



**Organisation for Economic Co-operation and Development
In co-operation with the World Bank Group**

*The Fifth Meeting of the
Latin American Corporate Governance Roundtable
8 - 9 October, 2004*

SUCCESSSES AND CHALLENGES IN ENFORCEMENT IN PERU

by
Mr. Carlos Eyzaguirre,
Consultant,
And Former Head,
Peruvian Securities Commission

Session 1:
**Legal, Regulatory and Institutional Framework for Enforcement -
State of Play and Key Challenges**

Successes in Enforcement

1.- The creation of the Administrative Court of the Peruvian Securities Commission (Conasev) is one of the biggest successes of the Peruvian Securities Commission in terms of enforcement. The court was created by a Resolution of the Peruvian Securities Commission Board. Its members are among the best Peruvian lawyers, some of them professors of law at the most prestigious Peruvian universities. Because of the quality of its members, it is a highly respected court. This is good for the protection of investors.

The Court works with complete independence of both the people in charge of the investigations and of the Peruvian Securities Commission Board. The decisions of the Administrative Court can be appealed to the Peruvian Securities Commission Board, which makes the final administrative decision.

2.- The new regulation on material facts disclosure. This regulation clearly specifies the type of facts that have to be disclosed. Also, every listed company has to create an internal code of conduct that describes the procedures to disclose material facts and the way to handle the reserved information. It also requires that companies report to Conasev the list of people who have access to the reserved information.

3.- Procedures for de-listing shares have improved. Conasev has set general rules to determine the de-listing price. A bank, investment bank, auditing or consulting firm designated by Conasev, may be required to provide the de-listing price if certain conditions prevail (For example: low liquidity). Such company is designated through a competitive procedure and has to be independent of the corporation that wants to de-list its shares. Conasev can challenge the valuation results.

4.- Any type of dispute between broker dealers or between broker dealers and their clients can be submitted to an arbitral court. But most important of all is the fact that if the client of the broker dealer decides to go to an arbitral court, arbitration becomes mandatory. This is possible because the members of the Lima Stock Exchange (LSE) approved this rule in a shareholders meeting. Otherwise, it couldn't be mandatory.

5.- Starting with the 2004 annual report, all listed companies in the Lima Stock Exchange will have to reveal their degree of compliance with the "Principles of Good Governance for Peruvian Companies". This is a big step for listed companies and every investor will be expecting the reports.

6.- Private Pension Funds are playing an increasing role in promoting Corporate Governance and have started to elect independent directors.

7.- In 2002, changes in the Securities Market Law introduced into the Law previous regulation established by Conasev.

The Challenges

1.- One of the biggest challenges to get better enforcement is related to facilitating the exchange of information between the Peruvian Securities Commission and the Bank Regulator (the Superintendencia de Banca y Seguros). This exchange will facilitate insider-trading investigations.

2.- Pension funds and Mutual Funds use different methodologies for asset valuation. This leaves an open door to regulatory arbitrage and must change.

3.- To use simple rules, easy to apply, which can prevent infractions. We can take as an example Article 44 of the Peruvian Securities Law: Board members and managers of listed corporations, and also members of the Investment Committees of the Mutual Fund Administrators and the Investment Funds have to give to the corporation or fund any short term profits made on shares of the corporation or the fund. It is a preventive measure that does not require proof of insider trading.

4.- Get more resources allocated to certain areas:

Although I have described the creation of the Administrative Court of the Peruvian Securities Commission as one of the successes in enforcement, I think that some junior lawyers could be hired to help the members of the court with their cases and ease their workload in order to solve the cases more rapidly.

And, in the area of disclosure of financial information by listed companies, more resources should be allocated by the Peruvian Securities Commission to analyze the content of the financial statements.

5.- Another serious problem is related to the Peruvian Securities Commission Budget. Although Conasev is financed by mandatory contributions made by the supervised entities, it is subject to the same expenditure constraints that apply to the whole Public Sector. This limits the expenditure in human capital and surveillance infrastructure in spite of having the financial resources to do it.

Also, the number of workers and their wages are tied to a structure that is approved by the Ministry of Finance. So it isn't easy to hire more workers or to raise their wages because this could mean a change in the structure that has to be negotiated with the Ministry of Finance.

6.- Require arbitration for listed companies.

If resources for enforcement could be doubled

1.- I would allocate more resources to the Administrative Court in order to hire junior lawyers.

2.- I would also allocate more resources to the Divisions in charge of doing the investigations. Have more lawyers assigned to them. Or alternatively, consider the creation of an enforcement division.

3.- I would also allocate more accountants to the area dedicated to review financial statements.

4.- Although spending resources in training judges does not belong to Conasev's duties, I would spend money in the training of specialized judges.

This year the Supreme Court Head announced that he intends to have specialized courts by the end of the year.

In 1997-98 an effort (proposal) by the Banking Industry to get specialized courts failed.