



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

Summary Note

***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**

The 2nd Meeting of the Latin American Corporate Governance Roundtable
Buenos Aires, Argentina, 28-30 March 2001

1. General

The second meeting of the Latin American Corporate Governance Roundtable was held in Buenos Aires, Argentina on 28-30 March 2001. The meeting was co-hosted by the Argentinean Ministry of Economy with the support of the Buenos Aires Stock Exchange, the Securities and Exchange Commission of Argentina and the Global Corporate Governance Forum.

The Roundtable brought together about 160 public and private sector experts from Argentina, Bolivia, Brazil, Chile, Colombia, France, Hungary, Mexico, Peru, United Kingdom, United States and Venezuela. In relation to last years meeting, the Roundtable was particularly pleased to welcome participants also from Colombia and Bolivia. Participants from the 12 different countries constituted a highly qualified group of senior decision-makers from concerned ministries, securities market regulators, stock exchanges, the legal profession, individual companies and investors.

Also represented at the meeting were experts from the OECD secretariat, the World Bank, the International Finance Corporation (IFC), the Inter American Development Bank, the International Monetary Fund and the International Chamber of Commerce. The OECD Trade Union Advisory Council was represented by the Inter-American Regional Organisation of Workers.

The meeting was opened by the Argentina's Deputy Minister of Economy, Dr. Daniel Marx. Dr. Marx discussed corporate governance in a broader economic context and underlined the importance of good corporate governance for developing efficient and credible capital markets that are able to provide domestic companies with access to internationally mobile capital. From this perspective corporate governance was a key policy concern and it should be a priority of both legislators and the private sector to raise awareness and improve corporate governance practices. In an era of globalised capital markets these efforts increasingly have to be carried out with a view to international developments. Several speakers also testified to the positive impact that the Latin American Roundtable process has already played in this respect by bringing together decision-makers from around the world and stimulating initiatives both in the private and public sectors.

The topic for discussion of the second Roundtable meeting was the shareholder's rights and equitable treatment of shareholders. It was agreed that these issues provide the foundation on which the quality of other corporate governance practices will depend. For this reason, the issues of shareholder's rights and equitable treatment of shareholders are subject to intensive reform efforts in the region. In Chile, for example, a new law regarding tender offers came into effect in December 2000 aiming to improve transparency and fairness in the tender offer process. Following several years of discussions and refinements the Lower House of the Brazilian Congress passed revisions to their company law on the 28 of March. Also Argentina is presently undertaking an ambitious review of important parts of their company law. The aim is to adjust provisions and practices to developments in corporate circumstances and capital markets.

Also several private sector initiatives can be noted. These included a revised and more comprehensive code of best practice recently issued by the Brazilian Institute of Corporate Governance, and a joint Argentinean project on best practices by the two leading private sector organisations IDEA and FUNDECE.

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First hand experiences from these and other efforts proved to be extremely useful to the substantive discussions of the Roundtable. It was also a great source for sharing information and exchanging practical experiences among participants who in their daily work are responsible for corporate governance reform work in their respective countries.

All documentation from the Roundtable meeting, including the agenda, presentations, background- papers, etc. can be found on the OECD website at <http://www.oecd.org/daf/corporate-affairs/governance/roundtables/in-latin-america/2001/>

2. Discussions and Main Conclusions

Participants to the Roundtable revealed broad consensus that problems relating to shareholder rights and equitable treatment of shareholders should be given highest priority at this point in time. It was considered critical not only for developing efficient and credible capital markets, but also for the financing, management and ultimate performance of the business sector. Without an accelerated development of the capital markets and without efficient and profitable companies, the economies will not grow, and the quality of life of the population will not increase.

From this perspective, it was agreed that the Roundtable should continue to identify workable reform options in the following four areas where concrete steps could be taken to improve the quality of corporate governance:

- a) voting rights and the importance of effective and informed shareholder participation;
- b) fair treatment of all shareholders during changes of control;
- c) increased transparency and efficiency in transactions between related parties and in cases of potential conflicts of interest;
- d) credible and effective enforcement of shareholder's rights.

Discussions on these four topics included both principal aspects and concrete suggestions in terms of reform. As agreed during the first meeting of the Latin American Roundtable, the main conclusions will be summarized in the Roundtable's White Paper that is drafted successively to reflect the consensus view of core participants to the Roundtable meetings.

a) Voting rights and the importance of effective and informed shareholder participation

In the discussion on the scope and procedures of the shareholder's meeting, participants focused their remarks on the evident contrast between the supposed importance of the shareholder's meeting, and the current reality. Except for extraordinary circumstances, the shareholder's meetings are generally considered to be "non-events." The ambition should be to convert the meeting into a workable company organ for the expression and protection of all shareholders. This can only be accomplished through laws, regulations and business practices that first of all assures an effective exercise of voting rights. This in turn requires that shareholders are provided with relevant and accurate information about the issues that will be discussed at the shareholder's meeting. The information should also be provided in time to allow shareholders to arrive at an

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informed opinion. Shareholders should also be granted certain rights that give them an opportunity to include issues on the agenda.

As for the shareholder's meeting itself, it was widely agreed that improvements could be made in order to lower the costs and facilitating the procedures for voting. New information and communication technology can obviously play an important role in this respect.

The quality of the shareholder's meetings also depends on the involvement by shareholders. Shareholders, and in particular institutional investors, were encouraged to actively keep themselves informed and to set aside the time and resources that are necessary to play an active and positive role in the decision making process of the company.

b) Fair treatment of shareholders during changes of control

Most speakers agreed that the situation with respect to changes in corporate control has been less than satisfactory in many Latin American countries. It was also agreed that such a situation is to the detriment of domestic stock markets. Against this background, the Roundtable had lively and very informed discussions about the most efficient means to determine and assure equitable treatment of minority shareholders when a controlling shareholder sells a control block.

While Brazil and Chile recently have passed laws and issued interpretative regulations in this respect other countries are still in the process of finding a suitable regulatory framework that fits national circumstances and meets internationally recognized standards. There was agreement among participants concerning the need to pursue this work with some vigor and to establish clear, practical and economically efficient rules for the well-functioning market for corporate control.

It should be part of the Roundtable's task to facilitate this process. Recent regulatory initiatives in the region, and also in the European Union, provide good opportunities to study the effects of various solutions. The objective should be to identify those basic principles that should guide any reform effort in this field or the refinement of prevailing provisions.

c) Increased transparency and efficiency in transactions with related parties and in cases of potential conflicts of interest

The Roundtable noted that several cases of related party transactions, for example in the form of co-investments with other corporate entities that are controlled by large owners of the company itself, its managers or directors, has created a loss of confidence on the part of minority investors. In many cases, minority owners have suffered injury, as they have not been able to count on effective legal remedies to oppose the transactions. It was therefore a common view that the regimes applicable to transactions with interested parties and conflicts of interest are not sufficiently effective.

Again, the Roundtable could contribute to the improvement of the situation by screening national standards and identifying best practices, legislative options or basic regulatory principles. While

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the details of any regulations in this area require further analysis, there was broad consensus that the concept of transparency needs to be at the very heart of it. Other vital components include, abstention from voting by directors involved in cases of conflicts of interest, and especially problematic cases, and supplementary mechanisms, like extraordinary votes of the minority, and special board committees.

d) Credible and effective enforcement of shareholder's rights

Even in cases when countries has an old and very well developed judicial tradition, settlement and enforcement of commercial disputes can still be inefficient. There may be several reasons for this. One is the speed, complexity and rapidly changing nature with which modern commercial relationships develop. This often makes it very difficult for the traditional court system to expedite cases with a pace that is satisfactory to all parties.

The Roundtable agreed that there is an increasing demand for effective settlement and enforcement mechanism in today's economy. It is therefore of key importance to a credible corporate governance framework that the regulatory agencies are given the authority and resources that makes it possible for them to keep up with rapidly changing demands and developments in the capital markets.

The Roundtable also discussed the contribution from various voluntary codes and settlement practices that can complement legal and regulatory provisions. It was widely agreed that the self-regulatory powers of market institutions, such as stock exchanges, could play an important role in this context, for example by requiring and providing for a generally accepted arbitration mechanism. Recent examples of such initiatives within the region may provide guidance for further refinement of private settlement routines.

3. Next Steps

Immediately following the Roundtable discussions, a core group from all participating countries met to initiate the drafting of the Latin American Corporate Governance White Paper. The White Paper will reflect the consensus of the different Roundtable meetings and identify common policy objectives and reform priorities.

Building on the discussions at last years Roundtable meeting in Sao Paulo and the two days of discussion in Buenos Aires, the reporters presented a first outline for discussion and a tentative summary of conclusions concerning shareholder's rights and equitable treatment. On the basis of discussions in the core group, the reporters will develop a revised draft of the White Paper covering a discussion of the Roundtables main priorities and main suggestions in the areas of shareholder's rights and equitable treatment of shareholders.

In their concluding remarks, representatives of the Mexican Stock Exchange and the Mexican Ministry of Finance invited the Roundtable to hold its next meeting in Mexico in the first quarter of 2002. The meeting warmly welcomed the proposal and expressed their gratitude to their Mexican colleagues.