Executive Summary

Argentina has a relatively well developed stock market, with impressive market value gains in the past year driven by the fast growing economy, yet in some ways a shadow of its former self before the end of the millennium financial crisis. The market is illiquid, as Argentinean companies prefer to list overseas, and few IPOs occur. BCBA and MERVAL have been less successful in dynamising trading and foreign and domestic investor interest than their best competitors in the region, such as Brazil. Barely a few years ago the BOVESPA main tier experienced similar lack of fresh investor interest, and attained a new life via the Novo Mercado premium Corporate Governance listing tier, where multiple IPOs went oversubscribed year after year, luring stakeholder confidence. Argentina could be poised to attain its full potential as well, given the market fundamentals and adequate legal and market infrastructure, as there remain several key areas of policy focus which need to be addressed:

1. It is especially crucial for capital markets development that its regulatory and institutional framework is perceived as strong and reliable. In particular, the CNV needs to be adequately equipped with resources. Further, the self-regulatory status of exchanges should not inhibit the strict supervision of market operators, including brokers. The institutional framework could also benefit from deeper cooperation and information exchange among regulators, especially on related deals within financial groups. Finally, CNV, the SROs, and other related stakeholders should continue the discussions around the unification of Bolsas and Mercados, until viable options can be ironed out.

2. A second focus area of consolidating recent gains is corporate disclosure. An area which merits particular emphasis is related party transaction monitoring, including transaction within financial groups where enforcement is more challenging due to several regulators involved. Related to the issue is the need for strengthening the control over auditor quality for listed firms. Finally, ownership information at the ultimate level should be available at a minimum to regulators to aid enforcement, but also to the market.

3. Good governance awareness can be aided by director training, further promotion and implementation of director independence, and strengthening of the efficacy and functioning of audit committees, while avoiding duplication costs by eliminating requirements for alternative similar corporate organs, or supplanting such organs with audit committees.

4. As a matter of longer term priority, the work of the 2001 Takeover Law reforms (Decree 677/2001) would need to be completed by extending the OPA regulations to all listed firms.
Acknowledgements

This assessment of corporate governance in Argentina was conducted in December 2006 by Tatiana Nenova of the South Asia Private and Financial Sector Department and Vidhi Chhaochharia of the Corporate Governance Department of the World Bank, as part of the Reports on Observance of Standards and Codes Program. The ROSC was based on a corporate governance template-questionnaire completed by Bomchil y Associados. Messrs. /Mmes.: David Robinett, Alex Berg, Henri Fortin, Ana Cristina Barros, Jonathan George Hooper, Mario Guadamillas and Zeinab Partow provided advice and comments.

The assessment reflects technical discussions with the Comisión Nacional de Valores, Banco Central de la Republica Argentina, Buenos Aires Stock Exchange, Mercado de Valores de Buenos Aires, Inspección General de Justicia, other regulators, market participants, stakeholders, experts, NGOs, and activists.

The draft ROSC assessment for Argentina was cleared for submission to the authorities by Axel van Trotsenburg on ____________.
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Country assessment: Argentina

This ROSC assessment of corporate governance in Argentina benchmarks law and practice against the OECD Principles of Corporate Governance, and focuses on listed companies.

Market profile

Argentina has a relatively well developed stock market, which is still in some ways a shadow of its former self. The country is taking steps to put behind the legacies of the country’s economic crisis 1999-2002, and the resulting regulatory instability. Market capitalization is sizeable, albeit mostly due to the few large foreign companies listed on the Bolsa de Comercio de Buenos Aires (BCBA). Market liquidity is insufficient for the purposes of institutional investors, and foreign investors prefer to hold Argentinean stock via ADRs listed in New York than via the equivalent stock at BCBA, robbing the latter from potential transaction volume. IPOs are few and far between, though SMEs have started listing on the SME tier since 2006, in a dynamic new development. The bond market also has high potential, as there is currently no secondary trading to stimulate its development.

Ownership is mostly concentrated in families and multinationals

The ten largest listed companies have on average 70% of their shares in the control block. According to market participant estimates, about 80-90 percent of listed companies have a controlling owner. The domestic institutional investor industry has great potential to spur the growth of BCBA, however, currently its equity holdings are small due to liquidity, diversification, and term structure considerations.

Comisión Nacional de Valores is undertaking important steps in corporate governance strengthening; further efforts needed to achieve high quality enforcement.

The Securities Commission (Comisión Nacional de Valores or “CNV”) is the securities market regulator. The CNV has taken a series of significant steps to increase corporate governance standards in Argentina over the past five years. Decree No. 677/01 introduced new disclosure and investor protection rules, and introduced arbitration procedures.

Argentina has developed a voluntary Code of Best Practices for Corporate Governance, as listed companies are reluctant to have governance rules imposed on them as a mandatory requirement. CNV’s regulatory powers are adequate, though resource shortages hamper a world-class level of enforcement in some areas. Nevertheless, CNV is achieving remarkable results with the resources at hand.

Except for BCBA, the self-regulating provincial stock exchanges are not active in either trading or regulatory activities, preferring instead to use and follow BCBA, but nonetheless creating a sizeable institutional superstructure of 16 stock exchanges and stock markets. BCBA plays an important role in monitoring corporate disclosures, in agreement with CNV. The impact of the self-regulatory status of BCBA and MERVAL on their enforcement ability merits careful evaluation, and some concerns have been raised in the case of the latter. Associated financial infrastructure is at the requisite technical level, including the Caja de Valores S.A., the depository, registrar, and custodian.

The pension funds regulator has achieved remarkable advances in regulating disclosure and governance aspects, spurring ideas of emulation within other financial sector regulators. The Banco Central de la Republica Argentina has undertaken an ambitions new project hoping to provide a unified database of corporate financial statements in an effort to improve upon the incomplete.
Arbitration is a viable alternative to slow commercial courts. The Arbitration Tribunal is proving a welcome alternative to the overburdened Buenos Aires Commercial Court, as well as provincial general courts, though it is under-used for investor protection issues, and has a considerable unexplored growth potential. There are mixed opinions as to whether the decisions of CNV’s administrative proceeding are overturned too frequently by the court. Argentinian regulatory oversight could benefit from further coordination and cooperation among the different agencies, with an eye to clarifying functioning in practice in areas of regulatory overlap, and improved enforcement efficiency (e.g. related transactions and Chinese walls within financial business groups).

Corporate governance is still perceived as a cost rather than a benefit by companies, and awareness is not high. Outstanding thorny issues in the eye of policymakers include business group regulations (including related transactions), quality of disclosure, audit committee functioning, director independence, arbitrage court scope, to name but a few.

Key issues

The following sections highlight the principle-by-principle assessment of Argentina’s compliance with the OECD Principles of Corporate Governance.

Investor protection

<table>
<thead>
<tr>
<th>Basic minority rights in place</th>
<th>Shareholders have the right to attend meetings, elect directors (including via cumulative voting), approve dividends, vote on major corporate decisions such as amendment of founding documents and authorization of capital changes, and can ask questions at shareholder meetings, though few participate actively in corporate governance due to closely-held ownership of listed companies. Sales of major corporate assets are not subject to shareholder meeting approval, unless they involve virtually all substantial assets of the company. Postal or electronic voting is not foreseen in Argentine law.</th>
</tr>
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<tbody>
<tr>
<td>However, shareholder redress is often weak and ineffective.</td>
<td>Shareholders are entitled to a host of protection mechanisms by law, though few are workable in practice. One frequently used and effective procedure is a lawsuit to reverse general shareholder meeting decisions, though practitioners note that the procedure is not always contained within the prescribed three month duration. Other options for shareholder redress are of generally ineffective, and are not used.</td>
</tr>
<tr>
<td>There is some dispersion between voting and cash flow rights</td>
<td>Common shares can carry one to five votes, non-voting participation shares are rare, and preferred non-voting shares have negative impact rights. A golden share was retained by the government after the privatization of certain public utilities companies. Whereas the majority of listed companies are not part of business groups, pyramids do exist, often to 3-4 levels. Cross-shareholdings are not frequent, and parking of shares in subsidiaries is restricted. Shareholder agreements are frequent.</td>
</tr>
<tr>
<td>Ownership disclosure improvements apparent</td>
<td>Ownership information at the 5% direct owner level is available with the CNV. Controlling shareholders, directors, auditors, and executives have a duty to inform the CNV, the public and the stock exchanges about the number and classes of shares of stock, convertible bonds, and options they own, on a monthly basis. This ownership information is available to the public via the CNV website, at the</td>
</tr>
</tbody>
</table>
direct ownership level. Failure to disclose may (and does) cause the CNV to initiate proceedings against the shareholder, which may result in fines, listing suspension or a ban on new public offerings.

Insiders report security transactions in real time. BCBA reports on controlling owners. The Caja de Valores maintains records of ultimate owners, but is not mandated to disclose them except upon a special CNV request, which prevents more effective enforcement and monitoring of insider trading and related party rules compliance. Shareholder agreements for listed firms are public. The available ownership information is not collected in a single database, and requires visiting several institutions; records are incomplete, and historical information must be compiled (such as BCBA material facts disclosures of control changes). The market for corporate control has not been active. World-class OPA (mandatory tender offer) procedures were adopted by CNV in 2001, but 70% of listed companies opted out. Delisting rules were also adopted, where no opt-out option was allowed for listed companies, and CNV has carefully monitored their successful implementation. Market participants testify to a significant improvement in minority rights and regulations on de-listing. Insider trading laws are relatively recent (2001). Insiders are banned from disclosing or trading on private information, and are liable to return all gains, in addition to sanctions. Since 2001, there have been three insider dealing cases, of which one has been resolved (and the guilty verdict reversed) after appeal to the Supreme court.

The rules to prevent abusive related party transaction are strict, and involve a detailed related party definition, as well as an independent assessment of the market terms of such deals before board approval, and shareholder approval in case of non-compliance with market conditions. Public disclosure of the independent assessment is adequate. Implementation of the rules depends on the active effort of truly independent (and adequately protected) directors and audit committees. Related lending is not prohibited. Conflict of interest rules are strict on paper, and have not been extensively tested in practice.

Disclosure

By law, Argentina has adequate transparency provisions, most importantly due to the considerable contribution to disclosure of Decree No. 677/01. Resource deficiencies in capital market regulators and institutions prevent the effective enforcement of some aspects of disclosure (such as content quality); however, timeliness and completeness is adequately enforced. Enforcement is mainly carried out by BCBA, by the power of an agreement between the latter and the CNV, due to resource constraints at the CNV proper. Shareholders can complain to the CNV on non-compliance with disclosure rules. Issuers generally do not consider the compliance burden excessive.

Listed companies file all periodic and real-time disclosures in an Edgar-like online system with the CNV, including annual consolidated audited reports, quarterly reports with limited audit review, founding documents, director and manager information, aggregate director compensation, shareholder meeting minutes, the comisión fiscalizadora report, material facts. Related party deals exceeding 1% of net equity and A$100,000 must be publicly disclosed as well. Detailed analysis of accounting and audit policies and practice can be found in the Argentina Accounting and Audit ROSC, World Bank, 2007. In some cases, listed companies also have some information on their websites.
Non-listed companies file annual reports, by-laws, and director information with IGJ/Commercial Register, where access is public, albeit somewhat expensive and slow, and the records are often incomplete. SARLs file only the bylaws / registration and changes thereto, with IGJ/Commercial Register (publicly available as well). In practice, meaningful information can only be obtained on listed and large non-listed companies, due to the mandatory existence of the *sindico*, whose duties include information provision to shareholders upon request.

### Company oversight and the board

Even though the majority of boards in Argentina are unitary, companies can establish in their bylaws a supervisory board (*Consejo de Vigilancia*) formed by 3 to 15 shareholders appointed by the shareholders’ meeting. The supervisory board is charged with oversight of the board and company compliance with the law, and in general bears strong similarity to both the audit committee of listed firms, the *comité de control interno* of AFJPs, and the *comisión fiscalizadora /sindico* of large SAs (see discussion below). Supervisory boards are not common.

Directors are appointed and may be removed by the AGM with majority, at the suggestion of the board. Up to a third of the board vacancies can be filed up by cumulative voting, which can be requested by 25 percent of capital. In companies with multiple share classes, the bylaws can establish that each class appoints / removes one or more directors. Any shareholder can nominate a director at the AGM, by raising their hand and proposing the matter for a vote.

Director duties of loyalty and of care are detailed and well defined, and include the obligation (among others) to place corporate and shareholder interests above that of controlling shareholders. As in all civil law systems, director duties do not benefit from a further and more specific definition, such as an explicitly defined duty to avoid conflicts of interest; instead, the duties of loyalty and care have a wide application. Directors are civilly and criminally liable for false or misleading statements. Director insurance is not common, mainly because existing products leave directors vulnerable to court attacks by excluding “willful harm”, which is easy to demonstrate in Argentinean court. Social liability suits and minority suits for personal damages, the two instruments most likely to protect minority interests, have been problematic in their functioning in practice.

### The effectiveness of the outsider (independent) director governance remedy hinges on adequate protection of the outsider against insiders

Listed companies must have at least two independent directors. Independence is defined sufficiently strictly. Effective December 31, 2007, independent directors will be disclosed in the board’s corporate governance report. Truly independent director efforts have been few and far between due to perceived inadequate liability protection of directors. Liability protection of directors is perceived to have a lot of potential.

Listed companies issuing shares (but not debt) must form an audit committee with 3 or more board directors, a majority independent, and elected by the board from among the directors as elected by the AGM. The members of the audit committee require business, financial or accounting qualifications, and have fairly wide powers of supervision of the board actions and corporate financial matters / internal control systems / legal council. Large SAs (including listed ones) in addition must form a *comision fiscalizadora / sindico* from the lawyer or accountant profession (the function is typically carried out by the external auditor or an ex-employee loyal to the company). *Sindicoss* have less wide, but very similar, functions and powers to those of audit committees, and needn’t be independent, by law. Specifically, it also monitors the legal compliance of the board, examines company books, reports to the shareholder meeting on the
company situation, and can investigate at shareholder request, but does not have important functions vis-à-vis the external auditor, related party transactions or the internal control systems, nor has access to legal council. AFJPs, on the third side, must have a comité de control interno charged with roughly similar functions.

Areas of Policy Focus

Argentina’s securities market has no reason for being any less dynamic or slower growing than the most successful capital markets in the region. To restore its recent vibrancy, however, the market would have to accept that the world has changed, from a corporate governance, transparency, and investor protection perspective, enormously in the past decade, with Sarbanes-Oxley re-echoed around the world. The very nature of corporate governance reforms around the world changed from the early 90s exploratory and tentative initiatives, to the early 2000s in-depth changes and emphasis on effective implementation and palpable results. The concept of the oversubscribed IPO start-up listing at the premier strict disclosure and good governance tier, a true child of the corporate governance age, is a usual part of the landscape in emerging markets, as it is in developed ones. The first such companies have listed on BCBA as well, and are heralding the potential of the capital market; provided, however, that investors are given adequate assurance of predictability, minimal red tape, and recourse, to protect their returns. In addition to stocks, the debt markets - fideicomisos and obligaciones – represent a considerable promise as an engine for capital markets growth. A final key factor that would spur growth and promote investor protection and stronger governance are domestic and foreign institutional investors, most importantly AFJPs, who would jump at the opportunity to hold more liquid, adequate-return domestic stock, if those were available.

Given important legal reforms in the recent past, which still remain to be fully assimilated, as well as the generally strong level of Argentina’s laws on the book, the country priorities currently focus on a consolidation and implementation of the changes adopted. Enforcement, training, awareness-raising, and resources would need to be channeled at the capital markets institutions, above all the securities regulator – the CNV – in order to assure that Argentina’s stock market reaps the full benefits from recent regulatory improvements.

Several specific issues would be put at the policymaker’s attention, for future consideration and by means of outlining the policy options available.

**Recommendation 1 – Strengthening capital markets institutions**

Investor confidence in the capital markets to an extent reflects the strength and power of the regulatory institutions involved. CNV, in particular, needs adequate resources in terms of budget and highly-qualified staff, which would not be lost to the private sector’s more attractive terms of employment, in order to credibly enforce the regulatory framework over private sector listed companies. CNV’s administrative procedure can be appealed at court with a stay on execution of fines. Appeals are used frequently and decisions are not generally reversed but fines are reduced.

The self-regulatory status of exchanges and stock markets should not preclude in the least a strong supervision of market operators, which needs to be implemented fully by CNV. The quality, transparency, and accountability of brokers and other market operators lies at the crux of the investor confidence in the markets. Options to strengthen CNV supervision over market operators should be identified and discussed with the SROs involved, and a viable policy should be implemented, in order to avoid the trap of some neighboring countries where broker quality discourages stock market investment.
Cooperation and information exchange among regulators needs to be strengthened, especially on related deals within financial groups. The Banco Central, CNV, and the Superintendencias of Seguros and AFJPs should institute a framework for furthering cooperation (e.g. regular meetings), as well as forge practicable channels for information exchange, while discussion options to eliminate barriers to freedom of information flow among institutions (e.g. ways around the secreto bancario rules, etc).

CNV, the SROs, and other related stakeholders should continue the discussions around the unification of Bolsas and Mercados, until viable options can be ironed out, on which consensus could be eventually built.

**Recommendation 2 – Solidifying disclosure improvements**

Related party transaction monitoring is not only difficult, but hinges upon the successfully fulfilled governance role of several stakeholders and regulators, which makes effective enforcement particularly challenging. Alignment of related party rules among the Banco Central, CNV, and the Superintendencias of Seguros and AFJPs should aid the enforcement effort, as would a thorough information exchange on members of financial groups – banks, insurance and pension companies, investment funds, broker/dealers, asset management firms, etc. Further strengthening the control over auditor quality for listed firms, as is being done for some specialized financial firms, would aid this process as well. Finally, the depositary, Caja de Valores, should be regulated to automatically share with CNV all ownership information electronically, in real time, to be used in the enforcement of insider trading and related party regulations.

**Recommendation 3 – Takeover regulations for all listed firms**

The 2001 Takeover Law reforms (Decree 677/2001) should be extended to all listed firms. In recognition of the difficulty of implementing this reform, international experience suggests means of isolating relatively inactive listed firms, and imposing the OPA regulations only on firms who indeed are in need of the market, e.g. those that issue new shares. This reform is suggested for the longer term, timed after the achievement of a certain level of market development, and to further raise the stock market profile.

**Recommendation 4 – Making corporate boards effective**

Most Argentinean boards have a long way to go in terms of their awareness of the benefits of good governance, as well as in their appreciation of the separation between the interests of controlling shareholders and the corporate interest itself. This process of awareness-raising could be aided by a number of initiatives:

- Director training has been shown by international experience to significantly increase the implementation of good governance principles. Argentina boasts several very strong governance pioneers who could easily step up to the training challenge, particularly the Argentine Institute of Corporate Governance (IAGO). More resources should be invested in training board members. Achieving this goal will require a combination of incentives, including recommendations for training in future revisions to the Code, more support from the corporate and investor communities, and continued work to develop relevant curricula. The government could support the Institute by requiring formal training of board members in companies where the state has participation.

- Director independence is a crucial yet possibly the most elusive reform in terms of effective achievement. Training might help opening up Argentinean business culture to new ideas on good governance, however, directors would only act in true independent manner if they feel sufficiently
compelled to do so by their duties, as well as adequately protected to safely stand up for the interests of the company and minority shareholders, possibly against controlling family interests. In particular, reforms are needed in director insurance requirements, which would also promote a wider menu of director insurance products offered by the market.

A second governance organ which international experience has found crucial for implementing effective transparency and accountability in companies has been the audit committee. In Argentina, there are several such organs created by regulation, including audit committee for listed firms, comision fiscalizadora / sindico for all large SAs, comité de control interno for AFJPs, as well as a supervisory board for any company that chooses to create one. All four of these organs have similar functions, which variations in powers and scope, and create unnecessary duplication costs for companies. Eliminating all but a single such organ would focus implementation efforts and scarce resources of companies and help make the organ effective. The benefits of the audit committee over other similar organs have been amply proven by international experience.

**Regulatory changes**

**High Priority**
- Implementing ownership disclosure to the ultimate level (with the involvement of Caja de Valores).
- Aligning related party transactions rules and implementing effective enforcement, especially in financial groups supervised by several regulators.
- Eliminating duplication of corporate oversight bodies, and making audit committees effective.

**Medium Priority**
- Harnessing director insurance rules and liability provisions to promote the safe functioning of truly independent directors.

**Lower Priority**
- Extending OPA regulations to all listed firms.

**Institutional Strengthening**

**High Priority**
- Strengthening of the CNV resources (including tools for stricter supervision over market operators).

**Medium Priority**
- Increased cooperation among regulators, on exchange of information, as well as on related deals within financial groups.

**Lower Priority**
- None.

**Private sector initiatives**

**High priority**
- Director training and corporate governance awareness-raising.

**Medium Priority**
- Consideration of viable options towards unification of Bolsas and Mercados.

**Lower Priority**
- None.
## Summary of Observance of OECD Corporate Governance Principles*

<table>
<thead>
<tr>
<th>Principle</th>
<th>FI</th>
<th>BI</th>
<th>PI</th>
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<tbody>
<tr>
<td><strong>I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK</strong></td>
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<tr>
<td>IA Overall corporate governance framework</td>
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<tr>
<td>IB Legal framework enforceable /transparent</td>
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<td>IC Clear division of regulatory responsibilities</td>
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<tr>
<td>ID Regulatory authority, integrity, resources</td>
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<tr>
<td><strong>II. THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS</strong></td>
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<td>IIA Basic shareholder rights</td>
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<tr>
<td>IIA 1 Secure methods of ownership registration</td>
<td>X</td>
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<tr>
<td>IIA 2 Convey or transfer shares</td>
<td>X</td>
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<tr>
<td>IIA 3 Obtain relevant and material company information</td>
<td>X</td>
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<tr>
<td>IIA 4 Participate and vote in general shareholder meetings</td>
<td>X</td>
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<tr>
<td>IIA 5 Elect and remove board members of the board</td>
<td>X</td>
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<td>IIA 6 Share in profits of the corporation</td>
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<td>IIB Rights to part in fundamental decisions</td>
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<tr>
<td>IIB 1 Amendments to statutes, or articles of incorporation</td>
<td>X</td>
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<tr>
<td>IIB 2 Authorization of additional shares</td>
<td>X</td>
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<tr>
<td>IIB 3 Extraordinary transactions, including sales of major corporate assets</td>
<td>X</td>
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<tr>
<td>IIC Shareholders AGM rights</td>
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<tr>
<td>IIC 1 Sufficient and timely information at the general meeting</td>
<td>X</td>
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<tr>
<td>IIC 2 Opportunity to ask the board questions at the general meeting</td>
<td>X</td>
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<tr>
<td>IIC 3 Effective shareholder participation in key governance decisions</td>
<td>X</td>
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<tr>
<td>IIC 4 Availability to vote both in person or in absentia</td>
<td>X</td>
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<tr>
<td>IID Disproportionate control disclosure</td>
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<tr>
<td>IIE Control arrangements allowed to function</td>
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<td>IIF Exercise of ownership rights facilitated</td>
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<tr>
<td>IIE 1 Transparent and fair rules governing acquisition of corporate control</td>
<td>X</td>
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<tr>
<td>IIE 2 Anti-take-over devices</td>
<td>X</td>
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<tr>
<td>IIF 1 Disclosure of corporate governance and voting policies by inst. investors</td>
<td>X</td>
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<tr>
<td>IIF 2 Disclosure of management of material conflicts of interest by inst. investors</td>
<td>X</td>
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<tr>
<td>IIG Shareholders allowed to consult each other</td>
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<tr>
<td><strong>III. EQUITABLE TREATMENT OF SHAREHOLDERS</strong></td>
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<tr>
<td>IIIA All shareholders should be treated equally</td>
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<tr>
<td>IIIA 1 Equality, fairness and disclosure of rights within and between share classes</td>
<td>X</td>
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<tr>
<td>IIIA 2 Minority protection from controlling shareholder abuse; minority redress</td>
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<tr>
<td>IIIA 3 Custodian voting by instruction from beneficial owners</td>
<td>X</td>
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<tr>
<td>IIIA 4 Obstacles to cross border voting should be eliminated</td>
<td>X</td>
<td></td>
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<tr>
<td>IIIA 5 Equitable treatment of all shareholders at GMs</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>IIIB Prohibit insider trading</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IIIC Board/Mgrs. disclose interests</td>
<td>X</td>
<td></td>
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<tr>
<td><strong>IV. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE</strong></td>
<td></td>
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</tr>
<tr>
<td>IVA Legal rights of stakeholders respected</td>
<td>X</td>
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<td></td>
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<tr>
<td>IVB Redress for violation of rights</td>
<td>X</td>
<td></td>
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<td></td>
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<tr>
<td>IVC Performance-enhancing mechanisms</td>
<td>X</td>
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<td></td>
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<tr>
<td>IVD Access to information</td>
<td>X</td>
<td></td>
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<td></td>
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<tr>
<td>IVE “Whistleblower” protection</td>
<td>X</td>
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## V. DISCLOSURE AND TRANSPARENCY

<table>
<thead>
<tr>
<th>Principle</th>
<th>FI</th>
<th>BI</th>
<th>PI</th>
<th>NI</th>
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<tbody>
<tr>
<td>IVF</td>
<td>Creditor rights law and enforcement</td>
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<table>
<thead>
<tr>
<th>VA</th>
<th>Disclosure standards</th>
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<tbody>
<tr>
<td>VA 1</td>
<td>Financial and operating results of the company</td>
<td>X</td>
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<tr>
<td>VA 2</td>
<td>Company objectives</td>
<td>X</td>
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<td>VA 3</td>
<td>Major share ownership and voting rights</td>
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<tr>
<td>VA 4</td>
<td>Remuneration policy for board and key executives</td>
<td>X</td>
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<td>VA 5</td>
<td>Related party transactions</td>
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<td>VA 6</td>
<td>Foreseeable risk factors</td>
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<td>VA 7</td>
<td>Issues regarding employees and other stakeholders</td>
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<tr>
<td>VA 8</td>
<td>Governance structures and policies</td>
<td>X</td>
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<tr>
<td>VB</td>
<td>Standards of accounting &amp; audit</td>
<td>X</td>
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<tr>
<td>VC</td>
<td>Independent audit annually</td>
<td>X</td>
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<tr>
<td>VD</td>
<td>External auditors should be accountable</td>
<td>X</td>
</tr>
<tr>
<td>VE</td>
<td>Fair &amp; timely dissemination</td>
<td>X</td>
</tr>
<tr>
<td>VF</td>
<td>Research conflicts of interests</td>
<td>X</td>
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## VI. RESPONSIBILITIES OF THE BOARD

<table>
<thead>
<tr>
<th>Principle</th>
<th>FI</th>
<th>BI</th>
<th>PI</th>
<th>NI</th>
<th>NA</th>
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</thead>
<tbody>
<tr>
<td>VIA</td>
<td>Acts with due diligence, care</td>
<td>X</td>
<td></td>
<td></td>
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<tr>
<td>VIB</td>
<td>Treat all shareholders fairly</td>
<td>X</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>VIC</td>
<td>Apply high ethical standards</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VID</td>
<td>The board should fulfill certain key functions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VID 1</td>
<td>Board oversight of general corporate strategy and major decisions</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VID 2</td>
<td>Monitoring effectiveness of company governance practices</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>VID 3</td>
<td>Selecting/compensating/monitoring/replacing key executives</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VID 4</td>
<td>Aligning executive and board pay</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VID 5</td>
<td>Transparent board nomination/election process</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VID 6</td>
<td>Oversight of insider conflicts of interest</td>
<td>X</td>
<td></td>
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<tr>
<td>VID 7</td>
<td>Oversight of accounting and financial reporting systems</td>
<td>X</td>
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<tr>
<td>VID 8</td>
<td>Overseeing disclosure and communications processes</td>
<td>X</td>
<td></td>
<td></td>
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<tr>
<td>VIE</td>
<td>Exercise objective judgment</td>
<td></td>
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</tr>
<tr>
<td>VIE 1</td>
<td>Independent judgment</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VIE 2</td>
<td>Clear and transparent rules on board committees</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VIE 3</td>
<td>Board commitment to responsibilities</td>
<td>X</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>VIF</td>
<td>Access to information</td>
<td>X</td>
<td></td>
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</tbody>
</table>

* Ratings apply to listed companies

The ratings table needs a legend (Vidhi?)
Principle - By - Principle Review of Corporate Governance

This section assesses Argentina’s compliance with each of the OECD Principles of Corporate Governance.

CORPORATE GOVERNANCE LANDSCAPE
CAPITAL MARKETS

Capital markets. Argentina has nine provincial self-regulated stock exchanges, five of which have an associated provincial self-regulated capital market.¹ This somewhat unusual distinction is defined by dividing responsibilities for authorizing securities listings (among other matters), which rests with the stock exchanges, and the responsibilities for regulating market trading activities and market intermediaries (e.g. brokers), which rests with capital markets. Any company listed on any provincial stock exchange can trade on any other stock exchange, and most companies list on the dominant Stock Exchange for corporate securities, the Buenos Aires Stock Exchange (BCBA), and trade on the Mercado de Valores de Buenos Aires, MERVAL. There is an OTC market for government paper, the Mercado Abierto Electrónico (MAE). MATBA and ROFEX are derivatives and commodities markets. As of October 2006, the BCBA market capitalization was A$1120 billion (US$361 billion), or 149 percent of GDP, of which A$135 billion (US$43.6 billion) can be attributed to domestic companies, representing 20 percent of GDP.² Trading is concentrated in a few stocks, and the top ten most liquid companies represent 89 percent of the trading.³ Some 103 companies are listed on the exchange, though the market is heavily concentrated in the five top foreign companies. Eight companies have issued preferred non-voting shares. Of the domestic securities, the top ten represent 10 percent of market capitalization, or 80 percent of domestic capitalization, as of October 2006. 24 companies are listed abroad, mostly via ADRs on NYSE. The MERV AL index has had a healthy growth since the financial crisis of 2001, at an average of 48%. 28 companies de-listed since 2001, mainly due to financial difficulties and mergers.⁴ IPOs are few and far between, though SMEs have started listing on the SME tier since 2006. There has been 1 IPO on the SME exchange. Two companies de-listed in 2006 (the number of delistings has been diminishing over the years since 2001). As of December 2006, there were 114 companies issuing shares registered with the CNV, and 98 companies had registered corporate bonds (168 companies in total). The value of corporate bonds currently issued is US$2,523 billion, and there is no secondary market for these securities, which diminishes their potential popularity. The free float is estimated at 30% as of June 2006.⁵

<table>
<thead>
<tr>
<th>Country Name</th>
<th>Market capitalization (% of GDP)</th>
<th>Market capitalization (current US$)</th>
<th>Listed companies, total</th>
<th>Stocks traded, total value (% of GDP)</th>
<th>Stocks traded, total value (US$ billion)</th>
<th>Stocks traded, turnover ratio (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>33.5</td>
<td>61.5</td>
<td>101</td>
<td>9.0</td>
<td>16.4</td>
<td>30.4</td>
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<tr>
<td>Brazil</td>
<td>59.8</td>
<td>474.6</td>
<td>381</td>
<td>19.4</td>
<td>154.2</td>
<td>38.3</td>
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<tr>
<td>Chile</td>
<td>118.4</td>
<td>136.4</td>
<td>245</td>
<td>16.4</td>
<td>18.9</td>
<td>14.9</td>
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<tr>
<td>China</td>
<td>35.0</td>
<td>780.8</td>
<td>1387</td>
<td>26.3</td>
<td>586.3</td>
<td>82.5</td>
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<tr>
<td>India</td>
<td>70.4</td>
<td>553.1</td>
<td>4763</td>
<td>56.4</td>
<td>443.2</td>
<td>94.2</td>
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<tr>
<td>Mexico</td>
<td>31.1</td>
<td>239.1</td>
<td>151</td>
<td>6.9</td>
<td>527.7</td>
<td>25.7</td>
</tr>
</tbody>
</table>


Table 1 and related figures need some clean-up for consistency (market section) - e.g., Merval growth is high, yet we criticize the market - clarity is needed. (Vidhi?)

OWNERSHIP FRAMEWORK

Ownership is concentrated in families and multinationals – the ten largest listed companies have on average 70% of their shares in the control block.⁶ According to market participant estimates, about 80-90 percent of listed companies have a controlling owner. Shareholder agreements are frequent (all privatized companies have them); though less than half of listed companies have shareholder agreements. Outside of these, there is little foreign investment directly though BCBA, as most foreign investors holding Argentine stock do so via international markets / ADRs. State ownership is not...
significant (Banco Hipotecario and Papel Prensa are listed majority-owned SOEs). Ownership by domestic institutional investors is very small. Total ownership of pension funds is approximately 1.1% of market capitalization; mutual funds owned 0.5%, respectively; a sample of the largest banks – 0.1%, and a third of the insurance sector – 0.03%. vii The domestic institutional investor industry has in principle great potential to spur the growth of BCBA, however, currently the focus is on holding foreign securities, due to liquidity and diversification considerations, as well as the matching term structure (Argentinean available securities are mostly short term). viii Institutional investors are not actively engaged in corporate governance monitoring. Though there have been instances of cooperation among pension funds and heightened corporate governance activity, this is not the case as a general rule. The investment fund industry is recovering, but still small and shying away from retail business.

LEGAL FRAMEWORK

Corporate legal framework. Argentina is a civil law country. SA’s can be public or private and SA’s if listed are automatically public. Companies, whether they are listed or not, are regulated by the Ley de Sociedades Comerciales de Argentina (“LSCA”). Non public companies are also regulated by the rules of the Commercial Register. In Buenos Aires the function is fulfilled by the Inspección General de Justicia, and provincial commercial registers follow generally its rules as well. Listed companies, on the other hand, are under the regulation of the Securities Commission (Comisión Nacional de Valores or “CNV”). In addition, they are regulated by the LSCA, Law No. 22,169 (CNV Law); Law No. 17,811 (Public security issues); Decree No. 677/01 (Transparency); the CNV resolutions; and by the regulations of each stock exchange. A recent reform of the LSCA has been elaborated by a Congress Commission, and focuses on certain corporate governance improvements for companies, including issues of business group interest (§54), independent directors (§§283, 298), and the wider adoption of a voluntary arbitration system (§15). ix In a major recent development, the IGJ resolution of July 28, 2006 imposes upon Buenos Aires non-listed large companies increased disclosure in their annual reports, including a discussion of company policy and strategy, note of related companies essential to the business, a set of mandatory ratios, and details on the relationship between the company and its controlling and controlled companies, including large transactions. The implementation and enforcement is this resolution remains to be evaluated.

Company types. The Sociedades de Responsabilidad Limitada (“SRL”) have a minimum of 2 or maximum of 50 members, and no minimum capital requirement. The Sociedades Anónimas represent less than 1% of companies, and have a minimum capital required of A$12,000. There are no national figures for a total number of registered companies available; however, the IGJ has, per January 29, 2007, 177,904 registered SARLs and SAs.

Basic description of board (size, eligibility, nomination / election). Even though the majority of boards in Argentina are unitary, companies can establish in their bylaws a supervisory board (Consejo de Vigilancia) formed by 3 to 15 shareholders appointed by the shareholders’ meeting. The supervisory board is charged with oversight of the board and company compliance with the law, examines corporate finances, reports to the board quarterly on company management, can call a shareholder meeting when it deems necessary or when requested by shareholders, and can form commissions to examine complaints by shareholders (LSCA §280-283). Supervisory boards are not common in Argentina.

Companies that make public offerings must have at least three board members (LSCA §299). There are no board size requirements for closely held companies. On average, the ten largest listed companies have a board size of 10 members. Members of the audit committee, which is mandatory for listed companies, must have relevant financial expertise, and come from the legal or accounting/audit profession. xI Half of the audit committee members must be independent. There are no qualification requirements for other board members. There are no restrictions on director nationality, provided that the majority of the members of the board reside in Argentina (LSCA §256). Directors’ term can not exceed three years (five years for the Consejo de Vigilancia) (LSCA §§257, 281d). In practice, controlling shareholders determine board composition and are free to remove any directors who do not follow their instructions. Dissenting directors are rare except in cases of shareholder “fights”, which frequently end with the controlling shareholders buying out the minority shareholders.
The board must meet quarterly. Board meetings are convened by the chair of the board; any board member may request the chairman to summon the meeting, and failing that, within 5 days, any board member may summon the meeting. The summons must indicate the agenda to be considered by the directors (LSCA §267). Quorum is the absolute majority of members. Decisions are taken by majority, unless otherwise stated in the bylaws (LSCA §§242, 267, 268). The Chairman and Chief Executive Officer are not typically the same person in listed companies, though this occurs on occasion. Listed companies can hold virtual meetings. There are no limits to the number of boards on which each director can sit.

**Securities law framework.** The CNV is regulated by laws Law No. 22,169 and No. 17,811 (as amended by decree 677/01). In addition, listed companies are subject to the regulations of CNV and the stock exchanges. Provincial stock exchanges generally follow the listing and operating rules of the Buenos Aires Stock Exchange (BCBA).

**Listing rules.** BCBA has 3 listing tiers: the special segment for large companies (capital over US$60 million, revenue over US$100 million; or 1,000 or more shareholders); the ordinary segment; and the SME Segment which enjoys simpler listing rules and requirements. The minimal float requirement for listed companies on the ordinary segment is 150 shareholders or 20% of voting share capital to be dispersed in ownership, or in the case of non-voting capital, 200 shareholders or 30% of capital. For the special segment, these limits are 1000 shareholders / 30% of capital for voting shareholders, or 1200 shareholders / 40% of capital for non-voting shareholders. The Counsel of the BCBA and the Technical management board has the authority to monitor and enforce listing requirements. There are 100 companies listed on the special segment, 10 on the ordinary segment, and one SME (several are in the process of listing).

**Banking Law.** The Law on Financial Institutions No. 21,526 regulates banks, foreign exchange companies, and other financial institutions (except insurance and pension funds).

**Corporate Governance Codes.** The voluntary “Code of Best Practices for Corporate Governance in Argentina” was developed by the Argentine Institute of Corporate Governance (IAGO), with the assistance of Instituto para el Desarrollo Empresarial de Argentina (IDEA), Fundación Empresaria para la Calidad y la Excelencia (FUNDECE) and accounting and law firms and was implemented in November 2003. The code sets guidelines for an improved management and control of companies’ operations, per international practice. The topics covered by the code are: (i) the board of directors, (ii) the chairman of the board, (iii) committees of the board, (iv) shareholders, (v) conflicts of interest, (vi) transparency and completeness of information, (vii) external audit, (viii) resolution of disputes, and (ix) stakeholders and social responsibility. Certain major companies and the subsidiaries of multinational companies have adopted their own corporate governance codes. In October 2006, the CNV introduced the requirement for listed companies to file a 14-points comply-or-explain disclosure. This rule becomes effective on December 31, 2007.

Possibly the major legal development impacting corporate governance provisions for Argentinean listed companies is Decree No. 677/01 (2001) which amended Law No. 17,811 by the guidelines of the Principles of Corporate Governance of the American Law Institute. This Decree was intended to ensure the full enforcement of the rights of the “financial consumer” (section 42 of the Argentine National Constitution), especially in the areas of disclosure and investor protection. The decree adopted tender offer regulations and mandated arbitration procedures for listed firms, among other reforms.

**REGULATORY FRAMEWORK**

**Securities regulator.** CNV is the securities regulator. It supervises the stock exchanges, securities markets, derivates markets and its intermediaries, brokers, issuers, managing companies and depositaries of mutual funds, rating agencies, financial trusts, and depositaries of securities. The mission of the CNV is to authorize public offerings of securities and watch over the interests of the shareholders by ensuring transparency and provision of fair prices in the securities market.
The CNV enforcement powers are adequate by law, except over market operators. It can issue warning, fines, suspend or cancel listing or trading, and suspend directors, executives, and auditors from their functions for up to 5 years. The CNV can demand reports and carry out inspections and investigations on firms and persons under its jurisdiction. It can request the aid of law enforcement agencies and report and prosecute crimes.

In practice the CNV rarely imposes serious sanctions, and those imposed are frequently reversed by the court. The OECD Latin American White Paper on Corporate Governance 2004 found that CNV imposed fewer sanctions relative to its counterparts in the region. Control over brokers conduct is fully vested in MERVAL, which makes for weak incentives to enforce, though CNV has control over brokers insofar as their jurisdiction over enforcing the securities law is concerned. The securities regulator can only subpoena documents from brokers or issuers with a court order. The CNV can initiate an administrative process against any violating party involved in securities transactions. The CNV may investigate shareholder complaints, but not act in representation of shareholders. CNV's administrative procedure can be appealed at court with a stay on execution of fines. Appeals are used frequently and decisions are not generally reversed but fines are reduced. Investigative proceedings may last from 3 months to 5 years. In 2005, the CNV enforcement division completed and adjudged 20 administrative proceedings, out of which 9 related to Issuers, 4 to rating agencies, 3 to market intermediaries, 3 to mutual funds, and 1 to a financial trust. Further, as a result of prior investigations, 13 administrative proceedings are under full execution as of end 2006, and 3 new proceedings were started in 2006. CNV received and addressed 36 complaints in 2005 (45 in 2004). CNV publishes enforcement statistics in its annual report and online at http://www.cnv.gov.ar/resoluc-fin.asp. For the period 1991-2004, there were 212 final resolutions issued in proceedings, of which 72 were appealed.

While CNV enforcement powers are largely adequate by law, in practice resource shortages prevent CNV from achieving exemplary quality enforcement. CNV has a staff of 22 accountants/lawyers engaged in enforcement.

**Stock exchange.** There are nine provincial stock exchanges (in addition to BCBA), five of which have an associated provincial capital market. Virtually all securities trading takes place on the BCBA and MERVAL. The latter is organized as a corporation owned by the member-brokers (practically all of which are bank subsidiaries). All exchanges are under the regulation of the CNV as SROs, and report periodically to it. BCBA can apply the following sanctions: (i) warnings, (ii) fines, (iii) suspension; and (iv) expulsion of the registry of associates. According to BCBA's agreement with the CNV, BCBA performs the bulk of the monitoring of listed companies disclosure, and reports to the CNV quarterly. BCBA's 20-25-strong accountant/audit team focuses on verifying the completeness of disclosures, not their quality. In practice, in the past year BCBA has issued warnings to listed companies on their quality of reporting (which have been effective), 10-15 suspensions (typically for failing to disclose a material fact such as a control stake purchase price), and 1-2 delistings (mainly for failing to fulfill listing requirements). MERVAL's Stockwatch automatic electronic surveillance mechanism monitors daily trading activities (manned by a team of 6-7 staff), and issues alerts, and would temporarily suspend trading in the case of considerable price gyrations, or request a broker for additional guarantees in case of excessive trading activity. CNV also monitors price movements, though to a lesser extent, and can request MERVAL for information on the participating parties in suspect transactions. MERVAL has enforcement power over market operators, and can issue warnings, fines, suspensions, and cancellations of licenses, as well as follow up on complaints and carry out investigations. There have been no serious disciplinary cases (suspension or cases referred to court) in the past three years. MERVAL carries out 2-3 inspections of brokers per year, as preventive enforcement. By law, appeals on BCBA and MERVAL decisions are examined without stay on execution.

**Central depository.** Caja de Valores S.A. acts as the only depository, registrar, and custodian for most listed companies. Caja de Valores S.A. is a private entity, regulated by CNV. Other depositories are permitted by law, but none have been created.

**Banking and other regulators.** The Banco Central de la Republica Argentina monitors the financial and banking sector and implements Law No. 21,526 (on Financial Institutions) and associated regulations; and supervises the financial and foreign exchange activity via the Superintendency of Foreign Exchange and Financial Institutions. Moreover, Law No. 21,526 authorizes the Central Bank to intervene in the securities market. The Banco Central has been focusing on bank corporate governance, as well as its own governance, in areas such as accounting standards, audit committees and ethics. A recent initiative, undertaken with support from the World Bank, involves the creation of an electronic database of financial statements of business entities, unifying the existing information from commercial bank borrowers, pension funds, CNV, etc. The initiative, termed “Central de Balances”, was started in 2006, with an aim to offer corporate financial information currently available to banks, AFJPs, and perhaps also IGJ, to other users of financial information, such as the court, senate, and other stakeholders, possibly including the public. The project is inspired by the existing database Central de Deudadores, which rates borrower credit risk. The planned database improves upon the financial statements collection of IGJ alone, which is on paper (and currently being scanned),
and includes some 40,000 companies (as opposed to potentially 100,000 companies whose financial statements are currently available to their lending banks). Outstanding issues are the unification of the format of the financial statements as required by the different collecting institutions, and bringing CNV, AFJPs, and IGJ on board. The issue of public access to the data is still under discussion.

The Superintendencia de Seguros de la Nación is exclusively in charge of controlling the performance of insurance companies (Ley de Entidades Aseguras y su Supervisión No. 20.091 §8). The Superintendencia de Administradoras de Fondos de Jubilaciones y Pensiones has exclusive jurisdiction over pension funds according to Law No. 24,241.

Company Registrar. The company registrars, namely Inspección General de Justicia (IGJ) in Buenos Aires and the provincial commercial registrars, are under the Ministry of Justice. Non listed SAs must file fundamental documents (and changes thereto including changes in administrators) and financial information (*memoria, balance, and información complementaria*). SRLs file only the company deeds / registration and changes thereto. Listed companies file basic deeds with IGJ / Commercial Register (financial information, as well as fundamental documents are instead filed with the CNV electronically, via the EDGAR-like *Autopista de Informacion Financiera*). IGJ has the legal power to warn, warn publicly, fine the company or its administrators, and can request court to de-register a company. In practice, IGJ does not engage in active monitoring, but instead follows up on investor complaints. IGJ rarely penalizes companies due to lack of resources and the multiplicity of registered companies to be monitored. The IGJ did not have enforcement statistics available. In cases of non-compliance with filing requirements the CNV has, in addition to its securities regulator powers, also full use of the powers of the national register, e.g. dissolution and liquidation of companies (Law No. 22,169 §2).

Access to IGJ information is neither relatively cheap nor particularly fast: a copy of the complete company files costs A$56 and takes approximately a month (urgent service costs A$112 and requires a week). Market participants note that IGJ company records are not up to date, reliable or complete. In practice, it is very hard to obtain information on non-listed companies, except larger ones who must form a *sindico* or *comisión fiscalizadora* (see VC). The IGJ receives about 400 requests per day, mostly from lawyers engaged in commercial court cases. The IGJ is undertaking some efforts to scan the available information (it is not in computerized form), to improve its efficiency and access speed. Recent reforms of the company registration system, to the extent they have taken place, have not extended to the functioning of provincial equivalents. Legislative proposals to unify all registries into a central registry have not been implemented so far.

Court System. In general terms, the Commercial Court in Buenos Aires is effective for minority dispute resolution, as compared to the region. That being said, legal actions are slow and expensive – a case takes at least 3 years. The commercial court system is overburdened with cases. In the past 30 years, there have hardly been any increases in the number of judge positions. Litigation costs are also high – legal expenses of 3% of the claimed amount, judicial and assessor fees, etc. The Arbitration Court is much more promising, being faster and cheaper; however, it is of limited jurisdiction and cannot currently handle a large case load. As a result, shareholder suits are rare, involve mostly non-listed firms, typically on issues of intra-shareholder (family) feud. Virtually all shareholder suits focus on filing for reversal of an AGM decision, which is fast, and predictable due to sizeable precedent.

Arbitration. In 1963, BCBA instituted a permanent Arbitration Tribunal with mandatory jurisdiction over issuers, and full powers as compared to the court. Investors, but not issuers, have the option to choose the court over arbitration, if they so prefer. There are three arbitrators, appointed competitively on merit by BCBA for life and remunerated by the Bolsa. Arbitration is free to the contesting parties. Parties are free to choose the following types of arbitration procedures to be applied by the Arbitration Tribunal: mediation, conciliation, arbitration by amicable compounders, and legal arbitration. In practice, arbitration is faster than the court, but has a limited capacity to try cases. For 2006, 27
cases have been resolved. On process are further 60 cases, the longest of which was initiated about 2 years ago. There have only been few cases related to corporate governance, mostly on OPA issues (pricing). The tool is reported useful for proceedings against directors, due to its obligatory nature (for listed companies). Arbitration can also take cases not involving listed companies, if so desired by both parties, and further regulatory and implementation efforts are contemplated in this regard.xxxiv

**Shareholder rights groups.** In addition to IAGO, IDEA, and FUNDECE, other organizations active in corporate governance include the Camara Argentina de Comercio; Cámara de Sociedades Anónimas; Cámara Argentina de Fondos Comunes de Inversión; Poder ciudadano; Centro para la estabilidad financiera (CEF); Comunicación de responsabilidad social de la empresa; Foro ecuménico social; Instituto Argentino de Responsabilidad Social Empresaria. CEF in particular has initiated transparency ratings and awards for large non-financial companies for the past three years, and more recently has also initiated an award for banks, which are being heeded and respected by the national business community.

### SECTION I: ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

#### Principle IA: The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets.

**Assessment:** Fully Implemented

**Overall capital market transparency.** By law, Argentina has adequate transparency provisions (details in section V), most importantly due to the considerable contribution to disclosure of Decree No. 677/01. Resource deficiencies in capital market regulators and institutions prevent the effective enforcement of some aspects of disclosure (such as content quality); however, timeliness and completeness is adequately enforced. Enforcement is mainly carried out by BCBA, by the power of an agreement between the latter and the CNV, due to resource constraints at the CNV proper.

**Regulatory consultation process.** Important or significant reforms by the CNV are posted for public consultation before they go into effect. Less formally, CNV is continuously in communication with listed companies, who offer suggestions, feedback and opinions on regulations and rules.

#### Principle IB. The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent and enforceable.

**Assessment:** Broadly Implemented

**Legal clarity.** Legal provisions concerned with transparency and corporate governance matters per se are mostly voluntary at this stage in Argentina. Those provisions of mandatory character (mostly Decree No. 677/01) are clearly defined and enforceable, in the opinion of the legal community (notable exceptions include director liability provisions).

**Consistency of application.** Corporate governance provisions are consistently applied, though limited to listed companies, and certain more detailed disclosure requirements for large non-listed firms. Aside from multinationals, listed companies have issues with compliance with independent director (voluntary) recommendations, as well as with establishing functional audit committees, the latter due to the recent nature of the regulations.

#### Principle IC. The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.

**Assessment:** Partially Implemented

**Clear division of regulatory responsibility.** Argentinean regulatory oversight could benefit from further coordination and cooperation among the different agencies, with an eye to clarifying functioning in practice in areas of regulatory overlap, and improved enforcement efficiency. Overlap areas of particular importance include financial conglomerates (a bank associated with an insurance/
asset management / pension fund / investment companies), which involves cooperation between Banco Central, CNV (for investment funds), and the Superintendencias de Seguros and de AFJPs. As another example, one could point out to banking secrecy regulations which impede full and efficient information sharing between CNV and the Banco Central. CNV and the stock exchanges also overlap in their duty of market surveillance, and agreements have been established to regulate the common responsibilities. Certain aspects of the agreements are still under discussion, for example, BCBA and CNV are considering the options of posting corporate filings directly (as is currently done) or only after the filings have passed BCBA control. Another example is the overlap in practice between clarifications to filings issued by BCBA, and those issued by CNV despite the existing agreement for monitoring of filings.

Regulatory cooperation. In general different agencies can share information. However due to Central Bank bank secrecy regulations, the CNV has no authority to request financial information of Central Bank-regulated entities, which impedes full and efficient information sharing between CNV and the Banco Central (Law No. 21.526). A similar problem exists with sharing ownership information between the depository, Caja de Valores, and BCBA, for example, which monitors listed company filings, and can use an ownership cross-check in its enforcement over insiders disclosure, related party transactions, director conflicts of interest, as well as material facts disclosure. The Banco Central initiative of Central de Balances is a step toward further cooperation and information sharing among the main regulators involved.

Legal harmonization. The issue is of relevance to the CNV, Banco Central, and the Superintendencias de Seguros and de AFJPs, especially in the areas of conflicts of interest and related party transactions, as far as corporate governance matters are concerned. The need for harmonization is perceived, and in some cases contemplated, such as in the case of the Superintendencias de Seguros, which is considering applying some of the regulatory tools already used by its sister organization controlling the AFJPs (see also section IIF).

Effectiveness of self-regulatory bodies. The stock exchanges and stock markets, all of which are SROs, perform a monitoring and enforcement role, under CNV supervision. In spite of adequate monitoring and sanction powers, it is difficult for MERVAL to sanction their own members with impartiality. Accordingly, there have been been no serious disciplinary cases by MERVAL (suspension or cases referred to court) in the past three years. BCBA is perceived as far more effective, though enforcement is on timeliness and completeness only (not quality), and in particular hard-to-observe matters remain inadequately enforced (such as related party transactions). Conversely, among the formal warnings issued by BCBA in the past year, it has nevertheless imposed 10-15 suspensions and 1-2 delistings for disciplinary reasons.

Principle ID. Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfill their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.

Assessment: Broadly Implemented

The CNV has full regulator powers over the entities it supervises. CNV’s integrity is assured via its quasi-autonomous status (it reports to the Ministry of Economy and Production). It is governed by a 7-member board of directors appointed and removed by the executive, and possessing recognized competence in capital markets. The Executive Branch exercises control over the legality of its actions, but not over the merit of its decisions.

CNV has approximately 135 employees, remunerated at a pay-scale of ½ to 1/3 that of the private sector or of BCBA, which causes significant staff turnover and braindrain. The CNV is funded through the national budget (its current fee collections would only fund 50% of the current budget), and its allocation for 2006 was AR$ 11 million, which is inadequate for effective supervision. CNV collections are remitted back to the central budget.

CNV is transparent in its regulation. CNV is continuously in communication with listed companies, who offer suggestions, feedback and opinions on regulations and rules. Further, it publishes enforcement statistics in its annual report.

SECTION II: THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS

The corporate governance framework should protect and facilitate the exercise of shareholders’ rights. Basic shareholder rights include the right to:

Principle IIA: The corporate governance framework should protect shareholders’ rights.
**Principle IIA 1: Secure methods of ownership registration**

**Assessment:** Fully Implemented

**Secure share registration.** All shares are nominative and non-endorsable, there are no bearer shares. Shares are represented by certificates and are not kept in dematerialized form. Evidence of ownership is registration in the corporate share register, which can be kept by the company, banks, or by the privately-owned Depositary, *Caja de Valores.* Most listed firms maintain their register at the *Caja de Valores,* whereas non-listed companies tend to maintain their own registry books. The *Caja de Valores* also acts as a clearing agency, and all transactions of listed securities are routed through there. In case *Caja de Valores* omits to register a share transfer, general recourse rules apply (filing a compliance action plus damages in court).

**Secure custody system** The concept of nominee ownership does not exist. An approximation thereto is achieved by leaving the “custodian” bank as the legal owner, and executing a contract between the investor client and the bank that permits the client to determine how to vote.

**Principle IIA 2: Convey or transfer shares**

**Assessment:** Fully Implemented

**Restrictions on share transfer.** Listed firms cannot have restrictions on the transferability of their listed shares. Shareholder agreements are common. There are some privatized utility companies where the control block is not subject to the public offering regime. Usually transferability restrictions for privatized companies vary from a first refusal right in favor of the other shareholders, to a total prohibition of transferring the shares during a certain period of time. The minority shares trading on the stock market (outside the control block) are freely transferable. Any limitation to the transferability of the shares should be disclosed in the share register and in the share certificates, as well as disclosed to potential shareholders if the share register is kept by *Caja de Valores* or a bank.

**Clearing and settlement framework.** DVP is final and irrevocable at T+3. The *Caja de Valores S.A.* executes the share transfers upon the instruction of Merval (if necessary, exchanging shares with another depositary). Merval in turn carries out the share settlement (broker accounts are cleared daily by Merval).

**Principle IIA 3: Obtain relevant and material company information on a timely and regular basis**

**Assessment:** Fully Implemented

**Availability of information (charter, financial statements, minutes, capital structure).** Annual and quarterly reports of listed companies are available at the CNV webpage, as well as on company websites. Copies of by-laws, director information and financial information, including the audit committee and *comisión fiscalizadora* reports are available from the CNV webpage, as well as, in the majority of cases, from company website. AGM / EGM minutes, material facts and other public company statements are published at the CNV website, as is 5% ownership information. The company must report any RPTs exceeding 1% of net equity and A$100,000, to the CNV and BCBA upon board approval. Shareholders have access to the share registry book (from the company or the depositary, in most cases *Caja de Valores*). In the latter case the company has to request a copy of the shareholder list on behalf of the shareholder. Non-listed companies file annual reports, by-laws, and director information with IGJ/Commercial Register, where access is public, albeit somewhat expensive and slow, and the records are often incomplete. SARLs file only the bylaws / registration and changes thereto, with IGJ/Commercial Register (publicly available as well). In practice, meaningful information can only be obtained on listed and large non-listed companies, due to the mandatory existence of the *sindico,* whose duties include information provision to shareholders upon request.

**Principle IIA 4: Participate and vote in general shareholder meetings**
Corporate Governance Assessment

Assessment: Fully Implemented

**Entitled shareholders can vote.** All shareholders can attend shareholder meetings, and all ordinary shares can vote.\(xli\) Preferred shares vote on class-specific issues, and can attain a full right to vote in the case of prolonged non-payment of dividends, or during the suspension of public trading of the share of a listed company. The level of shareholder participation at meetings in public companies is low. Usually few minority investors attend, AGMs are instead attended by the controlling and institutional shareholders, which can vary from 1 to 5 shareholders concentrating approximately 70% of capital. Block / institutional shareholders typically vote with management or the majority owner.

**Principle IIA 5: Elect and remove board members**

Assessment: Fully Implemented

**Shareholders elect board members.** Directors are elected by a majority of the votes at the AGM, and can be removed by the AGM at any time.\(xlii\) In case of classes of shares with varying voting rights, directors are elected in proportion to the share of voting power commanded by each class. The class who appointed the director can remove him/her. By CNV rules, a class cannot elect a higher percentage of directors than the share of votes commanded by that class.\(xliii\)

**Cumulative voting/proportional representation.** Shareholders representing a qualified minority (at least 25 percent of capital) may request cumulative voting on one-third of the directors, provided there are at least three directors.\(xliv\)

**Principle IIA 6: Share in profits of the corporation**

Assessment: Fully Implemented

**Clear legal framework.** The AGM approves the distribution of dividends. There is no mandatory minimum dividend requirement.\(xlv\) The cash payment of dividends much take place within 30 days of the AGM approval. If the AGM has approved several cash dividend payments throughout the year, the first payment takes place within 30 days from AGM dividend approval, and the last payment shall be completed before the end of the financial year in which the dividend was approved. The decision to have several dividend payments is separately voted on in the AGM agenda, and the schedule of payments is presented in the AGM agenda, and is published in the Official Gazette of the SROs where the securities are listed. The company notifies the CNV of the dividend payment dates. Dividend payments in shares are notified to the CNV and must be completed within three months of the CNV approval of the issue of the new shares. The company informs the CNV five days prior to the date when the share dividend will be at the disposal of shareholders. Any shareholder can propose an increase or decrease of dividends at the AGM during the discussion of the dividends approval agenda item. According to the LSCA, dividends can only be paid when companies turn a profit and have no accumulated loses from previous fiscal years (LSCA §224).

**Equitable treatment.** The AGM also votes on preferred dividends, unless the bylaws or the issue conditions of the preferred shares already specify the amount of dividend to preferred shares.

**Redress.** A special action is not expressly foreseen in case of incompliance to pay authorized dividends; a general complaint can be filed with CNV.

**Principle IIB. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:**

**Principle IIB 1: Amendments to statutes, or articles of incorporation or similar governing company documents**

Assessment: Broadly Implemented

**Changes to basic governing documents.** The following decisions are within the exclusive power of the AGM: (1) director appointment and removal; (2) auditor appointment and removal (for listed companies only); (3) amendment of the bylaws (exclusive power of the EGM); (4) authorization of share capital (exclusive power of the EGM); (4) waiving pre-emptive rights (exclusive power of the
EGM, decision taken separately for each capital increase); (5) remuneration of directors; (6) mergers and sale of substantially all company assets. Issuing shares can be delegated by the AGM to the board. 

**Shareholder Challenges.** Please refer to section IIIA, under the section on reversal of shareholder meeting decisions.

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<thead>
<tr>
<th>Principle IIB 2: Authorization of additional shares</th>
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**Issuing share capital.** The authorization of share capital is the exclusive power of the EGM, if bylaws changes are involved, or the AGM otherwise; however, issuing shares can be delegated by the AGM to the board, for a period of up to 2 years, and without any limit to the amount of capital authorized (Law No. 23,576 §§17, 23).xlvi

**Pre-emptive rights.** Shareholders have pre-emptive rights, which can be waived by the EGM with a majority of present votes for each specific capital increase (LSCA §§194, 197). Preemptive rights can also be waived in the special case when the interests of the company require it.xlvii

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<th>Principle IIB 3: Extraordinary transactions, including sales of major corporate assets</th>
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**Sales of major corporate assets.** Mergers, transformation, dissolution, liquidation, spin-off need AGM approval. For public companies, the AGM must approve the disposal or encumbrance of all or a substantial part of the assets of the company; and administration or management agreements of the company, or any agreement in which the assets or services received by the company are totally or partially paid with a percentage of the company’s profit, if the percentage is substantial (Decree No. 677/01 §72).

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<tr>
<th>Principle IIC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:</th>
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<td><strong>Assessment: Broadly Implemented</strong></td>
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**Meeting deadline.** The AGM must be held within 4 months of the end of the financial year, in the same geographical location as company headquarters (LSCA §§233, 234, 236, 237; CNV Regulation 368/2001 Chapter II §3).

**Meeting notice content.** The AGM notice containing the date, time, pace and agenda of the AGM, is published for 5 days, at least 20 and not more than 45 days before the AGM, in the Official Gazette and in a nationwide newspaper. For listed companies, the AGM agenda and notice are published also with the BCBA Gazette and filed with BCBA and CNV at least 10 days prior to the AGM (CNV Regulation 368/2001 Chapter II §4; BCBA regulations §74).

**Available information.** All relevant information must be made available 15 days prior to the AGM at company headquarters or electronically, including financial statements. The agenda and AGM background information (including bylaws) must be available at company headquarters at least 10 days prior to the AGM (LSCA §67). The share registry book must be at the disposal of the shareholders at any time in the domicile of the company. If the share registry book is not kept by the company and it is in a depository entity, the company has to request to the depository entity a list of the shareholders and their respective holdings when required by any shareholder (LSCA §213). The company files with the CNV, 10 days prior to the AGM, an affidavit on any penalties previously imposed on the external auditor, either criminal, administrative or professional, except the professional ones that have been assessed as private by the competent professional council.xlviii Directors’ personal
data is filed within 10 days after their appointment with the IGJ/Commercial Register, BCBA and
CNV, and published on the CNV website, and available from the IGJ/Commercial Register to the
public.\textsuperscript{xlix}

**Quorum and decision majorities, second call.** The AGM quorum is 50% for the first call, and there is
no quorum for the second call. The second call AGM notice must be published for 3 days, at least 8
days prior to the meeting date. The bylaws can allow for the first and second call AGMs to be held on
the same day with at least one hour of a delay (LSCA §237). Decisions are taken by majority. The
EGM quorum is 60% and decisions are taken by majority, unless the bylaws specify higher
percentages. Special matters such as change of company headquarters to another jurisdiction, change
of corporate purpose, merger, dissolution, etc. are taken by a majority of all votes (not only those
present).

**Voting and counting.** Shareholders vote by show of hands. Votes are counted by the secretary of the
meeting. Some companies have employees in charge of counting the notes and software programs in
order to guarantee the accuracy of vote counts. Current arrangements for shareholders participation in
companies’ meetings are adequate. AGM minutes must contain a summary of the discussion, the vote
counts, and a complete description of the resolutions adopted (LSCA §249). The AGM minutes must
be published at the CNV website, the BCBA Gazette, and the Official Gazette, as well as registered
with the IGJ / Commercial Register (LSCA §§12, 60, CNV general resolution No. 467).

| Principle IIC 2: Opportunity to ask the board questions at the general meeting |
| Assessment: Broadly Implemented |
| **Shareholder questions.** Shareholders may ask questions (including on corporate financial
information), provided the questions refer to agenda items, and are not of a malicious or
procrastinative / delaying character. In practice, questions are frequent, including on the possibility to
raise proposed dividends. |
| **Forcing items onto the agenda.** Shareholders cannot force items on the agenda. 5% of shareholders
can ask for an EGM, and by extension, can demand that an item be included in the next AGM’s
agenda. 2% of shareholders can add proposals, within 5 days of the AGM, and within the limits of the
existing agenda (Decree 677/01 §71). |

| Principle IIC 3: Effective shareholder participation in key governance decisions including board and key executive
remuneration policy |
| Assessment: Fully Implemented |
| **Facilitation of shareholder participation.** Shareholder participation is facilitated via various means,
including rules such as cumulative voting, appointment of the external auditor and of the board of
directors, appraisal rights following mergers (except in the case of listed companies) and delistings, as
well as various rights to decision-making at the AGM level (such as approval of RPTs and increased
majorities for waiver of pre-emptive rights), and rights to information (see section VA). On the other
hand, shareholders do not have an input into the director nomination process. |
| **Approval of board and key executive remuneration.** The AGM approves the remuneration of directors
in the aggregate, unless it is fixed by the bylaws.\textsuperscript{1} The total board remuneration (including salary and
other payments for the performance of technical and administrative duties) can not exceed 5% of the
gains of the company when no dividends are paid, and can increase proportionally with dividends
distribution up to an overall maximum of 25%. Exceptions to this rule must be approved by the AGM.
Remuneration of key executive is determined by the board of directors. |

| Principle IIC 4: Availability to vote both in person or in absentia |
| Assessment: Partially Implemented |
| **Proxy regulations.** Shareholders can vote in absentia if represented by a proxy. Members of the board

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\textsuperscript{1}
and members of the supervisory board, auditors, managers and employees cannot represent a shareholder by proxy (LSCA §239; CNV Regulation 368/2001 Chapter II §6). The proxy appointment signatures should be legalized by a notary, a bank or in a court of law.

Shares need to be deposited at least 3 days before the AGM (technically, by obtaining a certificate of ownership from the Caja de Valores), and cannot be traded until the day following the AGM. The AGM list is takes as of three days prior to the meeting date (LSCA §238; Decree 677/01 §4).

Postal and electronic voting. Postal or electronic voting is not foreseen in Argentine legislature. There are regulations on holding AGM by video- or teleconference, if allowed in the bylaws; however these have not been implemented by the CNV.

Principle IID: Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

Assessment: Broadly Implemented

Classes of shares. Companies can issue common shares carrying one vote, multiple-voting common shares carrying up to 5 votes (privileged shares), participation shares (few companies have issued those) as well as preferred non-voting shares. A golden share was retained by the government after privatization of certain public utilities companies. The rights conferred must be the same within each class. Listed companies cannot issue privileged shares. The rights of preferred shares are reflected in the bylaws. Whereas the majority of listed companies are not part of business groups, pyramids do exist, often to 3-4 levels. Cross-shareholdings are not frequent, and parking of shares in subsidiaries is restricted (LSCA §33). Shareholder agreements are frequent.

Disclosure of disproportionate control. Controlling shareholders, directors, auditors, and executives have a duty to inform the CNV, the public and the stock markets about the number and classes of shares of stock, convertible bonds, and options they own, on a monthly basis. Any changes in the controlling block must be reported to CNV. Any investor that purchases securities that represent more than 5% of equity capital must inform the CNV and BCBA. This ownership information is available to the public via the CNV website, at the direct ownership level. BCBA reports on controlling owners. The Caja de Valores maintains records of corporate securities, including ultimate owners, but not extending to owners behind trusts, partnerships, and shell companies. It is not mandated to disclose this ownership information to any entity or the market except to the CNV by request. CNV is in charge of enforcing ownership disclosure. Failure to disclose may (and does) cause the CNV to initiate proceedings against the shareholder, which may result in fines, listing suspension or a ban on new public offerings. The CNV can carry on inspections and request explanations into ownership matters. Whereas the ownership information is overall available, it is not collected in a single database, and requires visiting several institutions, records are incomplete, and historical information needs to be collected (such as the BCBA material facts disclosures of control changes).

Disclosure of shareholder agreements. Any entity or individual entering into shareholders’ agreements must inform the CNV, and the agreements must be submitted to the CNV for further disclosure (Decree 677/01 §§5, 6). Shareholder agreements may include transfer restrictions (such as first refusal right), terms establishing division of director appointments, necessary majorities to decide on capital increases, mergers, change of purpose, procedures on dispute resolution, etc. Shareholder agreements are not enforceable against third parties unless the latter are informed of the existence of the agreement. Compliance with their provisions can only be claimed as a contractual liability and not as a corporate liability.

Principle IIE: Markets for corporate control should be allowed to function in an efficient and transparent manner.

Principle IIE 1: Transparent and fair rules and procedures governing acquisition of corporate control

Assessment: Partially Implemented

Basic description of market for corporate control. The market for corporate control has not been active recently, and there have been no takeovers in the past 5 years, and 9 mergers involving listed firms. Several companies have bought out their minority shareholders, under close supervision by the
CNV in terms of both fair pricing and adequate disclosure.

**Tender rules/mandatory bid rules.** A bidder that is willing to buy up a significant share of capital in a company, leading to company control (50%), must observe the CNV public tender offer procedure (oferta pública obligatoria-OPA). However, given that most listed companies are already majority controlled, the OPA law permitted companies to opt out of the OPA regulation permanently, and about 70% did so (companies cannot opt out of the OPA regulations on delisting procedures). The offer must be directed to all shareholders, and must offer the same price within each class. The offer price cannot be lower than the price paid by the bidder during the preceding three months for shares of the target company, or lower than the price offered by agreement of the bidder with any target shareholder, and must be confirmed by an independent valuation firm. The CNV may authorize a price which differs by at most 20% from the independent valuation expert price if there are indemnity clauses regarding an actual risk included in the buyout agreement. The CNV is in charge of monitoring the procedure and of sanctioning any wrongdoers. Investors also have recourse to the arbitration court. Shareholders understand their rights and recourse in changes in control; however, market participants consider that most control transactions do not occur under fair conditions in practice.

**Redress.** Shareholder redress in cases of OPA rules and mergers includes the right to file a complaint with the CNV, the Arbitration Court, other competent entities such as the Comisión Nacional de Defensa de la Competencia or the Comisión Nacional de Comunicaciones (Communications commission), who would apply relevant sanctions. If the shareholder suffered personal damages, a liability action may be filed against directors. Minority shareholders have the right to withdraw from the corporation if they do not agree with the majority shareholder’s decisions, at a price equal to the book value of shares per the latest balance sheet. This appraisal right is not available to listed companies’ shareholders in the cases of mergers and spin-offs. There is a mandatory OPA tender offer when the controlling shareholder attains an ownership level of 95% of the capital, at a fair price per the OPA procedure (LSCA §245. Decree 677/01 §§25-30).

**Delisting-going private procedures.** Delisting is also performed per the OPA procedure, and can only be financed up to the corporation’s profits. The OPA must be extended to all convertible bonds, must include a prospectus indicating any assets or securities that are not in the market and who are their holders, and must include a fair price according to the real value of the corporation, and no less than the average share price of the past six months. The following additional facts must be taken into account to determine the fair price: (i) any previous share prices that the corporation may have offered to buy back shares (ii) any previous issue price of any corporate securities, and (iii) the real value of the corporation when compared to similar companies. CNV and the Comisión de títulos de BCBA also evaluate the fairness of the de-listing price.

Dissenting and absent shareholders must be paid their appraisal rights. The share price may be challenged by the minority shareholders at the arbitration or judicial level; the respective procedure can start 180 days after the last publication of the acquisition notice. Market participants report that redress could sometimes be used as a greenmail device. OPA rules at delisting have been appealed as unconstitutional by listed companies on three occasions, and have been confirmed by the court. Further appeals are currently ongoing.

Buy-backs must be carried out with funds from profits, and must be completely paid-in. For listed companies, the audit committee must certify as to the adequate justification of buying back corporate shares. The board must provide the public and shareholders with detailed information on the deal, including the purpose of the buy back, the maximum amount and price to be offered for the shares and the total amount to be invested in the transaction. Companies must report buy-back of shares in real time to the CNV and BCBA (Decree 677/2001 §68). The amount of shares to be purchased cannot exceed 10% of equity capital, and shares cannot be kept in treasury for more than 3 years, unless the AGM approves an extension.
### Corporate Governance Assessment - Argentina

**Assessment: Partially Implemented**

**Description of anti-takeover devices in use in the market.** Anti-takeover devices are rarely used or needed due to the typically concentrated ownership structures.

**Duty of loyalty in the event of a takeover.** In the event of takeover directors have the duty of neutrality (Decree 677/01).

**Accountability of boards and management to market pressure.** General director liability rules apply.

#### Principle IIF: The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.

#### Principle IIF 1: Disclosure of corporate governance and voting policies by institutional investors

**Assessment: Not Implemented**

**Blocked shares/record date.** The record date by corporate law is three days before the AGM, and shares are blocked until one day following the AGM.

**General obligations to vote.** Institutional investors have no general obligation to vote by law. In practice, institutional investors are not actively engaged in the governance of the investee companies.

**Disclosure of voting policy.** Institutional investors have no specific rules on disclosure of voting policies and activities, and do not use their voting rights actively.

#### Principle IIF 2: Disclosure of management of material conflicts of interest by institutional investors

**Assessment: Partially Implemented**

**Institutional investor policies on conflicts of interests.** Institutional investors are not specifically regulated to disclose the management of conflicts of interest. Financial groups usually have their asset holdings, a broker, asset managers, and are associated with a pension fund and an insurance business. Brokers and funds owned by a bank are required to be structured as separate subsidiaries, however, no Chinese walls rules exist. Initiatives are ongoing to fill in the regulatory gap by banning related transactions within financial groups. The pension funds (AFJP) and investment fund administrators are constituted as companies which subjects them to the general corporate fiduciary regime. AFJPs are under some conflict of interest regulations imposed by the Superintendencia de AFJP. Specifically, Ley 24,241 / 1994 and 2002 amendments and Instruction 22 of 2002 mandate a separation between the assets of the pension fund and its management. AFJPs cannot invest large amounts within the same business group. Instruction 23 / 2005 created the requirement for a comité de control interno, composed of 3 non-executive directors, which can make observations, monitor legal and internal compliance, and investigate on concerns identified. The internal auditor, who reports to the comité de control interno, presents the annual plan of internal control and its execution to the Superintendencia de AFJP. For investment funds, the law mandates independence between the administrator and depositary for the fund, and assets are segregated, but more needs to be done to regulate conflicts of interest. Insurance companies face fewer regulations.

**Principle IIG: Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.**

**Assessment Fully Implemented**

**Rules on shareholder consultation and acting in concert.** There are no rules limiting the right of institutional shareholders to consultation.

### SECTION III: THE EQUITABLE TREATMENT OF SHAREHOLDERS

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

**Principle IIIA: All shareholders of the same series of a class should be treated equally.**
**Principle IIIA 1: Equality, fairness and disclosure of rights within and between share classes**

**Assessment: Broadly Implemented**

**Availability of share class information.** The rights attached to each class of shares are described in the bylaws, which are available from the IGJ / Commercial Register and through the CNV website. New share issues contain class information in the prospectus, which is public. Shareholder agreements, which might modify the voting rights of shares, are made public by the CNV. LSCA requires equal treatment of shareholders of the same class (LSCA §207).

**Approval by the negatively impacted classes of changes in the voting rights.** Negatively impacted classes approve the relevant company decision in a special shareholders meeting (LSCA §250).

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**Principle IIIA 2: Minority protection from controlling shareholder abuse; minority redress**

**Assessment: Partially Implemented**

**EX ANTE PROTECTION**

**Ability to call meeting.** Shareholders holding more than 5% of capital stock may request the president to summon an EGM, or failing that, the court can summon a meeting (LSCA §§236, 254). The sindico can summon a meeting at its will, or at the request of 5% of shareholders, or if the board of directors failed to do so (LSCA §234). 5% of preferred shareholders can ask the board for an EGM for their class, or failing that, the IGJ/Commercial Register, and the court (LSCA §237).

**Disclosure rules.** Shareholders can complain to the CNV on non-compliance with disclosure rules, as well as file an individual liability action (LSCA §279; Law No. 17,811 §6). CNV would request the information, and in case of further non-compliance, initiate a hearing and apply sanctions including a warning, fine, suspension or cancellation of the listing.

**EX POST PROTECTION**

**Ability to sue to overturn meeting decisions.** Shareholders who do not vote in favor of a shareholder meeting decision, or are absent from the meeting, may challenge decisions adopted against the law and the by-laws. Judicial precedents have increased the legal causes to challenge such decisions, to include abusive decisions against minority shareholders, against good faith, and in general, against the social interest of the company (LSCA §251). The action to challenge such decisions has to be filed before the commercial court, and is resolved in practice quickly, within three months. While the case is in court, shareholders can request the preventive suspension of the execution of the wrongfully adopted decision. Additional shareholders who suffered damages due to a decision declared void and null by a court may claim damages in court, from shareholders who voted for the decision, as well as responsible corporate governing organs (LSCA §254).

**Liability for false statements in the prospectus** The issuers of securities, directors and parties in control, and the signatories of the prospectus are liable for the information included in the prospectus. Investors filing a complaint in court or at the CNV must prove the existence of an essential error or omission. The CNV can order the company to cease publishing the false statement and/or, can start an administrative proceeding against the perpetrators of false information. In case of negligence or malice, the CNV can impose a warning, fine, suspension of up to two years, or prohibition to publicly issue securities. Penalties on controlling shareholders, directors, executives, and auditors for false information used for market manipulation are more severe (Decree No. 677/2001 §12, 21, 35. Law No. 17,811 §6, 10). Directors and senior managers are civilly and criminally liable for false or misleading statements (LSCA §§259, 270, 274; Criminal Code §300).

**Ability to sue directors.** Shareholders have a liability action against directors demanding indirect damages (the “social liability action”). Its filing must be approved at an AGM/EGM. Damages go to the company (LSCA §276).

Shareholders (and any third parties) may file an individual action against directors in order to claim damages caused directly to them (the “individual liability action”). Such action does not require a shareholder meeting approval, and damages go to the shareholder individually, however individual
damages are rare to occur for dispersed investors (in a manner not affecting other minority shareholders) (LSCA §279).

Shareholders also have a derived action for the company’s benefit, which they can file individually. In this case, the defendant may choose to pay the proportional damages indirectly suffered by such claiming shareholder and settle the suit. Such proportional damages are to be calculated according to the shareholder’s participation in the capital stock (Decree No. 677/2001 §42). Derivative actions by shareholders against third parties after refusal on the part of the company to initiate a lawsuit are not foreseen in Argentine law. Class actions are not foreseen in corporate law either.

**Withdrawal rights.** Minority shareholders have the right to withdraw from the corporation if they do not agree with the majority shareholder’s decisions, at a price equal to the book value of shares per the latest balance sheet. This appraisal right is not available to listed companies’ shareholders in the cases of mergers and spin-offs.

**Inspection Rights.** Argentine law does not foresee inspection rights for shareholders at the expense of the company. Shareholders owning over 2% of issued capital may request additional information from the comisión fiscalizadora (LSCA §294). In the absence of a comisión fiscalizadora (in small non-listed companies), any member is entitled to ask the company for corporate information. 5% of shareholders can ask the CNV for an external audit at their expense; the CNV will consult the comisión fiscalizadora and audit committee in making its decision (Decree No. 677/2001 §14e).

**Redress from regulators.** The CNV may commence administrative proceedings against any person in breach of the securities, corporate and any other matter regarding publicly traded companies, at its own volition or per an investor complaint. Sanctions on companies include warnings, fines and temporary or permanent ban on listing. Additionally, fines of the amount of A$1,000 to A$1,500,000 and up to five times the amount of the gain obtained can be imposed on directors, administrators, auditors, counselors, and managers. The CNV can also disqualify entities to act as managing companies or depositaries of mutual funds, and (for up to 5 years, renewable) as underwriters.\textsuperscript{lxii} BCBA is present at the AGMs of listed companies, as an observer. Non-listed companies can request the company registrar (IGJ in Buensos Aires) to be present at an AGM, as a recourse. A random look at nine recent CNV proceedings reveals wrongful trading pursuits, a sanction on a stock exchange for poor monitoring, false information, non-compliance with disclosure, excessive director remuneration, failure to hold a board meeting. For the first half of 2007, CNV imposed two suspensions on trading on listed firms, and for 2006 – 4 in all.\textsuperscript{lxii}

### Principle IIIA 3: Custodian voting by instruction from beneficial owners

**Assessment: Broadly Implemented**

**Rights of beneficial owners to cast votes.** Share custodians are not legally compelled to provide voting information. In case shareholders intend to instruct custodians on a case by case basis regarding how to vote the shares, the CNV 2001 regulations require that custodians provide the relevant depository a sworn statement declaring that they have received voting instructions from shareholders, so that the latter can issue the depositary certificates permitting the voting of the shares by shareholder instruction.\textsuperscript{lxiii}

**Depository receipts.** In order to vote at the shareholders meetings: (i) the securities must be registered in AGM attendance register in the name of the depository bank; (ii) the depository bank must deposit of certificates at the corporate domicile and disclose its attendance to the AGM, (iii) in case of shareholder voting instructions, the depository bank must specify which shares are voted which way; and (v) the depository bank must keep a record of the voting instructions received.\textsuperscript{lxiv} The CNV can restrict voting in case of ADRs. Blank votes and abstentions are not counted for the decision majority (and are treated as absent for that purpose).

### Principle IIIA 4: Obstacles to cross border voting should be eliminated

**Assessment: Not Implemented**
Clarity of right to exercise voting rights. There are no legal impediments to exercising the right to vote. Shareholders must register at the depository prior to voting at the AGM, and the shares are blocked for 4 days.

Meeting notice requirements. Given the absence of proxy voting by mail, the disclosure period of 15 days prior to the AGM is not a problem; however, it could potentially be found too short to disseminate the corporate information to shareholders in a future scenario where custodians and voting by mail is introduced widely in the country.

Procedures to facilitate voting by foreign investors. Foreign companies have no restrictions to own Argentina shares, however, exercising their voting rights requires them to register with the Commercial Registry and comply with the information requirements for foreign companies (RC General Resolution 7/05 §220; LSCA §123).

Principle IIIA 5: Equitable treatment of all shareholders at GMs

Assessment: Broadly Implemented

Procedures to facilitate voting (electronic and postal voting systems). Electronic and postal voting are not permitted. lxvi

Equitable treatment of shareholders at meetings. Preferred and participatory shares do not vote at AGMs, however, they have a right to vote on issues that impact their rights negatively. Such shares are not very frequent. Preferred shares also receive voting rights in case of prolonged non-payment of dividends; and during a listing suspension (LSCA §217).

Disclosure of voting results. Votes are counted by the secretary of the meeting. In general, companies have employees in charge of counting the notes and software programs in order to guarantee the accurate counting of votes.

Principle IIIB: Insider trading and abusive self-dealing should be prohibited.

Assessment: Broadly Implemented

Basic insider trading rules. Insider trading laws are relatively recent – since 2001 – and have not been tried out in a significant manner yet. The company, directors, administrators, managers, auditors, members of the supervisory board and controlling shareholders, and anyone who knows insider information because of their position in the company or controlled / controlling / associated company, or other people with access to insider information, such as auditors, analysts, consulting firms, and banks, must keep the information confidential, as well as refrain from trading until that information is made available to the market (Decree 677/01 §§7, 33). In addition to insider liability, any profit obtained via insider trading is remitted to the company following the filing of a “recuperation action” with the commercial court. Minority shareholder direct suits against directors for market manipulation are insufficiently regulated except in the case of AFJP. If the company omits to file such action or does not file it in a period of 60 days after being requested to do so, such actions may be brought to a court by any shareholder (Law No. 17,811 §10; LSCA §276). Since 2001, there have been three insider dealing cases, of which one has been resolved (and the guilty verdict reversed) after appeal to the Supreme court.

Insider trading disclosure. Directors and controlling shareholders must inform the CNV (directors also inform the stock exchange and the public) about the class and amount of stock, convertible bonds and of any preferential right to buy or sell stock or convertible bonds that they may have on the corporation they administer. They must also disclose any purchase of stock or voting agreements that implies a change in the control of the corporation. lxvi Purchases of 5% of equity capital must be notified to the BCBA, the CNV and the public.

Criminal/civil/administrative penalties. The CNV is responsible for enforcement, and can impose administrative sanctions as well as file in court a criminal procedure.

Disclosure of other types of self dealing. The law does not envision further self dealing rules (see RPT rules below).

Principle IIIC: Members of the board and key executives should be required to disclose to the board whether they,
directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

Assessment: Broadly Implemented

The related party definition is reasonably all-encompassing and includes parties in control of a significant stake of capital, directors, executives and close family members and enterprises where they control a significant stake, as well as affiliated companies (LSCA §33; FACPCE Technical Resolution 21; Decree 677/2001 §73). A significant stake is defined as 35% of capital, the power to elect one or more directors, or the participation in shareholder agreements regarding the administration of the corporation. A related party transaction is defined as a transaction that exceeds 1% of equity or A$ 300,000.  

Related party transactions are approved by the board (with the vote of each director recorded in the board meeting minutes), unless they are not on market terms, in which case they require AGM approval. RPTs are assessed as to compliance with market conditions by the audit committee within 5 days and (if requested by the board) by two independent experts, whose reports are made available to shareholders at the company office the day after the transaction is approved. If relevant, the related party must provide the board, before the board votes on the RPT, with any documents, information, communications, and background, related to the operation that they may have been filed at any governmental entity; regulatory entity or foreign securities exchange commission. RPTs requiring AGM approval benefit from the statutory AGM disclosure procedure. RPTs approved by the board are notified in writing to the CNV, BCBA, and the public, referring to the audit committee / independent expert reports, which are also placed at company headquarters for the inspection of all shareholders, within a day. In case of a conflict of interest claim or legal actions by shareholders, the burden of proof is placed on the defendant, unless the reports of the audit committee / independent experts are favourable, or unless the AGM ratified the RPT by a majority of disinterested shareholders (Law 17,811 §77; Decree No. 677/01 §73).

Companies can make related loans to senior management, board members or large shareholders, as long as they are at market terms (or alternatively if they are connected to the main activity of the corporation). Related lending at non-market terms must be ratified by the board and disclosed to (and confirmed by) the AGM.

In practice, it is very difficult to enforce RPT rules credibly, without the active effort of truly independent (and adequately protected) directors and audit committees.

Conflict of interest rules and use of business opportunities. The law mandates that members of the board are not allowed to use corporate assets and confidential information for their own benefit (Decree 677/01 §8). Company insiders must inform of other director or comisión fiscalizadora positions they hold, and recluse themselves from voting on relevant issues. Directors may undertake activities in competition with the company only by AGM decision (LSCA §273).

Board responsibility for managing conflicts of interest. Directors, controlling shareholders and auditors must report to the board of directors and to the auditors any potential conflicts of interest with the corporation. In case of conflict, directors and controlling shareholders recluse themselves form voting on any related matter. Failure to inform will result in directors' and controlling shareholders' personal, joint and several liability for any damages that they may cause.

SECTION IV: THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between companies and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

Principle IVA: The rights of stakeholders that are established by law or through mutual agreements are to be respected.

Assessment: Fully Implemented

Stakeholder rights are well-protected in Argentina. Consumer rights are strong (consumer protection is a constitutional right), and are regulated and enforced by the Comisión de Defensa al Consumidor (Consumers Protection Act No 24,240). Creditor rights are specified in the Bankruptcy Law No.
24,522. Employee rights are especially strong (Employment Contract Act No. 20,744). Examples of employee rights include the principle of following the more favorable rule when deciding employee issues; general employee protection; inviolable basic rights; continuity bias when deciding whether to terminate the employment contract, protection against arbitrary dismissal, minimum salary, dismissal indemnification, non-discrimination, and others. There are several specific cases where employees also have direct participation in corporate governance. First, the Programa de Propiedad Participada grants a share of privatized utility companies to stakeholders, such as workers, consumers and producers of raw materials. Those programs have the right to elect one board member, and the stakeholders are awarded “participation bonds” ("bonos de participación"). Examples include Telecom Argentina, ENDESA Costanera, Hidroeléctrica El Chocon. The “Code of Best Practice for Corporate Governance in Argentina” developed by IAGO includes recommendations on stakeholder issues, in the areas of business ethics; environmental protection; anticorruption policies; and investing in the community. Some larger companies issue a “social balance sheet”, discussing stakeholder issues. Awareness on corporate social responsibility issues is highest among listed companies.

**Principle IVB: Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.**

**Assessment: Fully Implemented**

Stakeholders can obtain general court redress for violation of their rights, provided that they are directly affected. They can claim against the company, the controlling shareholder and directors, for any damages suffered in case of violation of the law, the public welfare, and corporate by-laws / internal regulations. Creditors can file enforcement actions to collect their debt, individual liability claims against corporate officers, general claims in cases of fraud, and insolvency proceedings. The Constitutional Reform in 1994 gives environmental groups the right to file class actions. Employees have the right to file claims against the company, the controlling shareholder, directors, and managers, for any damages suffered in case of violation of the law, the public welfare, and corporate by-laws. Creditors can file enforcement actions to collect their debt, individual liability claims against corporate officers, general claims in cases of fraud, and insolvency proceedings. Employees have the right to free judicial proceedings and do not pay justice tax. In addition, any reasonable doubt in the case is resolved in their favor.

**Principle IVC: Performance-enhancing mechanisms for employee participation should be permitted to develop.**

**Assessment: Fully Implemented**

General law does not envision performance enhancement schemes per se. Profit sharing mechanisms are possible for privatized companies. Further, the Negotiable Instruments Law No. 25.573 envisions employee participation plans (Planes de Participación del Personal en Relación de Dependencia) which are rarely if ever used. Share option plans are not used in practice. The law does mandate the disclosure of any management option plans in the annual report for listed companies.

**Principle IVD: Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.**

**Assessment: Fully Implemented**

**Annual report discloses economic and financial prospects.** The board discussion section of the annual report contains some of that information.

**Annual report discloses significant facts on employees.** The annual report contains some general discussion of the company and number of employees. There are no further rules for disclosure of employee issues in the annual report. Companies may opt to publish a social balance sheet reflecting employee issues.

**Information is timely and regular.** Periodic financial information disclosure is timely and regular.

**Principle IVE: Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.**
Assessment: Partially Implemented

**Whistleblower rules.** There is no special protection granted by law to whistleblowers, save for union representatives. Within each company, one or more union representatives – according to the number of employees of the company – can be elected by the workers. These enjoy special legal protection against dismissal, suspension or amendment of their employment contract, for the duration of their term as representatives and 12 months thereafter (Trade Unions Law No. 23.551 Ch. XII).

**Principle IVF:** The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

Assessment: Partially Implemented

**Effectiveness of bankruptcy, security/collateral, and debt collection/enforcement codes.** The insolvency laws are more debtor friendly in Argentina, though creditor rights are reasonably well protected. The Argentine Bankruptcy Law No. 24,522 authorizes the debtor to request the temporary suspension of payments and executions on collateral, for up to 90 days. Secured creditors can split from the liquidation proceeding and enforce their collateral faster and cheaper. Dividends are only distributed up to the amount of profits. Other creditor protections include, for example, the reversal action that creditors have on a shareholder who sells their shares back to the corporation soon before the declaration of bankruptcy.\(^\text{lxvi}\) When the equity capital falls below 50% of the stipulated legal capital, the law imposes the obligation to reduce the legal capital to restate the balance between the legal capital and the equity capital. At a 100% reduction (negative net worth), the corporation is considered insolvent and must initiate winding-up proceedings.

The enforceability of debt collection and insolvency rules varies from one province to another due to province-level procedural rules. The Doing Business database shows Buenos Aires comparing favorably to both the region and the OECD average (see table). Delays are frequent, in practice, due to the high number of backlog cases.

<table>
<thead>
<tr>
<th>Creditor Rights Indicator</th>
<th>Argentina</th>
<th>Regional Average</th>
<th>OECD Average</th>
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</thead>
<tbody>
<tr>
<td>Legal Rights Index (out of a possible 10)</td>
<td>3</td>
<td>4.5</td>
<td>6.3</td>
</tr>
<tr>
<td>Credit Information Index</td>
<td>6</td>
<td>3.4</td>
<td>5</td>
</tr>
<tr>
<td>Public credit registry coverage (borrowers per 1000 adults)</td>
<td>25.4</td>
<td>7</td>
<td>8.4</td>
</tr>
<tr>
<td>Private bureau coverage (borrowers per 1000 adults)</td>
<td>100</td>
<td>60.8</td>
<td>27.9</td>
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</table>


**SECTION V: DISCLOSURE AND TRANSPARENCY**

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

**Principle VA:** Disclosure should include, but not be limited to, material information on:

**Principle VA 1:** Financial and operating results of the company

Assessment: Broadly Implemented

**Overview of Financial Reporting.** Listed companies must file annual audited consolidated financial statements, a brief summary of the financial statements, report of the audit committee, report of the surveillance committee, and the independent auditor’s report, electronically with CNV and in paper format with the BCBA, within 70 days of the closing of the financial year (CNV Regulation 368/2001 Chapter XXIII §§1, 368, 372; BCBA Listing Regulations §62).

Financial statements are composed of a balance sheet, income statement, cash flow statement, statement of changes in
equity, and explanatory notes. Listed companies also file quarterly financial statements (with a limited audit review) electronically with CNV / BCBA within 42 days of the end of the quarter, together with a reporting summary, minutes of the board meeting approving the quarterly statements, quarterly report of the audit committee, independent auditor’s report. In addition, listed companies file electronically with CNV / BCBA all prospectuses, bylaws, shareholder meeting minutes, board meeting minutes, legal address, and names of the board members, audit committee members, key management personnel, as well as their independence status and certain personal data. Issuers generally do not consider the compliance burden excessive. Non-listed companies file their bylaws and financial statements with the IGJ / Commercial Register.

**Consolidation.** Consolidated financial statements are mandatory for companies controlling directly or indirectly other corporate entities.

**Management discussion and analysis.** However, the annual report must include a section describing important events of the business year, extraordinary transaction items, future prospects and operations, relationship with affiliated companies. In addition, the annual report includes business policies / company financial and investment information; decision making mechanisms / internal control systems; reasons for the proposed dividends policy; board and management remuneration policies / options plans.

**Oversight, sanctions and remedies.** Both the CNV and the BCBA successfully monitor the timeliness of filings. The CNV effectiveness of monitoring would be greatly enhanced by augmenting the CNV resources available for oversight. CNV may also perform on-site inspections. The sanctions for non-compliance include warning, fines, suspension of trading for up to 2 years, suspension of directors, members of the comisión fiscalizadora, auditors, key managers for up to 5 years, and a prohibition to trade securities. For the first three quarters of 2006, CNV imposed 2 warnings, 2 fines and one suspension for disclosure violations; the figures for 2005 are 5 warnings and 10 fines. BCBA may impose warnings, suspension, “rueda reducida” and cancellation of trading.

In 2006, two companies asked for an extension of the filing deadline; the remaining listed companies filed their reports on time. BCBA, who in practice shoulders the major share of the monitoring burden for periodic reporting, requests frequent clarifications from issuers. Issuers consider that supervision performed by CNV and BCBA is reasonably effective.

### Principle VA 2: Company objectives

**Assessment: Fully Implemented**

Listed companies outline the company objectives in the board discussion section of the annual report.

### Principle VA 3: Major share ownership and voting rights

**Assessment: Partially Implemented**

**Periodic disclosure of significant ownership.** The board is responsible for disclosing any controlling corporate entity, its ownership and voting rights in the annual report. The information is also available on the CNV webpage and in the BCBA gazette. Shareholders who acquire or divest the controlling block of shares in a listed company, and who acquire more than 5% of voting shares, must report this fact in real time to the CNV and BCBA. Voting agreements among shareholders must be reported as well (Decree 677/2001 §5a).

**Timely disclosure of significant ownership.** The ownership information has to be disclosed 15 days before the AGM.

**Regulatory agency access to ownership information.** The information is accessible to both the CNV and the BCBA.

**Disclosure of company group structures.** The annual report must include a section describing the relationship with affiliated companies. Controlling entities and their voting and ownership structures must be disclosed as well.

### Principle VA 4: Remuneration policy for board and key executives, and information about directors

**Assessment: Broadly Implemented**

**Material information about directors (qualification, selection, independence).** Information on independence is filed with the CNV prior to director appointment. Qualification and other background information is not periodically available.

**Board member disclosure of holdings and transactions in the company’s securities.** Directors, members of the audit committee and key management must inform on the number and classes of stock,
bonds or options held by them in listed companies, in real time to the CNV and BCBA (Decree 677/2001 §5a).

**Full disclosure of remuneration and remuneration policy.** The aggregate fees earned by the directors are disclosed in the financial statements, as well as the compensation policy (LSCA §64 b1).

<table>
<thead>
<tr>
<th>Principle VA 5: Related party transactions</th>
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<tbody>
<tr>
<td><strong>Assessment:</strong> Broadly Implemented</td>
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<tr>
<td><strong>Ex-ante disclosure of material related party transactions.</strong> The company must report any RPTs exceeding 1% of net equity and A$100,000, to the CNV and BCBA upon board approval (Decree 677/2001 §73).</td>
</tr>
<tr>
<td><strong>Periodic disclosure of related party transactions.</strong> RPTs are disclosed in the annual report, including type and value of transaction and parties to the contract.\textsuperscript{xxv} The audit committee is required to report on related parties' transactions, stating whether such transactions are performed at market price.\textsuperscript{xxvi} Local management tends to be reticent about providing detailed information in spite of regulations.</td>
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<tr>
<th>Principle VA 6: Foreseeable risk factors</th>
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<tbody>
<tr>
<td><strong>Assessment:</strong> Partially Implemented</td>
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<tr>
<td><strong>Disclosure of material risks.</strong> The notes to the financial statements must include sufficient information on risk management, especially as concerns derivatives.\textsuperscript{xxvii}</td>
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<tr>
<td><strong>Disclosure of internal risk control procedures.</strong> Annual reports need not disclose internal risk control procedures.</td>
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<th>Principle VA 7: Issues regarding employees and other stakeholders</th>
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<tbody>
<tr>
<td><strong>Assessment:</strong> Partially Implemented</td>
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<tr>
<td><strong>Disclosure of stakeholder issues.</strong> There are no rules for disclosure of employee and stakeholder issues in the annual report. Companies may opt to publish a social balance sheet reflecting employee issues.</td>
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<th>Principle VA 8: Governance structures and policies</th>
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<tbody>
<tr>
<td><strong>Assessment:</strong> Partially Implemented</td>
</tr>
<tr>
<td><strong>Disclosure of corporate governance report (including structure and operation of board).</strong> Some corporate governance information must be included in the corporate by-laws.</td>
</tr>
<tr>
<td><strong>Comply-or-explain in force.</strong> In October 2006, the CNV introduced the requirement for listed companies to file a 14-points comply-or-explain disclosure. This rule becomes effective on December 31, 2007.</td>
</tr>
<tr>
<td><strong>Regulator enforcement practice.</strong> In terms of compliance of listed companies with the mandatory and voluntary corporate governance norms in force in the country, BCBA experience shows that the audit committee and director independence is the largest problem item for listed companies; the remaining mandatory provisions are largely complied with. There is a wide divergence in compliance with the voluntary code rules.</td>
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<thead>
<tr>
<th>Principle VB: Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure.</th>
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<tbody>
<tr>
<td><strong>Assessment:</strong> Partially Implemented</td>
</tr>
<tr>
<td><strong>Compliance with IFRS.</strong> Local accounting standards were further aligned with IFRS (effective 1/1/2003), but certain key differences remain. Specifically, foreign exchange and inflation adjustment rules, in view of past macroeconomic instability, valuation of PP&amp;E, inventories, investments, and minority interest, as well as net investment hedge accounting rules. A detailed analysis is presented in the Argentina Accounting and Audit ROSC, World Bank, 2007.</td>
</tr>
<tr>
<td><strong>Review/enforcement of compliance.</strong> There are roughly 1,00,000 public accountants registered in Argentina, half of which are in Buenos Aires. The Consejos Profesionales de Ciencias Económicas are self-regulating bodies at the provincial level which regulate the accounting and audit profession. They can issue warnings, private and public reprimands, license...</td>
</tr>
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suspension (up to 1 year), and license revocation. In 2006, the Buenos Aires Consejo issued 3 public reprimands and 1 license suspension.

**Principle VC:** An annual audit should be conducted by an independent, competent and qualified, auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

**Assessment:** Partially Implemented

**Compliance with ISA.** Argentinean auditing standards are considerably less detailed and stringent than ISA. A detailed analysis of auditing standards is presented in *Argentina Accounting and Audit ROSC*, World Bank, 2007.

**Auditor independence.** The definition of auditor independence is stringent: the auditor cannot be an employee of the business group to which the company belongs, a family member of the owners or management, or a shareholder. The auditor’s compensation cannot be contingent upon the results of the audit or company performance.\textsuperscript{lxxxvii} CNV rules forbid auditors to provide accounting and a wide range of other services.\textsuperscript{lxxxviii} Auditor rotation is not required.

Audit committees must report audit and other service fees billed by external auditors. Also, the auditor report includes the percentage of issuers' audit services fees over total audit and non audit fees; the percentage of issuers' audit and non-audit fees over total group audit and non-audit fees; and the percentage of group audit fees over group audit and non-audit fees.\textsuperscript{xc}

**Auditor selection independent of management.** External auditors are proposed by the board, and opined on by the audit committee, as well as approved by the AGM (Decree 677 §13). Shareholders generally approve the board recommendation.

**Audit committee.** Listed companies issuing shares (but not debt) must form an audit committee with 3 or more board directors, a majority independent, and elected by the board from among the directors as elected by the AGM. Independence is defined sufficiently strictly, e.g. the audit committee member cannot be an employee (over the past 3 years), a significant shareholder, a board member of a significantly controlled company (at 35%), be employed by significant shareholders (at 35%) or entities in which those shareholders have significant influence.\textsuperscript{xci} The members of the audit committee are to be chosen among the directors who are well versed in business, financial or accounting issues. The audit committee evaluates the appointment and independence of external auditors and reports on its findings to shareholders, and opines on director compensation and new share issues.\textsuperscript{xcii} It also supervises internal control and administrative-accounting systems, as well as public disclosure of material facts, RPTs, and risk management. The committee also holds periodic meetings with management, internal and external auditors, discusses the periodic financial statements with management and the external auditor, reviews any problems, accounting principles changes, adequacy of internal controls, and significant financial reporting issues. Finally, the audit committee presents its opinion on whether RPTs are at market terms to the board.\textsuperscript{xciii} Directors, management, and external auditors must attend audit committee meeting son request, and provide information and collaboration as needed. The audit committee may request legal counsel at the expense of the company, with AGM approval, and has access to all corporate information / documents it may require.

**Requirements for oversight of audit.** The audit committee is charged with overseeing the performance of the external auditors and their independence, and must provide an opinion in the annual report.

**Competent and Qualified Audit Enforcement.** There are about 6,000 certified auditors in Argentina. All SAs must be audited. The big 4 share about two thirds of the audit market, with PWC far in the lead and Deloitte / Ernst & Young also having significant market share. To the extent there is a second tier of reputable companies, they are of a localized character. Auditors are certified by the *Consejo Profesional de Ciencias Económicas* (see VB for enforcement activities of the Consejo).\textsuperscript{xcv} The Consejo also sets out requirements for professional conduct.\textsuperscript{xcv} There is no independent oversight of the professional body. CNV may request accountants or professional councils to provide audit-related information, and carry out inspections and request explanations.\textsuperscript{xcvi}
Auditor qualifications. The qualification requirement for auditors is a bachelor degree in accounting, which falls short of good international practice.

Statutory auditors or similar company organs. Typically, the internal audit function reports to the CEO, the CFO, or the audit committee. There is little or no contact between internal audit and shareholders.

Corporate Law envisions a comision fiscalizadora (or sindico if composed of one person), which is mandatory for large SAs and whose members must be lawyers or accountants / auditors. The sindico is appointed by the AGM. It monitors the compliance of board actions with the law, by-laws and internal corporate regulations; examines the company documents and books, and periodic financial statements, every three months; and presents to the AGM a report on the economic and financial situation of the company, including the financial statements (LSCA §§64, 66). The sindico is present at board and AGM meetings with a voice but no vote; can summon an EGM when it deems necessary, and AGMs whenever the board fails to do so; and assures that important items are included in the shareholder meeting agenda (LSCA §§294). It can also conduct investigations at the request of 2% of share capital. In practice, the function is a sindico is carried out by the external auditor or ex-employees / persons closely linked to the company. Market participants note the duplication between the functions of the audit committee and sindico, and express diverse opinions as to the effectiveness of each. The sindico is perceived as an older, more established and well-understood institution, with a limited effectiveness. The audit committee is seen as promising given its wider powers; however, with the significant proviso of the true independence and adequate protection of its members, which is perceived as problematic at this stage of corporate governance development.

Principle VD: External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.

Assessment: Partially Implemented

Auditor accountability to shareholders. Audit reports are addressed to shareholders and to the board of directors. The external auditor need not be present at the AGM by law, though in practice the auditor would attend. Shareholders and stakeholders can take external auditors to court for civil charges, and some precedents exist in Argentina already.

Penalties for auditors who fail to perform with due care. Auditors are not required to take out mandatory insurance. External auditors are under civil and criminal liability for false and misleading statements, though they can only be criminally charged as accessories to the infliction committed by insiders.

Principle VE: Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

Assessment: Fully Implemented

Material facts. Any event or situation that may substantially affect the trading or price of the company stock must be reported in real time to the CNV and BCBA. In practice, it is not uncommon for the press to uncover unreported material information before the market does.

Easy accessibility of disclosed information. Information is easily accessible. A wide range of information to shareholders is disseminated through the CNV and BCBA websites and the BCBA Gazette. Most companies also have websites, and some have their annual report online. Listed companies typically have investor relations departments. Annual statements and other relevant reports are available at company headquarters for 15 days prior to the AGM. Non-listed company information is harder to obtain, due to the incompleteness and relatively difficult accessibility of IGJ / Commercial Register records. Information on small SAs and SARLs is notoriously difficult to obtain. Company headquarters offices contain certain information (see section IIC1); in practice, the latter is not solicited.

Prohibitions on selective disclosure of information. There are no express prohibitions on non-obligatory disclosures.

Principle VF: The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by analysts, brokers, rating agencies and others, that is relevant to decisions by investors, free from material conflicts of interest that might compromise the integrity of their analysis or advice.

Assessment: Partially Implemented

Disclosure of conflicts of interest by analysts, brokers, rating agencies, etc. The activity of investments banks, brokers, and rating agencies is regulated by the CNV, the Banco Central and the Mercado de Valores. In cases of conflict of interest, involved parties must disclose the conflict and reclus themselves. Rules on Chinese walls are an area of somewhat overlapping jurisdiction between the CNV and Banco Central, and requires further legislative effort to be fully regulated. Brokerage
research is considered independent.

**Regulation of credit rating agency conflict of interest.** There are no further explicit rules for credit agencies.

**Regulation of sell-side analyst conflicts of interest.** There are no further explicit rules for sell-side analysts.

**Disclosure of conflicts of interest.** Any person or financial institution has an obligation to refrain from actions that might compromise the objectivity of their advice, including conflict of interest transactions. The “Code of Best Practices for Corporate Governance in Argentina” is developed by IAGO and includes recommendations on relations with stakeholders in the areas of business ethics, environment protection, intellectual rights protection, anti corruption policies, investing in the community and e-governance.

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**SECTION VI: THE RESPONSIBILITIES OF THE BOARD**

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders.

**Principle VIA: Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.**

**Assessment: Fully Implemented**

**Board “duty of loyalty”.** The duty of loyalty includes the following obligations: (i) to place the corporate interests of the issuer and the common interest of the shareholders above any other interest, including the controlling shareholder’s interests; (ii) to refrain from obtaining a personal benefit from the issuer other than the compensation paid for directors functions; (iii) to organize and implement preventive systems and mechanisms to protect the corporate interests, reducing the risk of conflicts of interests in related party transactions; (iv) to abstain from competing with the corporation unless authorized by the shareholders’ meeting; to abstain from voting in case of conflict of interest (Decree 677/2001 §§5, 7, 8).

**Board “duty of care”.** Directors have the duty to act “as good businessmen”. In case of breach of their duties, directors will be personally, jointly and severally liable for any damages and losses caused by their actions or omissions. The burden of proof is placed on the director. Directors also have the following additional duties (Decree 677/2001 §6, 15): duty to not trade on confidential information; duty not to engage in business opportunities competing with the company; and duty to disclose their ownership in related corporate entities. Directors are civilly and criminally liable for false or misleading statements.

**Effective enforcement.** Directors are jointly and severally liable, towards the company, shareholders and third parties, for bad performance while they are at office, as well as for infringement of the law, the bylaws or the regulation, as well as for any other damage caused by fraud, abuse of powers or gross negligence. Director insurance is not common, but is available. Existing insurance products leave directors vulnerable to court attacks, as most insurance plans exclude “willful harm”, which is easy to demonstrate in court in most circumstances. Social liability suits and minority suits for personal damages, the two instruments most likely to protect minority interests, have been problematic in their functioning in practice.

**Principle VIB: Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.**

**Assessment: Fully Implemented**

**Board “duty of loyalty” / duty to treat all shareholders fairly.** Directors owe duties to the corporation and all shareholders equally, and cannot make decisions that will privilege one group over another (Decree 677/2001 §8). The duty of loyalty includes the obligation to place the interests of the company and shareholders above those of controlling owners.

**Principle VIC: The board should apply high ethical standards. It should take into account the interests of stakeholders.**
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**Assessment: Fully Implemented**

**Development of company codes of ethics.** Some of the larger companies have codes of ethics, published on the company website, including Banco Itaú Buen Ayre, Repsol YPF, BBVA Banco Francés, Petrobras Argentina. There is no specific statute applicable to boards regarding corruption, which falls under general criminal acts. Corporate contributions to political campaigns are disclosed (Ley de Financiamiento de Partidos Políticos Nº 26, 500 §§9, 33, 34, 39).

**Board and interests of stakeholders.** A board member must work towards achieving company objectives and fulfilling the social role of the company. The law does not specify expressly any board duties to stakeholders.

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**Principle VID: The board should fulfill certain key functions, including:**

**Principle VID 1: Board oversight of general corporate strategy and major decisions**

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**Assessment: Broadly Implemented**

**Central and strategic role played by boards.** The key functions of the board and supervisory board include guiding corporate strategy, risk policy, and business plans, setting performance objectives and monitoring implementation and corporate performance, but do not explicitly refer to oversight of major capital expenditures, acquisitions and divestitures.

**Director training, IOD.** Corporate governance is still perceived as a cost rather than a benefit by companies, and awareness is not high. IAGO offers monthly workshops to member companies, including on corporate governance issues.

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**Principle VID 2: Monitoring effectiveness of company governance practices**

**Assessment: Partially Implemented**

**Board oversight of legal compliance.** Compliance committees are not frequent in Argentina. Supervisory boards, if the bylaws provide for them, would take on board monitoring functions, including the appointment of investigative commissions to examine shareholder complaints against directors (LSCA §§280-283). Audit committees have similar functions as well.

**Board oversight of code compliance.** Effective December 31, 2007, a questionnaire related to corporate governance has to be completed by the board of directors and reported as part of the annual filing (CNV Regulation 368/2001 Chap. XXIII §1).

**Board self-evaluation.** Formally boards do not evaluate their performance on a regular basis.

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**Principle VID 3: Selecting/compensating/monitoring/replacing key executives**

**Assessment: Fully Implemented**

**Board oversight of selecting and replacing key executives.** The board has complete freedom to appoint and replace managers.

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**Principle VID 4: Aligning executive and board pay with long term company and shareholder interests**

**Assessment: Fully Implemented**

**Develop and disclose remuneration policy.** Director compensation is proposed by the board and approved by shareholders, unless it is set in the bylaws. The law limits aggregate board compensation at 25 percent of earnings, which is reduced progressively in function of dividend payments, and capped at 5 percent when no dividends are paid. These limits can only be exceeded with AGM approval (LSCA §261; CNV Regulation 368/2001 Chapter III §2-7; Law No. 17,811 §74).

**Oversight by non-executives.** The board determines management compensation (LSCA §270).

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**Principle VID 5: Transparent board nomination/election process**

**Assessment: Broadly Implemented**

**Clear and transparent board nomination process.** Directors and members of the supervisory board are appointed and may be removed by the AGM with majority, at the suggestion of the board. Nomination committees are rare.
**Effective shareholder participation in board nomination process.** Up to a third of the board vacancies can be filled up by cumulative voting, which can be requested by 25 percent of capital. In companies with multiple share classes, the bylaws can establish that each class appoints / removes one or more directors (LSCA §§243, 263, 283 and 299). Any shareholder can nominate a director at the AGM, by raising their hand and proposing the matter for a vote.

**Disclosure of nomination procedures.** There are no express rules on disclosure of nomination procedures.

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**Principle VID 6: Oversight of insider conflicts of interest, including misuse of company assets and abuse in RPTs**

**Assessment: Broadly Implemented**

**Board oversight related party transactions / self dealing.** Directors, auditors and managers of listed companies must organize and put into practice procedures and mechanisms to reduce the risk of conflicts of interest. Directors must inform the board, the audit committee, auditors and the supervisory board, when applicable, whether they have any potential conflicts of interest with the corporation, and refrain from voting. Directors and members of the supervisory board must keep confidential any non-public information which could affect the share price, as well as refrain from trading until that information is made available to the market (see section IIIB). Directors cannot use corporate assets or business opportunities for their own benefit. RPTs require an audit committee report informing whether the proposed transaction is at market terms or competes with the company’s line of business. In the latter case, the RPTs are disclosed to (and confirmed by) the AGM (see section IIC). Directors are liable for adequate disclosure of self-dealing and RPTs.

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**Principle VID 7: Oversight of accounting and financial reporting systems, including independent audit and control systems**

**Assessment: Fully Implemented**

**Board oversight of external auditors.** Listed companies must institute audit committees with a majority of independent members (see section VC), which oversee the external auditor, among other functions.

**Board oversight of internal controls.** Listed companies must institute audit committees with a majority of independent members (see section VC), which oversee the internal auditor, among other functions.

**Internal compliance programs.** In the case of listed companies, the audit committee oversees internal control systems. The board clarifies with management the financial statements, and approves them (a copy of the board approval meeting is filed with CNV and BASE). The audit committee monitors board compliance with laws, bylaws, and internal regulations. The sindico and Chairman of the Board sign, but do not certify (in the Sarbanes-Oxley sense), the financial statements.

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**Principle VID 8: Overseeing disclosure and communications processes**

**Assessment: Fully Implemented**

**Board oversight of disclosure process.** The board of directors has a duty to disclose and communicate to CNV any situation or event that may affect the offering or trade of company securities. In addition, individual directors have duties to disclose certain information, such as conflicts of interest, ownership, etc (see section VA).

**Board responsibility for communications strategy.** The board must appoint a person in charge of an investor relations, as well as implement internal control systems to fully comply with CNV disclosure and communications regulations.

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**Principle VIE: The board should be able to exercise objective independent judgment on corporate affairs.**
Principle VIE 1: Director independence

Assessment: Broadly Implemented

Director independence. In the case of listed companies, the audit committee must have a majority of independent directors and at least three members (Decree 677/2001 §15). Common practice is to appoint two independent directors. Independence regulations or rules for directors are relatively recent and companies find it difficult to open up to outsiders. The potential positive effect of director independence is already recognized by stakeholders, however an important factor reported by market participants for the lack of full efficacy of the independent director mechanism is the inadequate protection of outsider directors from potential attacks on liability due to their auctions as sentinels of the corporate (not insider) interest.

Independence criteria. Independence is defined sufficiently strictly. A director is not independent if he/she (or any close family member) is: a company ex-employee (over the past 3 years); has a professional relationship with the company or receives compensation (other than director pay) from the company, shareholders, or any legal entity with a significant stake or influence over the corporation, is a significant shareholder or has a significant influence over the company, is a board member of a company where the company is a significant shareholder, or transacts products or services with the corporation or its significant shareholders, in amounts significantly higher than the director compensation.

Company disclosure of independence. Effective December 31, 2007, independent directors will be disclosed in the board’s corporate governance report (CNV Regulation 368/2001 Chapter XXIII §1).

Independent oversight of key board tasks including:

Financial Reporting. The audit committee’s key functions include oversight of financial reporting.

Related Party Transactions. The audit committee’s key functions include oversight of RPTs.

Board and executive nomination. The audit committee’s key functions do not include oversight of nomination.

Board and executive remuneration. The audit committee oversees executive, but not board, remuneration.

Principle VIE 2: Clear and transparent rules on board committees

Assessment: Fully Implemented

Disclosure of mandate, composition, and working procedures of important committees. Audit committees are required for all listed companies. Companies rarely set up other board committees, and none are required by law or code.

Principle VIE 3: Board commitment to responsibilities

Assessment: Not Implemented

Company disclosure of board member activity. Board members are required to sign the minutes of the board every time they attend a board meeting (these are not accessible to shareholders, generally). In the case of RPTs, each director vote is recorded in the board meeting minutes. Absent directors are allowed to authorize other members of the board to vote in their names provided there is quorum.

Requirements for initial and on-going training. There are no legal requirements for board training.

Principle VIF: In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.

Assessment: Fully Implemented

Board access to information. Directors, auditors and members of the supervisory board have access to any corporate information. In the case of listed companies, audit committee members can access any reports, information or documents that they may deemed necessary to perform their supervisory activities.

Free access to qualified advisors. The members of the audit committee have access to professional advice at the expense of the corporation. The shareholders meeting estimates and approves a budget.
for this purpose. Directors that are not members of the committee do not have access to professional advice at the expense of the corporation.

**TERMS/ACRONYMS**

ADR: American Depository Receipt  
AFJP: Administradoras de Fondos de Jubilaciones y Pensiones  
AGM: Annual General Shareholders Meeting  
BCBA: Bolsa de Comercio de Buenos Aires  
CEF: Centro para la estabilidad financiera  
CNV: Comisión Nacional de Valores  
Cumulative voting: Cumulative voting allows minority shareholders to cast all their votes for one candidate. Suppose that a publicly traded company has two shareholders, one holding 80 percent of the votes and another with 20 percent. Five directors need to be elected. Without a cumulative voting rule, each shareholder must vote separately for each director. The majority shareholder will get all five seats, as s/he will always outvote the minority shareholder by 80:20. Cumulative voting would allow the minority shareholder to cast all his/her votes (five times 20 percent) for one board member, thereby allowing his/her chosen candidate to win that seat.  
EGM: Extraordinary Shareholders Meeting  
FUNDECE: Fundación Empresaria para la Calidad y la Excelencia  
GDP: Gross Domestic Product.  
IAGO: Argentine Institute of Corporate Governance  
IDEA: Instituto para el Desarrollo Empresarial de Argentina  
IFRS: International Financial Reporting Standards  
IGJ: Inspección General de Justicia  
ISA: International Standards on Auditing  
LSCA: Ley de Sociedades Comerciales de Argentina  
MAE: Mercado Abierto Electrónico
OPA: Oferta Pública Obligatoria

Pre-emptive rights: Pre-emptive rights give existing shareholders a chance to purchase shares of a new issue before it is offered to others. These rights protect shareholders from dilution of value and control when new shares are issued.

Proportional representation: Proportional representation gives shareholders with a certain fixed percentage of shares the right to appoint a board member.

RPT: Related party transactions. The OECD Principles of Corporate Governance hold that it is important for the market to know whether a company is being operated with due regard to the interests of all its investors. It is therefore vital for the company to fully disclose material related party transactions to the market, including whether they have occurred at arms-length and on normal market terms. Related parties can include entities that control or are under common control with the company, and significant shareholders, such as relatives and key managers.

SA Sociedades Anónimas

SARL: Sociedades de Responsabilidad Limitada

Shareholder agreement: An agreement between shareholders on the administration of the company. Shareholder agreements typically cover rights of first refusal and other restrictions on share transfers, approval of related-party transactions, and director nominations.

SME: Small and Medium Enterprise

SRO: Self Regulated Organization

Squeeze-out right: The squeeze-out right (sometimes called a “freeze-out”) is the right of a majority shareholder in a company to compel the minority shareholders to sell their shares to him. The sell-out right is the mirror image of the squeeze-out right: a minority shareholder may compel the majority shareholder to purchase his shares.

Withdrawal rights: Withdrawal rights (referred to in some jurisdictions as the “oppressed minority,” “appraisal” or “buy-out” remedy) give shareholders the right to have the company buy their shares upon the occurrence of certain fundamental changes in the company.

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i The stock exchanges are Buenos Aires, Cordoba, Rosario, Santa Fe, La Rioja, Bahia Blanca, La Plata, Confederada, and Tukuman. The alter tour have no capital markets associated with them.

ii Source: World Bank Central Database, CNV, BCBA, and MERVAL annual reports, 2006 data, 2nd quarter. The capitalization of the Argentine capital market is calculated by including the entire (world-wide) capitalization of foreign listed companies.

iii Trading volume was A$12.9 billion, and the turnover ratio was 1.2 percent.

iv See also La Bolsa Hoy: Review published by BCBA, November 2004 N° 11 “¿Por qué hay menos empresas en la BCBA? El perfil de las sociedades cotizantes”, pag 10. Disciplinary delistings are less frequent, and have historically been involved in endless court disputes.


vi The BCBA provides data on control groups. See also Schvarzer, Jorge. “Grandes grupos económicos en la Argentina. Formas de propiedad y lógicas de expansión”. CISEA, Centro de investigación de la situación del Estado Administrativo, Buenos Aires, Argentina, agosto de 1994, p. 58, also at http://bibliotecavirtual.clacso.org.ar/ar/libros/argentina/cicea/crupomex.doc.

vii Estimated by M. & M. Bomchil as of September, 30,2006 at A$12.502.626.000 (pension funds);
A$5,372,000,000 as of November 3, 2006 (mutual funds); A$1,168,936,000 (a sample of banks representing 73% in terms of total assets, 69% of total loans, 79% of total deposits and 68% of net worth); and A$358,834,865 (insurance).

The two sectors FACE the typical investment restructions, in terms of risk type and foreign origin. For the insurance sector, those are outlines in the Ley de Entidades Aseguradoras y su Supervisión No. 20,091 §35.

LSCA (Law No. 19,550) regulates incorporation of companies; by-laws and essential clauses such as corporate name, domicile, corporate purpose, capital stock and capital contributions; associates’ rights, administration; duties of administrators; financial statements; approval and distribution of profits; company reorganization: merger & spin-off; transformation; dissolution and liquidation.

File No. 1999-S-2006 of the Argentinean Congress.

BCBA By-laws, §1 a,b,c and e; §26.19; §26.22; §26.27 and §26.28.

Law No. 17,811 §59; Decree 677/01 §15; LSCA §285.

LSCA §260. The bylaws can specify a higher quorum.

LSCA §§73, 266; Law No. 17,811 §66.


BCBA Listing Rules §§14, 15, 16, 58; LSCA §270.

BCBA By-laws, §§1 a,b,c and e; §26.19; §26.22; §26.27 and §26.28.

Law No. 17,811; Law No. 24,083 (Fondos Comunes de Inversion); CNV Regulation 368/2001.


Law No. 17,811 §§10, 13; CNV General Resolution No. 401; Decree No. 667/01 §17. The fines may vary from A$1,000 to A$1,500,000, and may be raised further, up to five times the amount of the obtained benefit or the damage suffered as a consequence of the illegal action.

Law No. 17,811 §7.

Law No. 17,811 §§12, 14; Decree No. 667/01.

Of which 15 are pending, and 57 were resolved as follows: 3 CNV decisions were reversed by the court, in 9 cases the sanction was softened, and the remaining decisions were confirmed as issued by the CNV.

CNV Regulation 368/2001 Chapters XVIII, XIX.

BCBA By-laws §71; BCBA Listing Rules.

Law No. 17,811 §§34, 60.

Regulations of Caja de Valores S.A.; Law No. 20,643 Title III Chapter III. Caja de Valores has 6 million sub-accounts, of which 7000 are active, and 600 depositaries.

LSCA §§12, 60, 67, 299; Resolución General IGJ No 7/2005 §§34, 35, 38.

RC Resolution No. 7/05; Law No. 17,811 (Public offering of securities); Law No. 22,169; CNV Regulation 368/2001 Chapter XXVI.

LSCA §302, 303; Law No. 22,315 §§6, 12-15; Resolución General IGJ No 7/2005 §§27-33.

On average, a court judge has a case burden of 5,000 / year.

Law No. 21,839 specifies assessors fees and Law No. 23,898 contains the court rates.

In the mediation and conciliation case, the arguing parties settle the dispute by an agreement, which is ratified by the arbitration court. In the remaining cases, decisions are taken by majority vote of the three arbiters. Arbitration by amicable compounds cannot be appealed, whereas legal arbitration has the force of a first instance verdict. Decree No. 667/01 §36; BCBA By-laws §67/70.

Resolution IDJ 52/93 of Feb 9, 1993.
The cumulative voting right is eliminated when directors are elected by several classes of common shares. The procedure is as follows. The minority shareholders notify the company of their intention to use cumulative voting, at least three working days prior to the AGM, identifying the shares to be used for cumulative voting. The shares must be registrable and deposited at a depository entity. Once a shareholder declares his intention to exercise his cumulative voting right, all other willing shareholders can join the cumulative vote process. The company serves notice to shareholders on the pending cumulative vote proceeding, as well as announces at the AGM that any shareholder can join the cumulative vote. Shareholders voting by the ordinary system and those voting cumulatively compete in the election of one third of the members of the board of directors. The remaining two-thirds are elected by ordinary voting. Shareholders can divide their votes between ordinary and cumulative voting. Directors are elected if they have obtained an absolute majority of the votes present and voting by the ordinary system, or (in the absence of an absolute majority) if the cumulative votes cast represent a higher percentage than the ordinary votes cast, up to having elected one-third of the members of the board.

An EGM must approve the characteristics and price of the shares, any waivers of preemptive rights, pay-in periods, dividend-start date (BCBA Regulations §§81, 113). The EGM resolutions, minutes, and attendance register are filed with the CNV and BCBA. In addition, detailed information is filed with the CNV and BCBA, including the board decision to call an EGM, the EGM notice and background documentation, the draft capital increase resolution. In order to obtain CNV approval of the capital increase and BCBA approval of the share listing, the company files detailed documentation on the characteristics, quantity and price of the new shares, preemptive rights details, usage for the new funds, any subscription agreements. The company publishes notice of the upcoming capital increase in the Official Gazette and a nationwide newspaper (LSCA §194), and after the transaction notifies CNV, BCBA, and the public (via the Official Gazette) of the number of shares and capital subscribed. The capital increase is registered also with the Public Registry of Commerce.

The following conditions shall be met: a) the resolution must be considered in a specific point of the agenda of the shareholders’ meeting; and b) the resolution corresponds to shares to be paid-in in kind or for payment of previous liabilities of the company.

LSCA §60; CNV 368/2001 Chapter II §4; BCBA regulations §75.

In general stock options are not commonly used in Argentine listed companies.

Law No. 17,811 §65.

Holders of common shares have the following rights: (i) to receive dividends, (ii) negotiability, (iii) the ability to pledge or mortgage the shares, (iv) voting rights in proportion to the number of shares owned, and (v) the capacity to increase in value.

Decree 677/01 §§5, 6, 9-14; Law No 17,811 §§6-15; CNV Regulation 368/2001 Chapter XXI §§8, 12.

The OPA procedure is not applicable to mergers / spin offs. The OPA procedure is as follows
The bidder sends a full detail notification of the OPA to the BCBA, the public (Official Gazette), and the target company's board of directors, containing, inter alia, the OPA price and conditions, plans to take the target private, and details on the bidder. In addition, the bidder files a request for the OPA with the CNV, enclosing a guarantee of the funds to be used as OPA payment. CNV has 15 days to object, after which the OPA can be initiated. The bidder must also seek the approval of the Comisión Nacional de Defensa de la Competencia (Federal Antitrust Commission).

The target board of directors must express its opinion on the reasonableness of the offer (including disclosure on any agreements between the target company / board members and the bidder), to the shareholders and the public. All insiders holding shares declare their intentions to accept or reject the offer. A final accoucheur of the CNV approval and the OPA launch is published. The OPA acceptance period lasts for not less than 20 and not more than 30 days since the authorization of the OPA, and the CNV can extend it for 5-10 days. An additional period of 5-10 days is given for all shareholders who have not accepted the offer, to participate on the deal at the OPA price. The OPA results are published in the BCBA Gazette.

The procedure is as follows (CNV Regulation 368/2001 Chapter I §4a; Chapter II §4a; Chapter X §§2, 3b, 5; BCBA Regulations §§23, 50, 74). The board resolution to delist must be notified to the CNV and the BCBA as a material fact. An EGM must approve the delisting, and a notice summoning the meeting is published, specifying, inter alia, that the EGM quorum is 75% and that there cannot be more than 10% of votes against delisting. EGM background materials, notice, minutes, attendance, draft bylaws amendment, and a justification of delisting as acting in the company’s interest are also filed with the CNV / BCBA. Following BCBA approval of the delisting and CNV approval of the company withdrawal from public offering, the delisting and withdrawal must be notified in the BCBA Gazette.

Sanctions were much more frequently imposed in 2001-3, due to the financial situation in the country – 21 times in 2002 alone.

There are regulations regarding meetings to be held by simultaneous communications of sound and video, if allowed in the bylaws. However these regulations have never been implemented by the CNV.

Decree 677/01 §§5, 6. BCBA must publish the information in their bulletins or in any other widespread newspaper.

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III §7.

**lxxi**  LSCA §230; Ley de Reforma del Estado No. 23.696 §24. Decree No. 2423/1991 §1k.

The following listed companies maintain various charities / stakeholder programs: Banco Macro Bansud, Grupo Telecom, Banco Galicia, ACINDAR, Tenaris, Petrobras, Siderar, BBVA Banco Francés, Metrovías.

**lxxii**  LSCA §§54, 274 and 279; Argentine Civil Code (ACC); Bankruptcy Law No. 24.522.

**lxxiii**  Argentine Constitution §43. A recent ruling of the Argentine Supreme Court of Justice has admitted different environmental groups to participate in an environmental claim filed by several neighbors of the river “La Matanza” basin (Province of Buenos Aires) in order to obtain the reparation of the environmental damages caused in that area.

**lxxiv**  Employment Contract Act No. 20,744 §20.

**lxxv**  Bankruptcy Law §149.

**lxxvi**  CNV Regulation 368/2001 Chapter XXIII §§8, 11, annex I; LSCA §§62-65; FACPCE Technical Resolution 7, 8. The summary contains an analysis of the issuers’ operations; and 5-year comparative data for the financial statements; main operations; and the corporate financial ratios. LSCA §§281, 294.

**lxxvii**  CNV Regulation 368/2001 Chapter XXIII; BCBA Listing Regulations §23.

**lxxviii**  CNV Regulation 368/2001 Chapters II, III, XXI, XXIII, XXVI; Law 17.811 § 64; Decree 677/01; BCBA Listing Regulations §§73-79.

**lxxix**  LSCA §62; FACPCE Technical Resolution 21. The AGM approves the individual, not consolidated statements.

**lxxx**  LSCA §§62; FACPCE Technical Resolution 21; BCBA Listing Regulations §§62, 63. The information does not go to the ultimate owner.

**lxxxi**  CNV Regulation 368/2001 Chapter XXVI §6; BCBA regulation §62; LSCA §66.

**lxxxii**  Decree 677/2001 §39.

**lxxxiii**  BCBA by-laws §71. “Rueda reducida” results from an alert due to a price gyration or non-compliance with listing duties. In the past, the sanction used to involve the imposition of limited trading by BCBA, currently the company is allowed to trade fully; however, with the label “Rueda reducida” warning of a problem. The penalty was imposed once in 2006, and seven times in 2005.

**lxxxiv**  FACPCE Technical Resolution 8 §VII B.3; BCBA Listing Regulations §§62, 63. The independence rule applies to all members of the audit team.

**lxxxv**  FACPCE Technical Resolution No. 7. The independence rule applies to all members of the audit team.

**lxxxvi**  Except consulting services. CNV Regulation 368/2001 Chapter XIII §9.1; CNV Regulation 400.

**lxxxvii**  CNV Regulation 368/2001 Chapter XXIII §11; FACPCE Technical Resolution 21.

**lxxxviii**  FACPCE Technical Resolution 21; Decree 677/2001 §15; CNV Regulation 368/2001 Chapter III §§7, 8.

**lxxxix**  LSCA §65; Law 17.811 § 64; Decree 677/01; CNV Regulation 368/2001 Chapter XXIII annex I; FACPCE Technical Resolution 8.

**xc**  FACPCE Technical Resolution No. 7. The independence rule applies to all members of the audit team.

**xc**  Except consulting services. CNV Regulation 368/2001 Chapter III §9.1; CNV Regulation 400.

**xc**  CNV Regulation 368/2001 Chapter III §9.1; CNV Regulation 400.

**xc**  Decree 677 §15; CNV Regulation 368/2001 Chapter III §6; CNV Regulation 400.

**xc**  Decree 677; CNV Regulation 368/2001.

**xc**  Decree 677 §15h; CNV Regulation 368/2001 Chapter III §8.4.

**xc**  CNV Regulation 368/2001 Chapter XXIII §8.11.

**xc**  Res. 355/80; Res. 145/81.

**xc**  Decree 677 sect 14 and 15; CNV Regulation 368/2001 Chapter III §8.16.

**xc**  Specifically, companies whose capital exceeds A$10,000,000, or are publicly held or are public utilities, must appoint a sindico. If a sindico is not appointed, it is mandatory to appoint alternate directors who monitor the board compliance with the law and by-laws.
The materiality definition above is accompanied by a rich set of examples, including significant sales of 15% of assets, extraordinary transactions or loans / guarantees, lawsuits, share buy-backs, director / executive / syndic compensation.

Argentina has not issued any specific rule similar to the “business judgement rules”. However if a disinterested and informed decision is made by members of the board, such decision should not be challengeable in a court of law.

Regarding criminal liability, jailing form six months to two years shall be imposed on any founder, director, manager, liquidator or syndic of any corporation or any other legal entity who publishes, certifies or approves an untrue or incomplete balance sheet, profit and loss statement, or their respective reports, minutes, annual reports, or informs the associates’ meeting distorting the truth or with reticence regarding facts which are important for the appreciation of the economic situation of the company, regardless of the purpose he/she had to inform it pursuant the Argentine Criminal Code. Note that the scope of the definition of the crime is quite reduced and only founders, directors, managers, liquidators and syndics may be convicted as authors.

Notwithstanding that, liability may be attributed by taking into account the individual functions that directors may have been assigned, as long as they have been registered with the RC.

However unless otherwise provided by the bylaws, the company may purchase a civil liability insurance for directors, to cope with risks corresponding to the exercise of their functions. (Law No. 17,811 §74).

A significant shareholder is defined as a person with more than 35% of the equity capital, or that is entitled to elect one or more members of the board, or has entered into agreements with other shareholders involving the administration of the corporation or its parent company (CNV Regulation 368/2001 Chapter III §6).

Decree 677 §15; CNV Regulation 368/2001 Chapter III §6; CNV Regulation 400.