



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

**The Fourth Meeting of the
Latin American Corporate Governance Roundtable
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ISSUES PAPER

**Session 2:
“Private Civil Actions and Alternative Dispute Resolution”
Nabil Miguel
Bolivia**

**Co-hosted by:
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Session 2: “Private Civil Actions and Alternative Dispute Resolution”

Introduction.- The elected subject as an object of this session debate is: “Private Civil Actions and Alternative Dispute Resolution”, basically related between the shareholders and the society because of the obligations default or dispute aspects for their rights violations, that is subscribed in matters of decisions either jurisdictional or arbitral, calling to give solutions to judicial problems between them.

The criteria for the arguments and controversy solutions became materialized by the Jurisdictional Entities and the Arbitrators. In this sense, the government legislation, prescribes their functions as well as their faculties, for the main reason that the parties in dispute can know beforehand who can resolve their differences and controversies. Never the less , the Jurisdictional Entities and the Arbitrators have a different type of activity than the legislator activity, the latter one acts in an abstract senses and the first one works on a specific case. This is the main subject of this debate: “ if the justice materialization and the satisfactory balance of the individuals and generals interests are properly legislated or on the contrary, one must appeal to the judge’s discretion .”

Like the Jurisdictional Entities, the arbitrators must enclose their acts into legal provisions. Never the less in arbitrage procedures, the criteria of equality and discretion are emphasized, due to the fact that it is a legal Institution by which the parties derive from a consent declaration, remove the knowledge and the decision of their controversies to the Jurisdictional Entities, giving the resolution of their differences to a third person, to whose decision the parties expressly submit to; according to Equity or Law.

Over the base of the proposed introduction (judicial- extrajudicial matters), the lecturers will expose legal, technical and regulatory aspects that require alternative solutions of conflicts, as well as their advantages or disadvantages.

To follow, the debate themes to be developed by the lecturers during this session:

Debate themes:

1. Which is the legal and regulatory structure for the conflict solutions between the society and the shareholders?
2. Is the local regulation and the legal system adequate for the realization of the arbitrage procedure in order to bring an adequate protection to the minority shareholders rights?

3. Are there topics of corporative regard that must be resolved only by the Jurisdictional Entities?
4. Which are the effects and which are the legal securities of the arbitral decisions?
5. The principles of discretion and equity proper to the arbitrage procedure are clearly defined and supported by legal or regulations rules?
6. Which are the local arbitrage figures (ex. Of Law, equity, formal, non formal, obligatory) and which are applicable to the disputes between the society and the shareholders?
7. Is there protection or more major facilities for foreign shareholders in disputes with local societies?
8. What legal initiatives or regulatory rules have been generated to improved and standardise the solutions of conflicts in relation to regulatory and legal regimens of the region?
9. What is the local experience obtained in relation to the receptability by shareholders in the arbitrage procedure as an alternative mechanism of conflict solutions?
10. Which are the advantages and disadvantages that are experienced in the extrajudicial solutions?
11. How are the Arbitral Entities structured?