



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

**Major Corporate Events - De-listing and changes in
the Capital Structure**

by

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***The Second Meeting of the
Latin American Corporate Governance Roundtable
Shareholder Rights and Equitable Treatment
28-30 March, 2001, The Buenos Aires Stock Exchange,
Buenos Aires, Argentina***

Co-hosted by:
The Argentinean Ministry of Economy

With the support of:
The Buenos Aires Stock Exchange
The Securities and Exchange Commission of Argentina
The Global Corporate Governance Forum

5.1 *Is the existing framework for protecting the legitimate interests of minority shareholders in cases of delistings and changes in capital structure currently adequate? If not, why does the “equity contract” between investors and the company break down under such circumstances?*

a) Delisting.

The existing framework for protecting minority shareholders in delistings is clearly inadequate. Upon delisting, the dissenting shareholders have appraisal rights, but the "fair" value of their appraised shares is, according to the law, only equal to their latest book value. The minority shareholder, thus, has to choose between staying in a close company or selling its shares at a price which may greatly differ from their market price prior to the decision to delist.

There is now a draft proposal to amend the law and give dissenting shareholders the right to appraise their shares at a fair price upon delisting. The price would be determined based on one or more criteria such as book value, average share price for the last semester, discounted cash flow, and other, to be selected or combined on a case by case basis, subject to the approval of the Comisión Nacional de Valores.

b) Changes in capital structure.

Existing laws do not address specifically changes in capital structure, other than through requirements to obtain the consent of a class of shares before altering the rights of the holders thereof. Recently, however, two cases (Pérez Companc and Banco de Galicia) have raised worries that the current laws are insufficient to protect minority shareholders from coercive exchange offers which result in the strengthening of the voting control of main shareholders at the expense of other shareholders. To address such concerns, current proposed legislation includes general language against coercive offers.

5.2 *What has been the experience in the countries of the region with treatment of shareholders in cases of delistings? What has been the impact on outside shareholders, and the prospects for the public equity markets (both from the company and the investor perspective)? What should be the “guiding principles” for “equitable treatment” of shareholder in such cases?*

Although, as we saw above, the law is harsh on minority shareholders opposing delisting, in practice, issuers or controlling shareholders prior to delistings have offered the minority shareholders to sell their shares at prices close to market prices. In some cases, significant minority shareholders have been able to negotiate higher prices.

Notwithstanding the above, dissenting shareholders felt that laws provided them with insufficient remedies both, in the calculation of the fair value of their shares and in their right to challenge the decision to delist due to its lack of a valid business purpose.

5.3 *What has been the experience with respect to changes of capital structures? What aspects of minority shareholder protection do you consider to be most topical in relation to adjustments of the capital structure? What should be the “guiding principle” for “equitable treatment” in relation to adjustments in the capital structure? What are the experiences from pre-emptive rights and directed buy-backs?*

As we advanced above, there are two main cases which raised concerns on the fairness of exchanges offered to shareholders and the lack of legislation thereon.

In both, the Perez Companc and Galicia cases, shareholders were offered to exchange their shares for those of a new holding company. In such new holding company, controlling shareholders would have multiple (5) vote shares to ensure their continuing voting control. The Comisión Nacional de Valores approved both exchanges.

In the Galicia case, shareholders in the Banco de Galicia y Buenos Aires S.A. ("Banco Galicia"), the sole listed entity at that time, were offered to exchange their shares for shares in Grupo Financiero Galicia S.A.

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Buenos Aires, Argentina, 28-30 March 2001

("Grupo Galicia"), a newly formed Argentine holding company that would control Banco Galicia and other subsidiaries carrying on finance related businesses such as insurance, credit cards, consumer finance, real estate and securities brokerage, etc. Grupo de Galicia has two classes of shares, Class A with five votes per share and slightly over half the capital of the company and Class B with one vote per share. Shareholders holding approximately 46.34% of the votes at Banco Galicia would hold all class A shares and control Grupo Galicia and indirectly Banco Galicia after the exchange, while shareholders accepting the exchange would hold Class B shares. Beyond certain threshold number of exchanges, controlling shareholders offered to reduce their directors' fee arrangement from 12% of the pre-tax earnings to 6%. The expressed purpose for proposing the exchange was to separate in different subsidiaries the businesses of the bank and permit more flexibility and independence, both from a commercial as from a regulatory standpoint.

Similarly, the shareholders of Pérez Companc S.A. ("PC") were offered to exchange their shares for Class B shares in PC Holdings S.A. ("PC Holdings"). Such Class B shares were to have a preferred dividend for ten years, compared with the multiple vote Class A shares kept by the controlling shareholders.

5.4 What has been the response of legislatures and securities regulators to perceived mistreatment of minority shareholders in delistings and changes of control? What mechanisms have been employed? What degree of practical success have they had in promoting the "guiding principles"? What does this say about the relative importance of the legal framework versus regulator activism?

a) Delistings.

The Buenos Aires Stock Exchange and the Comisión Nacional de Valores have issued regulations increasing the minimum quorum to 75% to approve delistings and giving shareholders representing more than 10% of the votes the right to veto such a decision. However, the power of the regulator and the Stock Exchange to issue such regulations is questioned and they have not been able to change the method for determining the appraisal price of the shares, which is the heart of the problem.

b) Tender offers

The Comisión Nacional de Valores has regulated tender offers to gain or increase control. The regulations are aimed mostly to better inform offerees, to provide them with a board recommendation and to give offerees a second opportunity to sell after knowing the results of a first round.

5.5 Do securities exchanges have a legitimate role to play? How does their role differ from that of the legislator and the regulator? Do securities exchanges have the proper incentives and powers to play this role?

Exchanges may have their own regulations and may establish conditions for issuers that wish to list their shares with the exchange. They can also apply sanctions to issuers that breach such regulations. Consequently, they have the power to request companies that wish to list their shares to insert in their by-laws governance clauses protecting minority shareholders from actions such as delisting, changes of control and changes in the capital structure. However, it is doubtful whether they could force already listed companies to amend their existing by-laws for those purposes.