dominant owner? What are the experiences from including independent board members?
5. What is the present trend concerning the selection and remuneration of board members?
6. What is the general experience from the body variously known as *sindicós*, *comisarios* and *conselhos fiscais*? Does this special body generally contribute to the quality of board work and management oversight?

Session 8: The Role of Stakeholders in Corporate Governance

It is widely recognised that the competitiveness and ultimate success of any business corporation is the result of a teamwork that includes contributions from a range of different constituencies, such as capital providers, employees, suppliers and local communities. It is therefore in the interest of the company to involve different stakeholder groups in a way that assure long-term value creation and financially sound enterprises.

Since there is a wide range of different stakeholders that both contribute to corporate success and depend on the corporation's success for their well being, relationships with stakeholder may come in many different forms. Some of them may involve stakeholder participation in the governance process.

This session will discuss the role of stakeholders in the governance process. It will discuss the potential economic merits of an active stakeholder policy and different models to build performance enhancing stakeholder relationships, including incentive schemes. The panel will provide a regional and international perspective on the stakeholder debate focussing on the central themes of employee participation, community relations and environmental concern.

Issues for discussion:

1. How can the corporate governance process in a company assure that the rights of various stakeholders are respected? What should be the role of the board of directors in assuring that the company complies with existing laws and best practices in this area?
2. What are the experiences from a pro-active approach to stakeholder issues? Are such initiatives generally associated with improved corporate performance?
3. What should be the board's role in balancing conflicts between the interests of various stakeholders?
4. What are the experiences from various kinds of employee incentives, including employee stock ownership plans and profit sharing arrangements?
5. How can companies and investors improve their information to, and their dialogue with, different stakeholder groupings?

Session 9: Disclosure and Transparency

A credible disclosure regime is a central prerequisite for good corporate governance and well functioning capital markets. Not only does it allow individual investor to strike a proper balance between the risk and return prospects of alternative investment opportunities, but it also increases their ability to use their voting rights and influence corporate affairs in an informed manner.

At the heart of any disclosure regime is the audited financial statements and the continuous flow of material corporate information that might affect the investor's evaluation of company prospects. But also other types of information, including information about major shareholders, corporate governance structures and board characteristics can be essential to the market.

Disclosure can also help improve public understanding of the corporate policies and performance with respect to environmental and ethical standards as well as companies' relationships with the communities in which they operate.

The session will discuss the scope and content of high quality disclosure standards and the importance of an independent audit. It will also discuss different forms of disseminating corporate information to capital markets and the role of overseas listings in influencing disclosure practices.

Issues for discussion:

1. Do the audited financial statements by listed Latin American companies generally provide a solid basis for evaluating past performance? What are the main strengths and weaknesses of present practices?
2. The shareholder's right to influence the future direction of the company is of little value unless they receive relevant and timely information about corporate prospects. Do Latin American shareholders generally have sufficient information to use their rights, including voting rights, on a fully informed basis?
3. What are the key elements of additional disclosure items, for example risk factors that are related to financial market risks, off-balance sheet transactions and environmental liabilities?
4. Should a company's corporate governance policies, for example boardroom procedures and remuneration practices, be an item for disclosure?
5. How can new technologies be used to make corporate information available to users in a fair, timely and cost-effective manner?
6. To what extent has overseas listings, for example in the form of depositary receipt programmes, influenced disclosure practices? What is the scope for internationally recognised disclosure standards?

Concluding Session: Main Findings and Future Work

The Latin American Corporate Governance Roundtable has been established as a forum for dialogue among senior policy-makers, regulators and market participants. The main purpose of this first meeting is to provide the overall public and private sector perspective, and to survey the most topical corporate governance issues. In a subsequent series of four meetings over the coming two and a half years the Roundtable will address the key issues in more depth using the OECD Principles of Corporate Governance as a conceptual framework for analysis and discussion. The next meeting of the Roundtable will be held in Buenos Aires. Roundtable participants are invited to decide on the topics for that meeting. Possible options are:

- Shareholder's rights, including minority protection and the shareholder's meeting
- Equitable treatment of shareholders, including take-over regulations and control transactions
- Disclosure standards and transparency
- The role of stakeholders in corporate governance
- The role of the board of directors

In order for the Roundtable process to be of maximum practical use, the members of the Roundtable will synthesise the main findings and recommendations in the form of a White Paper. The White Paper will be a non-binding consensus document, aiming to provide guidance for both public and private sector reform efforts in the area of corporate governance, reflecting the rich experience and expertise of the Roundtable participants. The conclusions reached in the White Paper will also serve as valuable Latin American input to the forthcoming review of the OECD Principles of Corporate Governance. The White Paper process will be launched at the next Roundtable meeting in Buenos Aires early 2001. In addition to the meetings themselves, the Roundtable may also establish a dedicated website to facilitate dialogue and disseminating information. An Electronic Discussion Forum that Roundtable participants can use for communication between meetings may also be set up.

Issues for discussion:

1. Do participants agree with the proposed work plan for the Roundtable over the next two and a half years?
2. What should be the main topic(s) for in depth discussion at the next Roundtable meeting in Buenos Aires?
3. Are there any issues that are specific to Latin America and not sufficiently covered within the framework of the OECD Principles? If resources were made available, would it be useful to undertake analytical work in any such areas?