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Roundtable on Corporate Governance  
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# Stocktaking – Country Progress Implementing the Latin American White Paper Recommendations

# Background of Stocktaking Exercise

- **White Paper Released September 2003**
- **5<sup>th</sup> Annual Roundtable Meeting, Rio – October 2004**
- **Task Force Meeting, São Paulo - May 2005**
- **Country Progress Reports**
  - **Argentina, Brazil, Chile, Colombia and Peru**
  - **Multi-Institutional Teams**
- **Synthesis Note Draft**
  - **OECD and IFC**

# Purpose of Stocktaking

- **Aid Future Policy Dialogue in the Region**
- **Help Public and Private Sector Actors  
Prioritize their Efforts to Implement the White  
Paper's Recommendations**
- **Assist the Roundtable to Set Future Agenda**
  - **Better Support Public and Private Sector Reform,  
Education and Institution-Building**

# Country Teams

## ■ Argentina

- Fretes & Arieu; CNV; CEF; IAGO

## ■ Brazil

- CVM; IBGC; Investidor Profissional
- Commenters: Bovespa; CESA; Bradesco-Templeton; Jardim Botânico

## ■ Chile

- SVS; CCCG

## ■ Colombia

- Supervalores; Confecamaras; Bolsa de Colombia
- Commenters: Superbancaria; ANEC

## ■ Peru

- CONASEV; Bolsa de Lima; Carlos Eyzaguirre
- Commenters: AFP; CONFIEP; SBS; Javier Tovar

# Priority Issues of White Paper

- **Taking Voting Rights Seriously**
- **Equitable Treatment of Shareholders in Changes of Control and Delisting**
- **Integrity of Financial Reporting and Disclosure of Related-Party Transactions**
- **Developing Effective Boards of Directors**
- **Legal / Regulatory Framework – Improving its Quality, Effectiveness and Predictability**
- **[Regional Cooperation]**

# Reports: Focus; Organization

- **Progress Achieved Over Last Three Years**
- **Key Developments**
- **Obstacles to Progress**
- **Priorities for Further Progress**

# Draft Synthesis Note

- **Future of Legislative Reforms**
- **Private Sector Standard-Setting**
- **Obstacles to More Active Shareholders**
- **Non-voting and Multiple-voting Shares**
- **Adoption of International Accounting Standards**
- **Independent Directors**
- **Private Rights of Action**
- **Non-listed Companies**

# The Future of Legislative Reforms

- **2003-2005 Largely a Post-Reform Period**
  - **But Some Exceptions (Colombia; Mexico)**
- **Is There Legislative Fatigue?**
- **What is needed to Overcome Legislative Fatigue?**
- **What is Right Mix of Legislative Action vs. Regulation and Private Sector “Work Arouds”?**
- **When is Legislative Change Indispensible?**

# Private Sector Standard-Setting

- **Pattern and Intensity of Private Sector Involvement has Varied, Why so much?**
  - Identity of Participants
  - Intensity of Participation
- **What Explains the Diversity?**
  - Existing Institutional Landscape?
- **What Can / Should be done to Foster Broader and Deeper Private Sector Input in Standard-Setting?**

# Obstacles to Active Shareholders

- **Awareness and Education**
- **Shareholder Meeting Rules and Practices**
  - **Notice Periods**
  - **Pre-meeting disclosure**
  - **Voting by mail**
- **Institutional Investor Incentives and Regulations**
  - **Governance of Investors; Disclosure to Beneficiaries**
- **Difficulty of Enforcement**

# Absence of One-share One-vote

- **Persistence of Non-voting and Multiple-voting Shares**
  - Despite Problems Experienced in Some Countries
- **But Legal Limitations on Permitted Ratios**
  - Implicit Acknowledgement of White Paper Recommendation
- **How Much Confidence in Market Mechanisms?**
  - Novo Mercado; But Level 2 Permits Non-voting Shares
- **What will be the Warning Signs that Existing Limits and Market Mechanisms are not Sufficient?**

# International Accounting Standards

- **Significant Progress, but Gaps Remain**
- **Obstacles**
  - **Political Resistance / National Exceptionalism**
  - **Institutional Weakness (Auditing Profession Capacity and Self-Regulation)**
- **Related Party Transactions**
  - **Opacity of Beneficial Ownership in Some Countries**
  - **Weak Non-financial Disclosure Practices**

# Independent Directors; Audit Cmtes

- **Independence Alone is Insufficient**
- **Trade-off: Independence vs. Competence?**
  - Especially for Audit Committees?
- **Definition**
  - Independence from Whom?
  - Are Pension Funds Champions?
- **Mandatory Rules or Disclosure Requirements?**
  - Indirect Method (Chile)
- **Sourcing and Training of Independent Directors**

# Private Rights of Action

- **Topic of Rio Meeting Session with Legal Practitioners**
- **Civil Suits Still Regarded as not a “Reliable Enforcement Tool”**
- **Is Key Weakness Law, Process or Capacity of Courts?**
- **Agreement on Important Role of Regulator**
- **Agreement on need for Judicial Capacity-Building and ADR**

# Governance of Non-Listed Companies

- **Growing Attention Given Economic Importance of Permanently Non-Listed Firms**
- **Facilitating Transition to Public Listing**
  - **Broader Access to Capital**
  - **Ex: Bovespa's "Access Market"**
- **What is Proper Public Policy Approach?**
  - **Pure Market / Private Contracting? (How to Facilitate?)**
  - **Rationale for Regulatory Intervention?**
- **Private Sector Efforts to Encourage Transparency and Best Practices**
- **OECD Non-listed Company Initiative (Istanbul, 2005)**

# Second Half of Session

- **Progress Report Summaries by Country Teams**
- **Reactions and Comments from the Floor**
- **Synthesis Note – Comments and Drafting Suggestions**
- **Recommendations from World Bank ROSCs**



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# Gracias, Obrigado, Thanks



## Enjoy your caffeine break!!!