CORPORATE GOVERNANCE

General Reporter | **Klaus Hopt**

National Reporters | **Raúl Aníbal Etcheverry**
Rafael Mariano Manóvil

I. General information on corporate governance in the country

1.1. Definition of corporate governance (legal, academic, practical definitions)

Argentina's legal and regulatory framework does not foresee a definition of corporate governance. Decree No 677/2001 -the backbone of the corporate governance regime–, enacted on 22 May 2001, refers in its whereas to the relevance of adequate corporate governance practices. The decree also outlines the need of enacting a regulatory framework establishing principles as "full disclosure", "transparency", "efficiency", "investors protection", "equal treatment among investors" and "protection of the entities and financial intermediaries stability."

The following whereas characterize "corporate governance

practices" as principles, and qualify such practices as "good" or "adequate." Pursuing such good practices, the decree sets forth a series of principles, duties and rules –to be explained in detail below-, which are considered to fit with the required standard.

General Resolution No 516/07, passed on 11 October 2007 by the Comisión Nacional de Valores (CNV) –Argentine Securities and Exchange Commission- applies same criterion. Said resolution approves the "Corporate Governance Code" (*Código de Gobierno Societario*), applicable to listed companies which are authorized to make public offering of their shares.

It is worth mentioning that the trend in this field is evidenced by the label given to the CNV's file which ended with the issuance of the code: "Good Corporate Governance Practices Code" (*Código de Buenas Prácticas de Gobierno Societario).* As it stems from this title, corporate governance practices are qualified as "good" or, in the terms of the decree, as "adequate."

Scholars' common approach to the subject is to highlight the foreign genesis of the concept,[1] adopting in consequence definitions coined abroad. Preferred notions are those issued by the OCED (years 1999 and 2004)[2] or contained in the Cadbury report.[3] In this path, Odriozola[4] outlines Paz Ares' criterion, who conceives the corporate governance as a *"creation of value strategy."*

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[1] NICHOLSON, Ignacio, "Las reformas sobre gobierno corporativo a seis años de su sanción", [2007-II] *JA*, 1063; ALEGRÍA, Héctor, "Corporate Governance (El buen gobierno corporativo)", [2007-E], *LL*, 1364; FARGOSI, Horacio P., "Esquicio sobre el 'director independiente'", *Academia Nacional de Derecho* 2008 (September), [4/29/2009], LL, 1.

[2] Organization of Economics, Cooperation and Development, which defines corporate governance as follows: *"...Corporate governance is one key element in improving economic efficiency and growth as well as enhancing investor confidence. Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined..."*

[3] *"The system by which companies are managed and controlled."*

[4] ODRIOZOLA, Carlos S., "La necesaria búsqueda del gobierno corporativo", [2006-E], *LL*, 1115.

However, authors are prone to avoid a concrete definition, which is replaced by a description of the purposes aiming the practice[5], as well as by a list of main principles extracted from OECD's development (1999)[6] or from the Olivencia report.

Embedded in the trend reflected in the decree and the code, local authors translate the phrase corporate governance as "*buen gobierno societario*", which implies to qualify the practices as "good" ones.

The scholars' unanimous opinion is to consider that the phrase evidences an underlying confuse nature. Certain authors (as Alegría and Fargosi)[7] attribute this circumstance to its Anglo-Saxon origin and the differences between such regime and the continental law, on which Argentine law is inspired. In this sense, the use of the foreign phrase has been criticized[8], since according to the Argentine Commercial Companies Law No 19,550 (the "CCL"), the company's government is in charge of the shareholders' meeting, unlike the American system.

Only a few scholars build their own definition of the concept. Alegría[9] refers to: *"certain rules of conduct to improve the management of the issuers and, as a natural consequence, the transparency of such conducts by proper information to the market."*

Luchinsky[10] states that: *"corporate governance is a complex coordination system, resulting from a series of legal and political*

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[5] ODRIOZOLA, Carlos S., "La necesaria búsqueda..."

[6] VÍTOLO, Daniel Roque, "'Corporate Governance' en la nueva dinámica societaria a partir de la Sabannes-Oxley Act de los Estados Unidos. Difusión y reflexiones", in EMBID IRUJO, José, VÍTOLO Daniel R. *et al*, *Sociedades Comerciales. Los administradores y los socios. Gobierno corporativo* (Santa Fe, 2004, Rubinzal Culzoni Editores), p. 11 to 47.

[7] ALEGRÍA, Héctor, "Corporate Governance..."; FARGOSI, Horacio P., "Esquicio..."

[8] NICHOLSON, Ignacio, "Las reformas sobre gobierno corporativo..."

[9] ALEGRÍA, Héctor, "Corporate governance..."

[10] LUCHINSKY, Rodrigo S., "El sistema del gobierno societario. Corporate Governance en el derecho argentino" (Buenos Aires, Lexis Nexis Argentina, 2006), p. 1.

relationships which define a specific model of generation and distribution of resources in a given community."

Finally, it is worth mentioning that the concept has been considered as: *"the set of practices the main purpose of which is to protect the rights among the different participants of the enterprise determining the direction and return on investment in companies."*[11]

1.2. Stock corporation act, mandatory or fall-back, recent reforms, reform plans

Argentina's commercial companies legal system is ruled by the CCL, enacted in 1972 and largely amended in 1983 through Law No 22,903. Regulations issued by local Public Registries of Commerce complement the set of rules applicable to commercial companies.

The CCL sets forth the mandatory legal framework for all commercial companies either publicly or closely held. It has been criticized because of its lack of flexibility, due to its imperative rules which characterize the legislation of the time in which it was enacted.

The CCL regulates a wide range of issues such as incorporation; by-laws and essential clauses (e.g., corporate name, domicile, corporate purpose, capital stock and contributions); partners' or shareholders' rights and liability; administration; administrators' fees, duties and liability; financial statements; supervision; approval and distribution of profits; company reorganization (i.e., merger, spin-off and transformation) dissolution and liquidation.

In addition, the CCL foresees different types of companies (partnership, limited liability partnership, corporation, etc.), regulating their specific features in point to incorporation; general

[11] FERRARO MILA, Pablo, bibliographic reference to GAGLIARDO, Mariano, *Administración y representación de sociedades comerciales*, Lexis No 0003/013487.

meetings; administration bodies; special duties of administrators and syndics (internal auditors).

The CCL is an advanced law considering the time in which it was enacted. That is why this law foresees some of the main concerns on corporate governance for commercial companies, applicable to both publicly and closely held companies.

In this sense, the CCL establishes directors' and managers' duties and obligations. The leading principle is provided for in Article 59, which imposes managers and directors the obligation to act with loyalty and with the diligence of a good businessman. By means of a severe liability regulation, Articles 271, 272 and 273 deal with conflicts of interest and a general prohibition to compete. Article 274 establishes their joint liability in case their behaviour exceeds the limits of the law and the company's by-laws.

In case of breach of said duties, managers and directors are liable for damages *vis-à-vis* the company, shareholders, partners or third parties, and can be removed from office.

With respect to corporations *(sociedades anónimas)*, the CCL creates a complex structure with mechanisms of control and protection of shareholders' rights.

The administration is in charge of a board of directors. Managers can also be appointed, sharing responsibility with directors in their respective areas. Committees for special purposes can be organized within the board of directors.

Syndics (statutory professional internal supervisors, who have to be admitted public accountants or lawyers) are in charge of controlling the management of the company in the legal and accounting aspects, providing information or complying with certain shareholders' requests in the terms of the CCL, among other duties. Even if in a different way as according to the German supervisory board approach, this reveals that the CCL follows the dualist system in terms of management and control. A supervisory board of German type is optional, but seldom used.

Shareholders' rights are protected by mechanisms such as different classes of shares with special rights (for instance, the right to appoint a certain number of directors and syndics), special majorities for the approval of certain decisions, access to information rights, cumulative vote for the appointment of directors and syndics, preemptive and residual preemptive rights, appraisal rights, the possibility of including clauses in the by-laws limiting the transfer of shares (e.g., first refusal rights), etc.

Other provisions of the CCL worth highlighting are those related to voting rights in cases of conflict of interest, contracts between the company and its directors, activities in competition with the company, requirements for the preparation of financial statements and other reports, rules for earnings distribution, rules for the board of directors' performance, limitation to directors' fees, proceedings to challenge decisions of the shareholders' meeting, etc.

Finally, it is important to outline that according to the CCL, shareholders and not directors are entitled to increase the company's capital and consequently issue new shares, fix directors' fees and decide on the distribution of dividends. This is remarkably different from the situation in Anglo-Saxon jurisdictions, which should result in diverse needs in so far as corporate governance principles, standards and regimes.

It is relevant to point out that after the 1983 amendment Argentina became the first country to have an express disregard of legal entity rule in its Law.

In respect of reform plans, the last 20 years witnessed many attempts to amend the legal regime of corporations, including relevant projects as four on the unification of the civil and commercial codes, and two foreseeing a general amendment of the CCL. All of them have in common the express acceptance of the sole-shareholder company in the Argentine corporate legal framework.

Regarding the last general reform plan, Resolution MJDH No 112/2002 issued by the Justice Ministry, appointed Messrs. Jaime

Anaya, Raúl A. Etcheverry and Salvador D. Bergel as members of a special commission to draft a preliminary project for the integral amendment of the CCL. The preliminary project was terminated and formally filed as project with the National Congress by the senators chamber in 2006, and has expired.

In connection with corporate governance matters, the project includes some relevant modernising proposals, such as:

(a) a new paragraph in Article 54 provides that the group interest may in certain occasions and under certain conditions, be taken into account, following the recommendations of the Forum Europaeum on groups of companies and the Rozemblum doctrine.

(b) Articles 283 and 298 refer to the independence of members of the board of directors.

(c) Article 15 foresees arbitration for conflicts within companies.

The project also contains certain provisions included in Decree No 677/2001.

As from last year, many projects on amendments to specific and punctual articles of the CCL have been filed with the Congress, pursuing circumstantial and oriented to politic parties' convenience. The last project was filed on March 19th, 2009 with the Chamber of Deputies, and is an exception to said trend, since it regulates the sole-shareholder company.

1.3. Corporate governance code(s), administration of code (regulatory agency, stock exchange, self-regulatory body), duty to disclose/explain, compliance in practice, recent reforms, reform plans

Resolution CNV No 516/2007 (as amended by Resolutions

CNV No 544/2008 and 545/2008), applicable to companies authorized to make public offering of their stock, established a Corporate Governance Code.

The code addresses a set of recommendations directed to the board of directors, which are summarized as follows:

(a) Providing information on applicable policies in connection with the corporate group to which the listed company belongs, and to transactions with related companies, shareholders and directors.

(b) Assessment of the need to include the provisions of the code (or part thereof) in the issuer's by-laws.

(c) Management of the company, and approval and implementation of general policies and strategies, in particular the strategic or business plan, annual budget and policies of investment and financing, corporate governance, corporate social responsibility, risk management and control, information systems and training.

(d) Providing and update of information on management and risk control policies, as well as policies to follow up internal information and control systems.

(e) Assessment of the board's number of members, which must include "sufficient" independent directors.

(f) Analysis of the convenience of certain policies of appointment of directors, as well as issuance of recommendations on the relevance of director's participation in boards of other companies.

(g) Assessment of the board members' performance.

(h) Establishing training programs for directors and managers.

(i) Assessment and issuance of recommendations on the

need to inform publicly the reasons supporting the qualification as independent of directors and managers.

(j) Description of policies aimed to maintain a proportion of independent directors, and informing publicly the proportion of executive directors and non-executive independent directors.

(k) Informing on proceedings to provide shareholders with information of the company.

(l) Issuance of opinions on particular measures directed at promoting the participation of minority shareholders in shareholders' meetings and on the need to establish dividends payment policies.

The Corporate Governance Code also refers to two committees, the auditing committee (created by Decree No 677/2001) and the remunerations committee (which is not mandatory), establishing their scope, functions and the obligations of the board of directors' related thereto.

Resolution CNV No 516/2007 also amended the information regime foreseen in Resolution CNV No 368/2000 (the "CNV Rules"), in order to include provisions related to the obligation of the issuers' board of directors –except in the case of *PyMES*[12]- to prepare a corporate governance report on the application of the code, as an exhibit to the board of directors' report corresponding to the company's annual financial statements. The report must be filed with the CNV together with the relevant financial statements and related documents.

Since the resolution adheres to the "comply or explain" principle, the corporate governance report must inform on the adoption of the recommendations of the code, and measures implemented as a consequence thereof, or otherwise explain the reasons supporting its non-application.

[12] Small and medium sized companies, according to the parameters as foreseen by law.

The new regime will be applicable as from the filing of the financial statements corresponding to the financial year commenced on January 1st, 2008, but the term to file the corporate governance report was extended for 3 months as from the filing of such balance sheets with the CNV, which has not expired as of the date of this report. Thus, the efficacy of the code has not yet been tested.

The CNV is the application authority of the code.

As mentioned before, the CCL foresees a set of rules which provides for a corporate governance framework for commercial companies, applicable to either publicly and closely held. Improvement efforts by means of decrees or regulations will be productive if they are a consequence of a process of thorough and comprehensive research and analysis of the local needs, tailor-made for the country and amalgamated to, and coherent with, the legal framework in force.

The Corporate Governance Code is inspired in the Anglo-Saxon experience and adopts provisions of foreign codes. This explains why the code shows inconsistencies with the CCL, contradicts certain provisions of said law and overlaps with other rules. Besides, certain inaccuracies in the code may lead to different interpretations or conflicts in the application (e.g., the reference to a "sufficient" number of independent directors without providing with an objective criterion).

It is to be expected that the code will be revised and amended in due course to reflect the reality and needs of Argentine companies and the community, to fit with the legal framework and to meet the purpose of a code of such nature in an effective and efficient manner.

1.4. Capital market acts (including takeovers), recent reforms, reform plans

In addition to the CCL, listed companies are subject to Law

No 17,811 (Public Offering Act); Decree No 677/2001 (which amended Law No 17,811 in so far as corporate governance matters); the resolutions issued by the CNV; and the regulations of each market.

While the supervision of non-listed companies is of the competence of each jurisdiction, according to Law No 22,169,[13] the CNV is in charge of controlling listed corporations nationwide, with exclusive and sole competence to:

(a) Approve statutory amendments.

(b) Control all variations of capital, and the dissolution and liquidation of said corporations.

(c) Control permanently the operation of such corporations.

The regime is also complemented by other norms which rule specific issues concerning the public offering and the capital market participants (e.g., Decree No 656/92, Authorization to the Public Offering of Securities; Law No 24,083 and Decree No 174/93 on investment funds; etc.).

As mentioned above, the corporate governance regulations established in the CCL are complemented in the case of public companies with National Decree No 677/2001 (application aspects of which were regulated by CNV Resolutions No 400/2002 and 402/2002), which enacted a new transparency regime based on the corporate governance principles included in the 1999 OECD's Best Practices Code and the guidelines of the *Principles of Corporate Governance* of the *American Law Institute*[14]. Besides, certain provisions of the decree are similar to those foreseen in the

[13] Published in the Official Gazette on 25 February 1980.

[14] Cadbury and Olivencia reports were also taken into account for specific issues; although certain scholars criticized the decree for not following the models of said reports in all aspects.

Sarbanes-Oxley Act.

A new regime called the "Public Offering Transparency System" is foreseen in the decree. Its main provisions are summarized as follows:

(a) Duties of information and confidentiality to which issuers, intermediaries and other participants in the public offering procedures are subject.

(b) Duties of loyalty and diligence of directors and syndics, contracts with related parties, stock options and directors' responsibility.

(c) Provisions concerning the appointment, registration and CNV control of accountants and external auditors, focusing on their independence.

(d) Guidelines for the notion of independent director and creation of a mandatory auditing committee composed of at least three members which must be directors, with majority of independent directors.

(e) Authorization of the stabilization of the price of securities, in accordance with the regulations issued by the CNV.

(f) Disclosure of controlling companies' consolidated financial statements;

(g) Special regulations regarding shareholders' meetings and transactions with related parties, including the transfer of burden of proof.

(h) Liability for contents of the prospectus.

(i) Regime in case of misconducts affecting transparency.

(j) Enforcement provisions (CNV's powers to impose sanctions).

The decree also regulates tender offers, residual participations

and delisting, squeeze-out provisions and a withdrawal system to ensure a fair price.

Finally, the decree adopted an institutional arbitration system which is binding for issuers and optional for investors.

The same year the decree was enacted, the CNV passed an updated version of the CNV Rules, with provisions on transparency in line with the terms of the decree. Said regime was amended in 2008 by Resolutions CNV No 529/2008 and No 542/2008, which approved the Investors Protection Code (*Código de protección para el público inversor*). This code imposes duties of loyalty and information to intermediaries in the public offering of securities, amends the information to be provided by issuers, and establishes obligations to self-regulated entities (e.g., stock and exchange, securities markets).

1.5. Role of case law, stock exchange rules, self-regulation, best practice, other soft law

Case law has been very relevant in point to construe and applying the legal provisions contained in the CCL related to the directors' and managers' liability, issue which will be analyzed in paragraphs 2.7, 2.8 and 2.10 below. Important precedents have been ruled on cumulative voting, shareholders' information, shareholders' agreements, challenge of shareholders meetings' resolutions, directors' fees, disregard of legal entity, etc.

Regulation passed as from 2001 (decree no 677/2001 and complementary regulation) has not triggered the filing of claims giving raise to judicial rulings interpreting such norms. There are some precedents on squeeze-out, which will be mentioned in paragraph 3.6.

Main stock exchange in Argentina is the Buenos Aires Stock Exchange (*Bolsa de Comercio de Buenos Aires,* "BCBA"). Even if there are other stock exchanges in the country, such as *Bolsa de*

Comercio de Rosario, Bolsa de Comercio de Mendoza, Bolsa de Comercio de Santa Fe, etc.; the majority of the transactions are channeled through the BCBA, being the other stock exchanges a sort of "satellites" thereof.

As a self-regulated organism, the BCBA has issued a Regulation for the listing of securities (RCOT), which requires listed companies to disclose detailed information on their financial situation, activities, corporate data, financial statements, etc.

1.6. Available data and their sources (corporations listed/unlisted, with/without controlling or major shareholders, stock exchanges, takeover activity)

The CNV does not provide information on shareholdings. Information on listed companies, the kind of security they are authorized to quote, shareholders and interest (in certain cases), is available in the BCBA website.[15] According to said information, 62 companies make public offering of shares and securities in the BCBA, 19 of which (30%) are controlled by individuals, (being 14 of them controlled by one or more families), and 43 (70%) are controlled by other companies, including insurance companies and multinational economic groups.

Considering such reality, the controlling stake is nearly impossible to be acquired by means of a takeover, but through an acquisition from their owners. Tender offers regime is explained in chapter III below.

Until 9 December 2008, Pension Funds Managers (*Administradoras de Fondos de Jubilaciones y Pensiones, "AFJPs"*) held minority stakes and securities in public companies, being the main institutional investors in the market. Law No 26,425, and Decrees No 2103/2008, 2104/2009 and 2105/2008, replaced the

[15] www.bolsar.com (2009).

pension funds regime, dissolving AFJPs. The securities held by the investors were transferred to a National Government public entity (ANSES).

1.7. Role of banks, private equity, hedge funds, foreign investors

In contrast to current CNV regulations applicable to corporations subject to the public offering regime, there are no specific rules on corporate governance applicable to banks. Notwithstanding, certain restrictions are imposed to banks in connection with their role in third companies' governance.

The Financial Entities Law No. 21,526 (as amended) and the Argentine Central Bank Communications -both applicable to commercial banks, investment banks, mortgage banks, financial companies, saving and loan associations for or any other kind of real estate, and credit associations– restrict the role of banks as shareholders in third companies which perform non-financial activities.

Point (a), Article 28, of the Financial Entities Law establishes that a bank *"...cannot exploit by itself commercial, industrial or farming business or any business of any other nature without the Argentine Central Bank prior consent."*

According to Central Bank Communication "A" 3086, the expression "exploit by itself" set forth in Article 28 of the Financial Entities Law is also applicable to the situation where non-financial activities are performed by a third company in which a bank holds shares representing more than 12.5% of its stock capital or voting rights or, regardless whether the shares held by the bank represent a percentage lower than 12.5% of the stock capital or voting rights or not, when its participation grants a bank the necessary votes to adopt any decision in the third company shareholders or board of directors meetings.

Considering the foregoing, banks cannot hold shares representing more than 12.5% of a third company's stock capital or voting rights when said company performs non-financial activities.

Besides, banks in Argentina do not exercise the voting rights of their clients' shares that they hold as depositaries, except for the case of foreign banks which issue bonds listed in their countries (USA) against the deposited shares. Voting rights in these cases may be important.

In connection to private equity transactions, they had their peak in Argentina in the '90s decade. Common practice was that investors -specially investment funds- used to buy a controlling stake in an entrepreneurial venture, insufflate the necessary funds into the business (keeping the developers as managers), being the last step to lead the company to go public. Another methodology was to acquire potentially profitable companies, to restructure the management, operations and the whole business, being again the last step that the target offers its shares publicly. Issuance of bonds by the holding (or even by the operative company) was a common alternative to finance the acquisition.

This activity decreased by the end of the '90s, to disappear as from the generalized crisis suffered by Argentina in 2001/2002.

In respect of hedge funds, only very few of the main ones operate in the local market.

Foreign investors are allowed to operate in the local market. However, foreign exchange restrictions mentioned in section 0 must be taken into account.

1.8. Restrictions on foreign investment, state funds regulation

The CCL requires foreign companies to register as foreign investors with the Public Registry of Commerce for them to hold a stake in Argentine companies (Article 123). In turn, Res. 7/05 issued

by the Public Registry of Commerce of the City of Buenos Aires (to which many provincial registries have adhered) to register a foreign company in the terms of Article 123 of the CCL, requires the filing of accounting information evidencing that more than 50% of its non-current assets are located out of Argentina, or otherwise proving that said company is an investment vehicle of another company which fits with that standard, or a member of a group. The foreign company must also file information on its shareholders or partners. Otherwise, the shareholder shall not be entitled to exercise any right (e.g., voting at the shareholders' meetings, get paid dividends, etc.).

However, this requirement is not applicable in practice to foreign companies acquiring minority stakes through capital markets due to the trading dynamic, except in case of acquisition of a relevant stake to be kept as a permanent investment; provided however that the investor is interested in participating in the company's governance by attending shareholders' meetings.

Additionally, in Argentina, there exists a foreign exchange regime which subjects foreign investment to certain requirements and restrictions.

Finally and as mentioned, securities held by AFJPs were transferred to the National Government. Currently, they are managed by the ANSES (Pension Funds National Administration). Law No 24.241 establishes restrictions to the ANSES in point to the administration of pension funds. Such funds cannot be invested in shares of AFJPs, insurance companies, managers of investment funds, among others, nor in preferred shares or with plural votes.

The law also foresees restrictions as to the maximum percentages of the total amount of the pension funds that the ANSES is allowed to apply to each kind of security or investment.

Other restrictions are also foreseen in the law, as the prohibition to the ANSES to exercise voting rights in local or foreign companies in excess of 5% of the total votes. This limitation is aimed to avoid the ANSES to appoint directors through the cumulative voting system, giving it a status similar to an

institutional investor (as the AFJPs used to be).

In connection with state funds, the Argentine Government did not hold stake as investor until it became the owner of the stake held by the AFJPs, as mentioned.

1.9. Major corporate governance scandals (e.g., Enron in the U.S.) and influences of the current financial market crisis on corporate governance

Certain scandals involving banks occurred during the first years of the current decade. Among them, the Banco General de Negocios case is the most remarkable. Chairman, directors and owners of said bank faced accusations of corruption. Judicial inquiries were conducted against them for helping to ship large amounts of money out of the country in December 2001.

Fraud cases have occurred in closely-held companies, due in general to the lack of control over directors or managers, who -taking advantage of such negligence- diverted company's funds on their own behalf.

Currently, the situation depicted in 1.8 regarding the interest owned by National Government is likely to give raise to a corporate governance crisis. According to the restrictions mentioned in section 1.8. above, the National Government is not entitled to appoint directors at any company where it holds shares. Notwithstanding, public servants are pushing companies and controlling shareholders for them to allow the government to appoint directors. Thus, potential judicial claims could possibly be filed in the near future.

1.10. Reception of foreign law (civil law/common law) and style of regulation (U.S., UK, continental Europe, e.g.)

As mentioned, the CCL is a civil law regulation, as well as the

legislation which influenced in the design of its basic structure (i.e. Italian Civil Code as amended, German and French legislations of the time in which the CCL was passed). As referred to in 1.4 above, Decree No 677/2002, even respecting the main principles on the subject foreseen in the CCL, imports certain innovations from the common law system.

On the other hand, the Corporate Governance Code compiles an imported set of provisions -as mentioned before- which contradicts other rules of the CCL (see 1.3 above).

In connection with the difference between both common and continental systems in terms of corporate governance and the consequence of importing foreign provisions, Alegría[16] highlights that, whilst common law applies the monist system in point to control (i.e., directors develop both managerial and controlling activities), continental law –with certain exceptions- adheres to the dualist system (i.e., management and control functions are in charge of different bodies). These divergences imply that, when introducing foreign bodies or committees within the board of directors, their control functions must be carefully defined to avoid overlapping with those attributed by law to specific officers or bodies (e.g., supervisory board or fiscalisation committee –whose members are syndics with mandatory professional skills in Law or Accountancy).

II. Internal corporate governance

A. The board(s)

2.1. One-tier/two-tier board, option between both systems, relevance of board model options in practice, treatment by courts

The CCL sets forth that corporations authorized to make

[16] ALEGRÍA, Héctor, "Corporate governance..."

public offering of shares and securities must appoint a board of directors with at least 3 members. As mentioned in 1.2, an optional supervisory board which members must be shareholders is also foreseen in the CCL. Thus, a two-tier board structure is optional for corporations. This issue has raised no conflict, thus no judicial precedents are registered.

2.2. Size and composition, maximum number of seats, duration of office, staggered board

The board is composed by individuals who are appointed by the general shareholders' meeting or by the supervisory board, as the by-laws may establish. Several scholars are of the opinion that legal entities can also be appointed as board members.[17] However, this is not common practice in Argentina and Res. 7/05 issued by the Public Registry of Commerce of the City of Buenos Aires sets forth that only individuals can be appointed as directors.

As mentioned, listed companies must appoint at least three directors[18], up to the maximum number of positions as foreseen in the by-laws. No maximum is established by law. With respect to the term of their offices, it cannot exceed 3 fiscal years in case they are appointed by the shareholders' meeting. In case the by-laws establish a minimum and a maximum of directors, the shareholders' meeting shall fix the number of members for the relevant tenure. If directors are appointed by a supervisory board, their maximum tenure is extended up to 5 fiscal years.

The majority of the directors shall be domiciled in Argentina. All of them shall have a special domicile in Argentina where all

[17] HALPERÍN, Isaac – OTAEGUI, Julio C., *Sociedades anónimas* (Buenos Aires, Depalma, 1998) p. 461/462; CABANELLAS DE LAS CUEVAS, Guillermo, *Derecho Societario Los órganos sociales* (Buenos Aires, Ed. Heliasta, 1996) p. 538; SASOT BETES, Miguel A. – SASOT, Miguel P., *Sociedades anónimas. El órgano de administración,* (Buenos Aires, Abaco, 1980) p. 112 et seq.

[18] See CCL, art. 255.

notices related to their office shall be valid and binding.[19]

Staggered boards are allowed in case this practice does not affect the cumulative voting right for the election of directors that the CCL sets forth in favour of minority shareholders.

2.3. Tasks (shareholder/stakeholder orientation, concrete tasks)

The CCL reveals a shareholder-oriented approach, which is followed by Decree No 677/2001, but softened with certain provisions for the benefit of stakeholders.

The board's main duty is to manage the company. Managing the company implies to tailor and carry on the general strategy and the administration of the company's ordinary business. Such actions not expressly allocated to other bodies of the company, are considered to be vested on the board.

Accordingly, the board must focus on complying with the company's purpose, refraining from perfoming –among others- acts which: (a) could alter directly or indirectly the company's existence or functioning (included but not limited to, the sale of its going concern or a material part of its business, or the incorporation of other company); and (b) exceed the ordinary administration unless the urgency of the matters involved requires an immediate resolution, being imposible to call for a shareholders' meeting to address them.[20]

In turn, the Corporate Governance Code obliges the board to assume the company's managment, approving the general policies and strategies according to the different stages of the company's cycle of life. Main rules of the code related to the subject have been

[19] See CCL, art. 256.

[20] HALPERÍN, Isaac – OTAEGUI, Julio C., *Sociedades anónimas* (Buenos Aires, Depalma, 1998), p. 515/6.

depicted in 1.3. above.

2.4. Functioning (management/control, committee work, role of the chairman, lead director, evaluation)

According to the CCL, directors must hold a meeting to consider the company's business at least every three months, or more often as determined by the by-laws. The board must also meet in case any director requires so. In this case, the chairman shall call for the meeting, informing the agenda, which will be held within five days as from receipt of the request.

For a board meeting to be valid, the quorum established in the by-laws –which must require the attendance of the absolute majority of the members, at least- must be met. Decisions are adopted with the favourable vote of the majority of directors attending the meeting personally or represented by another director.

Directors cannot vote by mail, but they can be represented by another director at the meeting provided however, that the legal quorum is met by the present directors.

In case of a tie, the president is entitled to a casting vote only if the by-laws so establish.

The president is vested with the representation of the company.[21] The by-laws may vest other directors with the same authority (individually or jointly), but the president's representation powers cannot be limited.

The president of the board chairs the shareholders' meetings, unless the by-laws foresee otherwise.

The authority granted by the CCL or by the by-laws is vested on the board as a body, and not individually to each director.[22] Said

[21] See CCL, art. 266. The company may grant powers of attorney.
[22] FARGOSI, Horacio P., "El vínculo director-sociedad anónima", [2001-A], *LL*, 885.

authority can be delegated according to the following rules, as foreseen in Articles 269 and 270 of the CCL:

(a) The board is empowered to appoint an executive committee if the by-laws authorize so.[23] The committee must be composed exclusively by directors and its sole function is the administration of the company's ordinary business under the board's control.

(b) The board is entitled to resume, at any time, the functions delegated to the committee.

(c) The board has authority to appoint managers which shall be in charge of the performance of the administration tasks.

The managers, whether directors or not, are freely appointed and removed by the board, and usually hired through agreements ruled by Labor Law.

The board keeps the legal duty to supervise the managers' performance according to the board's decisions.

When the executive committee has been organized, the board remains liable for the supervision and performance of the committee. Additionally, the board is entitled to act by itself at any time.

With respect to evaluation, the Corporate Governance Code establishes that the board must, prior to the shareholders' meeting considering the annual financial statements, assess its own performance by drafting a written document to be used as guidelines to the evaluation, where they are required to state the criteria for measuring their performance.

Although the subject will be analyzed in section 2.10 below, it is worth mentioning that the annual shareholders' meeting considering the financial statements for the relevant fiscal year

[23] See CCL, art. 269.

discusses the directors' (and syndics) performance during such fiscal year.

2.5. Independent directors, definition of independence, their role and performance, information flow in the board and between the boards

Independent directors appear in Argentine legislation for the first time in decree No 677/2001. The decree establishes that the auditing committee must be composed by at least three members, the majority of them being independent directors. However, besides stating that reference is made to independence from the management and from the relevant shareholders, it does not provide for a definition of "independent director", but delegates to the CNV the authority to do so.

The CNV Rules (as amended by Res. CNV No 400/2002) provide the criteria to define by exclusion when a director is independent. Though, a director shall not be considered as independent when:

(a) He or she is as well a member of the board, or employee, of the shareholders owning "material interest" in the issuer, or of other companies in which such shareholders are entitled, even directly or indirectly, to a "material interest", or in which said shareholders exercise material influence.

(b) He or she is an employee of the issuer, or was an employee thereof during the last three years.

(c) He or she has professional relationships, or belongs to a company or professional association which has professional relationships with, or receives remunerations or fees (different from those related to his or her position as director) from, the issuer or its shareholders with "material interest" or material influence or with

companies in which said shareholders also own directly or indirectly "material interest" or exercise material influence.

(d) He or she, directly or indirectly, owns a "material interest" in the issuer or in a company in which it owns a "material interest" or exercises a material influence.

(e) He or she, directly or indirectly, sells or supplies goods or services to the issuer or to the issuer's shareholders owning in the latter –directly or indirectly- "material interest" or exercising material influence for amounts exceeding materially such received as compensation for his or her tasks as director.

(f) He or she is spouse, related up to the forth degree by blood and up to the second degree by affinity, to individuals who, in case of being members of the board, should not be considered independent as per application of the criteria depicted above.

"Material interest" refers to such individuals owning shares representing at least 35% of the corporate capital, or a lower percentage when such shares are entitled to appoint one or more directors by classes of shares, or the shareholders have entered into agreements with other shareholders related to governance and administration of the relevant company, or of its controlling party. "Material influence" has the meaning established in the *Normas Contables Profesionales* (Professional Accounting Norms, accounting system currently in force in Argentina, the "NCP").

In addition and as mentioned, the Corporate Governance Code establishes that the board must have as many independent directors as necessary, and has to explain and describe (as the case may be), if it has a policy directed to maintain the proportion of independent directors over the total number of directors. The board is also obliged to inform publicly the proportion of executive, non-executive and independent directors.

Finally, the board must establish if exclusive meetings of independent directors are appropriate. In case the chairman is not an independent director, the independent directors must appoint a leader independent director who will be in charge of coordinating the functioning of committees, drafting the agenda for the board's meetings, and holding meetings with the independent directors.

2.6. Controlling, risk management, internal control, audit, early detection of difficulties

Listed companies are obliged to appoint a fiscalisation committee (*comisión fiscalizadora)* with an odd number of members (called syndics, as mentioned), which is in charge to ensureing that the board complies with the CCL, the articles of association and regulations applicable to the company. Syndics attend, with voice but with no voting rights, the board of directors', executive committee's and shareholders' meetings and, in some specific cases, are entitled to call a shareholders' meeting provided the board refrains from doing so.[24]

For these purposes, the committee shall meet every 3 months at least. Syndics are appointed by the shareholders' meeting for a term no longer than 3 fiscal years. They are required to be admitted lawyers or public accountants, with a qualified title, or a civil partnership with several liability organized exclusively by said professionals.

On the other hand and as mentioned in 1.3 above, Decree No 677/2001 foresees that listed companies must organize an "auditing committee" within the board of directors' structure, which must be composed by at least three directors, the majority of which shall be independent directors.

The auditing committee is vested with authority to issue an

[24] See CCL, art. 294.

opinion on: (a) the hiring of the external auditors, (b) directors' and managers' fees and stock options; (c) transactions between the company and related parties; and (d) the increases of capital with restrictions to shareholders' preemptive rights.

This body is also in charge of monitoring: (a) the independence of the external auditors; (b) the internal control system; (c) the accounting and administrative system; (d) the application of information policies on risk management; and (e) all the information to be provided to the CNV.

In addition, the auditing committee is entitled to hire attorneys and other independent professionals, and to have access to the necessary information and documentation to comply with its tasks and obligations.

The Corporate Governance Code comes up with certain rules related to control and risk management. As mentioned in 1.3., the board of directors is in charge of defining the control and management risk policies, and any other concerning the follow-up (from time to time) of the internal information and control systems.

The board must also verify the implementation of said stratgies and policies, the compliance with the budget and the operations plan, and control the management perfomance and the meeting of the objectives set to them, including the estimated profit, and the attainment of the company's corporate interest.

Finally, so far as risk control and management, the board must inform if it has developed policies on that subject, and whether they are updated according to the applicable best practices or not. Same information shall be provided regarding other policies aimed to follow-up the information and control systems.

2.7. Duty of loyalty, regulation of conflicts of interest

Argentine regulation is particularly strong in point to

directors' duties of loyalty and diligence, and regarding conflicts of interest.

The leading principle as to directors' and managers' duties is provided for in Article 59 of the CCL, which imposes them the obligation to act with loyalty and with the diligence of a good businessman. Article 274 compels them to behave within the limits of the law and the company's by-laws.

In particular with respect of the duty of loyalty, Otaegui[25] states that, since the directors administrate assets not belonging to them, the duty of diligence (which will be analyzed in 0 below) is not enough and needs to be complemented with the duty of loyalty. In words of this author, according to the duty of loyalty the company's interest must prevail over the directors' ones.

Articles 271 to 273 of the CCL regulate conflicts of interest. According to them:

(a) Directors and managers can enter into agreements with the company as long as they correspond to the company's regular activities and they are subject to market conditions. Contracts not meeting this standard must be approved by board of directors' or the fiscalisation committee (provided no quorum is met for a board meeting to be held) and the shareholders' meeting. If the shareholders' meeting does not approve the agreement, it shall be null and void, and the involved directors shall be severally and jointly liable for the damages caused (Article 271).

(b) Directors are obliged to notice the board of directors and the syndics in case they hold a contrary interest. They must refrain from participating in the discussions on the subject (Article 272). It is worth mentioning that shareholders have the same obligation (Article 248).

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[25] OTAEGUI, Julio C., *Administración Societaria* (Buenos Aires, 1979, Ed. Ábaco de Rodolfo Depalma S.R.L.), p. 134.

(c) Directors are obliged to not to compete with the company, unless such activities are approved by the shareholders' meeting. This obligation includes not taking advantage of commercial or corporate opportunities.

Besides, according to the duty of loyalty, directors have confidentiality obligations and shall not misuse the company's assets.

Decree No 677/2001 and Law No 17,811 (Public Offering Act) also foresee the duty of loyalty. The latter considers the directors as "related parties" in connection with the execution of contracts among them and the company. Transactions between them and the company are subject to a special proceeding when significant amounts –as defined by the law- are involved. The CNV Rules complement the regulation of these topics.

2.8. Business judgment rule, standard of care

As mentioned in 2.7 above, Article 59 of the CCL imposes to directors and managers the obligation to act with loyalty and with the diligence of a good businessman.

The duty of loyalty has been analyzed in 2.7. Thus, it is necessary to profile the other standards.

The diligence of the good businessman implies that the manager has experience and knowledge over the company's activities. It is a professional standard which is related to the specific type of business of the company, and therefore different from the bonus pater familiae standard in Roman Law. Accordingly, he or she must be sufficiently prepared to be able to act successfully.[26] The lack of these elements implies responsibility.

[26] RICHARD, Efraín H. – MUIÑO, Orlando M., *Derecho societario* (Buenos Aires, 1997, Astrea), p. 229.

The duty of acting with the appropriate care to such knowledge and experience, provision and prudence are implied in the standard.

The management of the corporate business implies two kinds of activities. On one hand, the preparation of the reports and information required by law and applicable regulations and the diligent registration in the corporate books and commercial records. On the other hand, the adoption of the decisions needed to conduct the business, and the consequent performance of all necessary acts, within the limits of the corporate purpose.

The directors' and managers' obligations with respect to the management and conduction of the corporate business relate to their behaviour, which should reasonably conduct to the expected outcome,[27] thus, professional diligence does not ensure a guarantee of a good result.[28] Therefore, directors are deemed to have complied with their duties if they prove that they have acted prudently and with due care.[29]

Courts have decided that the director is liable for the sole circumstance of being a member of the board, insofar it is deemed that the body incurred in an act triggering its liability,[30] since even when the director did not act by himself or herself, he or she bears the duty of controlling the administration of the company.[31] In consequence, directors have been adjudged liable by not preventing other directors from incurring in misconduct, as long as if he or she

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[27] NCCA, Chamber B, *Forns, Eduardo A. v. Uantú S.A. y otros*, [2003-IV] *JA*, 897; ROVIRA, Alfredo L., "*Responsabilidad del directorio por la gestión empresaria*", [9/14/2005] *LL*, 1.

[28] ROVIRA, Alfredo L., "*Responsabilidad del directorio por la gestión empresaria*", [9/14/2005] *LL*, 1.

[29] NCCA, Chamber B, *Estructuras Elcora S.A. v. Yurcovich, Rosa y otra*, [1999-IV] *JA*, 178.

[30] NCCA, Chamber C, *Minetti y Cía. Ltda. S.A.* [11/06/1996] *JA* 1997-I-612; NCCA, Chamber E, *Comisión Nacional de Valores v. Renault Argentina S.A.*, [2004-B] *LL*, 141. For scholars' opinion, see ROVIRA, A. L., *Responsabilidad del directorio por la gestión empresaria*, [9/14/2005] *LL*, 1.

[31] NCCA, Chamber B, *Estructuras Elcora S.A. v. Yurcovich, Rosa y otra*, [1999-IV] *JA*, 178.

would have acted with due care, he or she had been aware of said misconduct.[32]

In this sense, courts have decided that the fact that the director recognizes that he or she was unaware of the misconduct, could be considered as evidence of his/her lack of due care.[33] Thus, liability arises unless the director does not adopt concrete actions for the misconduct to cease, according to his or her possibilities.[34] Consequently, directors can be exempted from liability if they have acted with due care only.[35]

Furthermore, the CCL foresees that, in order to avoid said personal liability for a board's act or decision, the director must state in writing his/her disagreement with such, and notify said disagreement to the syndic prior to the shareholders' general meeting assessing the director's responsibility.[36]

In order to verify whether the director's behavior complies with these standards, the following circumstances are to be considered: (a) the size of the company; (b) the corporate purpose,[37] (c) the general and specific functions assigned to the director; and (d) the facts surrounding his or her performance and how his or her duty of diligence was complied with.[38]

Based on these principles, Argentine courts tend to reject liability claims related to damages resulting from commercial decisions, but admitting the directors' liability in case of evident

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[32] NCCA, Chamber B, *Forns, Eduardo A. v. Uantú S.A. y otros*, [2003-IV] *JA*, 897.

[33] NCCA, Chamber E, *Crear Crédito Argentino S.A. v. Campos, Antonio y otros*, [2000-E] *LL*, 67.

[34] NCCA, Chamber D, *Comisión Nacional de Valores*, Lexis No. 70010718.

[35] NCCA, Chamber B, *Forns, Eduardo A. v. Uantú S.A. y otros*, [2003-IV] *JA*, 897. Regarding scholars see: ROVIRA, Alfredo L., "*Responsabilidad del directorio...* ", p. 1.

[36] See CCL, art. 274.

[37] In this sense, it has been decided that the director's exposure for misuse of company's funds when the company's purpose is the administration of third parties' funds aggravates his liability (see NCCA, Chamber E, *Crear Crédito Argentino S.A. v. Campos, Antonio y otros*, [2000-E] *LL*, 67).

[38] ODRIOZOLA, C. S., "*¿Reforma del régimen de responsabilidad de los directores o necesidad de una adecuada interpretación*", [1982-B] *LL*, 711 et seq.

breach to the duties of diligence and loyalty, non-fulfilment of obligations stemming from the by-laws, and in the event of responsibility *in vigilando.*

Even if the case relates to the merits of an increase of the share capital and not to director's liability, it is worth mentioning the case *"Pereda vs. Pampagro"*,[39] in which the court stated that the court was impeded to issue an opinion on a commercial decision or on the merit of the acts performed on these basis.

Additionally, for a director to be held liable, the court shall verify the existence of other civil responsiblity requirements, namely: (a) the existence of fault; (b) the relation between the director's conduct and the damages caused to the company;[40] (c) that said conduct is adjudged to the director by his o her lack of diligence or wilful misconduct; and (d) the damages.[41]

It is to be highlighted that directors' liability will be adjudged as long as the company suffers damages as a consequence of his or her misconduct.[42] Even not being held responsible due to the lack of damage, the director can be removed by the shareholders' meeting on the basis of the misconduct, and the breach of his or her duties.[43] In any case, the shareholders' meeting may revoke the director *ad nutum* (i.e., with no cause).

Given the relevance of these duties for listed companies, also Decree No 677/2001 refers to them. In particular, the decree obliges directors, managers and syndics to adopt the adequate measures related to the performance of the issuer's activities, to set internal controls in order to obtain a prudent conduction, and to avoid the

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[39] NCCA, Chamber D, *Pereda, Rafael v. Pampagro S.A.*, [1989-E], *LL*, 182.

[40] NCCA, Chamber E, *Industrias Record S.A. v. Calvo, Marta*, [2000-IV] *JA*, síntesis.

[41] NCCA, Chamber A, *Eledar S.A. v. Serer, Jorge A.* [1999-B] *LL*, 123; NCCA, Chamber B, *Mourín, José L. v. Editorial Molina S.A. y otros*, (1995) 162 *ED*, 436.

[42] NCCA, Chamber B, *Estructuras Elcora S.A. v. Yurcovich, Rosa y otra*, [1999-IV] *JA*, 178.

[43] NCAA, Chamber B, *Jinkus, Gabriel A. v. Video Producciones Internacionales S.A. and others* [171] *ED*, 272.

lack of compliance with legal duties. The decree also points out their obligation to act with the diligence of a good businessman in the preparation and difussion of information, and to take care of the independence of external auditors.

2.9. Remuneration, stock options, other incentives

The by-laws shall establish the directors' compensation; otherwise it shall be determined by the shareholders' meeting or the supervisory board, as the case may be.

Article 261 of the CCL foresees that: (a) the aggregate of the directors' compensation, including salaries for the performance of permanent administrative duties, must not exceed 25% of the company's accumulated profits; (b) said percentage shall be reduced to 5% when no dividends are distributed (paragraph 3); and (c) the aforementioned limits can be exceeded when the profits are not enough to compensate the directors for the performance of special duties.

This type of compensation shall be approved by the shareholders' general meeting (paragraph 4).[44] Said limits also apply to fixed amounts tied to profit compensations.[45]

Courts' decisions and opinions from scholars consider that the director is entitled to collect his/her fees in advance, on account of and subject to the final determination by the shareholders' meeting.[46]

Compensation with stock options is in conflict with

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[44] NCCA, Chamber B, *Rivieri de Pietranera, Lidia v. Rivieri e Hijos S.A.*, [1997-A] *LL*, 140, among others. For scholars who do not agree with this position, see: OTAEGUI, Julio C., "Algunas cuestiones sobre la retribución de los directores", (1999) 181, *ED*, 122.

[45] ROVIRA, Alfredo L., "La remuneración de los directores", in *El directorio en las sociedades anónimas*, (Buenos Aires, Ad-hoc, 1999), p. 211.

[46] NCCA, Chamber E, *Ramos, Mabel v. Editorial Atlántida*, (1999) 181 *ED*, 122; ROVIRA, Alfredo L., "La remuneración de los directores", p. 196.

shareholders' preemptive rights. Nevertheless, listed companies' directors can be compensated with stock options.[47] The value of said stock options shall be considered as to the application of the limits set forth in Article 261 of the CCL, as decree No 677/2001 prescribes. In these cases, the shareholders' meeting shall fix the price of the option and the shares to which said options are entitled, to the ends of Article 261 of the CCL. CNV Rules are also applicable.

The decree requires as well that the compensations policy (including stock options plans) be informed in the complementary notes to the financial statements. The auditing committee is entitled to issue an opinion on said plans.

2.10. Liability (only towards corporation or also toward shareholders and investors), in particular in crisis situations, concrete cases

The CCL rules the following judicial actions to establish the directors' liability[48]:

(a) Corporate liability action filed by the company. This claim is ruled by Article 276 of the CCL. It shall be filed by the company[49] against the directors claimed to be liable, and shall be previously decided by the shareholders' meeting, which can resolve so even when said decision was not included in the agenda, as long as it is a direct result from any matter included therein.[50]

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[47] See Decree No. 677/2001, art. 77.

[48] See ZALDÍVAR, Enrique - ROVIRA, Alfredo L. – RAGAZZI, Guillermo E. and MANÓVIL, Rafael M., *Cuadernos de derecho societario* (Buenos Aires, Abeledo-Perrot, 1976), Vol. II, 2nd part, p. 532/4.

[49] NCCA, Chamber A, *Eledar S.A. v. Serer, Jorge A.* [1999-B] *LL*, 123.

[50] See CCL, art. 276; NCCA, Chamber C, *Martínez de Quintas, Elisa E. y otros v. Quintas S.A.*, [1985-D] *LL*, 496.

Thus, courts have rejected actions not approved by the shareholders' meeting.[51] Notwithstanding, courts have also contended that the shareholders' meeting decision (prior to file the action) is not required when it will have no practical effect, thus delaying the conflict.[52]

(b) Corporate liability action filed by any shareholder. Provided the company (the shareholders' meeting) rejects the directors' liability, or fails to file the complaint once decided by the shareholders' meeting, shareholders are entitled to initiate this action, called "*ut singuli.*"

In case the shareholders' meeting approved the directors' performance, shareholders representing 5% of the capital stock shall be entitled to file the action as long as they have voted negatively to said decision (Article 275 of the CCL). This legal provision has given place to a discussion among authors, since certain scholars are of the opinion that, to be entitled to file the claim, shareholders must also have motioned the filing of said action at the shareholders' meeting, and challenged the meeting's resolution rejecting said motion.

This action may be filed by any shareholder also, in case the company fails to bring the action after three months as from the shareholders' meeting decision to initiate the claim (Article 276 of the CCL).

Although the CCL does not rule derivative actions as they are established by UK and US law, scholars understood that there are similarities between derivative actions and the *ut singuli* action.[53] The scope of this action is not limited to the plaintiff's concerns as it

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[51] NCCA, Chamber A, *Flor de Lis S.A. v. Guarneri, Juan y otro*, [2000-I] *JA*, 584.

[52] NCCA, Chamber B in re: *Forns, Eduardo A. v. Uantú S.A. y otros*, [2003-IV] *JA*, 897.

[53] den Toom, Marcelo A. "Acciones sociales de responsabilidad ut singuli: las acciones derivadas", in *El directorio en las sociedades anónimas* (Buenos Aires, Ad-Hoc, 1999), p. 299 et seq.

is filed in the interest of the company.[54]

However, decree 677/2001 foresees the right of listed company's shareholders to file derivative actions (as the CNV calls them, according to the English version of the decree available at its website).[55] Article 75 of the decree allows shareholders entitled to file the *ut singuli* action, to claim the compensation for the damages suffered by the company on the latter's benefit, or to claim the compensation for partial damages indirectly suffered by them proportionally to their stake, in which case the compensation shall become part of their equity.

When the shareholders pursue compensation for all damages alleged to be suffered by the company, the defendant is entitled to settle by paying the claimants the amount corresponding to the "indirect" damages, determined proportionally to their stockholding.

No court decisions have been issued on this matter yet.

(c) Individual liability action. Article 279 of the CCL states that shareholders and third parties are entitled to sue the directors by themselves and in their own interest. Commercial courts, following Halperin's position[56], have construed that such action may be filed by any shareholder or third party for damages directly suffered in its patrimony.[57]

Thus, courts reject claims for indirect damages caused in the shareholders' patrimony as a consequence of a major damage directly caused in the company's assets, considering that they are out of the scope of this action.[58]

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[54] NCCA, Chamber D, *Alvarez, Manuel y otros v. Guezeui, Julio y otros* [1985-A] *LL*, 317.

[55] http://www.cnv.gov.ar/LeyesyReg/Decretos/ing/DEC677-01.htm

[56] HALPERÍN, Isaac – OTAEGUI, Julio C., *Sociedades Anónimas* (Buenos Aires, 1998, Depalma), p. 557.

[57] NCCA, Chamber E, *Salguero León y otros v. Iorio, Roberto*, [1992-III] *JA* 14; NCCA, Chamber E, *López González, Manuel v. Belgrano 602 S.A. y otros* [1991-B] *IMP*, 1417.

[58] NCCA, Chamber A, *Frutos de Dupuy, Graciela v. Carosi, Augusto M.* [2001-A] *LL*, 648.

Third parties are always entitled to sue the directors for damages that their performance may cause.[59]

As anticipated, directors' performance for a given fiscal year is discussed at the ordinary shareholders' meeting treating the financial statements corresponding to such period. Responsibility extinguishes by approval of the perfomance or by waiver or settlment; provided however, that the responsibility does not derive from a breach to the law or the by-laws, given that the shareholders' meeting has approved the performance with no opposition from shareholders representing at least 5% of the outstanding capital.

Finally, it is worth mentioning that Article 173 of the Bankruptcy Law establishes the responsibility of the administrators who have wilfully allowed a company to become insolvent. The action shall be filed by the court's receiver or by any creditor, subject to the prior approval of creditors representing the absolute majority of the amount of credits accepted by the court.[60]

B. The shareholders

2.11. Fiduciary duties of controlling shareholders, conflicted transactions, transfer of assets and profits out of firms for the benefit of their controlling shareholders ("tunneling")

The concept of fiduciary duties is not foreseen in Argentine law. However, the CCL contains severe provisions to punish and avoid this type of behaviours.

The liability of controlling shareholders is foreseen in Article 54 of the CCL, which provides for three different hypotheses, as follows:

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[59] See CCL, art. 279.

[60] RIVERA, Julio C., *Institutiones de derecho concursal* (Santa Fe, Rubinzal-Culzoni, 1997) vol II, p. 369.

(a) Shareholders and controlling parties even if they are not shareholders shall be severally and jointly liable for the damage caused to the relevant company due to their wilful misconduct or negligence. They will not be entitled to set-off the indemnification they are obliged to pay with any profit that might have brought to the company in other businesses.

(b) The shareholder or controlling party using the company's funds or assets for its own, or other third party's business, must bring the profit to the company but bear the losses himself. According to relevant authors, the misappropriation of business opportunities is included in this legal concept.

(c) The third paragraph foresees the disregard of legal entity when the company turns out to be a means to breach the law, the public order or the good faith, or the entity is used to pursue the frustration of third parties' rights. In such cases, the company's activity shall be (also) attributed directly to the shareholders or controlling parties (whether shareholders or not) who made it possible. They shall also be jointly and severally liable for the damages caused.

Conflict of interest is foreseen in Article 248 of the CCL (see 2.7 above). According to said provision, shareholders must refrain from voting in decisions related to transactions with respect of which they hold (directly or on behalf of third parties) a contrary interest. Otherwise, the shareholder shall be liable for the damages caused, provided the necessary majority to adopt a valid decision should not been reached without its vote.

Decree No 677/2001 places certain obligations on listed companies' controlling shareholders. The same as directors, syndics and intermediaries, they must inform the CNV on the shares (quantity and class), put or call options regarding shares or

convertible securities they own, corresponding to the company to which they are related.

Certain acquisitions of shares considered to be material must be informed to the CNV, as well as the execution of shareholders' agreements related to the control of the relevant companies, limmiting the transfer of its shares, providing for purchase or call options over them or regarding subscription rights, directed to exercise a controlling influence or material changes in the governance structure of the relevant company.

In connection with the CNV Rules, they required issuers and controlling shareholders to provide certain information on the latter. Financial statements must also reflect control conditions, and controlling companies are required to prepare consolidated balance sheets.

Finally, Article 73 of Law 17,811 considers that controlling parties are a "related party" in connection with the execution of contracts among them and the company (see 2.7 above).

2.12. Shareholder rights and minority protection, in particular information rights (also groupwide)

The CCL sets forth a number of shareholders' rights. Certain rights are granted to all shareholders, as preemptive right and residual preemptive rights, as well as information rights, voting rights, the right to challenge shareholders' meetings resolutions, etc.

Other rights are established specifically to protect minority shareholders. Among them, the following can be highlighted:

(a) Appointment of directors:
The CCL foresees the possibility that the by-laws establish classes of shares, allowing the appointment of certain number of directors per class.

In case no classes of shares are foreseen in the by-laws, the

members of the board of directors shall be appointed by the affirmative vote of the absolute majority of the votes present at the meeting.

Minority shareholders are entitled to exercise their right to vote cumulatively, for the appointment of directors, members of the fiscalisation committee (if these are three or more) and members of the supervisory board, if this organ is foreseen in the by-laws. This system allows them to multiply their votes by the number of directors to be appointed, and allocating the resulting number of votes to one or more candidates up to one third of the board members to be elected. Shareholders voting cumulatively and shareholders voting by the ordinary system compete for one third of the vacant seats and the director/s receiving more votes are appointed. The rest of the seats shall be covered by applying the ordinary system (absolute majority of votes issued by shareholders not exercising the cumulative vote right and entitled to vote).

The CCL also foresees the procedure to be applied when cumulative voting is exercised, and states that the by-laws cannot restrict or affect such right.

(b) Appraisal right:
According to the CCL, minority shareholders have the right to have their shares bought back by the company if they do not agree with the majority shareholders' decisions related to certain specific issues, as merger, spin-off (with a few exceptions), some share capital increases in non-public companies, radical change of the corporate purpose, delisting, etc. To exercise this right, the shareholders who attended the shareholders' meeting must have voted against the relevant decision and give notice to the company of, among others, the decision to retire within five days as from the closure of the meeting. Shareholders who did not attend the meeting must serve said notice within fifteen days as from closure. Shareholders whose vote was abstention are not entitled.

Listed companies' shareholders cannot retire in case of merger or spin-off, provided however, that the shares that they will receive as a consequence thereof are authorized for public market trade.

The price to be paid to the minority shareholder for its shares shall be such stemming from the last financial statements prepared by the company or that it is obliged to prepare according to applicable laws and regulations. This criterion has been criticized by scholars because the shareholder does not get a fair value of his shares. But other authors are of the opinion that this is a compromise to encourage a restrictive exercise of this right.

Decree No 677/2001 foresees a different valuation system for the case of delisting. There a mandatory tender offer at fair market value is foreseen.

(c) Qualified minorities' rights:
Shareholders representing 10% of the corporate capital may request the Public Registry of Commerce or the CNV (as the case may be) to supervise the company in which they hold shares, in certain cases, including listed companies.

Shareholders representing 5% of the corporate capital (or the lowest percentage as foreseen in the by-laws) may require a shareholders' meeting to be summoned.

As mentioned in section 2.10., shareholders representing at least 5% of the corporate capital may resist the approval of the directors' performance.

Finally, shareholders representing 2% of the stock capital may make formal complaints with the syndic.

(d) Information:
Shareholders representing at least 2% of the corporate capital can request information to the fiscalisation committee. Non-public companies are allowed to not appoint a syndic if certain conditions are met; in such a

case shareholders are entitled to review the corporate books and registrations and to request information on the company and the business to the board of directors.

The board of directors is obliged to make available to the shareholders at the company's domicile, all information concerning the financial statements 15 days prior to the shareholders' meeting to consider them. This term is extended to 20 days for listed companies, according to Law No 17,811 and the CNV Rules. The information in such case can be made available by electronic means. Shareholders representing at least 2% of the corporate capital are entitled to submit in the corporate domicile their comments or proposals on the conduction of the business with respect to the relevant fiscal year. The board shall inform the shareholders that such comments or proposals are available at the corporate domicile or by electronic means.

Law No 17,811 and the CNV Rules oblige issuers and controlling shareholders to provide a wide range of information on corporate, financial and business matters. Listed company's directors or syndics shall notify the CNV and the relevant stock exchange any event or situation that, due to its materiality, may substantially affect the placement of securities or their negotiation.

Main documentation and financial information shall be filed electronically by means of the *Autopista de Información Financiera*, an electronic system of dissemination and disclosure of information used by the CNV similar to the EDGAR-Type System. The authenticity of the documentation filed is assured by encrypted access and digital signatures preserving authorship and confidentiality.

This system provides free access to all electronic filings made since 2001. The aforementioned relevant issues, company's by-laws, personal data of directors, financial statements and consolidated financial statements (quarterly and annual financial statements), are

examples of the main information available in the website. However, the CNV is empowered to postpone the disclosure of material information in special cases upon the issuer or interested parties' request, in the event that the corporate interest might be affected.

Finally, the Corporate Governance Code, in an attempt to promote shareholders' information, determines that the board of directors must inform whether the company has or not a specific office to provide response to queries and concerns, except for those which may affect the company's strategy or future plans. As the case may be, the board shall inform on the obligation to prepare reports on the matters that came out from time to time to keep the shareholders, the corporate bodies and the CNV informed.

2.13. Institutional investors, financial intermediaries

As mentioned in section 1.5, pension funds held by AFJPs (including shares, securities and any investment) were transferred to a National Government agency (ANSES). Thus, main private institutional investors in the market have disappeared. There are a few mutual funds, but their relevance is low.

In connection with intermediaries, the Public Offering Law sets forth that brokers and their representatives must be registered with the CNV, and the conditions to be admitted as such.These provisions are complemented by the CNV Rules and each market may add its own regulation.

Decree No 677/2001 and the CNV Rules establish that intermediaries are obliged to inform the CNV on material uncommon facts which may affect their business, responsibility or investment decisions.

Intermediaries are also compelled to keep confidential all transactions not publicly revealed and are bound to the same loyalty and diligence duties foreseen for directors and managers with respect to any player in the relevant market. They must prioritize the

principal's interest and refrain from intervening in case of conflict of interest.

As mentioned in 1.4, the Investors Protection Code (*Código de protección para el público inversor*) imposes duties of loyalty and information to intermediaries in the public offering of securities.

In addition, other information and loyalty and transparency duties are foreseen in the CNV Rules. Penalties in case of lack of compliance are applied by the CNV.

2.14. Shareholder activism

In public companies the level of shareholder participation at meetings is low. Usually, controlling shareholders –who concentrate more than 70% of the capital stock- attend the meetings, together with a few minority shareholders only.

The Corporate Governance Code contains certain rules which can be considered as an attempt to obtain a higher degree of involvement. Accordingly, the code states that the board of directors must inform if it promotes informative meetings with the shareholders from time to time, besides the shareholders' meeting foreseen in the law.

Furthermore, the board of directors must issue justified opinion on the convenience of adopting particular measures in order to promote the attendance and participation of minority shareholders at the shareholders' meetings.

As to reality, the same as anywhere else, there are a few lawyers who specialize in making trouble and challenge shareholders meetings' resolutions systematically.

C. Labor

2.15. Codetermination in the board or only plant codetermination

The Argentinean law does not foresee the right for employees to be represented on boards of directors. The only precedent in this direction are the *"Programas de Propiedad Participada"*, created by Law No 23,696, which are programs designed for the employees of privatized companies to acquire shares of a special class, representing a given percentage of their stock capital (10% in general), entitled to appoint a director. However, employees are allowed to sell their interest after certain conditions have been met.

2.16. Strong or not-so-strong trade unions

Until '40s decade, unions in Argentina were socialist, communist or anarchist. The military coup which took place in 1943 dissolved such unions, which were replaced by others with a populist trend supported by the National Government. The same unions exist up to now. Currently, they are very strong, but they confront with companies rather than cooperate, and do not participate in their boards or management.

D. Audit

2.17. Mandatory auditing by external auditors

As a general rule, the CNV Rules imposes listed companies to

file with the CNV annual and quarterly financial statements duly audited by external auditors, despite certain exemptions with respect to the latter's balance sheets.

In point to information duties, the CNV Rules (Book 7, Chapter XXIII, Articles XXIII.1 to XXIII.15) prescribe that a report issued by an external auditor must be attached to annual and intermediate financial statements (with certain exemptions for the latter, as mentioned) to be filed with the CNV. The report must state the auditor's opinion on the relevant balance sheets, according to the criteria set forth in the CNV Rules (Book 7, Chapter XXIII.11, Exhibit I).

Special financial statements in case of transformation, merger, spin-off and winding-up must be also audited by an external auditor.

If the minority shareholders' rights could be affected, the measure has been requested by shareholders representing at least 5% of the stock capital, and the fiscalisation and the auditing committees have submitted their opinion on the subject before the CNV, according to Article 14 of Decree No 677/2001, the CNV has authority to request any listed company to appoint an external auditor proposed by the company's auditing committee. The appointed auditor must carry out the specific or limited tasks as determined by the CNV. His or her fees must be paid by the party requesting the measure.

It is worth mentioning that the CNV must decide on the appointment taking into account the likelihood of damages to the shareholders and the scope of the requested measure, in order to avoid affecting the company's business.

2.18. Tasks of the auditor

Listed companies' auditors must be registered with the CNV's external auditors registry and comply with the CNV's requirements.

External auditors for a given fiscal year must be appointed by the ordinary shareholders' meeting approving the financial statements corresponding to the prior fiscal year. The board of directors may propose auditors, provided however that the auditing committee has issued a prior opinion.[61]

According to the NCP, auditors are subject to professional duties applicable to accountants: (a) keep secret about privileged information (except upon requirement of competent authorities)[62]; (b) behave on good faith; and (c) act with diligence and care.

Besides, auditors must respect laws and regulations in force - including ethics codes- referred to: (a) independence; (b) performance of tasks; (c) preparation of reports; (d) communications to clients or third parties; and (e) preservation of documents supporting their report.[63]

The NCP imposes auditors the obligation of preparing their reports according to the auditing rules in force.

The auditors' obligation is considered as a "result obligation", since they must perform their tasks with a high degree of diligence and accurateness, reflecting in their report the economic or accountant reality in such a way that any other auditing process should reach the same outcome, detecting any mistake, irregularity or fraudulent misconduct. In the latter case, auditors must inform on the subject in their report and issue a negative opinion.

Decree No 677/2001 (Articles 12 to 15) and the CNV Rules (Book 1, Chapter III, Articles 19, 24 and 25) also contain provisions on external auditors' tasks and duties. According to them, listed companies' external auditors are obliged to file with the CNV an affidavit on the sanctions applied to them prior to the shareholders' meeting appointing them. Changes during their tenures must be

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[61] Decreto 677/2001, art. 13.

[62] Law No 23,974 of professional secrecy.

[63] FOWLER NEWTON, Enrique, *Tratado de Auditoría* (3rd. ed., Buenos Aires, 2004, La Ley), p 222.

informed to the CNV.

Finally, legal entities acting as auditors must implement an internal quality control system to guarantee compliance with the CNV Rules (Book, 1, Chapter III, Articles 24 and 25), and are subject to certain restrictions in connection with the number of fiscal years acting as auditors of a given listed company.

Law No 25,246 obliges public accountants to inform the *Unidad de Información Financiera* (Financial Information Unit, agency which depends of the National Ministry of Justice), in case they have detected irregularities related to, or suspicious of, money laundering deriving from any of certain offences, as drugs trafficking; weapons smuggling; terrorism; etc.[64]

2.19. Independence of auditors

According to the NCP, auditors' independence is a mandatory condition to carry out an auditing procedure. An auditor shall be considered as non-independent with respect to the audited entity or individual when: (a) he/she is an employee, spouse or related, partner, shareholder, associate, director or manager (except in case the audited entity is a non-profit organization or similar) of the audited entity; (b) he/she holds material interest (directly or indirectly) in the entity subject to auditing procedure; (c) his/her remuneration depends (directly or indirectly) on the outcome of the auditing; and (d) in case of auditing procedures over financial statements, when his/her remuneration has been agreed on the basis of the results stemming from the relevant balance.

In case of lack of independence, the professional will not be eligible as auditor

In addition to the NCP provisions, the CNV Rules set forth further conditions with respect to listed companies, according to

[64] Law No 25.246 (B.O. 5/5/2000), arts. 20 y 21.

which external auditors shall not be deemed to be independent in case they render services different from the external auditing, the list of which includes the following: (a) management and representation acts; (b) adoption of decisions related to managerial or direction tasks to be considered by the shareholders' meeting; (c) custody of the company's assets; and (d) preparation of documents supporting transactions.

Furthermore, external auditors shall not be considered independent in case they render certain special valuation, tax and assistance services. The CNV Rules also provide the conditions under which technological, legal, financial and internal auditing assistance services have to be rendered in order not to affect the auditor's independence.

Relating this matter, Decree No 677/2001 requires that the auditor must be independent, and grants authority to the CNV to require information to professional associations, accountants and listed companies; to conduct inspections and request clarifications; to recommend principles and criteria to be applied to accounting auditing; and to determine independence criteria.

Finally, it is worth mentioning that the Corporate Governance Code establishes that the auditing committee is in charge of controlling external auditors' independence and performance.

2.20. Liability to company and shareholders directly (third-party liability), caps, concrete cases

External auditors are responsible to the audited company, its shareholders and affected third parties, as well as with respect to authorities and controlling entities, in case of non-fulfillment of their obligations, or misconduct causing damage. Besides, auditors are liable in case of criminal offence during the performance or in occasion of the performance, of their tasks. This liability implies three aspects: professional, civil and criminal.

(a) Professional liability:

Professional liability is triggered when the auditor acts against ethical rules applicable to his or her profession. Professional associations are in charge of applying the corresponding sanctions, which may consist of warning, fine, suspension or license revocation.

(b) Civil:

Auditors shall be liable in case of breach of their legal or contractual duties, negligent or willful misconduct.

General provisions of the Argentine Civil Code apply, being the auditor responsible for breach of contract with respect to the audited company; and for damages in connection with third parties.

According to the Argentine Civil Code, the party breaching a contract has to indemnify the innocent party by paying damages being an immediate and direct consequence of the breach (A519). In case of willful misconduct, the indemnification is extended to mediate damages (Article 520). Indemnification for moral damages (rare in case of legal entities) may also be imposed by the court, on a case-by-case basis (Article 522).

(c) Criminal responsibility:

The Argentine Criminal Code does not foresee offences to be committed specifically by auditors. However, certain offences are prone to be committed by auditors when breaching their duties, such as fraud (Article 172), breach of duty of secrecy (Article 156), and concealment (Article 277 I (b).

Notwithstanding, other criminal laws foresee certain offences which apply specifically to auditors, such as: (a) falsification of accounting information pursuing concealment of tax offences (Law

No 24,769, Article 15); (b) omission to provide information to social security agencies or collaboration with related offences (Law No 24,241, Articles 136 and 146); and (b) non-fulfillment of the duties foreseen in Law No 25, 246 (Concealment and Money Laundering Act).

Sanctions range from fines to prison, according to the kind of offence and the circumstances of the case.

In addition to the liabilities foreseen in paragraphs (a) to (c) above, in case of lack of compliance with the obligations foreseen in decree No 677/2001 and the CNV Rules, the CNV can penalize auditors with warnings and fines, and even by excluding them from the external auditors registry in case of reluctance.

III. External corporate governance

A. Takeover regulation

3.1. General regulation

Decree No 677/2001 regulates tender offers (*Oferta Pública de Adquisición*), and also contains provisions regarding residual interest in public companies.

The decree foresees two kinds of tender offers: voluntary and mandatory (to be depicted in 3.2 below).

Tender offers must be issued by the offeror to the listed company's shareholders (or bondholders, as the case may be), provided the CNV has granted a prior approval to the bid.

The CNV Rules detail the requirements that the offeror must fulfill, and provides for terms, obligations in connection with information, publicity and prospectus and, in general, regulates the procedure, which is oriented to guarantee equal conditions to shareholders or bondholders who are in the same situation.

3.2. Mandatory bid and bid price

It is to be outlined that Decree No 677/2001 granted to public companies the option to decide whether to adopt the mandatory tender offer regime or not. In order to not be subject to this regime, listed companies had a term as from the decree was passed, for their shareholders' meeting to amend their by-laws, including a specific clause stating so. Companies requiring authorization to become public shall be deemed to be subject to the mandatory bid rules, unless their by-laws provide to the contrary.

When a company is within the scope of this regime, bids are mandatory in the following cases:

(a) Material interest and control:
The offeror intending to purchase shares or other rights over shares or any other security, entitling to 35% of the corporate capital at least, must issue a mandatory tender offer, provided however, that said material interest encompasses the acquisition of control over the issuer.

The acquisition shall be exempted from the mandatory regime if it is aimed to a change of control as a consequence of a reorganization, or implies a redistribution of interest within the same group which do not alter the current situation of decision making and control. Other exemptions are also foreseen in the CNV Rules (Book, 5, Chapter XVII, Articles 18 and 19).

In case the offeror intends to reach an interest equal or exceeding 35% of the corporate capital and/or voting rights, the offer must be issued over securities representing at least 50% of the corporate capital entitled to vote. In parallel, when the offeror intends to purchase an interest accounting for corporate capital or voting rights in excess of 51%, the bid must include 100% of the corporate capital entitled to vote.

Provided the offeror owns an interest representing at least 35% but not exceeding 51% of the corporate capital or voting rights,

and intends to increase such interest at least a 6% in a 12-year term, the offer shall be issued over securities representing at least 10% of the corporate capital entitled to vote.

(b) Delisting:
In case the shareholders' meeting decides to delist the company, a mandatory bid shall be issued to the shareholders who did not vote in favor of such decision and to the holders of rights over potential shares.

(c) Indirect acquisition:
If a takeover occurs indirectly, as a consequence of a merger of, or a takeover in another company or entity (not listed or domiciled in Argentina) controlling (directly or indirectly) a public company, a bid shall be mandatory when the concerning interest equals or exceeds 51% of the affected company's corporate capital entitling to voting rights.

Notwithstanding, in case the company affected by the merger or the takeover is a holding company, or its main asset consists of the shareholding in the public company, the tender offer shall be mandatory according to same criteria mentioned in (a) above.

(d) Acquisition of the issuer's own shares:
In case the listed company intends to purchase its own shares, a bid shall be mandatory only if the CVN determines (according to its criterion) that the shares subject to acquisition account for a relevant percentage with respect to the average negotiated stock.

Finally, a tender offer shall be mandatory in certain cases of capital reduction.

As a general principle, the price has to be equitable ("*precio equitativo*"). Main prescriptions on the subject set forth by the CNV Rules are as follows:

(i) The price in the mandatory bid deriving from the acquisition of a material interest shall be such determined by the offeror, with the following exceptions:

1. If the offeror has acquired securities of the same type during the last 90 days, the price cannot be lower than the highest price paid by the offeror in such transactions.

2. If the controlling shareholders or other shareholders entitled to participate in the bid have committed with the offeror to sell their interest, the price cannot be lower than the price contained in said commitments.

In case shares are divided into classes, different offers have to be issued for each class with comparable prices.

The offer can be for cash or be an exchange for other securities offer under the terms and conditions foreseen in the CNV Rules.

The offeror must file with the CNV an opinion assessing on the offered price, issued by a specialized independent consulting firm.

(ii) According to Article 32 of the decree, for the mandatory tender offer deriving from the delisting of the issuer or the acquisition of its own shares, the price has to be equitable also, and in cash only. The following are acceptable criteria to determine that the price is equitable: (a) net worth value of the shares, as per a special delisting balance sheet; (b) value of the company pursuant to net present value cash flow criteria and/or other indicators applicable to comparable businesses or companies; (c) liquidation value of the company; (d) average of the quoted market price of the shares during the semester immediately prior to the delisting request, regardless of the number of sessions in which they may have been negotiated; and (e) price of the consideration or

underwriting of new shares, in case any new public purchase offer had been made regarding the same shares, or new shares issued, as the case may be, during the year prior to the date of the agreement requesting the delisting. Those criteria will be taken into account jointly or separately and with justification of their respective relevance at the time in which the offer is made, and duly supported in the offering prospectus.

The CNV may object the price if it considers that it is not equitable. This decision can be challenged by the company or its controlling shareholder before the Stock Exchange Arbitral Tribunal.

The lack of objection to the price by the CNV shall not impair the right of affected shareholders to challenge the price before judicial or arbitration tribunals.

3.3. Post-bid: anti-frustration or "just say no" rule, breakthrough, options, reciprocity

In connection with anti-frustration measures, Article 22 k) of Decree No 677/2001 states the neutrality principle: the board of directors cannot hinder the regular course of the tender offer procedure, unless the board intends to obtain alternative offers more convenient for the shareholders, or the shareholders' meeting has granted a special and prior authorization to such ends during the bid procedure.

The CNV Rules (Book 9, Chapter XXVII, Article 33) set forth the obligation of the board of directors to refrain from performing or agreeing any transaction out of the scope of the ordinary business of the company, or the main purpose of which is to disturb the regular course of the bid procedure. Shareholders' interest shall prevail over the board's ones.

The purpose of these prohibitions is to avoid directors to take

advantage of their position to interfere in the stock price or discourage the acquisition.

Directors, related companies or third parties acting together therewith, are not allowed to: (a) agree the issuance of shares or securities entitling to the subscription or acquisition of shares, except if such issuances had been previously decided and authorized by the shareholders' meeting; (b) enter into transactions (directly or indirectly) with respect to securities subject to the offer pursuing to hinder the procedure; and (c) sale, lien or lease real estate or other assets of the company in order to frustrate or disturb the bid.

It is worth mentioning that the company is not allowed to acquire its own shares as from the date in which it becomes aware of the existence of a tender offer (CNV Rules, Book I, Chapter I, Article 12).

In connection with the just say no rule, it is not compatible with the Argentine regime due to the fact that the board of directors cannot accept or reject a bid. Only shareholders are individually entitled to decide on the sale of their own shares.

Breakthrough measures do not fit with the Argentine system, since the CCL establishes special cases in which shareholders are entitled to one vote per share despite the number of votes (or lack thereof) granted by the by-laws. For listed companies, such special cases are the following: transformation, early dissolution, transfer of the corporate domicile abroad, material change of corporate purpose and capital repayment (total or partially). This regime is mandatory and cannot be amended or set aside by the by-laws.

Finally, no provisions on options and reciprocity are foreseen in the Argentine system.

3.4. Pre-bid: most important defensive measures

It is worth mentioning that most of the important defensive measures under the Anglo-Saxon system are not applicable to the

Argentine regime. For example, the board of directors cannot decide by itself an increase of capital, thus such funds cannot be used for defensive purposes; poison pills (unless already foreseen in the by-laws, and even then only a few of them) cannot be applied in the Argentine system, etc.

As mentioned in 3.3. above, the board of directors cannot sell the company's assets during the bid procedure, eliminating other common defensive measure.

However, the search for offerors with more attractive proposals (white knight) is allowed by Decree No 677/2001, within the terms established therein, as referred in 3.3 above.

3.5. Takeover bids from abroad

No specific requirements are foreseen by regulations in force. The foreign offeror must register with the Public Registry of Commerce as foreign investor, and comply with the annual informative regime mentioned in 1.8, first paragraph above. The offeror will be subject to the local capital market and public offering rules, exactly the same as a local offeror. Anyway, the CNV may require relevant information on the offeror or its group.

3.6. Squeeze-out and sell-out, other exit rights, compensation

(a) Squeeze out:
A controlling shareholder or a group of shareholders owning more than 95% of the capital stock of the relevant company (*quasi control*, as named by Decree No 677/2001) may issue an unilateral declaration called "acquisition declaration" (*"declaración de adquisición"*) which expresses the intention to acquire the total issued capital of the relevant company (i.e., all the remaining shares owned by minority shareholders and all other

bonds or securities convertible into shares) (squeeze-out). The acquisition declaration must be issued within six months as from the day the quasi control percentage has been reached, and it must be notified to the listed company's board of directors. At the same time, a request to delist the company shall be filed with the CNV and with the regulated market where the shares are listed.

Within five business days as from receiving the CNV's approval of said resolution, the controlling shareholders must transfer to an appointed escrow bank account the cash to be paid to the minority shareholders in consideration for the sale of their shares. The transfer of ownership of the shares is automatic, once the payment is made.

The price is determined by the controlling shareholder and shall be equitable. Same provisions mentioned in 3.2 (d) (ii) with respect to the price apply.

It should be stressed that minority shareholders are only entitled to challenge the offered price, but not the transfer of title on the shares or other securities. In this case, a judicial or arbitration tribunal determines the price of the shares. Both the Stock Exchange Arbitration Tribunal and the judicial courts of the company's domicile are competent in this matter, at the option of the minority shareholder filing the challenge to the price.

During the term of the judicial or arbitration proceedings, the controlling shareholders are entitled to all the economic and political rights of the shares transferred pursuant to the squeeze out.

The challenge of the price by any minority shareholder does not interrupt the delisting, nor make the purchase of the shares by the controlling shareholders void, and must be exercised within three months after the last publication of the objected price. Upon expiration of said term, the valuation made by the controlling shareholders will be deemed valid and binding.

The squeeze out system has been used many times without major problems. In a few cases, minority shareholders filed legal actions requesting the court to declare the squeeze out mechanism unconstitutional. The base argument is that the squeeze out mechanism violates minority shareholders property rights protected by the Argentine constitution because they are forced to sell their stock even if they are not willing to do so. In only three cases lower courts issued injunctions forbidding controlling shareholders to pursue a squeeze out based on its unconstitutionality, but only one based on the property rights argument. The others discussed the rank of the rule that introduced the squeeze out regime. Most probably these cases were settled.

(b) Sell out:

Any minority shareholder may require the controlling shareholders with quasi total control, at any time, to make an offer to purchase all minority shareholders' shares.

The controlling shareholder has a 60-day term to grant a tender offer, or to issue an acquisition declaration, launching a squeeze-out procedure in the terms depicted in (a) above. If such term elapses and no procedure is launched, the minority shareholder may file a claim to obtain a declaration stating that its shares are considered acquired by the controlling shareholder, fixing an equitable price, and compelling the controlling shareholder to pay it. The price shall be paid on the basis of same criteria referred to in 3.2 (d) (ii).

(c) Other exit rights

As mentioned in 2.12 (b) above, shareholders are entitled to appraisal right in the cases foreseen therein.

Delisting is a special case, since according to the CCL, minority shareholders who did not vote such decision are entitled to exercise their appraisal right. In parallel, Decree No 677/2001 obliges the company to issue a mandatory bid but only for this particular case.

Certain authors are of the opinion that mandatory bid applies unless the shareholder claims its appraisal right, but there is no practical experience since no conflict with this provisions has arose yet.

B. Disclosure and transparency (briefly)

3.7. Accounting system (USGAAP, IFRS, other)

The NCP are the accounting system currently applicable. These rules have been issued by the *Federación Argentina de Consejos de Profesionales en Ciencias Económicas – FACPC*, which is a national federation of the accountant professional's local (provincial) associations.

A commission the members of which have been appointed by the FACPCE, the CNV and the Accountants Professional Association of the City of Buenos Aires has been formed in August 2007, in order to discuss the implementation of the international standards NIIF/IFRS as mandatory accounting system in Argentina.

In November 2008, the FACPCE issued Resolution No 16 which sets forth a plan to gradually adopt the NIIF/IFRS standards. The project foresees different stages, including adaptation, training and implementation.

Resolution No 26 issued by the FACPCE on 20 March 2009 establishes that, once the gradual implementation process is completed, NIIF/IFRS standards shall be mandatory for companies under the CNV control, except for PyMES which are not in the public regime but admitted to other financing alternatives.

Companies not obliged to implement the NIIF/IFRS standards will be able to apply them voluntarily.

3.8. Periodic disclosure, future-oriented disclosure

Although the information that the issuer must file with the CNV at the times foreseen in the CNV Rules, the Decree No 677/2001 and the Corporate Governance Code (e.g., information to be authorized as public, to approve particular issues, related to shareholdings or tender offers, etc.), issuers must comply with a periodic disclosure regime.

This regime foresees the filing of annual and quarterly financial statements and related documents. Different terms and requirements are foreseen according to the section of the relevant stock exchanges where the issuer is listed.

Issuers may file voluntarily information for foreign investors, which must comply with the requirements established in the CNV Rules (Book VI, Chapter XXIII, Article 4 and related).

Besides, any information filed by the issuer with a stock exchange or market, shall be submitted before the CNV.

It is not mandatory for listed companies to provide the CNV with information on future activities.

3.9. Disclosure of shareholdings (thresholds)

Since shares must be nominative (registered or non-endorsable) the identity of the shareholders and the interest they hold is not privileged information. In addition, when shareholders' meetings are filed with the CNV, the attendance registry reveals the interest held by each attending shareholder. Financial statements must also reflect transactions with related parties and control conditions, and controlling companies are required to prepare consolidated balance sheets.

The CNV Rules require in certain cases the filing of information regarding shareholders and controlling parties (e.g., at

the time the authorization to become public is requested, when a company files to be listed in the news projects section of the stock exchange, etc.).

Provided the company is a member of a group, it must inform on the controlling, controlled and related companies (CNV Rules, Book 1, Chapter VI.2.1., Article 6, e.3).

In particular, Article 9, paragraph b) of Chapter XXI, Book 6, of the CNV Rules provides that the controlling shareholders of a public company shall inform to the CNV, on a monthly basis, of any change in their ownership of shares or bonds issued by the target company. Thus, in the event the controlling shareholders of the target company purchase shares of the latter, irrespectively of the quantity and the percentage acquired, they will be obliged to inform said purchase to the CNV. In addition, disclosure requirements regarding purchase of shares are also applicable to administrators and members of the fiscalisation committee of the issuer.

Finally, information on the controlling shareholders must be filed with the BCBA by listed companies. Said data is published online (www.bolsar.com).

3.10. Instant or ad hoc disclosure

As mentioned in 2.12 above, law No 17,811, Decree No 677/2001 (Article 5 a) and the CNV Rules (Book V, Chapter XXI.2, Articles 2 and ss.) oblige listed company's directors or syndics to notify immediately the CNV and the relevant stock exchange any event or situation that, due to its materiality, may substantially affect the placement of securities or their negotiation. The RCOT foresees same obligation.

Main documentation and financial information shall be filed electronically by means of the *Autopista de Información Financiera* at any time. The BCBA also receives relevant information via fax after normal working hours.

Article XXI.2 of the CNV Rules contains an exhaustive list without limitation, of cases considered as relevant events, such as: (a) changes in the corporate purpose or in the company's activities; (b) sale of fix assets representing more than 15% with respect to the last financial statements; (c) changes in the board of directors and syndics; (d) decisions on extraordinary investments and entering into relevant financial or commercial transactions; (e) losses exceeding 15% of the net worth; (f) negotiations to file a business reorganization proceeding, petition for bankruptcy and related proceedings; (g) facts affecting the regular development of the business; (h) relevant judicial or arbitral actions against the company; (i) the filing of shareholders' claims against the company or its officers, and the relevant news of the procedure; (j) agreements limiting the distribution of earnings or the internal bodies' authority; (k) changes in the controlling group shareholdings; (l) decision to acquire its own shares; (m) risk of a dissolution cause, etc.

3.11. Prospectus disclosure

The CNV Rules (Chapter VIII) regulates the issuance of prospectuses, which are considered as the basic document by means of which the public offering of securities is made. The prospectus must contain all information related to the transaction (statics information on securities, details and price), the issuer (key information, history, relevant events, main investment and divestments, takeover, main activities, group data, fix assets, financial and operative projections, liquidity and capital resources; F&D; accounting reports and information, etc.) directors, managers, shareholders, transactions with related parties and any other data that the CNV may require (CNV Rules, Book 1, Chapter VIII.2, Article 1).

The CNV is in charge of assessing the prospectus, with authority to request the addition of further information or amendments. (CNV Rules, Book 1, Chapter VIII.2, Articles 6 and 7).

Finally, Decree No 677/2001 sets forth that issuers and its directors and syndics; offerors (as the case may be), and signatories of the prospectus are jointly responsible for the information contained in such documents filed with the CNV. Experts and consultants are responsible for their professional opinion. Intermediaries participating in the transaction must review diligently the information included in the prospectus.

IV. Enforcement

A. Available sanctions and their relevance

4.1. Civil law, administrative law, criminal law

(a) Civil law

As depicted in detail in Chapter II hereof, the CCL foresees the sanctions applicable to directors, syndics, shareholders, controlling parties, etc. for breaching the law, the by-laws, lack of diligence or wilful misconduct.

In all aspects not provided for in the CCL, provisions on civil responsibility foreseen in the Argentine Civil Code also apply in second term. Same regime depicted in 2.20 (b) for auditors also apply.

Finally, and as mentioned, law No 17,811 and Decree No 677/2001 set forth indemnification rules in favour of parties suffering damages as a consequence of breaches to the law or regulations, negligence or wilful misconduct of issuers, directors, syndics, external auditors, etc.

Among such indemnifications, those foreseen in Decree No 677/2001 for cases of breach of secrecy duties and, mistakes or inaccuracies in prospectuses may be mentioned.

(b) Administrative law

Persons violating the provisions of law No. 17,811, related rules and regulations (as the CNV Rules), including the provisions related to transparency in the capital markets are subject to the following sanctions, besides the civil or criminal actions that may apply:

(i) warning;

(ii) fines up to AR$ 1,500,000 (approximately EUR 300,000), which may be increased to up to five times of the amount of the benefit obtained, or the damage caused, as a consequence of the illegal conduct, should it be greater;

(iii) prohibition for up to five years to act as directors, administrators, syndics, members of the supervisory board, reporting accountants, external auditors, or managers of issuers authorized to make public offerings, or to act as such in managing or depositary companies of mutual funds, in rating agencies or companies developing activities as financial fiduciaries, or to act as intermediaries in a public offering or in any other matter under control of the CNV;

(iv) suspension for up to two years to make public offerings of securities or, as the case may be, of the authorization to act under the public offering regime; or

(v) mandatory delisting of the company.

The CNV is in charge of imposing these sanctions. In case of breach of the provisions related to the transparency regime, the CNV must apply the sanctions according to the following guidelines: the damage to the reliance with respect to the capital market; the magnitude of the infringement; the benefits generated to, or damages caused by, the person breaching the law; the affiliation of the person breaching the law with the controlling group; in particular the

qualification of independent or external member/s, and the fact of having been sanctioned in relation to the Decree No 677/2001 during the last six years. In the case of legal entities, the directors, administrators, syndics, and members of the supervisory board whose individual responsibility is imposed, will be severally liable.

For constitutional reasons, an appeal against any sanction imposed by the CNV may be filed before a Federal Court of the company's domicile (in the City of Buenos Aires, before the Commercial Court of Appeals).

CNV Rules also penalize the acquisition of listed shares out of the public offering regime with the suspension of voting rights (CNV Rules, Chapter XXVII.11.3, Article 88).

(c) Criminal law

The Argentine Criminal Code foresees in Articles 300 and 301 the offences of fraud to the commerce and the industry, among which the following offences related to this report are included:

(i) Alteration of market prices by means of false news or fake negotiations.

(ii) Offering of public funds, shares or legal entities' obligations, hiding facts or true circumstances, or issuing false statements.

(iii) Falsification by a legal entity's administrator, syndic or liquidator, of accounting and corporate documentation, or provision with false or inaccurate information on material facts to the shareholders' meeting.

(iv) Concealment or consent from a legal entity's director, manager, liquidator or syndic, with respect to acts breaching the law or the by-laws from which damage could derive. In case the issuance of shares

or quotas is involved, this circumstance is considered as an aggravating circumstance.

These offences are penalized with prison from 6 month to 2 years.

4.2. Non-legal sanctions, such as naming and shaming, peer pressure, market constraints

Autonomous non-legal sanctions such naming and shaming, peer pressure or market constraints are not spread out in Argentina.

B. Supervision

4.3. Capital market authority (SEC, COB, CONSOB, DTI, etc), relevance for corporate governance, active/passive, legalistic/pragmatic

As mentioned in 1.4., the CNV is the capital market authority.

In connection with corporate governance, the CNV's role is active and legalistic.

As a matter of fact, the CNV has demonstrated not to be in practice as pragmatic as desirable, since it has made certain decisions and applied penalties focused on formal aspects only, despite the serious potential consequences avoided by means of the lack of compliance of minor formal obligations.

4.4. Takeover panel or other self-regulatory body

No takeover panel or similar body is foreseen in the Argentine regime.

As referred above, stock exchanges and markets issue their own regulations and are in charge of controlling their application.

4.5. Relevance of courts

CNV's decisions are appealable before the National Commercial Courts in the City of Buenos Aires, or before Federal Courts of Appeal in the provinces. However, decree No 677/2001 foresees the jurisdiction of the relevant institutional Stock Exchange Arbitration Tribunal in conflicts related to listed companies and their shareholders and investors, including those claims derived from the CCL, such as claims challenging corporate bodies' decisions and director's and other officers' liability.

The arbitral jurisdiction is also mandatory for the acquirer in case of an acquisition public offering, but optional for the minority shareholder subject to squeeze-out.

The relevance of court decisions is very high in this field. A very large body of case law has been developed by the jurisprudence as nearly all company law aspects.

C. Shareholders

4.6. Derivative suits (against directors), prerequisites, onus of proof, costs, right to apply to court for protection or dissolution

See section B 0.

4.7. Special audit (aim, appointment on shareholders' initiative, independence, scope [also groupwide], rights, report and availability, costs, general frequency of such special audits)

The only case of special audit on shareholders' initiative is depicted in 2.17 above.

D. Others

4.8. Role of shareholder associations, corporate governance commission, scorecards for corporate governance, rating agencies, the financial press, et al.

Private organisations have an active role in promoting corporate governance practices. Their main objectives are to assist Argentine private and public entities to promote high professional standards of conduct; to assist directors in this environment; to generate domestic or foreign relationships with the associations related to management; to communicate with the media, investors, educators, companies, non-governmental organizations, world business leaders and directors in order to improve the comprehension of matters concerning company bodies; to spread out best practices; and to carry out research activists.

The following are examples of such entities: the BCBA; Mercado Abierto Electrónico; Cámara Argentina de Comercio; Cámara de Sociedades Anónimas; Cámara Argentina de Fondos Comunes de Inversión; Instituto Argentino para el Gobierno de las Organizaciones (IAGO); Instituto para el Desarrollo Empresarial de la Argentina (IDEA); Organisation for Economic Cooperation and Development (OECD) Fundación Empresaria para la Calidad y la Excelencia; Centro para la estabilidad financiera (CEF); Comunicación de responsabilidad social de la empresa (ONG) Foro

ecuménico social (FES); Instituto Argentino de Responsabilidad Social Empresaria (IARSE).

To pursue their objectives, they organize seminars (such as IOSCO; IAGO; IDEA; and CEF); publish papers (such as CEF; IARSE); create documentation centers (such as CEF); and organize educating committees for members of boards of directors (such as IAGO).

Certain entities (such as IAGO) have issued voluntary conduct, practices and corporate governance codes.[65] These initiatives tend to compile best practices, principles or conduct rules expecting that private companies (public or closely-held), non-governmental organizations and association adopts them voluntarily, in an attempt to improve the corporate governance in the Argentine society.

V. Other matters

(Only if necessary for understanding the corporate governance of the country)

5.1. If very much under discussion, special (corporate) governance forms (see supra introduction, point 7)

5.2. Something might be said here about corporate social responsibility if it is of legal and practical relevance

[65] Issued between November 2003 and February 2004. Source: www.iago.org.ar.

VI. Summary, final conclusions, and observations

This report summarizes main Argentine legal and regulatory provisions on the topics requested, including the interpretation of courts when appropriate or requested.

As mentioned, corporate governance regulations should be revised and replaced by rules specially designed according to local needs, tradition and legal system.

Finally, certain regulations as those related to mandatory tender offers, residual interest and squeeze out are new. Thus, experience is not material in such areas. In addition, no relevant judicial precedents resolving certain doubtful or conflictive issues have been issued yet.

ANNEXES

Exhibit I: Key cases (court and non-court)

Exhibit II: Main corporate governance literature

EXHIBIT I

Key cases

1. NCCA, Chamber B, *E. Flaiban S.A. s/Sumario*, [1971] RDCO, 797.

2. NCCA, Chamber A, *Cerámica Milano S.A.*, (1974) 58 ED, 373.

3. NCCA, Chamber B, *Paramio, Juan M. v. Paramio, Pascual E. y otros*, [1994-I] JA, 423.

4. NCCA, Chamber D, *Estancia Procreo Vacunos S.A. v. Lenzi, Carlos y otros*, [1996-B] LL, 193.

5. NCCA, Chamber E, *Peacan Nazar, R. v. Torres Astigueta S.A.*, [1996-C], LL, 178.

6. NCCA, Chamber C, *Gómez, Humberto v. Confiteria Los Leones S.A. y otros*, [1997-B], LL, 132.

7. NCCA, Chamber A, *Saunier, Gastón v. Peña de Prendes, María Araceli y otros*, 6/10/1997, [1997] RDCO, 798.

8. NCCA, Chamber D, *Piekar, Jaime y otro v. Peña, Jaime J. y otros*, [1997-E], LL, 477.

9. NCCA, Chamber B, *Estructuras Elcora S.A. vs. Yurcovich, Rosa y otra,* [1999-IV] JA, 178.

10. NCCA, Chamber E, *Crear Crédito Argentino S.A. v. Campos, Antonio y otros*, [2000-E] LL, 67.

11. NCCA, Chamber B, *Forns, Eduardo A. v. Uantú S.A. y otros*, [2003-IV] JA, 897.

12. NCCA, Chamber A, *De Matteris, Luis v. S.I.E.*, (2005) Revista de las Sociedades y Concursos. No 37, p 202.

13. NCCA, Chamber B, *Transportes Perpen S.A. s/quiebra v. Perpen, Ernesto y otros*, (2006) Revista de las Sociedades y Concursos,

No 42, p. 349/56.

14. NCCA, Chamber C, *Saiz, María Luisa v. Camper S.A.*, [1979-D], LL, 35.

15. NCCA, Chamber A, *Fernández, Roberto M. v. Azcuénaga y Melo S.A.*, (2006), 217 ED, 190.

16. NCCA, Chamber D, *Gysin, Norberto y otros v. Garovaglio y Zorraquín S.A.*, [2008-E], LL, 200.

17. NCCA, Chamber C, *Comisión Nacional de Valores v. Laboratorios Alex S.A.C.*, [1993-C], LL, 295.

18. NCCA, Chamber E, *Ramos, Mabel v. Editorial Atlántida*, (1999) 181 ED, 122.

19. NCCA, Chamber B, *Banco Extrader S.A. s. quiebra v. Terrado, Jorge Alberto Ramón*, (2002) Revista de las Sociedades y Concursos, No 15, p. 242.

EXHIBIT II

Main corporate governance literature

Zaldívar, Enrique / Manovil, Rafael M. / Rovira, Alfredo L. / Ragazzi, Guillermo E. Cuadernos de Derecho Societario, 1st. ed., Buenos Aires (Macchi) 1973/1976, 4 volumes.

Otaegui, Julio C., Administración societaria, Buenos Aires (Ábaco) 1979, 486 p.

Halperín, Isaac / Otaegui, Julio C., Sociedades anónimas, 2nd. ed. updated, Buenos Aires (Depalma) 1998, 961 p.

Vanasco, Carlos A. Sociedades comerciales, 1st. ed, Buenos Aires (Astrea) 2006, 2 volumes.

Roitman, Horacio / Aguirre, Hugo A.; colab. / Chiavassa, Eduardo N.; eds., Ley de sociedades comerciales: Comentada y anotada, 1a. ed., Buenos Aires (La Ley) 2006, 5 volumes.

Cabanellas de las Cuevas, Guillermo, Derecho societario, 1st ed., Buenos Aires (Heliasta) 1993-2009, 32 volumes planned, 12 published.

Rodríguez Peluffo, Damián. La toma de control de sociedades abiertas: Una contribución al desarrollo del mercado de capitales, Buenos Aires (Ábaco) 2006, 221 p.

Camerini, Marcelo A,. La transparencia en el mercado de capitales, 1st. ed., Buenos Aires (Ad-Hoc) 2007, 767 p.

Guillermo Cabanellas de las Cuevas (direction) / Gabriel de Reina Tartière (coordination), Mercado de Capitales, Buenos Aires (Heliasta) 2009, 3 volumes.

Verón, Alberto V., Ley de sociedades comerciales comentada, anotada y concordada, 1st. ed., Buenos Aires (Astrea) 1990, 6 volumes.