



*The Seventh Meeting of the  
Latin American Corporate Governance Roundtable*

*22-23 June, 2006  
Buenos Aires, Argentina*

**Non-listed Companies in Venezuela  
Tendencies, legal frameworks, promotion of  
Corporate Governance**

By

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### The Non-listed Company in Venezuela

Much has been said about Corporate Governance, its significance and application regarding open-capital companies engaged in capital markets; however, the Venezuelan economy mainly consists of non-listed closed-capital companies: family-owned and/or state-owned small and medium-sized companies, as well as large companies, whose shares do not quote on stock markets.

The **small and medium-sized company** sector represents 95% of the Venezuelan market, being one of the main generators of employment and job opportunities in the country.

There are also non-listed **large companies** operating in the country, which have a great capacity to shape the remaining economy due to their influence on the creation of business networks, and its interactions with the small and medium sized companies which finally represent the vast majority of the country's business community.

There are also **state-owned companies** (or those in which the government has a significant stock participation). Basic industry has a significant role in the Venezuelan economy: gas companies, mining and metallurgic companies, such as *ALCASA* and *VENALUM*, some companies from the power sector, such as *CADAFE*, and, certainly, *Petroleos de Venezuela PDVSA*, which is a particular case due to the sensitivity of oil-related matters within our country.

The importance of creating useful and efficient tools is therefore evident in order that the majority of those businesses may introduce good governance practices within their organizations.

The abovementioned has been stated in previous documents which we have published on the subject matter, particularly in the Venezuela document submitted for the **First International Experts Meeting of Corporate Governance for non-listed Companies**, held on April 19-20, 2005, at Istanbul, Turkey, which was published by the OECD (Organization for Economic Cooperation and Development) within the compendium "Corporate Governance of Non-Listed Companies in Emerging Markets" ([www.OECD.org](http://www.OECD.org))

This document, together with **the profile of the non-listed company sector** in Venezuela, also includes the **points of view of relevant parties** regarding Corporate Governance:

- The **regulator**: National Securities Commission (*Comisión Nacional de Valores – CNV*).
- The **issuer**: Venezuelan Association of Issuers (*Asociación Venezolana de Emisores*).
- The **operator**: Caracas Stock Exchange (*Bolsa de Valores de Caracas*).
- The **promoter**: National Commission for the Promotion of Investments (*Comisión Nacional para la Promoción de Inversiones*).
- The **companies** (listed and non-listed): Venezuelan Federation of Industrialists and Businessmen (*CONINDUSTRIA* is its acronym based on its Spanish name).

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This report highlights the efforts of these institutions to promote this type of practice through the means each have available and based on their respective influence areas, as well as their **orientation towards the encouragement and promotion of good governance practices** for companies.

This tendency encourages the adoption of a **transparency culture regarding the disclosure of information** within the business environment, as well as promotes **the expansion of capital markets** through the incorporation of companies which traditionally do not take into consideration the stock market as an alternative to accessing credit.

The foregoing lets us foresee a favorable future scenario and evidences the tendency to create conditions and incentives to adopt Corporate Governance practices.

In any case, there is a legal and regulatory framework in force of relevance to implementation of the Corporate Governance principles, which governs the performance of companies and their disposition to assume such principles.

### **Legal and Regulatory Framework applicable to the Corporate Governance principles**

As of this date, this subject matter has been developed and discussed in Venezuela through regular legal mechanisms, such as Laws, Ordinances and Regulations. The Venezuelan Association of Executives (AVE) has developed **a report describing the legal regulations in force and applicable to corporate governance in the country** which constitutes a **group of laws structured and organized according to the OECD's Principles of Corporate Governance**.

This information-gathering and documentation work was developed through the division created by the Association to promote and spread the subject matter: the **AVE Committee on Corporate Governance**, which is supported by the commitment and active participation of the Board of Directors of the Association, as well as by the representatives of several sectors of the business community in our country: **banks, small and medium-sized companies, large companies which quote at capital markets and also by non-listed, family-owned companies, as well as the governmental entity in charge of promoting and regulating the Venezuelan capital market (CNV)**.

The report, without an exhaustive analysis of the regulation in force, makes reference to the legislation and its relevance to the Corporate Governance principles issued by the OECD.

The legal regulation reviewed includes:

- Commercial Code
- Capital Market Law
- General Law of Banks and other Financial Institutions
- Regulations of the National Securities Commission (CNV)
- Civil Code
- Civil Procedure Code
- Law of Public Registration and Notary Offices

Likewise, when referring to stakeholders, it indicates the following regulations:

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- Organic Labor Law
- Law of Working Prevention, Conditions and Environment
- Organic Environmental Law
- Environmental Criminal Law
- Consumer and User Protection Law
- Law to Promote and Protect the Exercise of Free Competition
- Municipal Ordinances
- Regulations and Practices issued by the Association of Certified Public Accountants

Attached you will find a reference table based on the “Report on Venezuelan Regulations Applicable to the Corporate Governance Principles” (2003) **Dillon D., Legal Consultants, AVE Committee of Corporate Governance.**

The table highlights the references exclusively applicable and mandatory for listed companies. It is important to point out that principles of “voluntary compliance” have also been issued, but these have not been included in the report for not being part of the legislation. [But since the legislation and regulation apparently only apply to listed companies, wouldn't the voluntary principles actually be more relevant for the non-listed companies?]

### Tendencies of Non-listed Companies in Venezuela

- In general, one can observe a **resistance regarding the promotion of information disclosure**, generated by a sense that non-listed companies would lose their confidentiality and/or administrative autonomy. Therefore, even when the significance of the application of good corporate governance measures is recognised, **companies do not necessarily contribute to promote the subject**. Similarly, reluctance occurs in relation to the incorporation of external directors and the treatment of minority shareholders regarding their active participation in the company's management.
- However, in many cases this **resistance is mostly related to lack of information and incomprehension about the benefits** obtained from the application of good governance practices, since recent studies carried out by consulting companies within local representative samples revealed, for example, that, once applied, one of the most appreciated principles in terms of its added value is the incorporation of independent external directors to the Boards of Directors (*ref. A.D. Little*).
- Likewise, there is **the perception that the adoption of Corporate Governance practices may be expensive**, since in emerging economies such as ours the relationship between the adoption of good corporate governance practices and the value added by such to companies is not immediate; even in many cases the perception may be the exact opposite. In the case of small and medium size companies, it has not been easy to accept, for example, the need to incorporate an external consultancy in order to add quality to management practices.
- However, **the small and medium-sized company sector** is more and more globalized and seeks strategic associations in order to move forward in the internationalization process. In this process, it begins to comprehend that it **must disclose its information, make available its financial statements and move forward towards**

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clearer and more transparent mechanisms within its administrative management and the control of its Board of Directors' management.

- At the same time, it is possible to identify within this sector a **growing number of companies which may be attractive for investments**. Such companies may be more willing to take into consideration the possibility to attract capital from sources other than the financial sector and, therefore, take into account the corporate governance principles which privilege stock markets.
- In parallel, this sector **must work together with the financial system**, which represents its main financing mechanism; and banks, due to their own regulatory frameworks, “encourage” their clients to implement good corporate governance practices.
- In the case of **the family-owned SME** (small and medium-sized companies), it is more and more evident the recognition within this sector of **the need to establish protocols to manage the family-business relationship and to professionalize management**, such as evidenced by the experience of the AVE from the sessions held with family-owned companies to discuss these matters. In this sector, implementation of principles for transparency and reliability values is increasingly appreciated as adding to the company's reputation.
- In the case of **the non-listed, large private companies**, in many cases family-owned, it generally keeps its equity interest restricted to a limited group of shareholders, usually members of the same family. Even though these **companies may participate in stock markets through the issue of debt securities, they do not participate through the issue of shares**. According to the information supplied by recent studies carried out by the consulting firm McKinsey, the main challenge for large family-owned companies in Latin America is to compete with companies which have global participation within the region. To do so, they must adjust their strategies and, just as for small and medium-sized companies, they will need more professional managerial models in order to avoid that family problems turn into business problems.
- In practice, large, family-owned companies tend to be carefully monitored by developed markets out of a concern that their administration will pay more attention to the interests of owners than to those of the company. However, in less-developed markets such as ours, these may represent highly valued investment alternatives if they are successful and show well-developed management structures.
- In any case, **the large family-owned company** requires access to capital markets and in practice it uses them as a valid financing alternative, whether through the issuance of shares, issue and negotiation of commercial papers, or by attracting investment partners. In any case and given the several alternatives submitted to the investor, **corporate governance represents an added value to the company's competitive position and turns it into a better option**.
- In the case of state-owned companies, the tendency to adopt or not good governance practices shall be highly related to the public policy framework in which these operate and to the strategic interests defined for each sector. However, in any case, we hold the opinion that corporate governance adds value in terms of transparency, reliability and credibility, elements which are always necessary for the success of governmental

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policies. Also, and consequently, it enhances competitiveness elements which will benefit the perception of “country brand” (*marca país*) as a whole.

**Therefore, we may conclude that there is a tendency to create awareness within every sector regarding the value of Corporate Governance practices and although, as we have already stated, it is necessary or even mandatory for the large, open capital companies engaged in stocks markets, it is also necessary for other companies because:**

- These must interact as business partners with the large, open capital company.
- These are financed by the banking sector, which is governed by very specific regulations on the matter and increasingly encourages (but not necessarily requires) “good governance” conditions in the recipients of the funds.
- Good governance practices lead to the formalization of administration and/or family protocols which tend to professionalize and maintain businesses in the long-term.
- These generate employment opportunities and contribute to the reduction of poverty conditions, which are a critical problem within our Latin American region.
- The exercise of good corporate governance adds value in terms of their competitive positions in markets and therefore increases the country’s competitiveness.
- To adopt Corporate Governance practices enables them to respond to globalization challenges.

## Promoting Corporate Governance of Non-listed Companies

In addition to the efforts to **promote and spread the benefits** related to Corporate Governance, it is necessary to **set forth policies and specific incentives through public policies in order to encourage the adoption** of this type of good practice.

To date, the National Securities Commission has had a major role due to its influence as regulator of the capital market. The commission has been encouraging, rather than requiring through laws and regulations, **the voluntary application of good governance principles** based on their benefits to companies in terms of competitiveness and the possibility to obtain financing through capital markets.

Through its Strategic Plan (in keeping with the “National Plan for the Country’s Social and Economic Development for the period 2001-2007), it sets forth two main guidelines:

- **Development of a “Social Comptrollership”:** (i.e. the possibility to activate, between the interested groups, a controlling and auditing action around the company), in which **corporate governance and information disclosure** have a major role through:
  - Timely(?) and sufficient information;
  - Corporate Governance Principles;
  - Application of International Standards;
  - Efficient supervision of intermediaries and issuers;
  - Assistance to the Small Investor, issuers and intermediaries and public in general;
  - Accountability.

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- **Capital Democratization:** a strategy directly focused on establishing incentives in order that non-listed companies be encouraged **to participate in capital markets** to access financing sources. It includes:
  - Incentives to *small and medium-sized enterprises*;
  - Creation of products for small investors;
  - Incentives to increase the activity (?) of individual and institutional small investors;
  - Creation and spreading of a stock market culture;
  - Cooperative associations of investment advisors.

In this regard, the Commission has defined and developed several measures **to encourage and support** specifically the sector of small and medium-sized companies:

- Flexibility in the process for obtaining public offer authorizations (incorporation to stock markets/incentives for being listed);
- Existence of a substitute guarantee for the Risk Qualification required by the *CNV* at the moment of issuing debt securities (therefore reducing costs and expediting the process);
- Simplification of the documents and formalities to be submitted before the *CNV* for applying for Public Offer authorizations (prospectus and publicity through electronic means);
- Creation of a work team to promote, assist and directly advise *SME's* regarding their applications before the *CNV*;
- Possibility of joining the public financial system (*BIV*, *BANFOANDES* and others) in order to get its support as Custodian, Taker (*Taquilla*) or distribution point of the issues in order to reduce placement costs.
- [Can you add a point explaining the point on insertion of investors (how this is being done?) and how this may also encourage SME adoption of CG practices and listing?]

## Conclusions

In emerging economies such as the Venezuelan one, the adoption of Corporate Governance by non-listed companies has a significant impact on the economy and, moreover, on the manner in which business is conducted in the country.

The need is clear for an economic policy with long-term objectives previously agreed between the several sectors and parties of the society in order to achieve the adaptation of our markets to currently accepted international requirements and standards.

Therefore, the challenge is to establish a more accepted perspective on the cost-benefit relationship which generates the adoption of Good Governance Principles and practices to non-listed companies, even beyond regulatory and obligatory frameworks, in order to move forward towards the necessary culture of ethics, transparency and, definitely, towards a socially-responsible point of view which must characterise companies.

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Asociación Venezolana  
de Ejecutivos

ATTACHMENT: SUMMARY OF THE REPORT ON VENEZUELAN REGULATIONS OF LISTED COMPANIES RELEVANT TO THE CORPORATE GOVERNANCE PRINCIPLES. Dillon D., Legal Consultants, AVE Committee of Corporate Governance

<b>SHAREHOLDERS' RIGHTS</b>		
a. Registration	<b>CC, NCNV,</b>	
b. Right to Revision and Inspection	<b>CC, LMC</b>	
c. Privileged Information	<b>LMC, NCNV</b>	
d. Voting right	<b>CC,</b>	
e. Disapproval/Accountability	<b>CC, CPC</b>	
f. Right to Dividends	<b>CC, CCIVIL, LMC</b>	
<b>EQUITABLE TREATMENT</b>		
a. Equality	<b>CC</b>	
b. Right of Minority Shareholders	<b>LMC, NCNV</b>	
c. Conflicts/Interested Parties	<b>CC, NCNV</b>	
<b>FUNCTION OF SOCIAL INTEREST GROUPS IN THE CONTROL OF COMPANIES</b>	<b>LOT, LOPCYMAT, LOA, LPA, LPCU, LPPELC, NSUDEBAN, NCNV, OM</b>	
<b>COMMUNICATION AND INFORMATIVE TRANSPARENCY</b>		
a. Preparation of Accounting Information	<b>CC, LMC, NCNV, NSUDEBAN</b>	
b. Auditing	<b>NCNV</b>	
c. Publicity	<b>CC, LRPN, NCNV</b>	
d. Money Laundering	<b>NCNV</b>	
<b>COUNCIL RESPONSIBILITY</b> (Board of Directors)	<b>CC, LMC</b>	

**CC:** COMMERCIAL CODE

**NCNV:** REGULATIONS OF THE NATIONAL SECURITIES COMMISSION

**LMC:** CAPITAL MARKET LAW

**CPC:** CIVIL PROCEDURE CODE

**CCIVIL:** CIVIL CODE

**LOT:** ORGANIC LABOR LAW

**LOPCYMAT:** ORGANIC LAW FOR WORKING PREVENTION, CONDITIONS AND ENVIRONMENT

**LOA:** ORGANIC ENVIRONMENTAL LAW

**LPA:** ENVIRONMENTAL CRIMINAL LAW

**LPCU:** CONSUMER AND USER PROTECTION LAW

**LPPELC:** LAW TO PROMOTE AND PROTECT THE EXERCISE OF FREE COMPETITION

**NSUDEBAN:** REGULATIONS OF THE BANK SUPERINTENDENCE

**OM:** MUNICIPAL ORDINANCES

**LRPN:** LAW OF PUBLIC REGISTRATION AND NOTARY OFFICES