

# Argentina

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## Sources of corporate governance rules and practices

- 1** What are the primary sources of law, regulation and practice relating to corporate governance?

In Argentina there is no specific law governing corporate governance. Instead, the legal framework for corporate governance is scattered in a number of specific laws and regulations in different areas. The main legal framework is defined by the following rules:

- General Resolution No. 516/2007 issued by the Argentine Securities Exchange Commission (Comisión Nacional de Valores, CNV), which applies to corporations that make public offering of their shares;
- General resolutions issued by the CNV, such as General Resolution No. 400/2002, which incorporates new transparency regulations for local capital markets in order to establish better practices of corporate governance;
- Resolutions issued by the Superintendency of Corporations (Inspección General de Justicia, IGJ), such as Resolution 7/2005, which applies to the companies incorporated in the city of Buenos Aires;
- Law No. 17,811 (Public Offering of Securities Law);
- Decree 677/01 (Capital Markets Transparency and Best Practices);
- Law No. 19,550, as amended (the Companies Law);
- Law No. 25,246, which created the Financial Information Unit (FIU) for the analysis, processing and transfer of information in order to prevent money laundering;
- the Argentine Criminal Code (sections 256 to 259); and
- provincial regulatory rules that apply to companies incorporated outside Buenos Aires.

- 2** What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder activist groups whose views are often considered?

Argentina is a federal country. Therefore, the primary government agencies responsible for enforcing corporate governance regulations are: the IGJ for companies registered in the city of Buenos Aires, which is a federal district and capital of the country; the Corporations Agencies in each of the provinces of Argentina for companies registered in their jurisdiction; the CNV for corporations that make public offering of their shares; and the FIU for the analysis, processing and transfer of information in order to prevent money laundering nationwide.

## The rights and equitable treatment of shareholders

- 3** What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action?

The appointment of the members of the board of directors is made at the ordinary shareholders meeting. The directors are elected by the majority of votes of the shareholders.

The members of the board can be removed with or without a cause and, unless specified in the by-laws of the company, they are elected for a maximum term of three years. Their removal can only be decided by the shareholders' ordinary meeting, adopted by majority of the shareholders vote or by any other majority established in the by-laws of the company (Companies Law, section 243).

With respect to the possibility of requiring the board to pursue a specific course of action, the board of directors shall pursue the causes of action decided by the majority of the shareholders at the meeting. The board of directors calls the meetings and determines the agenda. Nevertheless, shareholders representing at least 5 per cent of the capital of the company can request a call for a shareholders meeting by the board of directors with a specific agenda. In addition, in case the shareholders' meeting is unanimous, which means that the total capital is represented at the meeting, the inclusion of new matters in the agenda can be decided if such a decision is made unanimously.

- 4** What decisions must be reserved to the shareholders?

The decisions reserved to the shareholders are taken at the shareholders meetings. There are ordinary and extraordinary meetings, depending on the nature of the matters to be discussed.

In the ordinary meetings the shareholders may deal with the approval of the annual balance sheet, the appointment and removal of directors and syndics or controllers, their eventual liability vis-à-vis the corporation, capital increases up to five times the original capital of the company, dividend distribution, profit and loss statements and any other matter related to the day to day management of the company (section 234 of the Company Law).

At the extraordinary meetings the shareholders may deal with the amendment of the corporate by-laws, mergers and acquisitions, dissolution of the company, limits or suspension of the shareholders' preemptive rights to subscribe new shares, the issuance of bonds and debentures and capital reductions, among other decisions (Companies Law, section 235).

- 5** To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

The by-laws of the company can contemplate many classes of shares with different voting rights, and may grant up to five votes per share.

Common shares must have identical economic rights; regardless of their different voting rights.

Preferred shares enable their holder to obtain an economic preference over the common shares. They may have the right to vote but they may not grant more than one vote per share.

The extension of the voting right that each class of shares confer will be reduced to one vote per share when fundamental changes in the company are to be considered. In this situation, multiple voting cannot be performed and preferred shares will also have the right to vote. The fundamental corporate changes shall be adopted at an extraordinary shareholders' meeting.

- 6** Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote?

Both ordinary and extraordinary shareholders meetings require special notice (publication in the Official Gazette and in a major newspaper in the event of companies subject to state control) indicating the date, place and agenda of the meeting.

For ordinary meetings, once notified, shareholders intending to participate in the meeting must inform the board that they intend to attend three days in advance.

On first call, ordinary meetings require a quorum of 51 per cent of the voting shares and extraordinary meetings require a minimum of 60 per cent, unless a higher percentage of voting shares is required by the company's by-laws. On second call, ordinary meetings may be held regardless of the number of votes present and extraordinary meetings require the presence of 30 per cent of the voting shares, unless otherwise specified in the by-laws. An absolute majority (51 per cent) of the voting shares present is necessary to approve any decision, unless a higher percentage is required by the company's by-laws.

The shareholders can vote in person at the meetings or by proxy. Directors, members of the supervisory board, managers and the corporation's employees cannot represent a shareholder at the meeting.

- 7** Are shareholders able to require meetings of shareholders to be convened, resolutions to be put to shareholders against the wishes of the board or the board to circulate statements by dissident shareholders?

The board of directors calls the meetings and determines the agenda. Nevertheless, shareholders representing at least 5 per cent of the capital of the company can request a call to a meeting to the board of directors with a specific agenda. In addition, in case the shareholders' meeting is unanimous, which means that the total capital is represented at the meeting, the inclusion of new matters in the agenda can be decided if such a decision is made unanimously.

If the requirements are met, and the board omits to call the meeting within 40 days of the request, the shareholders can judicially request the calling of the meeting.

Shareholders can also judicially challenge shareholders meetings' resolutions that they considered in violation of the by-laws or the Companies Law. The action has to be initiated within three months from the adoption of the resolution, only by shareholders that did not vote in such resolution or were not present.

- 8** Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action against controlling shareholders for breach of these duties be brought?

Although there are not specific regulations that establish duties of the company or controlling shareholders in protection of minority shareholders, the Companies Law establishes certain informational rights and other provisions in their protection:

Section 246(6) establishes the right of shareholders holding 2 per cent of the share capital to compel the controller to investigate certain matters; section 263 provides that cumulative voting shall apply to elections of directors whenever the by-laws of the company provide for three or more members for such position. Section 257 provides for the challenging of board resolutions and section 236 provides for the right to call for shareholders meetings, as detailed explained in question 7.

Section 33 also establishes that shareholders of a company acquired in more than 25 per cent by another company must also be informed of such acquisition at the shareholders' meeting.

- 9** Can shareholders ever be held responsible for the acts or omissions of the company?

In principle shareholders are not liable for the acts or omissions of the company. The corporations exist in part to shield the personal assets of shareholders from personal liability for the debts or actions of a corporation and it is considered an entity separate and distinct from its members. Its members are liable only to the extent that they have contributed to the company's capital.

Nevertheless, in certain cases the courts have upheld the lifting of the corporate veil and impose liability for corporate acts and omissions on shareholders that acted in abuse or with fraud of the corporate structure.

Companies Law, section 248 also establishes that shareholders that have an interest contrary to the company in a particular transaction must waive their rights to vote on such specific transaction. If the shareholders votes and with such vote the majority decision is reached, they will be responsible for all damages to the company.

Section 254 also establishes that those shareholders that have voted in shareholders' meeting that were declared judicially invalid will be jointly liable for the consequences of such meetings.

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#### Corporate control

- 10** Are anti-takeover devices permitted?

There are no legal provisions prohibiting anti-takeover material behaviours aimed at making the company a less attractive target for hostile takeovers (eg, approving a cash distribution to shareholders, undertaking an asset disposition plan, sale or pledge of any part of the company or its intangible assets), nor prohibiting defensive actions such as, eg, the buy-back of the company's outstanding shares. However, as well as regarding any other 'indirect' transactions capable of causing damages to third parties or to the market, it is possible to attack those 'poison pills' (as such measures are commonly known) through the general anti-fraud rules applicable to contracts and provisions protecting trade loyalty.

From a different point of view, there are provisions applicable to publicly held companies protecting minority shareholders in case of takeover acquisitions. In this sense, section 23 of Decree 677/01 provides for a 'mandatory acquisition tender offer' (an OPAO) through which the bidder that intends to acquire a 'sig-

nificant participation' (defined as a 35 per cent or higher stock holding) in the target company, provided that such participation grants the control of the company to the buyer, shall offer to buy the shares of the minority shareholders, in different proportions in consideration of the total stock that the bidder is willing to acquire (such proportions are defined in chapter XXVII.2.2 of the CNV Rules, Text-2001).

**11** Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

Yes. Such restrictions could be adopted by means of the company's by-laws or through shareholders agreements. The Companies Law expressly allows the limitation of the transfer of 'quotas' for the limited liability company (*sociedad de responsabilidad limitada*, SRL). This law allows limitations but expressly states that such limitation could never imply a total prohibition of the transfer of quotas. This rule is applied by analogy to corporations (*sociedad anonima*, SA).

Restrictions on the free transfer of shares are commonly adopted as call and put options, first refusal rights, tag-along and drag-along rights. In some particular cases the prior approval of the board of directors or the rest of the shareholders is required to perform the transfer.

**12** Are compulsory share repurchase rules allowed? Can they be made mandatory in certain circumstances?

The repurchase by the company of its own shares is authorised under exceptional circumstances enumerated in section 220 of the Companies Law. Under such rule, the repurchase is permitted:

- to cancel the repurchased shares, with a prior decision on a capital reduction.
- to avoid serious damage to the company, provided that the shares have been fully paid in; the shares are repurchased with fiscal year's liquid profits or available reserves; and the alleged serious damage is confirmed in the next shareholders' meeting; or
- when the shares are owned by a commercial establishment or a company that is acquired or absorbed by the company.

In the case of corporations that make public offering of their shares, there are additional requirements contained in section 68 of the Public Offering of Securities Law No. 17,811 (as amended by Decree 677/01). The most relevant are the prohibition of a company acquiring its own shares in an aggregate amount exceeding the limit of 10 per cent of the capital stock of the company (or the lower percentage limit established by the CNV). The shares acquired by the company exceeding said limit shall be sold within 90 days as from the date of acquisition.

The own shares acquired by a company that does not make public offering of its shares shall be sold by the company within a maximum term of one year as from the acquisition (Companies Law, section 221). In the case of publicly held companies, such term is of three years (Decree 677/01, section 68).

#### The responsibilities of the board (supervisory)

**13** Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

One-tier board structure is predominant in Argentina, since the chairman or 'president' (as it is called by the Companies Law) is

the legal representative of the company and there are no ranks or levels within the board. However, section 269 of the Companies Law allows the companies to form an executive committee composed of the directors who are exclusively in charge of the management of ordinary business. The board of directors shall oversee the action of that executive committee and shall exercise the additional legal and statutory duties that apply. In addition, the adoption of this structure shall not modify the obligations and liabilities of directors.

**14** What are the board's primary legal responsibilities?

The directors shall perform their duties with the 'loyalty and care of a good businessman'. This is a fundamental rule contained in section 59 of the Companies Law that regulates the board of directors' duties and liabilities.

The primary function of the board is the legal representation of the company, which is vested on the chairman or 'president' of the board of directors, as well as the management of the company's ordinary affairs. For that purpose, board meetings shall be held with the periodicity established by law.

The Companies Law provides for responsibility actions against directors ('corporate responsibility action'), which can be exercised by the company (section 276) or by the shareholders on behalf of the company (section 277) when the former fails to do so. The shareholders and third parties are also entitled to bring individual actions against directors (section 279), in this case, seeking the compensation of damages on their own benefit.

Decree 677/01 establishes more rigorous responsibilities for the directors of companies that make public offering of their shares. Among others, it sets forth precise information and disclosing duties (sections 5 and 6), secrecy obligations concerning information that has not been made public (section 7) and, in connection with the loyalty and carefulness standard, several non-compete obligations aimed at protecting the company's interests and preventing insider trading (section 8).

**15** Whom does the board represent and to whom does it owe legal duties?

Although the board holds the legal representation of the company, it owes a legal duty both to the company and the shareholders.

**16** Can an enforcement action against directors be brought on behalf of those to whom duties are owed?

The Companies Law sets forth the unlimited, joint and several liability of the directors towards the company, the shareholders and third parties for their wrongful performance in violation of the 'loyalty and carefulness of a good businessman' standard, as well as for legal or statutory breaches and damages caused by negligent or abusive behaviours, gross negligence or wilful misconduct. (Companies Law, section 274).

The responsibility cause of action on behalf of the company ('corporate responsibility action') is aimed at recovering losses and damages from directors that have been found responsible for the non-fulfilment of their duties, causing damages to the company. It can be brought by the company or by the shareholders if the company fails to do so, being always the compensation or indemnification obtained for the benefit of the company. The decision of filing the action must be taken in a shareholders' meeting. Such decision entails the immediate removal of the directors impeached (Companies Law, section 276). If this action on behalf

of the company is not initiated within three months counted as from the date of the shareholders' meeting, any shareholder is entitled to initiate it (section 277, 'individual responsibility action'). In case of bankruptcy, the responsibility action on behalf of the company can be initiated by the trustee of the process or by creditors individually if the trustee fails to do so.

Additionally, the shareholders and third parties are also entitled to bring individual actions against directors (section 279) to recover losses and damages, being the compensation obtained in their own benefit.

Applicable exclusively to companies that make public offering of their shares, section 75 of Decree 677/01 provides that when the responsibility action on behalf of the company is initiated by the shareholders individually (as explained above in the second paragraph of this question), plaintiffs can seek for compensation of the total damages suffered by the company or (unlike the ordinary regime explained above in the second paragraph of this question) claim for compensation of the partial damages indirectly suffered by them in the proportion of their shareholdings, in their personal benefit.

**17** Do the board's duties include a care or prudence element?

Yes. As explained in question 14, the basic standard for evaluating a director's performance is the 'loyalty and care of a good businessman'. This rule is contained in section 59 of the Companies Law, and its scope shall be determined in each particular case according to the facts that are being analysed.

**18** To what extent do the duties of individual members of the board differ?

The Companies Law foresees the possibility of assigning specific functions to certain directors; however, the liability of the board shall continue to be joint and several as a whole (Companies Law, section 274).

Thus, if a responsibility action is initiated, all the members of the board shall be jointly sued. But if the relevant function was assigned to a given director by means of a shareholders meeting resolution or the company's by-laws, in such case there will be a presumption of individual responsibility on such director.

In the case of listed companies, in order to be effective vis-à-vis third parties, the assignment of specific duties for responsibility determination purposes shall be informed to the Argentine Securities and Exchange Commission (CNV) and to the stock exchange where the shares are offered (Decree 677/01, section 76).

Section 274 of the Companies Law also foresees a responsibility release in favour of those directors that have opposed in writing the relevant resolution adopted by the board, provided, however, that such opposition shall be timely informed to the company's syndic (ie, before the responsibility has been denounced), where this officer has been appointed by the company.

**19** To what extent can the board delegate responsibilities to management, a board committee or person?

The directors can not delegate their responsibilities. However, the board can appoint general or specialised managers. In those cases, the directors will continue to be liable together with the managers appointed and must supervise the actions of the managers. Managers are not part of the board, but the same responsibility rules are applicable to them (Companies Law, section 270).

**20** Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation, or listing requirement? If so, what is the definition of 'non-executive' and 'independent directors' and how do their responsibilities differ from executive directors?

In the case of companies that do not make public offering of their shares, there are not such requirements or categories.

Publicly traded companies shall create an 'audit committee' to provide independent assistance to the board of directors. The audit committee functions as a collegiate body and shall be composed of at least three members of the board of directors, the majority of whom shall be independent and non-executive (Decree 677, section 15). Decree 677/01 delegated to the CNV the determination of the independence criteria.

Through General Resolution No. 400/02 the CNV established a number of cases in which a member of the audit committee shall be deemed not independent. Among other cases, it is not considered independent if the director that is also a member of the board, or employee of a shareholder that holds a significant stake of the capital stock of the company or of another company in which, the shareholder holding a significant participation in the company, holds directly or indirectly a significant participation or has a significant influence in such company.

'Significant participation' is considered the holding of not less than 35 per cent of the capital stock of the company or a minor participation if such holding gives the right to elect one or more members of the board of the company or if there are shareholders' agreements related to the governance of the company, or related to the governance of the controlling company of the company, to which those holdings are a party.

Responsibilities of the audit committee include, inter alia, overseeing the financial reporting process, giving an opinion with regard to the proposal of the board of directors as to the appointment of external auditors to be hired by the company and control their independence, providing the market with complete information regarding transactions where there is conflict of interests with members of corporate bodies or controlling shareholders and giving its opinion about the reasonability of the proposals on fees and option plans for directors or managers of the company made by the management body.

**21** Do law, regulation, listing rules or practice require separation of the functions of board chairman and CEO? If flexibility on board leadership is allowed by law, regulation and listing rule, what is generally recognised as best practice and what is the common practice?

The Argentine corporate regulations do not provide for the separation of the functions of chairman and CEO. As mentioned above, the legal representation of the company is in head of the chairman of the board of directors.

The position of CEO is not legally defined and corresponds to a customary practice of large companies that have a type of general manager, apart from the president of the company who acts as the legal representative. Thus, the CEO could be appointed as a manager, as provided by section 270 of the Companies Law (see question 19).

**22** What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

There are no mandatory board committees for companies that do not make public offering of their shares. However, an executive committee can be created and it shall be established in the company's by-laws. This executive committee is author-

ised exclusively to carry out the ordinary affairs of the company (Companies Law, section 269).

On the other hand, publicly traded companies must have an audit committee as a mandatory requirement and its powers are established in section 15 of Decree 677/2001. See question 20 for further explanations about its composition, functions and independence criteria.

**23** Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

Yes. According to the Companies Law, board meetings shall be held at least once every three months, unless the by-laws of the company require more frequent meetings.

**24** Is disclosure of board practices required by law, regulation or listing requirement?

Disclosure of board practices is not required in the case of private companies.

Publicly held companies are subject to disclosing obligations. On a general basis, the board of directors shall notify the CNV of any event or situation that, owing to its importance, may substantially affect the underwriting of the negotiable securities or their negotiation. In addition, the board, with the participation of the issuers' supervisory council, shall appoint a person who shall be in charge of market relationships and the communications set forth above (Decree 677/01, section 5). Similar information shall be simultaneously disclosed to the stock exchange where the issuer's shares are traded (Decree 677/01, section 6).

**25** Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions between the company and any director?

#### Remuneration of directors

Section 261 of the Companies Law sets forth that the maximum amount of fees that, under any circumstances, the members of the board of directors may receive (including salaries and other compensations) for the execution of technical and administrative functions shall not exceed 25 per cent of the fiscal year's profits. However, the maximum amount of fees shall be limited to 5 per cent when no dividends have been distributed to the shareholders, and shall be increased proportionally to the distribution until reaching the 25 per cent limit when the total profits have been distributed.

In particular circumstances where special commissions or technical or administrative functions have been carried out by one or more directors, the total remuneration may exceed the 25 per cent limit, provided, however, that such decision shall be duly founded in the shareholders' meeting and the issue previously introduced as an item on the agenda.

Decree 677/01 sets forth that the companies authorised to make public offering of their shares may remunerate their directors with executive or technical and administrative functions, as well as the managers, with stock options of the same company. In these cases, the shareholders' meeting shall establish the price of the options and of the shares to which they are entitled, and the value to be taken into account for purposes of the 25 per cent remuneration limit established in section 261 of the Companies Law.

#### Length of office

The company's by-laws shall determine the term for which the directors can be elected, which shall not exceed three fiscal years. Such term could be extended to five fiscal years if the directors are elected by the supervisory board (where this body has been created).

#### Transactions between the company and directors

The directors may execute agreements with the company that are related to their ordinary activity, under fair market conditions.

The agreements that do not meet the aforesaid conditions shall be subject to an approval process by the board, in certain cases, with the intervention of the syndic of the company.

Notwithstanding the possibility of contracting with the company under the conditions set forth above, as a general rule of behaviour, every time a director has an interest other than that of the company's, he or she shall make it known to the board of directors and syndics of the company, and abstain from intervening in the relevant debate, under penalty of incurring responsibility (Companies Law, section 272).

In the case of companies with public offering of their shares, the agreements executed between the company and any of its directors are considered made between 'related parties', falling under the provisions of section 73 of the Public Offering of Securities Law No. 17,811, as amended by Decree 677/01. Section 73 provides for an approval process by the board of directors, with a prior opinion of the audit committee in order to determine if the transaction is under reasonable market conditions. After the approval by the board, the transaction must be publicly disclosed. If the conditions of the transaction have been qualified as not being under fair market conditions, approval from the shareholders' meeting is required.

**26** How is the remuneration of the most senior management determined?

Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions between the company and senior managers?

There are no legal specifications regulating managers' remuneration. Their relationship with the company can be established either as a labour relationship or as a services agreement with the company. The parties may freely agree on the remuneration conditions, which often include stock option plans, bonuses and incentives, in addition to the basic salary or monthly payments if a services agreement was entered into.

**27** In relation to directors' and officers' liability insurance: is it permitted or common practice? Can the company pay the premiums?

According to section 256 of the Companies Law, the directors shall constitute a guarantee in favour of the company, covering their responsibility for the non-fulfilment of their duties. Such guarantee must be set forth in the company's by-laws. Through Resolution No. 7/2005, the IGJ of the city of Buenos Aires established that in the case of corporations such guarantee shall amount not less than 10,000 Argentine pesos (approximately US\$3,200) for each director, and that can consist of bonds, public notes and local or foreign currency deposited in financial entities or securities depositaries, as well as bank guarantees and insurance policies covering civil liability. The premiums shall be afforded by the directors, not by the company.

## Update and trends

**New regulations may foster FDI and IPOs**

The government has recently issued a set of non-mandatory corporate governance recommendations for companies that offer securities to the public (public companies), to further improve the corporate governance legal framework. In October 2007, the Argentine Securities Commission (CNV) issued a resolution approving certain recommendations as the minimum contents that these companies could include when issuing their own internal Corporate Governance Code.

In Argentina, the issuance of such internal Corporate Governance Codes is not mandatory and, according to the language of the new resolution, the list of recommendations described above is also non-mandatory. Nevertheless, there is a new obligation for the board of directors of a public company to file a new, separate report at the time of filing their financial statements with the CNV. This report shall inform the CNV if the company follows, and in what manner, the recommendations. Otherwise, the board of directors shall explain in the report the reasons why the company does not follow the recommendations, and if they will be followed in the future. This obligation is effective as of 1 January 2008.

The main recommendations in the new resolution are that the board of directors shall:

- inform the shareholders of the company of the existence of transactions between affiliates and related companies, and transactions with shareholders and board members, in order to assure the compliance of the duty of care, loyalty and independence;
- evaluate if the provisions included in the Corporate Governance Code of the company shall be included totally or partially in the by-laws of the company. The board of directors must also ensure that the by-laws provide for the obligation of the members of board of directors to inform of any personal interest that may constitute a conflict of interest;
- approve the policies and general strategies of the company, particularly the business plan, investments and financing policies, corporate governance policies, social responsibility policy, risk management and control policies and directors' and managers' training policies;
- inform the shareholders if the board has established an internal control and risk management policy, and if such policies are updated to adapt them to the best practices on the subject;
- explain to the shareholders the appointment procedure and composition of the audit committee.

- appoint a corporate governance committee that shall establish the guidelines for the selection and appointment of the directors and executives of the company;
- before the annual meeting of shareholders of the company, evaluate their own performances and file a report on the matter at the annual meeting;
- explain and describe if they have a policy with respect to the number of independent directors and the proportion of such in the board. They must also inform the public of the proportion of executive, non-executive and independent directors within the board, indicating the category of each director;
- implement a training plan on corporate governance for its members and the executives of the company aimed at maintaining and updating their understanding and knowledge;
- inform the shareholders if they hold informational meetings in addition to the ordinary corporate meetings of the company. The board shall also inform to the shareholders if there is a specific office location to address questions and answers not related to the strategy of the company;
- evaluate, taking into consideration the protection of the minority shareholders' rights, the convenience of the existence of a control market. In particular, the board shall explain to the shareholders the basis for the decision to enroll or not in the mandatory regime for public offering acquisitions (tag-along rights);
- evaluate the convenience of establishing dividends payments to shareholders;
- inform the shareholders if the company has a website freely available to the public that provides information and respond to the concerns of the users of this website in an updated, informative and friendly manner; and
- analyse the rotation policy for internal and external auditors.

The application of corporate governance transparency regulations enhances the company's performance, leads to higher levels of investment and greater responsiveness to growth opportunities. If the response of the Argentine companies to these recommendations is positive we can expect a new flow of FDI and a mobilisation of the Argentine capital markets with an increase of IPOs.

**Insurances with directors as beneficiaries**

The companies authorised to make the public offering of their shares may, unless otherwise provided by the by-laws, contract civil liability insurances with the directors as beneficiaries, covering risks corresponding to the exercise of their functions. (Decree 677/01, section 74).

- 28** Are there any constraints on the company indemnifying directors in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

There is no restriction on the company to indemnify directors; moreover, indemnity agreements in favor of directors are a very widespread practice. If there is no indemnity agreement signed between the director and the company or its shareholders, the indemnification in favor of a director should be authorised by a shareholders' meeting.

However, in general, the directors are the ones who are responsible before the company, shareholders and third parties, in the way stated in question 14.

**29** What role do employees play in corporate governance?

Unless employees are at the same time shareholders, directors or officers of the company, they do not have any specific role or involvement in corporate governance.

**Disclosure and transparency**

**30** Are the corporate charter and by-laws of companies publicly available? If so, where?

Yes. The articles of incorporation and by-laws of any registered company and its amendments are available at the Public Registry of Commerce of every jurisdiction where the company is incorporated within Argentina.

**31** What information must companies publicly disclose? How often must disclosure be made?

Every year, all the companies must submit their audited financial statements and the annual report with the Public Registry of Commerce of the corresponding jurisdiction.

In addition, the companies which are listed or whose activity is under control (such as insurances, banks, etc) shall submit before the corresponding authority a quarterly report together with a quarterly audited financial statements, a board report and a controlling council report.

Finally, financial statements could be checked by any person in the correspondent Public Registry of Commerce.

**Hot topics**

**32** Do shareholders have an advisory or other vote regarding executive remuneration?

Yes. According to section 261 of the Companies Law, the by-laws may establish the compensation of the board of directors and the supervisory board. If the remuneration is not determined in the by-laws (which is the most frequent case), the shareholders shall decide on the matter annually at the shareholders' meeting together with the financial statements consideration.

**33** Do shareholders have the ability to nominate directors without incurring the expense of proxy solicitation?

According to the Companies Law, shareholders have in general the right to nominate directors by means of their votes in the shareholders' meetings. A proxy is not required.

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