



ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND DEVELOPMENT



The 2007 Meeting of the Latin American Corporate Governance Roundtable

10 - 11 October 2007

Medellín, Colombia

Country Report: Voluntary Corporate Governance Code in Argentina

The OECD asked several consultants, regulators, corporate governance institutes and other relevant stakeholders to elaborate reports regarding the development and implementation of voluntary corporate governance codes in each of their countries/regions. The reports, as well as a synthesis report elaborated by the OECD Secretariat based upon them, is provided to the Roundtable participants as background for the meeting's discussion.

The Argentinean country report was developed by the **Instituto Argentino para el Gobierno de las Organizaciones (IAGO)** for the IAGO's Code section, while the OECD Secretariat developed the section relative to the code from **Comision Nacional de Valores (CNV)**. For any comment or specification regarding IAGO's Code please contact Fernanda Denaro at: fdenaro@iago.org.ar

Further information as well as the integral text of IAGO's code can be found at: www.iago.org.ar.

The text of the CNV Code (Resolution 516/2007) can be found at: www.cnv.gov.ar

Copyright © OECD 2007, All rights reserved

Corporate Affairs Division, Directorate for Financial and Enterprise Affairs
Organisation for Economic Co-operation and Development
2 rue André-Pascal, Paris 75116, France
<http://www.oecd.org/daf/corporate-affairs/>

I. INTRODUCTION

The present report aims to summarize the Argentinean experience regarding national corporate governance codes. Currently two different codes exist in Argentina; the first one has an “educational” or “benchmark-setting” purpose and was issued by the Instituto Argentino para el Gobierno de las Organizaciones (IAGO) in 2004. The second and latest code aims to complement the legal framework with a regulatory -mandated “comply or explain” reporting mechanism. It was issued by the Comisión Nacional de Valores (CNV), the Argentinean securities regulator, in 2007. Hence, the present report is divided into two main sections –one for each code- while a final section sums up findings regarding how these codes co-exist and are likely to interact.

II. IAGO's CODE

Background

IAGO was originally born as an association jointly established by IDEA and FUNDECE, two Argentine private sector institutions highly committed to furthering the competitive strengths of companies in Argentina. Both FUNDECE and IDEA have been long characterized by their ongoing efforts towards enhancing, on the one hand, the development and training of private companies and, on the other hand, the promotion of corporate governance best practices. In late 1999 both entities jointly carried out a project aimed at paving the way for the adoption of corporate governance good practices in Argentina.

Since then they have been thoroughly committed promoting corporate governance improvements research, draft documents, build consensus nationwide and developing contacts and exchanges worldwide.

This is the origin of IAGO, which began to operate in January 2002 and became well known both at the national and international levels. This is what has allowed IAGO to become a reference —within the Argentine private sector— of what is globally known as “corporate governance”.

Evolution and development

1999 – 2001

Publication of three research papers; A high-level multidisciplinary team was assembled for this purpose, which included consultants, directors, economists, businessmen, law firms, banks and investors. Additionally, inquiries were made to several auditors and consultants, banks, the Stock Exchange, the National Securities Commission (CNV), the Chamber of Corporations, businessmen, shareholders, law firms, investors, the Open Electronic Market (MAE) and the stock market, all of which have contributed with highly relevant information.

In late 1999, FUNDECE and IDEA decided to pool their efforts to organize a roundtable discussion on corporate governance good practices, an issue of considerable local interest and of significant development worldwide. This project consisted of three stages:

Stage I: A document on the global history of this discussion and the adoption of codes for corporate governance in different countries was elaborated.

Stage II: A presentation was made to representatives of the private sector, thus facilitating discussion. Corporate governance-related topics dealt with during the discussions were:

- a) Equitable treatment of minority shareholders;
- b) Disclosing and transparency of information, and
- c) Responsibility of directors and managers.

Stage III: During February and March 2001, a survey on the points of agreement resulting from previous meetings was conducted. Survey participants were selected from a group of

representatives of the private sector. As a result, a list of commonly agreed guidelines was elaborated.

The papers published are the following:

- March 1999: Las mejores prácticas en la dirección de empresas: desarrollo del concepto (*Best practices for corporate governance: concept development*) (coordinated by Carlos Adamo and written by Ramiro Martín).
- December 2000: Principios de Buen Gobierno (*Principles of Good Governance*) (FUNDECE – IDEA).
- March 2001: Prácticas de Buen Gobierno Empresario. Hacia un consenso del Sector Privado (*Practices of Good Corporate Governance. Towards a private sector consensus*) (FUNDECE – IDEA).

August 2002

The IAGO's Executive Committee entrusted the drafting of the Code to Alberto Schuster, Senior Partner of KPMG's office in Argentina, and Juan Javier Negri, Partner of Negri & Teijeiro Abogados law firm.

November 2003

A draft Code was presented and published on the website during two months for the public to post their opinions. No relevant comments were posted.

September 2004

The Code of Best Practices for Corporate Governance in the Argentine Republic was published.

Structure of the Code:

The Code comprises a preamble and 9 chapters dealing with the following topics:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. The Board of Directors <ul style="list-style-type: none"> • Overall Responsibility • Constitution • Independence • Knowledge , skills and values • Loyalty and care • Functioning • Specific responsibilities • Evaluation and training • Remuneration 2. The Chairperson of the Board <ul style="list-style-type: none"> • Overall responsibility • Specific responsibilities 3. Board Committees <ul style="list-style-type: none"> • Audit Committee • Remuneration Committee • Nominations and Corporate Governance Committee • Finance Committee 4. The shareholders <ul style="list-style-type: none"> • Equitable treatment • Reporting of information • The Shareholders' Meeting | <ol style="list-style-type: none"> 5. Conflicts of interest <ul style="list-style-type: none"> • Mechanisms • Forbidden practices • Disclosure • Policies 6. Information transparency, fluency and integrity <ul style="list-style-type: none"> • Reliability of information • Financial disclosure • Non-financial disclosure • Corporate governance annual report • The Website 7. Auditors <ul style="list-style-type: none"> • Internal auditor • External auditor 8. Dispute management and settlement <ul style="list-style-type: none"> • Mechanisms 9. Interest groups and social responsibility <ul style="list-style-type: none"> • Mechanisms • Interest groups |
|---|--|

- Social responsibility

The main topics are those relating to the constitution, responsibilities and duties pertaining to the Board of Directors —as compared to other officers— and the responsibilities pertaining to the Chairperson and the various Board Committees.

Legal Framework, Resolution 493/06

At its meeting held on April 18, 2006, the CNV's Board of Directors resolved to invite the general public to express its opinions and ideas regarding the draft **General Resolution 493/06**, "Informe anual Directorios sociedades oferentes de acciones" (Annual Report submitted by the Board of Directors of publicly traded companies), intended for the directors of companies authorized to make a public offering of their shares to provide information relating to corporate governance in the annual report included in the company's financial statements or otherwise giving information explaining why certain practices are not adopted.

The mentioned draft resolution was in some ways related to the IAGO Code, which includes internationally accepted recommendations for good corporate governance that are consistent with the Argentine Corporations Law and the relevant decrees and regulations from the CNV. The Code is based on the principles suggested by the Organisation for Economic Co-operation and Development (OECD), which are set out in the "White Paper for Corporate Governance in Latin America" prepared by the OECD and the International Finance Corporation (IFC) with the consensus of participants from Argentina, Brazil, Chile, Colombia, Mexico, Peru and Venezuela.

The survey included in the draft resolution stems from similar sources; thus in May 2006, IAGO submitted the Code of Best Practices to the CNV for its consideration, so that the questions to be answered by the companies in their annual reports might be consistent with the Code. In the end, the questionnaire included in General Resolution 493 partially drew on IAGO's Code, although it made no reference to it.

On October 5, 2006, the CNV issued General Resolution 493, which might apply to the financial statements corresponding to fiscal years ending as from January 1, 2007 onwards.

However, regardless of this first effort of the CNV in order to implement the above mentioned 14-questions survey, this system was replaced a year later by the issuance of the **General Resolution 516/2007**, which included a new and more comprehensive voluntary Corporate Governance Code (CNV Code) for listed companies with a "comply or explain" reporting mechanism, as will be further explained later in this report.

Channels of distribution and promotion

IAGO's website is the main channel of distribution and the newsletter published every three months, its main channel of promotion. The IAGO's website is: www.iago.org.ar.

This website was created with the support of CIPE (Centre for International Private Enterprise) and was activated in 1994.

It includes IAGO's Mission and Vision, as well as a summary of its activities. It also includes an events section, where all the activities organized and attended by IAGO are published, and a News section where newspaper and other published articles as well as announcements concerning upcoming international visitors are published.

The whole text of the Code of Best Practices for Corporate Governance in the Argentine Republic is publicly available for consultation and printing at the Bibliography section. Several papers authored by national and international renowned experts in the field of corporate governance have also been published in this section.

Several articles on corporate governance have been published in Buenos Aires' largest newspapers.

This newsletter is the main tool to be in contact with IAGO's database. It is sent by e-mail every three months to around 1,500 executives from large companies representing a wide range of lines of business —e.g., banks, private pension funds, accounting and law firms, and government agencies. This communication tool is used for highlighting the significance of the Code and encouraging people to visit the website and download the file.

So far, IAGO has sent nine newsletters. Several well-known Argentine experts have made a significant contribution by writing on the national and international reality regarding corporate governance.

Main promotion activities

Dr. Marcos Bertin, Dr. Carlos Leone and Dr. Javier Negri have promoted the Code at the seminars and conferences which they have attended, such as the Seminar for Family Enterprises, seminars organised by People Soft and Grant Thornton, and courses delivered at the Business Sciences University.

Additionally, Mr. Alberto Schuster, Senior Partner of KPMG's office in Argentina, has promoted the Code in several activities carried out along with different companies.

Conclusions from surveys

During the months of February and March, IAGO held meetings with executives from three entities and requested them to fill in the survey received from the OECD. The surveyed entities were the Buenos Aires Stock Exchange, the Chamber of Corporations and the CNV. Complete reports on the surveys are available upon request.

The **main conclusions** derived from the surveys conducted were the following:

1. The three entities got to know the Code through IAGO's website and the Roundtable held in Buenos Aires in 2006.
2. Corporate governance rules will be enforced in Argentina when companies understand that these rules represent a benefit, rather than an obstacle, for them and that they add value to companies, among other advantages. A cultural change that requires time and a gradual adaptation is therefore necessary.
3. Companies will feel encouraged to adopt these rules if they consider them as a necessity. Additionally, the adoption of these rules must be encouraged by generating informative guidelines, facilitating the process of filing procedures and the regulatory structure. All this must be accompanied by an official policy in which a greater development of the capital market should be one of the goals of the State Policy. The main drawbacks are cultural in nature.
4. The Stock Exchange and the Chamber of Corporations consider that the work of the Audit Committee overlaps with that of the Statutory Auditing Committee, and that it may have been advisable to adapt Argentina's system, instead of adopting the rules governing European publicly traded companies, which operate very differently from here.
5. The three entities are willing to dialogue with IAGO and to working towards the continuous improvement of the Code in order to keep it tailored to the companies' needs.

III. CNV's CODE

As mentioned before, the CNV decided to replace the 14 questions survey included in Resolution 493/06 by a more comprehensive corporate governance code which was finally issued on October 19th 2007 with Resolution 516/2007.

Resolution 516/2007 implements a "comply or explain" reporting mechanism under which listed companies will have to report -along with their annual report- their level of compliance with the voluntary code included in the Resolution. In this sense, listed companies are required to report if they're complying with the code's recommendations and, if so, how they're actually doing it. They are also required to report if they're not complying with such recommendations, either

totally or partially, to explain why that is the case and if they're expecting to implement them in the future. With the latter, the CNV adopted a rigorous "comply or explain" mechanism that favors full disclosure.

The code is composed of 28 recommendations divided into the following chapters and sub-chapters:

1. Application Scope

- Relation Issuer – Economic Group
- Inclusion in company's by-laws

2. The Board of Directors in General

- Responsible for company's strategy
- Management control
- Internal control and information, risk management
- Audit committee
- Number of directors
- Integration of the board
- Participation in other boards
- Evaluation of the board
- Training and development of directors

3. Director's Independence

- Independent directors
- Designation of executive directors
- Proportion of independent directors
- Independent directors meetings

4. Relations with Shareholders

- Information to shareholders
- Attention to doubts and inquiries by shareholders
- Participation of minority shareholders in shareholder's assemblies
- Control market; Dividends policy

5. Community Relations

- Internet communications
- Site's requirements

6. Board Committees

- Presidency of the committee by an independent director
- Rotation of external auditors and trustees ("síndicos")
- Double role of auditor and trustee
- Compensation systems
- Corporate governance and appointments committee
- Non-discrimination policy for the board's integration

In accordance with the introductory section of Resolution 493/06, the code was developed as an effort to foster transparency and information disclosure in the market, following the latest international developments. It also mentions that the code aims to stimulate the disclosure of information regarding the Board's activities in order to benefit the shareholders and the market in general. It adds that the existence of a corporate governance code is not only attractive for potential investors but that it also reduces the cost of finance for companies. Likewise, it argues that the definition and disclosure of the conduct standards included in the code is useful to clarify the relations between board members and executives, as well as that of shareholders – especially minority shareholders- with third parties. Finally, the introductory section of the Resolution states that all the required information will be considered as "relevant information" in accordance with the current law and will therefore be treated and disclosed to the market in that manner.

Finally, it should also be noted that recommendations of the CNV code are sometimes drafted in a way that suggests companies to evaluate the convenience or not of adopting certain general practices, rather than directly recommending the adoption of specific practices (in the understanding that it's a voluntary code but companies will have to explain if they don't adopt such practices). For example, the CNV Code recommends: *"the Board shall include a sufficient number of independent directors"* instead of recommending a specific percentage of independent directors. Likewise, the CNV Code says: *"the Board shall judge if the person that nominates a director shall disclose, for its general diffusion, a sufficient motivation with respect to the nominee's independence"* rather than directly recommending the disclosure of such motivations.

IV. CONCLUSIONS

Due to their different nature, IAGOs Code (an educational or benchmark setting code) is more comprehensive and covers a wider set of issues than the CNV Code (a "comply or explain" code that complements the legal framework). Likewise, IAGOs Code recommendations are also more direct and specific than the more general suggestions of the CNV's one. However, the issuance of Resolution 516/2007 by CNV marked an important advance in the Argentinean voluntary framework since it adopts a strict and pro-disclosure "comply or explain" reporting mechanism and its Code is wider in coverage than the Resolution's 493/06 14-question survey.

As with other countries with both totally voluntary codes and "comply or explain" reporting systems (such as Brazil), the Argentinean codes should be used by the market in order to complement each other rather than compete. First, IAGO's code is totally voluntary and could be widely used by non-listed companies and for academic or educational purposes. Second, it could be a comprehensive and useful reference to inspire individual company codes or codes developed by other players like institutional investors (i.e. corporate governance statements for pension funds' voting and investment policies). Finally, it could even serve as a more specific reference for listed companies who want to adopt the CNV Code's more general recommendations or that even want to implement best practices in areas on which the CNV's Code does so less fully.

On the other hand, CNV's code is a regulatory mandated "comply or explain" scheme, it's specifically directed to listed companies and its main objective as a regulator-led initiative is market protection and transparency, as well as a gradual adoption of "second generation" best practices beyond the "minimum" already mandated by law. Therefore, it's natural that these types of codes tend to focus in particular subjects on which the regulator has a particular concern (i.e. shareholder's rights to achieve more market protection). The implementation of the CNV's code recommendations and the response from listed companies and the market remain to be seen from next year's first adherence-reporting submissions.