Argentina

The Role of Institutional Investors in Promoting Good Corporate Governance Practices in Latin America: The Case of Argentina

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1. Introduction

1.1. In the last decade, corporate governance emerged as a worldwide concern, initially in developed countries and then spread to emerging ones. Good corporate governance, defined as "the set of rules and practices that govern the relationship between the managers and shareholders of corporations, as well as stakeholders like employees and creditors"[1] is not only beneficial for corporations but also bolsters the level of market confidence and integrity, and strengthens financial stability. Therefore, they are a key element to be addressed both by the private and the public sector in order to promote economic growth and development.

1.2. Coupled to those developments, financial markets have witnessed the growing importance of institutional investors, mainly mutual funds, pension funds, hedge funds, private equity funds, and insurance companies. Management of large portfolios led these funds to hold significant shares of the equity of corporations and transformed them into not just investors but owners of firms. Fiduciary responsibilities of these types of investors and return-seeking behaviour, prompted an increasing concern among them regarding good corporate governance at the firms in which they invest third parties' funds. Therefore, the role of institutional investors in promoting good corporate governance and in monitoring and controlling the management of corporations has expanded.

1.3. In Argentina, structural reforms that began in early 1990s have provided the framework for the development of capital markets by addressing both the issues on the supply-side (issuers) and the demand-side (investors). With respect to the former, and specifically related to corporate governance, the debate on this topic began in May 2001 with the enactment of the Transparency Decree (Decree No. 677/2001). It established several governance guidelines inspired by international best practices and standards for listed companies. In spite of the well-intended goals of the reform, modest progress has been made so far at the corporate level. The decree was complemented by a series of regulations issued by the CNV, namely Resoluciones Generales 371/01, 400/02, 401/02, 493/06, and 516/07 that addressed a diversity of issues put forward by the decree.

1.4. Particularly related to the active participation of minority shareholders, the Decree established two procedures: i) the public solicitation of proxy voting powers (section 70-c); and ii) special investigation rights (section 14-e). In the first case, a shareholder representing more than 2% of equity can request proxy voting powers from other shareholders in order to represent them at a specific shareholders meeting. The second refers to the right of shareholders representing more than 5% of equity to request the National Securities Commission (Comisión Nacional de Valores, CNV) to call the firm for an additional external audit to be undertaken by auditors designed by the former. In both cases, formal procedures have to be followed by minority shareholders. These rights aim at providing further incentives for minority shareholders –in particular, institutional investors- to be more active. Alas, anecdotal evidence suggests that they were seldom exerted.

1.5. As mentioned by CEF (2005) companies consider many of these reforms as a mere increase in their costs (e.g. the mandatory audit committee) at the time the expected rewards for adopting such rules have not been significant. In addition, those firms that have improved (or are in the process of improving) corporate governance practices are not fully recognised by the market because no reliable measure exists for making inter-firm and inter-temporal comparisons. There is not a benchmark of good practices which companies can compare to, and the stock exchanges do not provide a mechanism for differentiating firms in this particular aspect. Regulatory developments had somehow stagnated afterwards, and resumed in 2006 by means of requiring listed firms to fill a questionnaire on their governance practices and on adopting a code of good governance.[2]

[1] OECD (2004)
[2] CNV, Resolución General N° 493/06 and Resolución General N° 516/07, respectively.

1.6. On the demand side, liberalisation of the capital account, reform of the insurance and mutual funds regulatory framework, and the creation of the private pension funds system laid the foundations for the development of local institutional investors and the facilitation for foreign investors to participate in local capital markets. As a consequence, institutional investors grew continuously throughout the decade and gained increasing participation in local capital markets. Unfortunately, capital markets in Argentina did not develop as would have been expected and have remained shallow and relatively illiquid.

2. Institutional Investors in Argentina: Stylised facts

2.1. Capital markets in Argentina are relatively underdeveloped not only when compared to developed economies but also relative to other emerging countries in Asia and Latin America, including those that (as it is the case for Argentina) are bank-based economies.[3] Table 1 shows the size of the domestic capital market for selected countries for year 2007, measured as the ratio of market capitalisation to GDP. Other indicators of market development (such as liquidity, IPOs per year, etc.) exhibit the same pattern (i.e. stock and private-bond markets in Argentina are well behind international and regional figures). Raw figures show that, as of June 2007, there are 99 local listed firms in Argentina whilst the average for selected Latin American countries is 260, annual traded equity equalled 2.8% of GDP in Argentina in 2007 while the same figure for other countries in the region is eight times higher.

Table 1: Market Capitalisation as % of GDP for selected countries (2007)

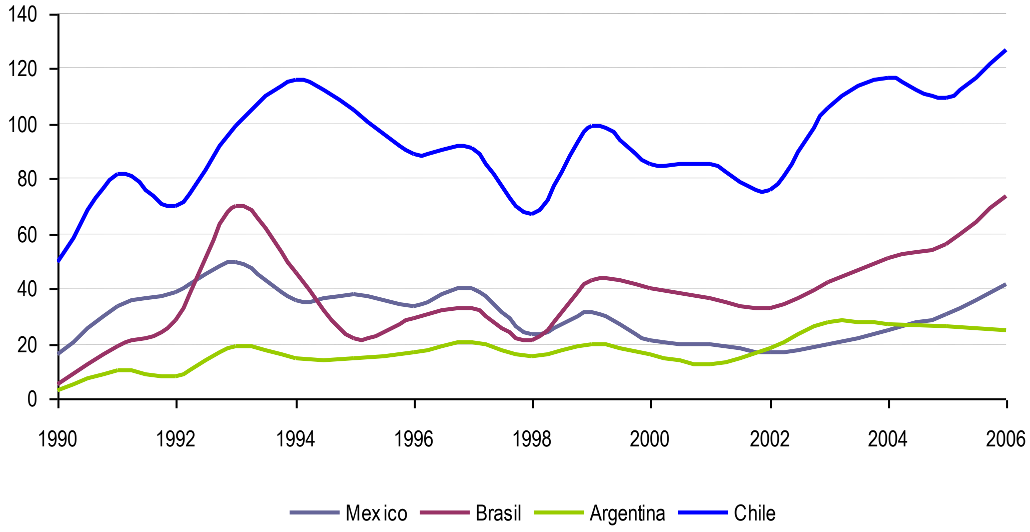
Country	MK/GDP (in%)
Hong Kong	1284.2%
Malaysia	174.2%
Canada	153.4%
United Kingdom	139.2%
Chile	129.9%
Spain	125.3%
Korea	117.3%
United States	113.6%
Brazil	104.2%
Japan	98.9%
Thailand	80.3%
Phillipines	71.5%
Peru	64.1%
Germany	63.5%
Colombia	60.5%
Indonesia	48.9%
Mexico	44.5%
Argentina	**21.8%**

Source: own elaboration based on World Federation of Exchanges

2.2. When examining the trend of that ratio over a longer period in Latin America, the conclusions are broadly the same. Figure 1 presents the evolution of domestic capital markets for selected countries in the region since 1990. For the period after the Argentinean 2001-2002 crisis, it can be seen that the development of the local capital market has somehow stagnated while other countries show a steady upward trend.

[3] For a comprehensive description of the Argentinean capital markets, see Ferraro (2007).

Figure 1: Market capitalisation as % of GDP for selected Latin American countries (1990-2006)



Source: Ferraro (2007)

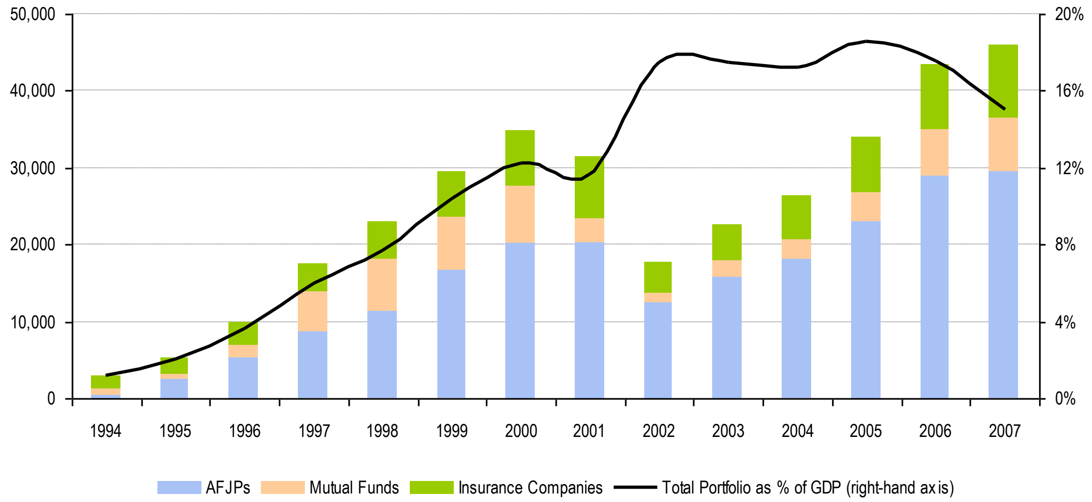
2.3. Another important feature of the local capital market is that, despite the reported figures of market capitalisation, the actual stocks that are regularly traded (i.e., free-float) are a relatively low percentage of total shares. Defining net market capitalisation as total market capitalisation net of the shareholdings of the controlling entity (being it an individual or another corporation), the figures for Argentina are even more impressive. IAMC (2007) estimates that free-float represents 35% of total market capitalisation as of fourth quarter of 2006.[4] As it will be developed in the next sections, this fact has crucial implications in terms of available options for large investors when disagreement with management and/or boards shows up.

2.4. In Argentina, institutional investors became relevant players in the local capital markets by the early 90s when structural reforms were undertaken and provided the legal and regulatory framework within which they were able to develop. Insurance companies existed prior to that decade but their participation in local capital markets was marginal. Mutual funds took centre stage in the early 90s while private pension funds began their operations in 1994 as a consequence of the reformed pension scheme. The reform replaced the pay-as-you-go state run system for a dual one in which individuals could choose either to be affiliated to the state-promoted system or to save into personal accounts managed by professional institutions, the Administradoras de Fondos de Jubilaciones y Pensiones (AFJP).

2.5. The assets under the management of institutional investors, namely insurance companies, AFJPs and mutual funds have consistently grown both in nominal and real terms (as % of GDP). Figure 2 reflects such evolution. Latest figures available show that funds managed by AFJPs are US$ 29,8 bn. or 8.5% of GDP as of September 2008, by mutual funds are US$ 5,0 bn. or 1.4% of GDP (September 2008), and by insurance companies are US$ 10,4 bn. or 3.0% of GDP (June 2008). In order to estimate their impact on the local capital markets it is imperative to analyze the composition of the portfolios they manage. This is not trivial for Argentina given the asymmetries that exist with respect to the quality of public information available.

[4] Furthermore, the report calculates an adjusted free-float (net of shareholdings of AFJPs) that represents 25% of total market capitalisation.

Figure 2: Portfolios managed by AFJPs, insurance companies and mutual funds, 1994-2007 (in US$ millions and as % of GDP)

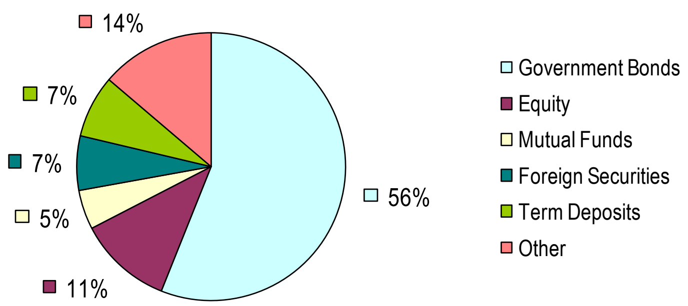


Source: own elaboration based on SAFJP, SSN, CAFCI and Mecon

2.6. In the case of AFJPs, Figure 3 shows the portfolio composition as of September 2008. Funds invested in (local) equity amount to US$ 3.4 bn. representing approximately 7% of total local market capitalisation and 11% of AFJPs´ portfolio.[5] These figures should be taken cautiously due to a low free-float of several large listed firms. Their participation (when adjusting for free-float) is considerably higher, particularly in certain companies. AFJPs hold shares of 40 listed local firms and their actual stakes vary widely among them (see Annex I). These shareholdings also exhibit a relatively high level of concentration since eight stocks represent 70% of total equity shareholdings.

2.7. The evolution of AFJPs portfolio composition can be (broadly) divided into two sub-periods. The 2001-2002 crisis marked a breaking point in terms of the continued increase in public debt holdings by AFJPs that reached a record high level of 77% in 2002. During the period prior to the crisis, holdings of public debt were crowding-out other financial instruments, in particular term deposits and equity. Before 2002, the interest of AFJPs on foreign equity was negligible but jumped from 1.7% in 2001 to 10.3% in 2004 while at the same time, the holdings of local equity only recovered to the pre-crisis values.

Figure 3: Portfolio composition of AFJPs (September 2008)



Source: own elaboration based on SAFJP

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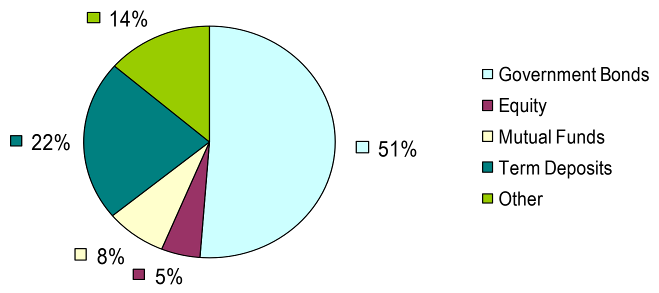
[5] This latter ratio reached an all-time high of 23% in the third quarter of 1997.

2.8. Regarding insurance companies, their investment policies are not as restrictive as is the case for pension funds as described in the next section. Figure 4 plots the portfolio composition as of June 2008 where, again, there is a significant participation of government bonds on total portfolio, while equity represents a minor stake (5%). It should be noticed that equity figures reported involve both local and foreign stocks but there is no publicly available information on their respective contribution. Equity figures can also be split into listed and non-listed stocks; in this case, approximately 55% are listed stocks and 45% are non-listed. Notably, only one company (life-insurance) accounts for almost 60% of the listed shareholdings.

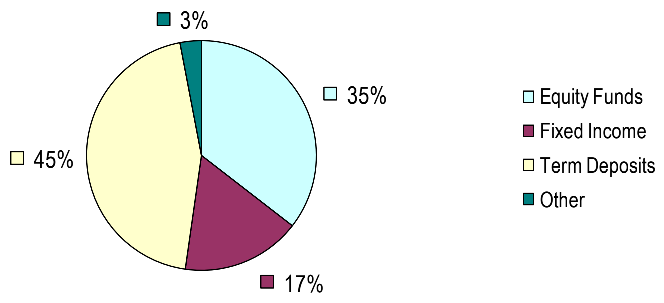
Figure 4: Portfolio composition of Insurance Companies (June 2008)



Source: own elaboration based on SSN

2.9. Finally, mutual funds are also another participant in capital markets. Figure 5 shows the composition of mutual funds by type of funds. Notably, 35% of total portfolios were invested in equity, both local and foreign. Again, available information makes it difficult to assess their real stake on local stocks. The portfolio composition of mutual funds has undergone a structural change since 2001. Prior to the crisis, equity funds represented about 10% of total portfolios and were by and large invested in local stocks; term deposits funds and fixed income funds accounted for more than 80% of total portfolio. This picture changed remarkably after the crisis where equity funds gained a large participation in overall mutual funds (representing about a half in 2007) and simultaneously went through a process of transformation on their composition, since they currently invest over 90% in foreign equity, particularly in securities from Brazil.

Figure 5: Mutual Funds by type (September 2008)



Source: own elaboration based on Argentinean Association of Mutual Funds (CAFCI)

3. Regulatory Framework

3.1. As per the 2008 figures, it is clear that local pension funds, insurance companies and mutual funds are the most visible institutional investors in the Argentinean capital markets, albeit their importance is notably different. Their proactiveness as managers of third-party funds and the fiduciary duties involved are set on the respective laws that govern their functioning, namely Law 24.241 for pension funds, Law 20.091 for insurance companies, and Law 24.083 for mutual funds. Moreover, they are regulated and supervised by different official agencies that also have asymmetric powers, and degrees of enforcement and independence. The Superintendencia de Administradoras de Fondos de Jubilaciones y Pensiones (SAFJP) regulates and supervises private pension funds, the Superintendencia de Seguros de la Nación (SSN) does the same for insurance companies, while the Comisión Nacional de Valores (CNV) overlooks the functioning of mutual funds.

3.2. Since AFJPs act as intermediaries of forced retirement savings from third-parties, they are heavily regulated in many aspects of their operations. In particular, there are specific rules regarding quantitative and qualitative limits on the amounts they can invest on bonds and stocks of listed companies. These regulations also distinguish among those local and foreign companies and within the former, among those that were privatised and those that were originally private entities. There are also a few regulations on the role of AFJPs representatives on the shareholders general meetings of those companies they have invested in.

3.3. In September 1993, the Argentinean Congress passed a bill (Law 24.241) that radically changed the then-existing pay-as-you-go public pension system. The newly created arrangement (Sistema Integrado de Jubilaciones y Pensiones or SIJyP[6]) established a dual (mandatory) system in which co-exist a pay-as-you-go and private accounts schemes, allowing the workers to choose among them. The latter is of the defined contribution-, open-type, where affiliates accumulate a share of their income on personal accounts[7]. These funds are managed by private entities called Administradoras de Jubilaciones y Pensiones (AFJP) that were created when the law took effect in 1994.

3.4. Complementary to the private accounts schemes, the law established a public insurance mechanism aimed at limiting the losses that the beneficiaries may suffer due to underperforming funds, misbehaviour or bankruptcy of AFJPs or life and disabilities and retirement insurance companies. Simultaneously, a regulatory and supervisory authority for the private system (the SAFJP) was set within the organisational structure of the Ministry of Labour, but as an independent agency.

3.5. The law states that the duties of AFJPs are the management of pension funds and the granting of retirement benefits. The pension fund shall be separated from the AFJP's balance sheet and constitutes an autonomous entity, being the affiliates and beneficiaries their proprietors. The law also instructs AFJPs to provide the affiliates with a body of information, including the portfolio composition of the pension fund, at least on a quarterly basis. Notwithstanding, there is no reference as to the disclosure of guidelines related to their investment policies and/or proactiveness as share (or debt) holders.

3.6. In addition, the law mandates to invest the resources of the fund under the consideration of safety and adequate returns criteria. Therefore, AFJPs' portfolio decisions are subject to qualitative and quantitative limits regarding the different types of assets eligible to be part of the pension fund. It should be noted that bonds, stocks and similar instruments should be publicly listed and

[6] It does not include pension schemes run by professional associations and provincial governments.
[7] There exists also the possibility to make voluntary contributions, both by the employee as well as by the employer.

purchased on initial public offerings or through transparent secondary markets.[8] A description of the current upper limits for each financial asset is shown in Annex II.

3.7. The regulation imposes a ceiling on the holdings of listed shares of up to 50% of the fund which could be further widened by 20% when including shares of privatised corporations that are publicly traded. Both of them shall be authorised by the CNV to be traded in the market. The maximum percentage of the fund to be devoted to foreign shares is 10%. Furthermore, AFJPs are prohibited from holding multiple voting shares or shares that do not entail the right to vote.[9] They are also banned from holding shares of other AFJPs, companies managing mutual funds, credit rating agencies or insurance companies. The quantitative upper limits are also subject to further restrictions. Shares of each company cannot exceed the lesser of 2.5% of the fund or 5% of the voting rights or equity of the issuer. In addition, only shares with a minimum rating of Category 2 are eligible by AFJPs.

3.8. AFJPs are also compelled to attend the shareholders' general meetings in case they own 2% or more of the voting rights, with the aim to exercise the rights as shareholders. The AFJP's board of directors should nominate the persons in charge of participating at the meetings or should be designated by the custody entity. In case the holdings of the AFJPs are below 2%, the choice of not attending must be made explicit in the AFJP board's records and based on the best interest of the affiliates.

3.9. In addition, regulation requires each AFJP to deliver a minimum yearly return. This minimum return is calculated every month and set as the lower of the 70% of the weighted average return for the overall system or the weighted average return minus 2 percentage points. In case a AFJPs fails to reach this minimum return over a month, it must compensate affiliates by funding their accounts with the difference.

3.10. In the case of insurance companies, their activity is regulated by Law 20.091 enacted in 1973 and successive modifications and regulations, mainly the Resolución 21.523/92 issued by the SSN. Both norms set the main principles governing the functioning of all kinds of insurance companies that can be broadly grouped into four categories: general, life, annuities and labour risks. Section 35 of the Law (and of the Resolución) lays out the framework for the investment policies to be followed by companies. They are allowed to invest in: term deposits, sovereign (local and foreign) bonds, listed corporate bonds and stocks, collateralised credits (such as mortgages), real state, (publicly offered) mutual funds, (publicly offered) financial trusts, and financial transactions guaranteed by an authorised financial institution. Among these options, the law establishes a general principle to be followed by companies, namely that "those instruments with higher liquidity and sufficient profitability and safety" should be preferred.

3.11. In addition, the board shall prepare the "Norms for Investment Policies and Procedures" that should be developed along the lines set up by the regulation and be strictly followed by the company. They also shall include the quantitative limits for portfolio composition, considering certain qualitative aspects included in the regulation.[10] The regulation only restricts investment in publicly offered financial instruments to those with a credit rating of (at least) BBB.[11] In addition, investing in related-entities is admitted up to a maximum of 20%. There also exist quantitative limits that are applicable to the calculation of coverage reserves but do not entail the prohibition of violating those limits. Investments made prior to 1998 in shares of pension funds, and of retirement and labour risk insurance companies are valid so as to compute coverage reserves up to a maximum

[8] The CNV determines those markets that are considered transparent. In the case of foreign markets there is a list comprising 8 stock exchanges, while for local markets there are a number of requisites that stock exchanges should comply with (see Book 9, Chapter XXV, Section 1 of the CNV Norms).

[9] When the law was passed in 1993, AFJPs were allowed to invest in no-voting shares but not in preferred shares.

[10] For instance, the Norms shall take into account currency and term mismatches, liquidity, risk diversification, among other parameters.

[11] Foreign bonds shall be rated as investment grade.

of 20%.[12] Finally, the regulations establish certain quantitative limits and conditions on the collateralised credits to be granted by insurance companies.

3.12. As can be seen, the regulation over insurance companies is less restrictive than that applicable to pension funds. There are only a few explicit quantitative limits on eligible financial instruments while there are no provisions on the role the insurance companies have to play with respect to their shareholdings of listed and non-listed companies.

3.13. Mutual funds were created after the enactment of Law 24.083 in 1992. Given the nature of the mutual funds, there are only a few restrictions on the composition of the portfolio. The risk-return profile and the eligible assets to be incorporated into each fund shall be clearly established by the "Fund Management Prospectus" to be issued by the fund management firm. Overall, Section 7 establishes that mutual funds are prohibited from investing in: i) securities issued by the fund management firm or by the depository institution, or other mutual funds; ii) equity or bonds issued by the parent company of the fund management firm or by an entity being either the parent of or controlled by the depository institution, exceeding 2% of total equity or liabilities of the parent or controlled firm; iii) equity (and bonds) of a single issuer exceeding 10% of total equity (of total liabilities) of that issuer, respectively; and iv) a single sovereign bond representing more than 30% of the total portfolio under management. Moreover, mutual funds are prohibited from exerting more than 5% of the voting rights of every issuer, regardless of its actual shareholdings.[13] Additionally, Decree 174/93 (Section 14) also imposes a ceiling of 20% on the fund portfolio share of securities issued by a single entity (or a conglomerate).

3.14. The regulation on foreign securities for mutual funds is an important element that affects not only mutual funds themselves but AFJPs as well. Mutual funds are subject to an additional ceiling on the holding of foreign securities of up to 25% of total portfolio value.[14] However, securities issued by firms located in Brazil, Chile, Uruguay and Paraguay are considered as local to the extent of this limit. This characteristic, although it limits the potential diversification of mutual funds, permits AFJPs to indirectly invest abroad (in Mercosur + Chile) and therefore expand their 10% ceiling on direct investment in foreign securities. Preliminary evidence suggests that AFJPs have made use of this possibility and expanded their holdings of foreign securities (indirectly) for an additional 6% of their portfolios as of the end of 2007.[15]

3.15. The CNV has also issued a set of regulations for mutual funds that are incorporated as Book 2 of the "Norms of the CNV" (the Norms) which is the legal body issued by the CNV that mainly regulates public offerings, mutual funds, financial trusts, credit rating agencies, capital markets, futures and options. Chapter XI - Section 41, para. b) of the Norms provides that mutual funds aiming to replicate a stock market or fixed-income index are allowed to exceed the 20% ceiling and/or to invest in those instruments prohibited and mentioned as i) in the paragraph above. The Norms (Chapter XI, Section 44) also provides a model for developing the "Fund Management Manual" to be adopted by fund managers looking for a fast-track authorisation by the CNV to operate in the market. In addition to the general regulations, in Paragraph 8 the model includes a premise where the fund manager is embedded with the responsibility for exerting the voting rights derived from stock- or bond-holdings by the mutual fund.[16]

[12] The 20% maximum limit will be gradually reduced to 0% in 2011.
[13] As per Section 7, para. a) of the Mutual Funds Law (Law No. 24083)
[14] Securities that were issued by a foreign entity but traded in local markets (the so-called CEDEAR or Certificado de Depósito Argentino) are excluded from this restriction.
[15] However, in October 2007 the pension funds' upper limits for holdings of mutual funds investing in Mercosur and Chile were modified. By December 2008, pension funds' holdings of this instrument shall not exceed 2% of total portfolio (Resolución Conjunta SAFJP No. 10/2007, CNV 517/07 and BCRA 209/07)
[16] Fund manager is also allowed to authorise another person or entity to exert those rights, in accordance to his/her instructions.

4. Institutional Investors´ strategies

4.1. Institutional investors find it very difficult to promote good corporate governance practices at listed firms. There are several reasons explaining this fact, some being common to all investors and others are particular to their type. The fact that local capital markets are thin and illiquid and that there are very few (or even no) IPOs per year, makes the exiting option rarely available for institutional investors, particularly the largest ones, as it is the case of pension funds. The low free-float ratio exhibited by the market reinforces such effect. Hence, one would expect institutional investors to be more active given limitations on their ability to "vote with their feet". However, as described below, this is not the case in Argentina.

4.2. Many firms, usually family-controlled (holding more than 50% of the company), are reluctant to allow other investors to actively participate in business decisions. In the case of insurance companies and mutual funds that hold only very minor stakes at firms, they do not have the proper incentives to be active shareholders due to the costs involved (relative to their holdings and potential impact on the portfolio value) and the free-rider problem.

4.3. Another common issue that comes up when identifying main corporate governance problems at firms is the independence of directors. Given the practical problems that arise when trying to assess whether a director is truly independent (besides the formal compliance with the objective criteria set forth by the regulation) and provided that there is a perception that independent directors with appropriate background are difficult to find, this issue becomes one of the main concerns of institutional investors, particularly pension funds that, in many cases, have sufficient voting rights so as to notably influence directors' nomination and appointments. In addition, independent directors are usually nominated by the controlling shareholder, a fact that casts some doubts on their actual independence.

4.4. Furthermore, there is an issue about the cost-sharing of searching capable candidates to be nominated (and eventually appointed) by institutional investors; again, the potential benefits for investors are not clearly perceived as it is the case for the costs of doing so, while the propensity of other investors to free-ride is another element to be considered.

4.5. As it has been described in the previous section, there is not a mandate for any of the institutional investors to disclose (or even to have) a document setting their procedures and policies with respect to participation and voting at shareholders (or bondholders) meetings. Evidence provided by market participants points out that only a few institutional investors have adopted explicit policies regarding proxy-voting, although most of them have an investment manual to be followed.

4.6. Since the fiduciary duties of AFJPs are clearly established and do not explicitly entail their obligations with respect to exertion of voting rights of companies at which they invest, AFJPs maximise portfolio returns subject to (among other factors) avoidance of potential claims coming from their affiliates due to their proactiveness as shareholders. Therefore, they have implicitly followed a policy of abstention-culture, refraining from voting either affirmatively or negatively to most of the issues put forward at shareholders meetings. This is particularly true in the case of boards looking for ratification of certain business key decisions such as the negotiations with the government regarding the regulatory framework in the case of privatised utilities. The representative of each AFJP at shareholders meetings usually votes in accordance to previous instructions received by the AFJP´s board and the legal department; this is done so as to avoid any claim to the AFJPs by the regulator or affiliates. Moreover, they may informally suggest potential candidates for the board as independent directors but, again, they usually do not propose directors, although they may vote in favour of certain candidates. In sum, available evidence suggests that AFJPs are focused on full compliance with the existing regulatory framework rather than devoting efforts and resources to improve corporate governance of firms in which they invest.

4.7. The existence of a voluntary code of good corporate governance practices for listed firms could be used by institutional investors as a benchmark against which they can measure whether good or bad governance practices are put in place at listed companies, and then be more active. A broad spectrum of market participants (including firms, stock exchanges, institutional investors, among others) should be engaged in the developing of such a code which could have positive effects on a number of participants. For instance, corporations would internalise the importance of adopting good governance practices, there could be a reduction in the cost of assessing compliance to best practices, stock exchanges would be able to advance the development of premium markets for firms that comply (fully or partially) with the code, etc.

4.8. In this respect, Argentina has begun moving in the right direction at the time the code of best corporate governance practices for Argentinean firms (issued by the Argentinean Institute for the Corporate Governance, IAGO) was finally released in 2004. However there has been scarce evidence of a broad voluntary adoption of the code by firms, particularly listed ones.

4.9. Then, in October 2007 the CNV issued Resolución General 516/07 that promotes the adoption of a code of corporate governance by listed firms. The norm lays out a set of issues that, at a minimum, should be included into a code to be developed by each firm. Boards shall elaborate an annual report where compliance with the code has to be evaluated or, in case no code has been adopted, explain the reasons why this has occurred. Since issues addressed in the RG 493/06 were included into this new regulation (particularly related to board practices and responsibilities), the former norm was then repealed. Also, the RG 516/07 is effective for annual financial statements commencing on January 1st, 2008.[17]

4.10. Although the CNV proposal is a step in the right direction, some market participants consider that it may not work well as an objective benchmark for investors. Albeit the norm provides guidelines on the expected content of the code, it would also grant firms ample room for the discretionary adoption of practices in accordance to what the firms already comply with. As a consequence, the market would likely have as much codes as firms listed, therefore making comparison of governance practices a rather difficult and costly task for investors. In addition, the elements included in the norm as minimum contents of a code could not be strictly considered as good practices or principles to be followed, but a description of a series of topics related to corporate governance from which no actual recommendations arise.

4.11. International experiences show that, in many cases, having a code that has been developed and consented to by all relevant market participants is a better choice in terms of expected success of such an initiative. Its voluntary adoption, along with some degree of flexibility for corporations to adapt it to their specifics should be considered. It is also important that a reference code shall be promoted in order to facilitate inter-firm comparison by investors who then, in turn, would be able to exert market discipline and reward those firms that perform better in terms of governance practices.

4.12. The existence of financial conglomerates also poses another restriction on potential proactiveness of institutional investors given the conflicts of interest that may arise due to cross-holdings. In many cases, AFJPs and mutual funds are partially (or wholly) owned by another financial institution, most commonly a bank.[18] Hence, the ownership structure of AFJPs and mutual funds could also help in explaining a relative lack of proactiveness, given the conflict of interest that may arise when exerting their rights as owners of firms. Five out of eleven AFJPs, representing approximately two-thirds of total portfolios, are controlled by a banking institution. A similar figure exists in the case of mutual funds. Complementary to that, AFJPs and equity mutual funds invest in

[17] Consequently, reports on compliance with the code of corporate governance are expected to be released after the first quarter of 2009.

[18] This is also true for certain insurance companies, but there are not as relevant as it is the case for pension and mutual funds.

the larger companies operating in Argentina which, in turn, are major clients of the banking system. Therefore, there exists a potential conflict of interest when an institutional investor manager may consider voting against a proposal put forward by the board of a corporation, since that corporation may exert certain influence on that manager through its commercial relationship with the bank that controls either the pension or the mutual fund. It is worth noting that, given their relatively low shareholdings, mutual funds would not significantly affect corporate decisions.

4.13. It could also be the case that, due to pyramid shareholding structures, the institutional investor and the company which the fund invests in, belongs to the same conglomerate or holding. In any case, there is no publicly available information on institutional investors´ policies aiming at managing this material conflict of interest.

4.14. This feature has also negative implications for the possibility of coordinating institutional investors' proactiveness. In the case of pension funds, provided that they manage portfolios with similar compositions, better performance of stocks would benefit them all across the board; additionally, pension funds face a similar profile of future disbursements for beneficiaries that should lead them to focus on the long-term performance of companies. In sum, their interest seems to be aligned and should facilitate the coordination of their actions as shareholders. Again, the material conflict of interest originating in the ownership structure of several institutional investors, the regulations on proactiveness and the free-ride problem make it quite difficult.

4.15. Furthermore, the absence of institutions offering proxy research, voting recommendations and governance advisory services for shareholders, makes it difficult not only for shareholders interested in being proactive, but also to overcome the free-rider problem in an already narrow market. At the same time, there seems not to be a demand for those services in Argentina from institutional investors.

4.16. In sum, a thin local capital market makes the exit option a costly one and therefore it should lead to the use of voice over exit when dissatisfied with a firm's performance, as mentioned by Clark and Hebb (2002). The collected evidence shows that shareholdings of institutional investors are relatively stable and do not exhibit significant movements when mismanagement occurs. However, proactiveness is perceived by institutional investors as a driver for potential claims coming from beneficiaries and investors in case equity investments do not deliver appropriate returns and therefore damage the portfolio value. As a consequence, the abstention culture appears as a safer alternative for managers of pension and mutual funds.

4.17. Finally, there is also the case that corporate governance is a topic attracting few market participants´ interests. As mentioned before, there is no clear perception on the private and public benefits derived from the adoption of good corporate governance practices. A few organisations have been active in Argentina to promote discussion of this topic, and they generally lack support from key participants. An exception to this general rule has come from the banking sector, where the main banking associations participated in the discussion of a code of good banking practices with clients, which was finally released and adopted by most of the banks operating in Argentina.

5. Governance of Institutional Investors

5.1. For financial intermediaries in general (including banks) the existence of a regulatory framework and a supervisory authority can lead other stakeholders to being depositors, investors, or affiliates, to assume a more passive monitoring role. Thus, the approach to be taken when analysing governance of institutional investors should be different from that applicable to non-financial firms. Despite the fact that there are significant differences among financial intermediaries (banks, pension funds, insurance companies and mutual funds), they share certain common features that differentiate them from non-financial firms, as shown in Table 2.

Table 2: Comparison of financial intermediaries vis a vis non-financial firms

Listed non-financial firm	**Financial Intermediary**
Relatively transparent	Relatively opaque
Equity is more relevant than debt and creditors are more concentrated	Debt is more relevant than equity and creditors are atomised
Scarcely regulated and without government protection	Heavily regulated and existence of a government-promoted safety net
Management is relatively more simple	Management is relatively more complicated (larger boards, higher share of external directors, more committees and meetings are more frequent)
Main conflicts of interest: Management vs. Shareholders, and Controlling-shareholders vs. Minority-shareholders	Main conflicts of interest: Affiliates, Depositors and Investors vs. Shareholders

Source: CEF (2006)

5.2. Governance practices at institutional investors are mainly driven by regulation set forth by the SAFJP, SSN (insurance) and CNV. The regulatory agencies are also responsible for enforcement of the legal and regulatory framework. Given the asymmetries on the actual powers of regulation and supervision, accountability and independence of each of them, the governance framework varies considerably among AFJPs, insurance companies and mutual funds.

5.3. With respect to board composition, regulation for institutional investors follows that applicable to any kind of corporation in terms of the restrictions applicable to individuals who cannot be directors nor internal comptrollers of a firm. There is no requirement for having independent directors at boards.

5.4. In terms of transparency and information disclosure, institutional investors comply with standards required by the respective regulatory agency. It is worth considering that none of the local institutional investors (being them AFJPs, insurance companies and mutual funds) are listed, hence affecting the quantity and quality of the information provided to the market. Given that information disclosure depends basically upon the regulatory framework (which is different for each type of institutional investor), there are also notorious asymmetries among them. Moreover, certain information is made publicly available by the institutional investors (at their offices, websites or the like) while other information has to be submitted to investors.

5.5. AFJPs are required to disclose ownership structure, board, external auditors and management composition and quarterly and annual financial statements; that body of information is mainly available at the SAFJP´s website. In addition, AFJPs shall send quarterly reports to their affiliates disclosing –among other information- portfolio composition, return indicators, and management fees; interestingly, the latter indicators shall be presented on a comparative basis as well; therefore facilitating the analysis by affiliates. Mutual funds management firms shall disclose their by-laws, quarterly and annual financial statements, ownership structure, board and management composition, minutes of the shareholders-, board-, and oversight board-meetings, the mutual fund prospectus (that includes the fund´s objective, investment policies, management fees, etc.) and detailed information on the portfolio composition on a weekly basis and on the value of the shareholdings on a daily basis. They are mandated to submit to investors –on a quarterly basis- a detailed description of the debits and credits that have been done over that period on the investor's account. Finally, insurance companies must submit to the SSN quarterly and annual financial statements, solvency indicators and minimum capital, ownership structure, and board composition; that set of information is available through the SSN website.

5.6. In addition to the general provisions applicable to firms in terms of internal and external controls, in the case of the AFJPs and insurance companies, their respective regulatory agencies have established that each firm shall put in place an Internal Control Committee. In the case of AFJPs it has to be composed (at least) by three non-executive directors while for insurance companies it is required to have (at least) one non-executive director. However, no specification has been set in terms of independent directors at boards of institutional investors, nor about the management of conflict of interests that may arise when a director of an institutional investor has also been appointed at boards of related entities (financial conglomerates).

5.7. Pension fund directors and managers, and other incumbents are subject to stringent penalties, ranging from 6 months to 10 years of imprisonment. If an AFJP fails to discharge its duties and violates the law and/or regulations, it is subject to criminal prosecution. Credit rating agencies and authorities in charge of authorising the public listings of bonds, stocks or mutual funds, of defining those markets that are considered as transparent, of approving the credit ratings, and of authorising the functioning of depository institutions for the instruments comprising the pension fund are subject to criminal prosecution as well, in the case they fail to act in accordance to their statutory duties and in doing so, cause a harm to the pension fund. If these violations were geared as to provide a benefit to them or to a third-party, the penalties are increased. [19]

5.8. The pension system in Argentina went through a major reform in February 2007.[20] Among other changes, a state-managed pension fund was established (the so-called "Fondo de Garantía de Sustentabilidad del Régimen Previsional Público de Reparto") aiming at providing a critical mass of funds for the state-run pillar to be used when economic conditions prevent the state from providing adequate income for the retiree. The fund built-up using those funds accumulated by certain groups of affiliates to the private pillar that were compulsorily transferred to the public pillar and the surpluses obtained by the National Administration of Social Security (ANSES). The accumulation of funds has a ceiling equivalent to annual retirement disbursement by the ANSES and, according to official figures as of February 2008, it manages a portfolio of around US$ 6 billon, which makes the fund a relevant player in local markets.

5.9. Its governance norms have been developed through Decree 897/07 and warrant some considerations. The management of the fund is the sole responsibility of ANSES, who will rest on the Banco de la Nación Argentina for operational procedures and will be assisted by an Investment Committee in charge of defining the investment criteria to be followed by the fund manager. The Committee will be composed by the Executive Director of ANSES (as chairman), the Secretary of Finance and the Secretary of Treasury. Finally, a Commission for surveillance of the fund was created (Comisión de Seguimiento) and is composed of government officials, legislators, representatives from the banking associations, business associations, and unions, among others.

[19] Moreover, the incumbent regulatory authorities such as the SAFJP, BCRA, the CNV, the ANSES (Administración Nacional de la Seguridad Social), and the SSN can impose additionally penalties to the entities involved in the private pension scheme under their regulatory and/or supervisory scope.

[20] Law 26.222

5.10. This scheme may generate inefficient outcomes due to a poor governance structure. Management, investment policies and use of the fund´s resources are under the responsibility of those official agencies in charge of national budget financing, either through taxes or debt. Hence, there is a risk for misuse of these funds that could potentially be diverted to finance budget deficits, not directly (since it is prohibited) but, for instance, through purchasing sovereign bonds (political dependence). Moreover, the Commission has restricted attributions since it can only inform the public about the situation and evolution of the fund. There are not yet provisions for external and independent control of the fund management nor strict parameters of accountability.

5.11. In addition, the operation of the fund is under the responsibility of the Banco de la Nación Argentina, a state-owned bank that also owns a private pension fund, the AFJP Nación. This cross-relationship among different participants may exacerbate governance problems. The fund is not under the regulations set forth by the SAFJP and therefore there could potentially be a non-level-playing field for private and public pension funds.

5.12. In February 2008 ANSES announced that the Investment Committee had approved investment guidelines for the fund. However, scarce information was provided (ANSES just issued a press release). Publicly available information only refers to upper limits on the holdings of different assets within the fund. The holdings of the fund can make up to 65% of claims to the national government that can be expanded by a further 30% when including state-owned firms and provincial governments and an additional 30% when including bonds issued by the Central Bank.

5.13. Finally, in October 2008 the national government sent to the Congress a bill to abolish the private pension funds system and compulsorily transfer their affiliates to the pay-as-you-go scheme managed by the ANSES. If this proposal is passed by the Congress, then the ANSES would be the largest institutional investor in Argentina, managing a fund of approximately US$ 40 bn. The proposed bill does not include provisions on the role of the state (through the ANSES) as shareholder nor any change on the current governance of the ANSES. It does include the creation within the Congress of a Commission for supervising social security funds. It will be composed of six representatives and six senators[21].

[21] For additional information, please see addendum at the end of this report.

6. The Case of Private Pension Funds

6.1. Given the importance of AFJPs as major institutional investors in Argentina, in this section we look more in detail at certain features that can be related to their proactiveness (and the existing incentives for doing so) in local capital markets: board composition, participation at shareholders meeting, their perception of the governance of listed companies, investment regulation and credit rating procedures.[22] These features are not intended to provide a comprehensive measure of AFJPs´ proactiveness but only to shed some light on the current environment and how pension funds cope with it.

6.2. First, an interesting feature of the relationship between pension funds investments and public listed companies refers to the composition of the boards of the latter. Table 3 shows the differences between board structures of companies with and without AFJPs as shareholders. On one hand, boards of firms on which the AFJPs are shareholders are larger and the number of independent directors is higher as well.[23] On the other hand, the ratio of independent directors as a percentage of total directors is higher for those firms at which AFJPs are not shareholders so there is no empirical evidence supporting the claim that participation of independent directors on boards is higher when AFJPs are shareholders; actually the data shows that this effect seems to operate in the opposite direction.[24] Indeed, the evidence suggests that listed firms tend to comply with minimum regulatory requirements in terms of appointment of independent directors.

Table 3: Board composition of listed firms, number of directors (2007)

Statistics	AFJPs are shareholders			AFJPs are not shareholders		
	Total directors	Independent directors	% of independent directors	Total directors	Independent directors	% of independent directors
Average	9.4	2.7	30.7	5.7	2.0	39.8
Median	9.0	2.0	30.0	5.0	2.0	33.3
Mode	9.0	2.0	25.0	3.0	2.0	0.0
Maximum	19.0	8.0	57.1	12.0	6.0	100.0
Minimum	5.0	2.0	10.5	3.0	0.0	0.0
Standard deviation	3.4	1.3	11.3	2.5	1.1	28.5
Variation coefficient	0.4	0.5	0.4	0.4	0.5	0.7

Source: own elaboration

6.3. Second, voting at shareholders' meetings is one of several options at the disposal of pension funds. As noted in Section 1, local capital markets are relatively shallow and illiquid hence making the exit option a costly strategy when mismanagement occurs; in this context, and provided the long-term performance interest of pension fund investments, one would expect an active participation of AFJPs at shareholders meetings. When trying to assess this issue, a problem arises since the minutes of shareholders meetings only identifies shareholders´ participation when voting against (or abstaining) a proposal included in the shareholder meeting's agenda.[25] It is also worth noting that siding with board and/or management when voting does not necessarily imply lack of proactiveness nor indifference to business issues.

6.4. The review of the shareholders general meeting's minutes (of those firms at which AFJPs have a stake) that took place in the first half of 2007 only intends to add information on a quite complex issue to cast, as it is the case for investors' proactiveness. From the 37 cases that were surveyed,

[22] This exercise is also facilitated by the publicly available information for pension funds.

[23] It should be noted that AFJPs tend to invest in the largest firms which are usually those with larger boards.

[24] Econometric analysis reveals that –at a 5% level of significance- the differences on both groups regarding board size, number of independent directors, and independent directors as a percentage of total directors are statistically significant.

[25] However, this is not usually the case since we have found minutes where there are unidentified shareholders voting against (or abstaining) a proposal.

only in 5 cases one or more AFJPs voted against (or abstained to vote) a proposal included in the agenda. In the remaining 32 cases, every item of the meeting´s agenda was unanimously approved; this does not necessarily imply that AFJPs voted affirmatively but that they may also have chosen not to participate because their voting rights represented less than 2%.

6.5. Lack of minority investors' participation at shareholders meetings has not been identified as a major concern in Argentina.[26] Yet, in practice, there seems the case that minority investors do not have sufficient incentives to actively participate, as it was mentioned in the previous paragraphs. At the same time, participation would not seem to be facilitated by issuers. Reviewing the minutes mentioned above, the average duration for general shareholders meeting is 47 minutes. Again, that indicator is not intended to gauge final conclusions on the investors´ proactiveness but to provide additional information on the topic.

6.6. Third, some evidence points out that AFJPs do not perceive that good corporate governance practices are put in place by listed companies. CEF (2005) carried out a survey among the then-existing 12 AFJPs requesting from pension fund managers their perception on five areas of corporate governance at listed corporations in Argentina.[27] The results of the survey are reported in Table 4 and should be taken cautiously provided the economic conditions that were valid at the time of the survey and the particular situation that the pension funds industry was then going through.

Table 4: Pension Funds' perception of corporate governance at listed companies (as a %)

	Very high	High	Low	Poor	N/A
1. General Principles	3.2	18.0	46.5	29.0	3.2
2. Management and Board	0.0	11.0	33.0	50.0	6.0
3. Minority shareholders	0.0	13.0	38.0	43.1	6.0
4. Transparency	4.1	25.3	37.8	26.7	6.0
5. Other stakeholders	7.0	20.5	24.2	9.8	38.6

Source: own elaboration

6.7. Fourth, as pointed out by CEF (2004), quantitative and qualitative limits on the composition of pension funds portfolios, and minimum return requirements make it difficult for pension fund managers to diversify their holdings and so exert their power as shareholders and make use of the exit option. This scheme generates a "herding" effect because every AFJP tend to replicate the average portfolio (mostly influenced by the portfolio composition of the largest funds) and thus it does not stimulate competition among AFJPs through better portfolio management. Moreover, while AFJPs are penalised for underperforming, they are not rewarded for performing better than the average, and hence be more active regarding their shareholdings.[28]

6.8. An additional restriction comes from the fact that holdings of foreign securities are also restricted to a maximum of 10%, a ceiling on foreign shareholdings that was reached right after the 2001-2002 crisis and have remained at 10% since then. This fact, along with the unstable regulatory framework of the foreign exchange market, makes it even more difficult for pension funds to "vote with their feet" and exit local equity to buy foreign securities. In this respect, the evidence provided by the mutual funds is quite interesting given that they face no hard restrictions on buying foreign

[26] OECD (2004)
[27] See Annex III for a description of the five questions submitted to pension funds. Nine out of twelve AFJPs answered the questionnaire.
[28] The regulation establishes no reward for performing better than the system, while the affiliates seem not to exhibit a sizeable response to AFJPs´ investment returns, i.e. there is evidence of a low elasticity (see CEF 2004).

assets and can (relatively) easily “vote with their feet”. Actually, their holdings of foreign equity are more than nine times larger than those of local equity.

6.9. Fifth, the rating restriction applicable to AFJPs holdings of domestic equity considerably limits the capability of AFJPs to diversify their shareholding portfolio, since less than 50% of listed companies’ stocks are rated on an already narrow market. Consequently, it is important to gauge the weight assigned by rating agencies to good corporate governance practices when rating stocks. There are four rating agencies that provide such a service in Argentina.

6.10. A randomly selected sample of rating reports for each of the rating agencies in 2007 shows that little or no attention is paid to corporate governance practices at firms when rated. Two reports analyse companies´ boards and management, though superficially. One of the reports also gives an opinion on the internal control systems. In all cases, there is a description of the ownership structure and the past dividend policies. In sum, the reports reflect that the rating is effectively based on the macroeconomic outlook, the balance sheets and income statements (current and historical), and on the perspectives for the industrial sector on which the company operates.

6.11. Based on that, rating agencies seems to have room to play a role in incorporating corporate governance practices when rating firms (at least when rating equity). By doing so, they could provide a market signal on the importance of this issue, a signal that could deliver tangible benefits for firms and promote the adoption of good corporate governance by them. Nevertheless, there is a concern over who would bear the costs of undertaking such activity and whether there is an actual demand for those services. Since rating reports are paid by the companies being analysed, there is no incentive for firms to request rating agencies to assess governance practices and recommend improvements when no market premium for good practices exists. Simultaneously, if rating agencies includes such an assessment (not legally required) they would find it difficult to pass on the costs to firms and would have to pay for it themselves. For this to be solved, there is a real need for investors to demand such an assessment or to have the possibility for evaluating governance practices against a benchmark (a corporate governance code, for instance).

7. Conclusions

7.1. Empirical and anecdotal evidence suggest that institutional investors' proactiveness in Argentina is rather low. Instead, they have followed a more passive approach as shareholders of listed companies in Argentina. Despite that, the relatively low development of capital markets in Argentina would suggest an increasing proactiveness given the costs of exiting stock investments. Several factors could explain this relative lack of proactiveness.

7.2. Furthermore, recommendations in the area of institutional investors' proactiveness should take into account the restrictions that the local environment poses. Expanding the ability of institutional investors to invest abroad, while permitting portfolio diversification, may go against the objective of developing local capital markets, and be difficult to implement due to political considerations. The free-rider problem, is another obstacle for institutional investors being more active. Moreover, difficulties in finding truly independent directors and the related searching costs make it even more difficult for institutional investors to pursue proactiveness in firms, since they ultimately would have little power over corporate decisions.

7.3. Other stakeholders, such as credit rating agencies, could encourage the undertaking of good corporate governance practice if they were to take them into account while assessing risks. The problem is that such an action entails costs which the companies may not be willing to bear due to their lack of understanding that such action may be profitable as a result of lower financial costs.

7.4. Ownership structure of institutional investors and the presence of financial conglomerates is another element that may make it difficult for them to practice proactiveness. This is due to commercial relationships between the banking arm of the financial conglomerate and a corporation that is also publicly listed and therefore a potential target for investing by pension and mutual funds, and insurance companies.

7.5. There is no low-cost way for institutional investors to evaluate the governance of issuers nor to compare among them. The minor role that rating agencies seem to assign to corporate governance practices when rating firms, the dearth of firms providing shareholder services, and the absence of a voluntary benchmark against which institutional investors can assess firms' governance, make it very costly for investors to correctly price the governance of firms in which they invest. As a consequence, it is difficult for the market to provide the proper signals to issuers with respect to the importance of adopting good corporate governance practices. Even if some institutional investors were able to do so, in the case of pension funds the investment regulations hinder them from holding a portfolio that is significantly different from the average portfolio of the system.

7.6. Finally, there are several issues to be addressed in terms of the governance of institutional investors themselves. Such an exercise exceeds the scope of this work but independence of directors, managing conflict of interests, internal and external controls, explicit investment and proactiveness policies, among others, are at the top of the list of pending issues in this respect. In addition, the recently created public pension fund exhibits governance problems in itself.

7.7. In sum, institutional investors' proactiveness is weak and the evidence suggests that there are not enough incentives for them to exert their rights as shareholders. So as to gain momentum, their proactiveness could be complemented by some sort of proactiveness by banking institutions. This appears as a natural path given that firms' external financing comes mostly through the banking system rather than the capital markets. Corporate governance assessment by banks should lead to better financing conditions due to lower credit risk and this could provide a market signal for firms to promote the adoption of good governance practices. This is a whole new approach for promoting good corporate governance practices through third-parties that should be considered as a complementary instrument for the well-known mechanism of institutional investors' proactiveness, while at the same time its potential impact on firms should not be disregarded. In addition, the growing importance of international institutional investors and their experience as promoters of good corporate governance practices is another element to be considered when developing mechanisms to improve governance of listed firms.

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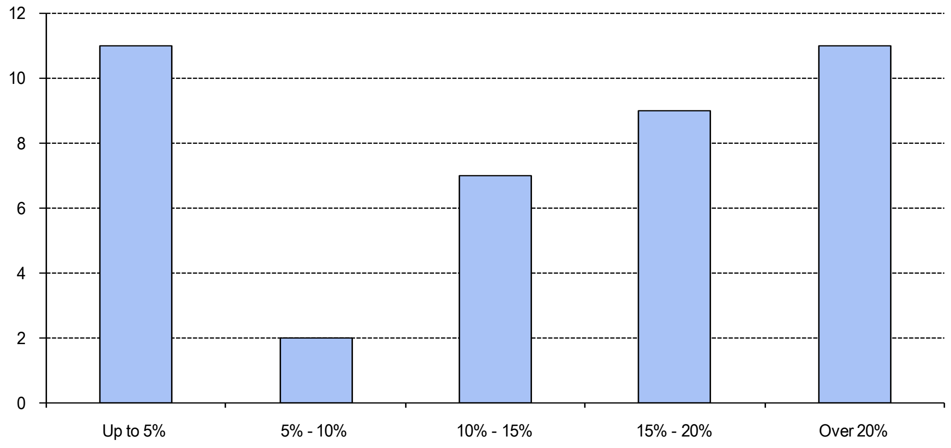
Annex I: Shareholdings by AFJPs (number of firms) – September 2008



Source: own elaboration based on SAFJP and Bolsar

Annex II: Upper investment limits for the pension funds

Financial Instrument	Upper limit (as a % of the total fund)
National Public Bonds, Treasury Notes and Credits to the National State. It may be furthered up to 100% in case the excess of the first 50% is invested on instruments with real collaterals o warrants	50%
Provincial or Municipal Bonds and bonds issued by public entities or enterprises	30%
Corporate Bonds with a maturity of two or more years	40%
Corporate Bonds with a maturity of less than two years	20%
Convertible Corporate Bonds	40%
Convertible Corporate Bonds issued by privatised companies	20%
Time Deposits	30%
Equity	50%
Equity of privatised companies	20%
Mutual Funds Shares	20%
Foreign Sovereign Securities	10%
Foreign Corporate Securities	10%
Futures and Options	10%
Mortgage-backed Bonds	40%
Direct Investment Funds Shares	10%
Structured Financial Trusts	10%
Other Financial Trusts	20%
Securities issued with the purpose of financing medium- and long-term productive and infrastructure projects(*)	20%

(*) This item was included as part of the 2007 modification of the law 24241. It also sets a minimum of 5% on this type of investment, being it the only case where a minimum restriction on portfolio composition has been imposed.

Source: SAFJP, Instrucción General N° 22/03 and successive modifications

Annex III: Institutional Investors Survey [*]

1 - On General Principles:

There is growing international consensus as to the fact that CG good practices significantly increase firms' market value and facilitate access to financing.
Which is your perception about the priority set by the firm in connection with the application of CG good practices?

2 - On Senior Management and Board of Directors

There is a potential conflict of interest between shareholders and management that may lead them to act as free riders. For such reason, it is important to exercise effective control over decisions made by managers on behalf of the Board of Directors in its capacity as representative of shareholders.
Which is your perception about the degree of independence existing between senior management and board of directors?

3 - On Shareholders

There may be a conflict of interest between majority and minority shareholders. In those cases in which minority shareholder rights are not duly protected, controlling shareholders may use their power for its own benefit in the manner known as private benefits of control or expropriation.
Which is your perception about the degree of protection granted to minority shareholder rights and interests?

4 - On Information Disclosure

With a view to mitigating the information problems suffered by minority shareholders, it is important that the company disclose as much information as possible on a clear, complete and accurate basis.
How do you rate transparency in terms of quality, clarity and accessibility of the information provided by the firm?

5 - On Other Stakeholders

CG good practices require consideration of the interests of agents who, without having a direct interest in the firm, are influenced by actions taken by the company (customers, vendors, the community at large, etc.)
Which is your perception about the relationship between the firm and society? (Social and community initiatives)

[*] The survey was extracted from CEF (2005)

Addendum to the Discussion Paper (November 2008)

On October 21st, the National Government submitted a draft bill for Legislative consideration regarding a major reform of the pension system in Argentina. The proposal was passed by the Representatives House on November 6th and finally approved by the Senate on November 20th.

The bill basically creates a new system –the so-called Sistema Integrado de Pensiones Argentino or SIPA- to replace the currently existing scheme, beginning its operations in January 2009. The SIPA will consist of a unified pay-as-you-go system with some sort of funding (at least in the short term), while the existing second pillar managed by private pension funds (AFJPs) is eliminated.

The abolition of the defined contribution pillar managed by the AFJPs implies that the funds accumulated by affiliates in their personal accounts will be pooled and transferred to the Social Security Administration (ANSES) to add to the Fondo de Garantía de Sustentabilidad del Régimen Previsional Público de Reparto. This fund is expected to serve as a reserve fund to finance the pay-as-you-go scheme when current income becomes insufficient to pay for social security obligations. Information on the governance of the fund was provided in Section 5 of the CEF report.

Once the new system becomes operational, the ANSES will become the largest institutional investor in Argentina managing a fund of approximately USD 25 billion. Interestingly, no provisions were made regarding its role as shareholder in major listed companies in Argentina. The portfolio currently managed by AFJPs is composed by an 11% of equity in local market, so those shareholdings –that represent up to 30% of the total equity of certain firms- will be now under state ownership with no guide regarding what the ANSES will do in this respect.