This second edition is intended to put corporate governance into its global context, to show its significance for modern business society.

Written by the leading practitioners within the field, **from 32 jurisdictions**, this second edition will be a useful, first-hand reference material for practising lawyers and in-house attorneys who may counsel clients on their business in foreign countries.

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'Corporate governance rules cause acute concern for companies interested in investing or doing business in foreign countries, hence the need for their in-house and external legal counsel. They are keen to see that the business environment of the host jurisdiction is compliant with global standards. A corporate governance regime with global standards is now an essential element of international business.' – Akira Kawamura

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SWEET & MAXWELL

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INTERNATIONAL SERIES
2ND EDITION

THOMSON REUTERS™

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PREFACE

Akira Kawamura | Anderson Mori & Tomotsune

Following the great success of the first edition of this Book, it was agreed by the authors and the publisher, Thomson Reuters, to publish this updated second edition. The original edition was first published in 2013. It is an unusually short period of time in which to release a second edition – just about two years. I am deeply impressed by the amount of support and willingness expressed by all of the authors to participate in this work again. I also greatly appreciate the initiative taken for this by the publisher and its editors.

I am fully aware of the reason why we must update the first edition in such a short period of time: corporate governance rules and systems are changing rapidly and dramatically in many jurisdictions in the world. I am certain that this second edition may provide the readers with a good, current and quick understanding of the rules prevailing throughout the present time global markets.

1. GLOBAL CORPORATE GOVERNANCE

Good corporate governance is a necessary pre-condition for corporate culture to flourish. It ensures that companies comply with the law and the ethical rules of societies and as such are good corporate citizens.

Good corporate governance is also a key factor for companies to raise funds from the most suitable capital markets in the world or to trade their financial commodities in the market places. Unless they prove themselves as being highly and legitimately managed under the commonly accepted corporate governance rules, businesses may no longer be admitted to the major markets.

It is also a key consideration for the regulators of the recipient countries to introduce the rules according to global standards into their own jurisdictions because these are critical criteria looked at by foreign investors when deciding where to invest. They owe substantive responsibilities to commit themselves with their own corporate governance rules that prevail in their own home jurisdiction. Therefore, the globally recognised rules can be considered to be an important business infrastructure in the recipient countries.

Another trend is the globalisation of both companies and their investors. Hence, corporate governance rules must also be of a global standard. Such rules from different jurisdictions influence each other and are becoming very much the same in most of the world's leading markets, although, needless to say, the US law has been, among those, the most influential and has in many ways dominated global rule making. We can say that global corporate governance is emerging and is well accepted in many jurisdictions around the world.

Thus, I think, good corporate governance is essential for the sustainable growth of the world economy.

2. GLOBAL FINANCIAL CRISIS

Corporate governance became a critical item on the agendas of regulators and law makers everywhere in the world in the years since the global financial crisis (GFC), which took place following the collapse of Bear Stearns Co Inc and Lehman Brothers Holding Inc in 2008. It triggered, as is well known, the collapse of many financial institutions, banks and investment banks in major jurisdictions in the United States, Europe and then, in other parts of the globe. The serious aftermath of the GFC is still being felt in many jurisdictions such as Spain, Greece or Italy.

While there were many different reasons why rescue packages were or were not applied to the failed financial institutions, there was a common and important criterion, which was the ethical fairness of the corporate governance adopted by the board of such failed entity. It was observed that the people and their governments were not persuaded to help the collapsed entities unless they were successful in proving that they had been properly managed under a healthy corporate governance structure. If not, they were no longer admitted to play a role as corporate citizens.

3. ENRON AND THE SARBANES-OXLEY ACT

As early as 2002, the so-called Sarbanes-Oxley Act (SOX Law or Act) was introduced in the United States in reaction to a number of large corporate scandals revealed in that year. The largest one was the accounting fraud orchestrated by the board of Enron Corporation. It was said that it would have triggered a second Great Depression following the 1929 crisis, if a comprehensive reform of the management of corporate boards, as well as their accounting and audit systems and the professional services rendered by accountants and lawyers, was not introduced by way of the Act.

The Round Table Discussion on the rule-making to enforce the Act was held at the historic building that houses the United States Security Exchange Commission in Washington DC just before the Christmas holidays in 2002. I was invited to the Round Table as a panellist by the SEC. We discussed the scope of the cross-border reach that may be given to the Act and its subordinate rules. It was noted that the Act was intended to be a global rule and not just a national rule. As is seen in the following chapters of this book, the major principles of the Act have now been introduced and enforced in most of the major jurisdictions including Japan, Germany and so on.

4. COMMON ISSUES

As may be seen in the following chapters, there are many commonalities in the corporate governance rules of the jurisdictions covered in this book. The committees system of the board coupled with the independent directors, especially the independent audit committee, have been introduced in many jurisdictions after the introduction of the SOX Law and its subordinate rules. The power and functional support of independent committees may have to be introduced in many more jurisdictions.

Executive compensation is another hot issue: with the problem of so-called "say on pay". A large number of cases in this area have been instituted in many jurisdictions, especially in the United States. It is hoped that a sound standard for executive compensation will be established through those court cases.

Effective enforcement of the compliance programme developed under the SOX Law regime must be strengthened in many jurisdictions. In this regard, boards may have more practical powers to oversee the management of the companies.

Thus the topic of corporate governance is now an acute concern for the companies and their boards around the world. It is especially important for the companies that are active in multi-jurisdictional markets and hence, for their in-house counsels and outside legal counsels. They should keenly watch developments in corporate governance rules as an important part of the changing business environment.

5. LATEST DEVELOPMENTS AND THANKS

In the last few years, the corporate governance rules have been massively innovated in the most of the major markets. They

include, for example, the introductions in some part of a Corporate Governance Code and/or the Stewardship Code. In my own jurisdiction, Japan, both of them, being recently introduced, have brought about substantial changes to and reform of the Japanese corporate and investment culture.

I am very much honoured to again undertake the General Editorship of this Book, catching up with the changes in present day corporate governance around the world. This should continue to be a unique and excellent source of legal information on this topic. More importantly, this is one of the most current and comprehensive reference books on the topic.

The authors who have kindly agreed to contribute their valuable time to contributing to this book again are literally the best and most prominent lawyers on the topic in their respective jurisdictions and are very well known as such throughout the world.

This Book provides the best and most practical first hand reference material for the lawyers and in-house counsels who may have opportunities to counsel clients on their business in foreign jurisdictions. I would like to thank the authors for their valuable contributions to this Book.

I wish to note with thanks again the Foreword written by Marty Lipton of Wachtell Lipton Rosen & Katz. He is the legendary corporate governance lawyer of our age and a prominent advisor to the boards of major American and global entities.

Since 1 July 2013 the threshold for having to disclose substantial holdings of capitol or voting rights in listed companies was reduced from 5% to 3% and gross short positions have to be disclosed. The threshold to put items on the agenda was raised from 1% to 3%. Finally, the relevant Act contains a mechanism enabling a listed company to identify its "ultimate shareholder". Furthermore the NCGC obliges a shareholder to consult with management 180 days prior to putting an item on the agenda, which gives management time to settle a discussion with the shareholder or to build up a defence.

FOREWORD

Martin Lipton | Wachtell, Lipton, Rosen & Katz

The core purpose of corporate governance is to build long-term sustainable growth in corporate and shareholder value for the benefit of all stakeholders. The vitality of the global economy depends upon our fostering a long-term orientation and resisting the pressure to measure success on the basis of myopic benchmarks. Corporate governance practices can, and should, vary across jurisdictions, and the treatment of the following key issues by boards, management, stakeholders and regulators has global relevance in determining a corporate governance profile that facilitates the creation of sustainable value and is fine-tuned to specific country and company circumstances:

- Establishing an appropriate "tone at the top" to actively cultivate a corporate culture that gives high priority to ethical standards, principles of fair dealing, professionalism, integrity, full compliance with legal requirements and ethically sound strategic goals.
- Partnering with management and advisors to review the company's business and strategy and identifying and developing talent as part of robust succession planning.
- Organising the business, and maintaining the collegiality, of the board and its committees so that each of the increasingly time-consuming matters that the board and board committees are expected to oversee receives the appropriate attention of the directors.
- Understanding, and effectively evaluating, the ever-evolving legal rules, stock exchange requirements and aspirational 'best practices' that have come to have almost as much influence on board and company behaviour.
- Developing an understanding of shareholder and stakeholder perspectives on the company and fostering long-term relationships with shareholders and other stakeholders, as well as coping with escalating requests for meetings to discuss governance and business proposals, including employee lay-offs, stock buybacks, special dividends, spin-offs and other corporate transactions.
- Objective evaluation of activist agendas, notwithstanding the threat of proxy contests, with-hold-the-vote campaigns and other pressure tactics, to determine what will in fact further the best interests of the company and all of its constituents.
- Developing an understanding of how the company and the board will function optimally in the event of a crisis and proactively planning for a crisis.
- Ensuring appropriate procedures for review of transactions involving related persons or that could otherwise involve a conflict.
- Retaining and recruiting directors who meet the requirements for experience, expertise, diversity, independence, leadership ability and character, and providing compensation for directors that fairly reflects the significantly increased time and energy that they must now spend in serving as board and board committee members.
- Coping with the proliferation of new regulations and changes in the general perception of business that have followed the financial crisis.
- Addressing conflicts of proxy advisory firms and the shortcomings of one-size-fits-all governance checklists and

resisting unsound demands of corporate governance activists that are not linked to true value creation.

- Achieving the delicate balance of enabling the company to recruit, retain and incentivise the most talented executives while avoiding media and populist criticism for inappropriate compensation.
- Dealing with populist demands, such as criticism of risk management, and the demands of the public with respect to health, safety, environmental and other socio-political issues in a manner that will pre- empt increased regulation and avoid escalation of unsound demands, while at the same time furthering the best interests of the company.

Considerable attention has been devoted to searching for lessons learned from the global financial crisis and ways to improve board functioning. Perhaps one of the most valuable "lessons learned" is that boards and regulators need to focus on what works, without the undue distraction of reform for reform's sake and standardised mandates that pay lip service

to "best practices" but add little if any real value. Some of the other "lessons learned" include a renewed focus on risk management (including overseeing cybersecurity), a better understanding of the challenges faced by highly complex, global businesses and a rethinking of the experience and skill sets needed for an effective board.

In order to promote effective governance, the institutional, regulatory and governance environment must facilitate an adequate supply of quality directors who: (i) have sufficient knowledge of, and experience with, the company's businesses, even if this requires a re-examination of whether the trend towards boards with only one non-independent director makes sense and results in boards with a greater percentage of directors who are not "independent", (ii) are in sufficient number to staff the requisite standing and special board committees that handle much of the board's work, (iii) are able to devote sufficient time to board and committee meetings, and the preparation for them, (iv) receive regular tutorials by internal and external experts as part of expanded director education and (v) are encouraged to maintain a true collegial relationship among and between the company's senior executives and the members of the board.

ARGENTINA

Pablo García Morillo | Marval O'Farrell & Mairal
(in collaboration with associates Gustavo Morales Oliver and Melisa Ortes Gonzalez)

1. GENERAL PRINCIPLES

1.1 What are the general principles of corporate governance in your jurisdiction? What are the main objectives of the corporate governance principles? Is your legal system based on common law, civil law, Islamic law or something else?

The general principles of corporate governance in public companies in Argentina are transparency, disclosure and efficiency. Their main goal is protecting investors and the public in general while also seeking efficiency in the capital markets.

The Argentine legal system is based on Civil Law.

1.2 Have there been any recent developments in the law, codes and rules of corporate governance?

On 29 November 2012, Capital Markets Law No. 26,831 (the Capital Markets Law) was passed by the Argentine Congress, amending the public offer regime set forth by Law No. 17, 811.

The Capital Markets Law conferred the power to the Argentine Securities Commission (*Comisión Nacional de Valores*) ("CNV") to appoint supervisors with powers to veto the resolutions adopted by the board of directors and separate the board of directors for a period of 180 days when the interests of the minority shareholders and/or security holders are infringed. It also eliminates the markets' self-regulation and empowers the CNV to authorise, supervise, monitor, act as disciplinary authority and regulate participation in the capital markets.

Additionally, among other amendments, the Capital Markets Law: (i) sets forth different categories of agents depending on their activities, (ii) requires that investment advisers shall be registered before the CNV and shall prove their capacity and credentials, (iii) requires that markets are established as corporations, authorised by the CNV, with the specific purpose of organising trading transactions of public securities and (iv) sets forth a mandatory tender offering regime.

Further, as a consequence of the Capital Market Law, the CNV issued General Resolution 622/13 amending its own set of rules (the CNV Rules).

In October 2014, Law No. 26,994 stipulated a new Civil and Commercial Code which will enter into force in August 2015 (the Civil and Commercial Code). Law No. 26,994 unified the Argentine Civil and Commercial Codes and introduced major modifications on the Argentine Corporations' Law No. 19,550, as amended (ACL). Despite a few innovations such as the introduction of single partner companies, there were no relevant modifications of the corporate governance regime itself.

1.3 Outline recent court cases and incidents involving corporate governance issues. Were there any significant corporate scandals or large unlawful corporate cases?

Court cases involving corporate governance issues are not common. Notwithstanding this, the CNV frequently conducts administrative investigations on those listed companies which have infringed securities laws.

A relevant corporate governance case relating to insider trading issues is that of *Terrabusi*. In 1993, Establecimiento Modelo Terrabusi SA (Terrabusi) started negotiations in order to sell the majority stock of shares to Nabisco corporation. The parties subscribed to a memorandum of understanding (MOU) in November 1993 by which the purchase price per share was agreed on. In 1994 some managers and shareholders of the control group of Terrabusi carried out numerous purchases and sales of Terrabusi shares on the open market.

The CNV decided that those managers and shareholders committed insider trading by using information to which they had access due to their positions in the company. When the case reached the Supreme Court in 2007, the decision of the CNV was confirmed and monetary penalties were imposed on the accused.

1.4 Which law enforcement agency is in charge of enforcing corporate governance? May a criminal sanction be levied upon infringement of the corporate governance rules?

The Public Registry of Commerce (PRC) regulates and oversees legal entities while the CNV is the government agency regulating and controlling listed companies. In the event of a dispute, the courts will have jurisdiction to decide the matter and enforce a ruling.

There are other government agencies overseeing corporate governance aspects of companies in certain industries such as the Central Bank, which regulates banking activities, and the Superintendence of Insurance which regulates insurance companies.

Argentine law specifically provides criminal penalties for directors and shareholders in cases such as fraud, insider trading, stock market manipulation and unauthorised financial and stock market activities.

2. SOURCES OF LAW

2.1 Which laws, codes or statutes govern company structures and organisations? Are there statutes like the Companies Act or other forms of law? Is there much relevant case law?

The ACL is the main regulation for legal entities. It sets forth the different kinds available. The most used are *Sociedad Anónima* and *Sociedad de Responsabilidad Limitada*. They are similar, in certain aspects, to US corporations and limited liability companies, respectively.

In terms of corporate governance, the ACL sets forth certain principles such as frequency of board meetings, conflict of interest rules and minority rights for all companies whether listed or not.

Further, the main legislation on corporate governance for listed companies involves the CNV Rules, the Capital Markets Law and General Resolution of the CNV No. 606/12 (the Corporate Governance Code). This Code provides several recommendations by the CNV on matters including, but not limited to, company risk, company ethics, integrity of financial information, independent external members of the board, access to information by the shareholders and promoting active involvement by all shareholders. The board shall issue an annual report (the Code Report) disclosing whether the company follows the guidelines in the Corporate Governance Code or not. In the latter case, the reasons for this must be disclosed as well.

The Central Bank of the Republic of Argentina has also issued certain rules on corporate governance applicable to the banking industry (*Com. A5106, Com. A5201 and Com. A5203*).

Also, the Federal Internal Audit Agency (*Sindicatura General de la Nación*) has issued General Resolution No. 37/06 regulating corporate governance for state-owned companies (*Sociedades del Estado*).

Case law related to corporate governance matters is rare.

2.2 Which laws, codes or statutes regulate capital markets in your jurisdiction?

The Capital Markets Law is the main law that governs the securities markets in Argentina along with the CNV Rules and the General Resolutions enacted by the CNV.

2.3 Are there any public interest laws which apply to or influence corporate governance?

Capital Markets Law and CNV Rules have been considered public interest laws due to the need to protect the investors and the public in general. Further, companies are required to comply with a variety of laws that also influence corporate governance, such as environmental, labour and anti-corruption regulation.

2.4 Have there been any recent developments in any of the above laws? What are the recent changes to the above laws or rules and the reasons for them?

Please see the answer to question 1.2.

3. SHAREHOLDERS AND THE SHAREHOLDERS' MEETING

3.1 How are shareholders' interests represented in the company? How are the shareholders assured exercise of their rights? What is the highest governing body within the company structure if it is not the shareholders' meeting?

The shareholders' meeting is the highest governing body within a company structure. It has broad powers to decide over all matters relating to the governing of a corporation, including the appointment or removal of directors, approval of financial statements and dividends and amending the byelaws. Shareholders may participate in general meetings personally or by proxy.

Some of the main protections for shareholders under the ACL are as follows:

(i) Shareholders have appraisal rights enabling them to withdraw from the company and receive the book value of their holdings, calculated on the basis of the company's most recent balance sheet if they disagree with a resolution adopted in the shareholders' meeting in connection with certain matters specified in the ACL.

(ii) Apart from those cases where directors are appointed by different classes of shares or by the statutory supervisors (*síndicos*), directors may be appointed through a method known as cumulative voting that grants minority shareholders the right to appoint up to one-third of the board members.

(iii) Any resolution adopted in the shareholders' meeting, which is contrary to law or to the company byelaws may be declared void by a court if requested by the shareholders that did not vote in favour of such resolution or were absent from the meeting in which the resolution was adopted. This claim must be filed within three months after the end of the relevant meeting.

(iv) Shareholders have pre-emptive rights to subscribe new shares (or convertibles) issued by the company, of the same class as its holding and in a proportion sufficient to maintain that shareholder's holding.

(v) Any shareholder may, in representation of the company, file claims against a board member for breach of duties, violation of the law or the byelaws, damages caused by wilful misconduct, abuse while in office or negligence. Also, shareholders have the right to individual actions against directors.

(vi) Shareholders have the right to obtain copies of the minutes from the shareholders' meetings.

(vii) Shareholders have the right to request judicial oversight of the company which may result in the appointment of an inspector or co-administrator, whenever the administrators of the company perform or omit actions that may result in serious danger to the company, provided however, that no other legal means are available to remove such administrators.

(viii) Shareholders have the right to dividends, which can only be lawfully paid out from the company's retained earnings, as reflected on their annual financial statements and approved by the shareholders' meeting.

The directors can only be removed by the shareholders' meeting, even if they have been appointed by the surveillance committee. If the director was elected by a class of shareholders, only this class of shareholders can remove him or her unless the director is incapable of holding the position or has performed activities which compete with the business of the company.

Shareholders' meetings have exclusive competence to decide on matters allocated by the ACL. Shareholders' meetings are either ordinary (*Asamblea Ordinaria*) or extraordinary (*Asamblea Extraordinaria*), depending on the type of matters dealt with at the meeting.

Corporations may have different classes of shares with different rights attached to each class which in turn may be common (*acciones ordinarias*) or preferred (*acciones preferidas*). Common shares may give the holder one to five votes, as provided for in the byelaws. However, the issuance of common shares granting the right to cast multiple votes (up to five votes per share) may not enjoy economic preferences. Listed companies cannot issue shares with rights to cast multiple votes (although those shares outstanding with more than one vote before entering into the public offering regime will preserve those multiple votes). Preferred shares may be non-voting except with respect to decisions on certain important matters, such as the extension of the corporation's term, transformation into another type of entity, fundamental change of the corporate purpose and transfer of the domicile of the corporation to another country.

3.2 How is the shareholders' meeting conducted? Who may chair the meeting? May attendance (not voting) at the meeting be restricted only to the shareholders? Are the shareholders allowed to be accompanied by legal or other counsel?

The shareholders' meeting must be called by the board of directors or statutory supervisors. Also, shareholders representing 5% of the capital of the company may request the board of directors or statutory supervisors to call a shareholders' meeting, unless the byelaws provide for a lower number. In this case, the mentioned shareholders must include in their petition the matters to be discussed in the shareholders' meeting. The shareholders' meeting cannot pass resolutions on matters other than those included in the call by the board of directors unless all the

votes and capital of the company are present and vote for the approval of such resolution. If the meeting is not called by the directors or statutory supervisors as requested, it can be called by the PRC or by a judge.

To participate in shareholders' meetings, shareholders must deliver their shares in the company or a certificate representing their shares, issued by a bank or a depositary institution, with the company or applicable entity for registration on the shareholders' meeting attendance book, not later than three business days prior to the meeting. The company will then issue appropriate receipts entitling admission to the meeting. The shareholders' meeting is chaired by the board's president, unless it is called by the PRC, in which case it is chaired by the official officer appointed for the case.

Shareholders may participate in shareholders' meetings directly or through proxies. When participating directly, shareholders must prove their status. Individuals must prove their identity with formal ID; when a shareholder is a legal entity, the legal representative or duly appointed attorney must submit evidence of such capacity. A judge, notary public or bank official must certify signatures on proxies. If the proxy was issued outside Argentina, it should be duly legalised by either the Apostille of the Hague Convention of 1961 or by the pertinent Argentine Consulate. Directors, managers, statutory supervisors and employees of the company may not represent shareholders.

Shareholders may also attend shareholders' meetings by electronic means if such guarantees the identity of the shareholders (and in the case of closely held companies, such possibility is allowed by the byelaws). The board of directors does not have any obligation to circulate statements of dissenting shareholders, unless expressly provided in the byelaws.

Attendance at shareholders' meetings is not limited to shareholders since the directors, statutory supervisors and general managers may and shall attend the shareholders' meetings with the right to speak. According to the rules of the PRC of the City of Buenos Aires, attorneys are allowed at shareholders' meetings in case their legal knowledge is necessary to analyse matters of interest of the company. However, if any shareholders seek to have legal counsel at the meeting on the basis of the shareholders' own interest, approval by the majority of the votes present at the meeting is required.

3.3 How are minority shareholders' rights protected?

The minority shareholders' rights are protected as follows:

For shareholders representing not less than 2% of the capital stock:

- The right to obtain information from the statutory supervisors (*síndico*).
- The right to give notice to the statutory auditor, in writing, of any corporate disorder. The syndic is obliged by law to investigate such facts and share them with the shareholders' meeting.

Shareholders representing at least 5% of the capital stock:

- The right to request that a shareholders' meeting be held to discuss the matters indicated in his/her request. The byelaws may establish a lower percentage to permit the exercise of said right.
- The right to object to waiver of a director's liability.

- The right to appoint an external auditor.

Additional rights for shareholders representing not less than 10% of capital stock:

- The right to request governmental control of corporate matters.
- The right to request partial distribution during the liquidation of the company, if all corporate obligations are sufficiently guaranteed.

As explained above, upon the regulation of the Capital Markets Law through Decree No. 1023/2013 (the Capital Markets Law Decree), the CNV and/or shareholders and/or holders of securities of 2% of the corporate capital or the outstanding amount of the securities are empowered to inform about any infringement of their rights. Within this scope, the CNV is empowered to appoint a supervisor (*veedor*) with veto rights or the power to suspend the board of directors. The Capital Markets Law Decree requires a duly grounded administrative act, which should expressly indicate which regulations have been breached or are at risk of being breached. A legal opinion issued by the permanent legal service and an opinion from the accounting department shall be required and, if necessary, an opinion from other technical departments of the CNV. According to the Capital Markets Law Decree, the appointment of supervisors has the aim of controlling and monitoring the company's board of directors. The supervisor may not exercise management or co-management powers. The decisions made by such supervisor can be appealed only to the chairman of the CNV.

For the cases in which the CNV considers that the rights of minority shareholders and/or security holders are seriously threatened, the CNV may order that the board of directors be suspended for a maximum term of 180 days, in order to normalise any shortcomings that may have been found. According to the Capital Markets Law Decree, the administrative order providing for this measure can only be appealed to the Ministry of Economy and Public Finance.

3.4 Is shareholder activism encouraged or discouraged? If not encouraged, how is it regulated?

The Corporate Governance Code includes a special recommendation encouraging the active participation of institutional shareholders.

Since there are few institutional investors, shareholder activism is limited.

3.5 How are professional shareholders (those minority shareholders who seek some extra benefit from companies by unduly and habitually influencing management by using their shareholding) treated by the law? Are they excluded from attending the shareholders' meeting? Are they criminally or otherwise publicly sanctioned?

The action of unduly and habitually influencing management is treated equally whether it is committed by minority or controlling shareholders.

Further, the board of directors is generally appointed by the controlling shareholders. For that reason, professional shareholders generally have no power to influence the management. For minority shareholders' rights please see the last paragraph of the answer to question 3.3.

3.6 Are shareholders' benefits given to some of the shareholders by the company without resolution by the shareholders' meeting prohibited or regulated by the law or other rules?

Based on shareholders' equity, all shareholders of the same class shall be treated equally. Hence, the company is not allowed to give benefit only to some of the shareholders without a resolution by the shareholders' meeting.

4. DIRECTORS AND BOARD OF DIRECTORS

4.1 What are the functions and responsibilities of the directors and the board of directors? Do you have a one- or two-tier board system? What are the outside directors called?

The main function of the directors and the board of directors is the management of the company. As set forth by the ACL; the President, who is elected from among the members of the board, represents the company.

Directors are subject to a standard of loyalty and diligence; non-compliance with these standard results in unlimited, joint and several liability for damages arising therefrom. Directors are personally and unlimitedly liable to the corporation, the shareholders and third parties for non-performance of their duties, violation of the law, the byelaws and regulations, and for fraud, abuse of power and gross negligence. Directors are jointly and severally liable for wrongful acts, although different extents of liability can be allocated to each director depending on the director's individual participation. However, directors are not liable for downturns in the corporation business (for example losses) if they are not a consequence of the directors' breach of duties.

According to sections 59 and 274 of the ACL, liability of directors arises in cases of improper performance of their duties, breach of the law or the byelaws and due to damage caused wilfully or negligently.

If a director's liability is engaged, damaged parties may bring a direct action against the director without the need to seek remedies from the company first. Derivative actions can be initiated if the shareholders' meeting decided to initiate actions against a director and the company does not carry out the decision within a three-month period, for more information regarding this matter, please see the answer to question 11.

The board is a body of the company which must act in the company's interest. Section 272 of the ACL states that directors must ensure that the interest of the company prevails over their own interests. In case of conflicts of interest, disclosure by the director is required.

The board may delegate certain administrative functions by appointing managers (*gerentes*). In addition, committees may be created within the board to deal with specific issues such as technical matters, financial matters and so on.

Argentine law establishes a single board of directors. Whether one or more members of management may be appointed as board members depends on each company's byelaws. However, listed companies must have a plural board of directors with a minimum of three members.

Listed companies must also have a supervisory committee (*comisión fiscalizadora*) composed of three members who must be lawyers or accountants. For more information regarding this matter, please see the answer to question 5.

4.2 What are the rules that may give rise to civil and criminal liability of the director(s)? How are those liabilities sought?

As explained in question 4.1, directors are subject to a standard of loyalty and diligence, and non-compliance with this standard results in unlimited, joint and several liability for damages arising therefrom. In principle, companies cannot preclude the liability of directors and officers in advance. The annual shareholders' meeting may, however, grant discharge to the directors and officers for the preceding business year by approving their performance. As a consequence, the company itself and all shareholders voting in favour of the resolution are precluded from bringing an action against the directors and officers with respect to facts known to the shareholders' meeting at the time, provided, however, that the decision does not violate the law or the byelaws and that shareholders representing 5% or more of the company's capital does not object.

Further, while directors' liability is generally joint and several, a director will be exempt from such liability if he or she filed, in a timely manner, written objections to the corporate resolution causing the damage and either gave notice thereof to the company's supervisory committee or filed legal proceedings challenging the decision adopted by the board. In order to be exempt from liability, a director who took part in the discussion or the resolutions, or who was aware of the improper conduct, must give such written notice prior to the time that the conduct is reported to the board, the supervisory committee, the shareholders' meeting or the competent authority, or to the time that a judicial action is initiated. Violation of environmental, tax and foreign exchange regulations may give grounds to criminal liability.

4.3 Does the board of directors have a committee system, for example nomination committee, compensation committee, audit committee? If not required, is it common practice for companies? How does it function?

The only mandatory board committee for listed companies is the auditing committee set forth by the Capital Markets Law.

Although it is not required by law, additional committees may be created within the board to deal with specific issues. The Corporate Governance Code recommends that the board establish a sufficient number of committees to manage the corporation. It provides guidelines related to the audit committee, and also proposes the creation of new committees, such as the "remuneration committee" and the "appointments and corporate governance committee". The Code provides that the board must: (i) inform who proposes members of the audit committee, (ii) indicate if the audit committee should be presided over by an independent member, (iii) propose to the shareholders' meeting the number of members of the board of directors it considers adequate, including the number of independent directors and (iv) establish whether it is appropriate for independent directors to hold exclusive meetings. The remuneration committee must be composed of people with seniority in human resources, and it should be in charge of: (i) designing policies for remunerations and benefits for directors, executives, advisors and consultants, (ii) administrating the share purchase options' system and (iii) informing on guidelines to design retirement plans for directors and executives. The appointments and corporate governance committee must be in charge of: (i) fixing the proceedings for the selection of directors and key executives and (ii) elaborating on corporate governance rules – that should include the Code regulations – and supervising their compliance.

4.4 Is it a legal requirement to have an independent director or a third party director? If so, how are they appointed? Is it required for listed companies?

There is no minimum number of independent directors. Local rules only require the disclosure of the nature of directors (whether independent or not). However, listed companies are required to have an audit committee that must comprise three or more members of the board of directors, the majority of whom shall be independent (*please see answer to question 5.1*).

The criteria to determine independence are governed by the CNV. According to section 109 of the Capital Markets Law, independence would have to be established both vis-à-vis the company and the controlling shareholders, and independent directors cannot be executives of the company.

In principle, the responsibility of the executive and independent directors is the same unless the byelaws, the regulations of the company or the shareholders' meeting have allocated functions in a personal manner and this allocation is registered with the PRC.

4.5 How is the compensation for directors or officers determined? Can it be contested by the shareholders or the regulatory authorities? What are the common rules or practices for the compensation of officers?

The remuneration of the directors may be defined in the byelaws. If the byelaws do not outline directors' remuneration, pursuant to section 261 of the ACL along with the CNV regulations (for listed companies), the remuneration of directors will be defined by the shareholders' meeting.

The maximum amount of compensation that corporate directors may receive, including salaries and other compensation for the performance of technical or administrative activities, may not exceed 5% of the computable profits for the fiscal year if the company does not distribute dividends, and may be increased proportionately up to a cap of 25% of its computable profits for the fiscal year, to the extent that dividends are distributed.

Nonetheless, both the ACL and the CNV regulations provide that this percentage amount may be exceeded if that amount is insufficient to cover fixed fees distributed to directors who carry out specific duties, so long as the fees over the percentage limitation are expressly approved in an ordinary shareholders' meeting where approval of the fees is expressly included in the published meeting agenda. Also, the shareholders' meeting can decide to pay remuneration in excess of this limit if the remuneration under such limits were unfair because there are no profits or the profits are low.

4.6 How will the board handle a corporate crisis like an internal criminal case, violence, social media exposure or dawn raid by the authorities?

Regarding listed companies, due to the principle of transparency and full disclosure, the board has the obligation to inform as "relevant information" any material event that may impact on their stock price. Further, in the event of a social media exposure, the CNV may require the company to deny or give further explanation on said matter. Also, in case of a dawn raid by any governmental authority, the board shall collaborate and comply with the legitimate requests of said authorities.

5. BOARD OF AUDITORS, AUDIT COMMITTEE, ACCOUNTING AUDITORS

5.1 How is the internal accounting and legal audit structured and conducted? Is an outside accounting audit required and, if so, how is it structured? Are there requirements to change the auditor every five years?

Pursuant to the Capital Markets Law, companies whose shares are publicly offered in Argentina are required to have an audit committee that shall be comprised of three or more members of the board of directors with experience in business, finance or accounting matters, the majority of whom shall be independent pursuant to the criteria established by the CNV. Generally, members are deemed independent so long as they have no connection with the issuing company or the controlling shareholders and hold no executive position in the issuing company.

The CNV Rules introduced, for listed companies, the obligation of an audit firm rotation every three years and mandatory partner rotation every two years for the listed companies.

5.2 Are there supervisory auditors? What is the function of the supervisory auditors' board?

As explained in question 4.4, listed companies must have a supervisory committee (*comisión fiscalizadora*) composed of three independent members who must be lawyers or accountants and whose functions are to supervise the administration of the company, attend all board and shareholders' meetings and, in general, control the legality of the corporate decisions. In broad terms, they protect the rights of shareholders and verify that the company abides by the law and its byelaws. All the members of the supervisory committee shall be independent according to the criteria established by the CNV.

Capital Markets Law provides that companies that make public offerings of shares and that have set up an audit committee are not required to have a supervisory committee. The decision to eliminate the supervisory committee shall be taken in an extraordinary shareholders' meeting, which should have the attendance of shareholders who represent at least 75% of the shares entitled to vote. The resolutions in all cases will be made by an affirmative vote of 75% of the shares entitled to vote, without applying the plurality of votes. As mentioned above, in cases where the supervisory committee exists, Capital Markets Law requires that all of its members shall be independent.

6. MARKET DISCLOSURE/TRANSPARENCY TO THE SHAREHOLDERS AND THE PUBLIC

6.1 What are the disclosure requirements for companies in your jurisdiction under company law, capital markets law or any other rules?

Certain corporate acts must be registered with the PRC (change of directors, amendments to byelaws, financial statements and so on). This means that for privately held companies, there is a duty of disclosure only regarding documents that must be registered or filed with the PRC.

Listed companies are obliged to comply with a series of periodical filings with the CNV for purposes of supervision of the issuer's development. To such end, companies must submit to the CNV copies of quarterly financial and annual reports, together with information about members of the board and the supervisory committee.

Also, under CNV regulations, disclosure obligations are imposed on certain participants in the public offering of securities, vis-à-vis the CNV, the relevant exchange and the public in general. In particular, companies under the public offering regime must disclose the occurrence of material events (*hechos relevantes*) which may affect the negotiation or value of the securities involved. These disclosure obligations are imposed on board members, among others. As explained above, the byelaws and their amendments, among further information of companies, must be electronically filed in order to make them available to the public. That information may be obtained on the CNV's webpage: *www.cnv.gob.ar*.

Pursuant to the regulations, information on global remuneration paid to directors, committee members and top executives, as well as stock options and benefit plans, must be reported in the prospectus when registered securities are issued. In practice, the CNV generally requires disclosure of details of individual remuneration.

Furthermore, the Corporate Governance Code and the Code Report are also relevant (*please see answer to question 2.1*).

The Code Report shall be included as a schedule with the board's report (*memoria*) to the annual financial statements. The Code Report is publicly disclosed as relevant information of the corporation.

6.2 What is the liability or responsibility of the board in relation to the company's disclosure requirements?

The board of directors is responsible for drafting and disclosing the information described in the answer to question 6.1.

7. M&A AND CORPORATE GOVERNANCE

7.1 Upon an M&A offer, how are the transparency and fairness rules of the company provided under the company and stock market laws and rules?

Capital Markets Law provides that any investor seeking to acquire a substantial or controlling portion of a listed company stock must launch a public tender offer addressed to all the holders of such listed company stocks, stock options or convertible securities. Listed companies' resolving to delist their shares from the capital markets must also launch a mandatory tender offer of such company stock.

In addition, Capital Markets Law provides that any stockholder of a listed company representing 95% or more of such company total capital, can launch a compulsory purchase of such company stock held by minority shareholders.

Further, regarding fairness, the Capital Markets Law gives priority to a shareholders' right to receive equal and fair treatment; this is the reason why the group controlling shareholders and minority shareholders must receive the same price for their shares with a distribution of the control premium. In this sense, the offeror has the obligation to propose a fair price. As previously mentioned, all listed companies that trade their shares in Argentina will be subject to a public tender offer in the event of a change of control. The same occurs in case of a purchase of a significant shareholding (above 15%). In both cases, the law requires that the offer be made to all holders of securities at a fair price.

8. PROXY FIGHTING

8.1 Is proxy fighting customarily conducted for control of the company management or anything else? How is it regulated under the company law or market regulations?

Though the possibility of granting proxies for the attendance at a shareholders' meeting is regulated in the Capital Markets Law and the ACL, proxy fighting is not a common practice in Argentina.

Section 69 of the Capital Markets Law expressly provides that any shareholder wishing to publicly request the granting of a proxy shall submit the relevant request pursuant to the regulations established by the CNV in such regard. To submit such a request, the shareholder shall hold not less than 2% of the capital stock and must have been a shareholder for not less than one year. A proxy shall always be revocable and must be granted for a specific shareholders' meeting.

9. OFFICERS' REMUNERATION RULES

9.1 How is remuneration of officers determined? By whom? Is there a role for the shareholders' meeting? Is there any mechanism for an independent body to review and evaluate them?

According to general practice, the compensation of executives is set by the board of directors. Shareholders normally do not participate in fixing the remuneration of any executive. The Corporate Governance Code includes recommendations among which we can find the encouragement to the board of directors to decide if creating a remuneration committee is convenient for the company or not. Said committee shall hold meetings at least twice a year and may hire external counsel. Since this is just a recommendation and is therefore not mandatory, companies may decide to follow this recommendation or not. However, they will have to disclose and explain their position in such regard in their annual financial statements. The limitations on the directors' remuneration do not apply to officers.

9.2 Is the mechanism of officers' remuneration publicly debated?

In case a remuneration committee is created, it shall inform the board of directors every year about the remuneration policy applicable to directors and high ranking officers of the company (*for more information please see the answer to question 9.1*).

10. DIRECTORS' LIABILITIES, LIABILITY INSURANCE, INDEMNIFICATION

10.1 What are the directors' responsibilities and liabilities under the law? Can those liabilities be covered by insurance? Can it be indemnified by the company or other related parties?

Section 59 of the ACL imposes a duty on directors to act loyally and to perform their responsibilities with the diligence of a "good businessman". The concept of loyalty embraces the obligation to act with the correctness of an "honest person" and in defence of the interests of the company.

The liability of directors is not contractual in nature, therefore, the directors cannot contract out of such liability since it is considered contrary to public policy. Further, the byelaws may not be changed to modify mandatory provisions of the ACL to diminish directors' liability.

Each director has to grant a guarantee both in listed and non-listed companies in favour of the company for no less than ARS10,000 (approximately USD1,150 at the current exchange rate). Insurance bonds are often used for this purpose.

Furthermore, unless otherwise provided in the company byelaws, a company subject to the public offering regime can contract civil liability insurance for its directors in connection with the risk inherent in the performance of their functions (*section 75 of the Capital Markets Law*).

Corporations are allowed to enter into indemnity agreements with their directors. In this way, directors' and officers' insurance slowly becomes a general practice, even for wholly-owned subsidiaries.

Notwithstanding the above, Argentine law does not allow the company to hold the directors harmless in certain specific cases such as: (i) if the claim is based primarily upon or attributable primarily to a director gaining any personal profit or advantage to which they are not entitled or (ii) if resulting primarily from directors' knowingly fraudulent, dishonest or wilful misconduct or gross negligence.

11. SHAREHOLDERS' DERIVATIVE SUITS

11.1 Is a shareholder's derivative suit provided for by law in your jurisdiction? How is it enforced by the shareholders?

Shareholders' derivative suits are expressly provided by section 76 of the Capital Market Law and sections 277 of the ACL.

The ACL provides that derivative actions can be initiated if the shareholders' meeting decides to initiate actions against a director and the company does not carry out the decision within a three-month period. Also, if a director's liability is engaged, damaged parties may bring a direct action against the director without the need to seek remedies from the company first.

Regarding Capital Markets Law, in the case of companies that publicly offer their shares, civil liability actions under section 276 of the ACL, may, in the event they are to be brought by individual shareholders, be filed to claim compensation on behalf of the company for total damages sustained by it or else to claim compensation on partial damage indirectly sustained by the shareholder pro rata to its respective holding, in which case the amount of the compensation shall be paid to and owned by the shareholder.

11.2 Have there been any recent relevant court cases on the subject?

Derivative suits are rare in practice therefore, there are few records.

12. SOCIAL INTEREST IN CORPORATE BEHAVIOUR

12.1 How is a company in your country expected to deal with the following issues: corporate social responsibility; gender, racial and social diversification; environmental issues; ecology and corruption?

Companies must comply with local legislation regarding anti-discrimination, environmental and anti-corruption

regulation. Further, in connection with listed companies, the Corporate Governance Code provides that the board must determine the strategy and main policies of the corporation and supervise their compliance. These must include financing and investing policies, corporate governance, corporate social responsibility, environmental issues, control of risk management and continuous training programmes for directors and executive managers. As explained in question 6, the board of listed companies is required to draft the Code Report.

13. REGULATORY FRAMEWORKS FOR PROFESSIONAL INVESTORS

13.1 How are professional investors (like pension funds or investment funds) required or encouraged to exercise their power for the good corporate governance of the company? Are they required to comply with rules like the Stewardship Code?

The Corporate Governance Code (*please see answer to question 2.1*) includes a recommendation encouraging the active participation of all shareholders of the company in the shareholders' meetings, especially including minority and institutional shareholders.

There are no regulations similar to the Stewardship Code.

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