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Corporate governance and enforcement mechanisms in emerging markets.

Forum 2
17 November 2007, Saturday

Dr. Carlos A. Barsallo P. (1)
Chairman
Panamanian Securities Commission (CNV)
www.conaval.gob.pa
barsallo@conaval.gob.pa
carlosbarsallo@hotmail.com

(1) Doctor of Laws. University Complutense of Madrid, Spain. Diplôme Supérieur de l´ Université. University of Paris. Pantheon Assas (Paris II). Master of Laws, LLM. University of Pennsylvania. U.S.A. (Juris Doctor). School of Law and Political Science. University of Panama. Harvard University Program of Instruction for Lawyers. Professor Master of Laws Program. Corporations. Panama (1997-1999) Graduate School. Law School. Commercial Law I. (1999). More than 90 national and international conferences. More than 60 articles on corporate law, corporate governance and securities law. FÁBREGA, BARSALLO, MOLINO & MULINO 1994- 1999**.** Banking and corporate law**.** Visiting lawyer ALLEN & OVERY´S New York office. Special Alternate Magistrate (3 times) Third Superior Court. Panama. Toronto International Leadership Centre for Financial Sector Supervision. Program Leader (Securities). Elected by Capital Financiero (financial weekly) as Public figure in Panama 2006.

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- The current state of the knowledge on corporate governance and enforcement mechanisms in emerging markets.
- The issues that we know relatively little about.
- The pressing issues that should be targeted by researchers.
- The policy relevance or the potential impact of such research on practice.
- The factors that facilitate or hinder the emergence and sustainability of potential cooperation between academia and practitioners to deal with such questions.
- Source of data or experiences that can be used or alliances that can be made between research and practitioners.
- Examples of data and suggestions for access to data.

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I. Background.
(The current state of the knowledge on corporate governance and enforcement mechanisms in emerging markets).

Corporate governance is a new a topic in Panamanian law. The commercial code (Law 2 of 1916), the corporate law (Law 32 of 1927), which is drafted to provide maximum flexibility to offshore companies, the securities market law, (Decree Law 1 of 1999), which is the main legislation concerning listed companies is based on US laws-and it is considered to be sophisticated, though poorly enforced-, none of this 3 legal provisions include the concept of corporate governance by its name.

This is something that is characteristic not only of Panama, but of many other countries in the region. As the International Monetary Fund (IMF) Working Paper**: Equity and Private Debt Markets in Central America, Panama, and the Dominican Republic** prepared by Hemant Shah, Ana Carvajal, Geoffrey Bannister, Jorge Chan-lau, and Ivan Guerra (July 2007) indicates: "As with many countries of similar size, private capital markets in most Central American countries (the term includes in this context Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and Panama) remain under-developed in terms of size, liquidity, and number of issues. Equity and debt markets meaningfully exist only in three countries (one of these countries is Panama) and are shrinking in several cases.

Although the largest in the region, the equity market in Panama is contracting. There were 28 companies listed in 2001, but this number has fallen to 24 in 2006, of which 18 are financial intermediaries, mainly banks. The decline is due to the delisting of companies acquired by international conglomerates during the last 5 years. In 2006, market capitalization was US$ 6,819 million, 40 percent of GDP. The market is very concentrated, with the top five companies making up 80 percent of the market. Trading volume is very limited though it has grown from US$ 45 million in 2001 to US$149 million in 2006.

In Panama the major issues are driven by the preponderance of banks. Given abundant debt financing, there is little need for equity financing. In addition, institutional investors are largely absent from the equity market.

Key structural problems for the development of the securities market include **poor corporate governance, and transparency.**

Corporate governance and protection of minority rights is weak throughout the region. All the countries in the region have a basic framework for corporate governance for unlisted companies in their Commercial Codes, and this framework does not differ significantly from other countries with Napoleonic tradition. However, for companies with publicly issued securities, this basic framework should be complemented with other

provisions that afford an appropriate level of protection to minority shareholders. This additional framework is almost absent in the region. Most countries lack adequate public disclosure of insider and/or substantial holdings. Only in four countries (Costa Rica, Dominican Republic, Honduras, and Panama), does acquisition of control in a listed company (under certain circumstances) require a mandatory tender offer to all shareholders. Only two countries (Honduras and Panama) have developed codes of corporate governance, but even in those countries the codes require further strengthening in issues such as independent directors, qualifications of directors and use of supporting committees by the board.

There is a need to promote development of a regional corporate governance code. While such a code should ideally be developed jointly by investors, issuers, regulators and **government, the latter need to take substantial lead in making it happen. There is a need to change the culture of family ownership, and the discussions surrounding development of a corporate governance code could be used by the authorities and private business leaders to foster this change.**

Other problems for the development of the securities markets are: The small size of regional businesses, pervasive family ownership, and aversion to minority investors, tax avoidance, and the loss of confidence caused by past financial crises, and weak development of institutional investors. Basic securities laws and regulation have significant gaps in many countries.

In the case of equity issuance there is no minimum issuance or minimum float requirement in most of Central America.

Disclosure requirements for equity issuers are weak in most countries. The most common problems relate to: I) timely disclosure to the public of insider and/or substantial holdings; ii) timely disclosure to the public of material events: and iii) the minimum requirements for the prospectus, which generally fall short of international best practices. In the case of Panama, the CNV has followed very closely the IOSCO recommendations on prospectus for cross border listings.

In the case of corporate debt issuance disclosure requirements for corporate debt issuers are more complete than those for equity. In the majority of the countries disclosure requirements are reasonable. The main area of weakness is the timeliness of disclosure of material events.

In addition, review of compliance with periodic disclosure has been limited. In most countries, supervision is limited to verifying the timely submission of information, but the actual content is not rigorously examined. In addition, in a number of countries, market supervision and enforcement have been weak due in part to weaknesses in the legal framework, (inadequate description of offenses and/or adequate sanctions). Thus, t**he public perception in some of these countries is that there is insider trading and market manipulation, with insufficient action taken by the regulator.**

The limited number of equity issues is the result of a number of causes which are common to the region as a whole. Problems are perceived to be more on the supply side than the demand side.

Supply side

- **Size of firms and family ownership:** The small size of regional economies and of most firms naturally limits the need or ability to raise equity financing through public issuance. Most of the firms that reach a critical size where equity issuance would be a possibility belong to family groups and are tightly held. While a company can be relatively easily controlled with majority and certainly with a super-majority of shares, in Central America, there is a strong aversion to minority shareholders of any size. Therefore, there is very limited float in the market, including in some of the largest listed companies.

- **Information: There is a culture of secrecy regarding business practices and firm's financial statements, for both competitive and tax related reasons, and owners are reluctant to reveal information necessary for public offering**.

- **Cheap cost and ease of bank financing:** The current high level of liquidity in the regional banking systems implies relatively attractive loan financing. **Together with the ease of bank loans (in terms of fewer disclosure requirements) and speed, this creates a weak environment for supply of equity securities**. Many large firms that might issue equities also have tight relationships with banks and can extract favorable terms for loan financing. Many of these companies of critical size are usually part of financial conglomerates that set up their own bank, and get cheap financing at least up to the prudential limit of related borrowing. For other smaller firms, the fixed costs of issuance make debt financing more attractive.

Demand side

- **Corporate governance and investor protection.** All of the real and perceived problems of poor corporate governance and investor protection act as a powerful constraint on investor demand. Although the supply constraints are more binding currently, these factors are likely to inhibit demand and the growth of equity markets over the long term.

Panama shares many of the obstacles to the development of equity markets in the region. Much of the Panamanian economy is service oriented, and large investment projects are few. The new project with the Panama Canal represents an important opportunity.

The limited number of listed companies is a result of multiple causes, many of them shared by the region. Family-owned companies still prevail and with them an aversion

to give up control. **An unwillingness to comply with disclosure requirements, coupled with the excess liquidity of the banking sector, encourage many companies to use bank funding instead of the securities market.** There are also "scale" problems as public issuance involves minimum costs that are not worth it for companies below certain size. In the case of Panama the legal environment for business is in general benign, but the judicial system is an obstacle.

In terms of preconditions for the development of private capital markets, some priorities for reform include**: improvements to transparency of the corporate sector**, by requiring auditing and filing of financial statements of companies that reach certain threshold; allowing expedited proceedings for execution of collateral by financial institutions; a new bankruptcy law; strengthening requirements for public accountants as well as oversight mechanisms for the accountancy profession; linking substantial tax benefits for listed companies to some free float requirement."

II. Corporate governance in Panama today.
(The issues that we know relatively little about).

In Panama there is no case law or jurisprudence that makes direct reference to the concept of corporate governance.

Corporate governance is not a part of the regular programs at the law, management or financial schools.

56.9% of the Panamanians surveyed by a local newspaper (La Prensa 2003) declared that they do not know the concept of corporate governance.

Agreement 4-2001 issued by the Superintendence of Banks makes direct reference for the first time in Panama to the concept of corporate governance. Agreement 4-2001 is directed to the banks with a license issued by the Superintendence of banks. Other provision that makes reference to corporate governance is Law 51 of 2005 (Article 108). The Social Security (a public agency), when investing in debt, (it can not invest in stock) must consider by law that the issuer of the investments has adopted **good corporate governance rules**. This part of the new law was introduced by recommendation of the securities regulator the CNV.

In the securities market, Agreement 12-2003 issued by the Panamanian Securities Commission (CNV) is directed to the issuers that are registered at the Panamanian Securities Commission. It is based on the system comply or explain.

In the year 2002, after a financial scandal that affected the securities market, the CNV decided to promote very actively corporate governance in Panama. This was done first by organizing meetings and working groups with all the stakeholders and finally by issuing a regulation that recommends guides and principles on corporate governance. The guidelines are based on the OECD corporate governance principles.

The Panamanian regulator followed also very closely the document **"Instituting**

Corporate Governance in Developing, Emerging and Transitional Economies", Center for International Private Enterprise (March 2002).

The adoption of these guidelines on corporate governance was part of an ample process of consultation.

The CNV established two high level commissions integrated by representatives of the stock exchange, auditors, chambers of commerce, businessmen, key issuers and others. For two years this commissions worked on a proposal for corporate governance for issuers registered at the securities commission.

The regulator was convinced that having good corporate governance for issuers would promote and strengthen the favorable conditions for the development of the securities market in Panama. This is the first legal mandate of the CNV (article 8 Decree Law 1 of 1999). Having issuers with good corporate governance would reduce risks and would help to promote better managed companies. As a result there should be an increase in value to investors and better protection to the interests of all the stakeholders.

To the CNV the existence or absence of corporate procedures aligned with the principles of corporate governance recommended by the CNV, following the OECD principles on corporate governance, constitutes information of importance according to the current law definition of the concept of material information and must be a matter of total disclosure in the prospectus as well as in the periodic reports.

Article 1 of Decree law 1 of 1999 defines importance when used in connection with the requirement of divulging information as that information which most probable the holder, purchaser or seller of a security, or the person to whom said information is addressed would deem important upon deciding how to act.

According to Article 73 of the Decree Law 1 of 1999 when requesting information to issuers, the CNV shall restrict itself to request information and documents of importance which are relevant to the investing public. The CNV considers that it is relevant to the investing public to know if an issuer has adopted or not the recommended principles on corporate governance.

Agreement 12-2003 is considered by law a regulation (articles 1 and 10 decree law 1 of 1999). The no disclosure of the information regarding the absence, partial adoption or total adoption of the corporate governance principles recommended by Securities Commission, or the false or misleading revelation of this information regarding corporate governance can be subject to administrative fines by the CNV (article 208 decree law 1 of 1999) and civil liability (article 2004 decree law 1 of 1999) by the civil courts.

The process of adopting Agreement 12-2003 faced great opposition. The stock exchange and the main issuers with their stocks listed at the Panamanian stock exchange requested the CNV not to adopt the regulation.

It is important to mention that the CNV power to regulate issuers has been successfully

challenged in court, setting a dangerous precedent and undermining its ability to enforce the law and issue rules and regulations. For example, Regulation 16-2000 on the solicitation of proxies was declared unconstitutional in 2002 due to a dispute over the CNV's right to regulate the matter. In 2004, issuers threatened to legally challenge Regulation 12-2003, the Panamanian Guidelines on Corporate Governance. To this date, the threat has never been carried out.

In a paradox the Panamanian stock exchange, due to its interest in 2004 in becoming member of the Iberoamerican Federation of Stock Exchanges had to formally review its standing on corporate governance and thanks to the international efforts on improving corporate governance apparently decided not to formally oppose agreement 12-2003.

III. Enforcement of corporate governance in Panama.
(The issues that we know relatively little about).
(Source of data or experiences that can be used or alliances that can be made between research and practitioners.)

The CNV has been very active in explaining, promoting and enforcing corporate governance of issuers registered in the Commission.

Some of the specific measures, in addition to adopting Agreement 12-2003 previously discussed, include:

1. **Requesting and preparing studies on corporate governance.**

2. Following enforcement procedures against issuers for not complying with adequate disclosure and making public the results of the proceedings.

3. Actively educating the general population on corporate governance topics.

4. Promoting the formation of new allies. The Institute of Corporate Governance.

5. Preparing studies on compliance on corporate governance and making them public not only on the regulators web but also on the newspapers.

1. Requesting and preparing studies on corporate governance.

The case of corporate governance in Panama and an action plan on how to work to adopt it in Panama for public companies was presented by a Commissioner in 2003, (before the adoption of Agreement 12-2003), to a group of international regulators in a securities market session of the **Toronto International Leadership Centre for Financial Sector Supervision**. It received reviews and comments from international regulators with experience on the subject.

The CNV requested to the World Bank a Report on the Observance of Standards and codes (ROSC) on corporate governance in Panama. It was concluded in June 2004.

The ROSC concluded that even though Panama has progressed a great deal with the passing of its new securities law in 1999, the reforms in corporate governance are still in its very early stage. The report considered necessary to strengthen corporate governance in Panama because it is an essential ingredient to promote high standards and to keep the Panamanian capital markets reputation among the investors.

According to the ROSC, of the 23 OECD Corporate governance principles, in Panama **3 principles are considered Observed**, **9 principles are considered Mostly Observed, 7 principles are considered Partially Observed and 4 principles are considered Materially Not Observed.** The results of the ROSC were shared with the public and are published in English and Spanish versions in the CNV´s Web page (www.conaval.gob.pa) and in written form for the study of all the interested parties.

2. F**ollowing enforcement procedures against issuers for not complying with adequate disclosure and making public the results of the proceedings**

The CNV has initiated several administrative proceeding and imposed fines, which are published, whenever an issuer fails to comply with its disclosure requirements on corporate governance (mainly the disclosure of information of importance or material).

3. **Actively educating the general population on corporate governance topics.**

CNV members are active participants in educational activities on corporate governance in Panama and abroad. They write papers and essays. They inform the public on corporate governance using the media (radio, television, newspapers, and the Internet). They attend the most important forums on corporate governance such as ICGN, OECD Latin American Roundtables on Corporate Governance (Brazil, Peru, Argentina, Colombia), among others.

There have been essay contests organized by the CNV on corporate governance, as well as contest to award financial journalist for their reporting on corporate governance issues. The educational programs are funded with the fines imposed to the participants in the market for not complying with the securities regulation.

4. **Promoting the formation of new allies.**

(Source of data or experiences that can be used or alliances that can be made between research and practitioners.)

An Institute of Corporate Governance has been created in 2007 by members of the Panamanian private sector. It was a proposal of the securities regulator originated in 2006, but to avoid conflict of interest- or the simple appearance of one- the regulator has not been involved in the subsequent stages of the process. The Institute, which has 15 members, has participated for the first time in the 2007 Latin American Roundtable on corporate governance organized by the OECD.

The Institute Web page is http://gobierno.empresarial.googlepages.com/home. Its President is Joseph Fidanque and its Secretary is Julieta Rodriguez. (mailto:igc@igc-

panama.orgigc@igc-panama.org). The support of the Global Corporate Forum has been very important to the creation of the Institute.

5. **Preparing studies on compliance on corporate governance and making them public not only on the regulators web but also on the newspapers.**

(Examples of data and suggestions for access to data.)

Several comparative studies (2004, 2005 and 2007) with the information on how the issuers report to the CNV an the market their level of compliance with the recommendations on principles on corporate governance have been published by the CNV, not only in the special section on the web page of the regulator www.conaval.gob.pa (Corporate Governance), but also in the local newspapers.

The impact of the newspaper in emerging markets is far more reaching than the impact of the Internet as the reaction to the publication of the studies on corporate governance has shown to the CNV.

There is an English section on the CNV Web page and Agreement 12-2003 has been translated into English, as well as other important material regarding corporate governance is available on the CNV web page in English.

In 2004, 22% of the issuers indicated that they followed the principles on corporate governance recommended by the CNV. In 2006, 30% informed that they follow the principles on corporate governance. We are up by 46%. So far there is no concrete evidence that help us conclude how the local market has reacted to the information on corporate governance.

IV. The problems with limiting the options only to disclosure and not considering the realities of the local market attitudes and practices.
(The pressing issues that should be targeted by researchers.)
(The policy relevance or the potential impact of such research on practice.)

One ofthe pressing issues that should be targeted by researchers is to determine in the particular context and practice of an emerging markets with the characteristics of Panama is if a system of voluntary adoption of corporate governance codes or guidelines with a voluntary disclosure system is enough or if there is a need to follow a mandatory code system with mandatory disclosure.

Another pressing issue is to study how important is to close the gap between corporate governance in non public companies and public companies in emerging markets due to the generally lack of transparency of non public corporations *vis a vis* its stakeholders. And to determine what is going to happen to future of the stock markets if this gap continues to grow.

In theory it can be argued that a mandatory corporate disclosure system is unnecessary because corporate managers possess sufficient incentives to disclose voluntarily all or virtually all information material to investors.

"A disclosure will be supplied voluntarily by issuers interested in the capital markets when

there is a consensus among suppliers of capital or other transactions in the capital market that this information is necessary to them for lending and investment choices", Kripke has written, emphasizing that "issuers will supply it because the alternative is to forego access to the capital markets" *(H. Kripke, The SEC and Corporate Disclosure: Regulation in Search of a Purpose 119 (1981).*

This theory presents problems in practice as explained further and it has been challenged in developed markets. It needs further study in markets such as the Panamanian where the best data available regarding issuers attitude towards disclosure is from 1970.

In the case of the United States market it has been established that: "The reluctance of many business corporations in the pre-1933 period to disclose what is considered essential balance sheet and income statement data, as well as the more recent reluctance of many firms to disclose (or effectively to disclose) line-of business data or earnings projections, often has been explained by business representatives as fear of revealing useful data to competitors *("See id. At. XXI, Stevenson, Information and Rivalrous Competition, 48 Geo. Wash. L. Rev. 671 (1980). Economic and legal theorists have argued, alternatively, that government intervention to compel corporate disclosure is necessary because information material to investors is a public good.")*

"Many firms´ disclosure practices, if not subject to mandatory rule, would be the product of both financial considerations and concerns about the firms´ competitive position. Because of concerns about the competition's response to dissemination of material financial information, some firms presumably would prefer to suffer lower stock markets prices or pay higher costs of capital rather than run the risk of inspiring additional or earlier entrants into their product markets (or takeover bidders). The balance between financial and competitive considerations would likely vary by firm based on such factors as the need for new capital, fear of new competition, and relative influence of corporate financial and operating executives. **At the least this suggests that some firms would adopt disclosure policies materially different from those employed in their industries in spite of the adverse inferences that financial theorists posit that investors might draw**."

Assuming that we are in a system in which the corporations can voluntarily select the adoption or not of corporate governance practices and also disclose this information voluntarily we need further studies in order to determine certain decisions.

It is necessary to understand the reasons why allowing outsiders to take a look at the corporate decisions and participate in corporate decisions has never been worth it to the insiders-specially in emerging markets-, who are finally the ones that have the power to take the decision.

Peter Blair Henry and Peter Lombard Lorentzen Economy Professor at Stanford University and PHD candidate, respectively, in their paper: "***Making Markets Work: How Domestic Capital Market Reform can improve Access to global finance*** indicate three possible explanations***:***

- First: Insiders consider that involving shareholders prevents the corporation of

taking strategic decisions. There is an extra bureaucracy in complying with corporate governance that makes the decision making process slower.

- Second: Revelation costs. More revelations make harder to keeps successful business lines out of competitors sight. These costs reduce the value of the company to all shareholders and could be a good reason not to adopt best practices on corporate governance.
- Third: Even if admitted that the company benefits from cheaper cost of capital if it improves corporate governance, the insiders benefit a deal greater by taking advantage of their current position a way of conducting the company *vis a vis* a company with best practices on corporate governance.

Additionally there is an important problem of timing and coordination. If all the companies in a particular country have problems with corporate governance, the first company that reforms and changes its corporate governance practices runs the risk of looking worst than the other companies. For example, if most of the companies in one country are formally reporting earnings, but only because they are not complying with or are in violation of international financing reporting standards, the first company that changes and admits it has losses, this honesty and sincerity will not benefit the company in comparison with the other companies.

If all the companies are compelled to change at the same time, the best companies will be noticed. That is why we can argue that in Panama it is necessary to level the playing field with a mandatory system.

Some consider this is the same problem facing issuers that undergo credit rating procedures that in Panama are voluntary.

In the case of Panama we wonder if we can naively think that the no adoption of better principles on corporate governance on a voluntary basis by the majority of the issuers is due simply to a lack of knowledge by the controlling shareholders of the benefits of corporate governance. We do not think so.

A report titled **Development of a Securities market in Panama, prepared in 1973 by the General Secretariat. Organization of American States Inter American Committee on the Alliance for Progress-Capital Markets Development Program** presented the valuable information on Panamanian businesses attitude toward the securities markets as an alternative to financing the corporation. The study maintains its relevance 34 years later because it reveals the attitude of the Panamanian businessmen back in 1970´s with respect to accessing capital markets as a way of financing their enterprises and **their willingness to promote best practices on corporate governance and to disclose information to the investor.**

The study was the result of a series of direct interviews with several key corporations. The interviews reflected 6 different types of companies.

First example: Company A. Manufacture Company. 95% of its stock is in private hands, the rest is in minority shareholders. It obtains financing form banks in the U.S. its suppliers

and loans from its directors and officers. It is willing to disclose information including financial statements, but it is **worried of labor pressures and expropriations if its financial statements are made public**. It will use the financing via the stock market because it considers it can obtain a better interest rate than using debt. It can obtain financing via debt at medium term from banks in the United States. It considered it can not obtain medium term financing or long term from Panamanian banks.

Second example: Company B. Public Insurance Company with 50 to 100 shareholders. 80% bought the stock when the company was formed. **The Company registered at the CNV in order to build public trust in the company.** There are occasional sales of its stocks. Because of the nature of its business there is no concern for raising capital.

Third example: Company C. A food processing Company with approximately 100 shareholders. It obtains its financing via Panamanian banks. Its auditors prepare complete financial statements, but the information is only available to the controlling parties and not for the shareholders. I**t would not make public the information because it does not need the incentives that could be available to the companies that make public their information. In addition it considers the investors would not pay what the stock its worth**.

Fourth example: Company D. Transportation business. It requires great amounts of capital. It obtains the capital without difficulty from Panamanian banks. Management supports the idea of making some information public if there are the right incentives. **The company is not willing; for fear of expropriation or of pressures to reduce its prices due to the high return margins.** It believes that the supply of money in Panama is just temporary and that stock market is an alternative to banking financing.

Fifth example: Company E. Heavy industry Company. 10 shareholders. It obtains capital via banks because it has no difficulty in doing so. It prepares financial statements which are provided to the directors, the banks and government. **It would not be willing to make the financial statements public for fear of the allegation that its earnings are to high and for fear of demands from union workers for better wages and benefits**.

Sixth example: Company F. Heavy industry Company. The families that control it do not own the majority of the stock. It considers itself a public company because it has a large number of shareholders. It has an important numbers of employees that are shareholders. **It would be willing to make their financial statements public if there are the right incentives.**

It can be stated that much of the concerns are valid 34 years later. It is necessary to improve transparency and corporate governance for non public companies. Otherwise the gap between non public companies and public companies will widen making the stock market less attractive for the corporations in emerging markets such as Panama.

V. The future of corporate governance in Panama.

The 2004 ROSC recommended the following: (1) a sufficient level of disclosure in

practice, to enable the identification of beneficial owners and their exact stakes, in the annual report; (2) simplified shareholder redress, including a more active role for the securities regulator, so as to enable shareholders to challenge corporate decisions; (3) the creation of an effective audit oversight mechanism; (4) the re-introduction of the regulation on proxy solicitation, requiring the provision of sufficient information for shareholders to make informed voting decisions; (5) mandatory audit committees for all listed companies; (6) clearer fiduciary duties and liabilities of directors, and (7) the availability of relevant and useful training for board members.

The report also proposed: Strengthening the securities regulator's ability to issue and enforce regulations on listed firms, their boards and shareholders and stricter monitoring of the quality of disclosure.

Legislative reform was considered a high priority. Given the reluctance to make any changes to the corporate law that would make it less flexible, **policymakers should consider introducing corporate governance reforms for listed firms through amendments to the securities law**. The securities law should also explicitly grant CNV the power to regulate listed companies; in general, CNV's jurisdiction and regulatory powers need to be clarified and upheld. Ownership disclosure of ultimate owners should be significantly strengthened to permit the identification of significant shareholders. Regulation on proxy solicitation should be re-introduced, e.g. along the lines of Regulation 16-2000 declared unconstitutional.

Enforcement was considered a high priority: Emphasis on the enforcement of CNV regulations is a priority. The assessment recommends improved enforcement of disclosure provisions, with increasing emphasis on a review of content. CNV staff should be trained to gain awareness of corporate governance issues and abuses. Emphasis should be placed on the disclosure of ownership and related-party transactions. Law 45 of 2003 (financial crimes bill supported by the CNV) makes a first step in holding directors more accountable for their actions. Efforts in this direction need to be continued. One possible avenue to be explored is the requirement for issuers to file board minutes with the CNV.

Voluntary/private initiatives were considered a medium priority Audit committees should be introduced in listed non-bank companies, as the Corporate Governance Guidelines foresee. **The creation of a director training organization will help increase director professionalism, as training is provided (on a fee basis); and in addition represents a driving force for corporate governance advocacy, providing input into future reforms.**

This last recommendation is, thanks to the support of the Global Corporate Forum, a reality today. The Institute of Corporate Governance-Panama is organized and is conducting activities to promote corporate governance.

The future treatment of corporate governance in Panama and its enforcement needs to take into consideration the reality of corporate law and practice in Panama. Panama possesses and extremely liberal and so called flexible corporate law. It was instituted to provide the attributes of the corporation such as limited liability (article 39 corporate law) and juridical personality independent from the shareholders (article 251 commercial code) and the free and easy transfer of shares (article 32 corporate law) without any major concern

for the minority shareholders and their protection rights and no other rights than those that the articles of incorporation can establish, as they are usually prepared by and for the founding and controlling shareholders.

Currently there is no desire or will to reform corporate law with the purpose of providing greater protection to minority shareholders. The current corporate law was designed to provide maximum flexibility for offshore corporations. Faced with this clear and not very promising scenario for the minority shareholders, a partial solution is to reform the securities law in order to provide better corporate governance rules for public companies.

For listed firms, ownership and other disclosure requirements, as well as minority rights in general, could be strengthened in the Securities Law, given the reluctance to make the Corporations Law more prescriptive. The idea is to generate more trust from the investors.

Previous reforms (2003) were carried out after a serious financial scandal that involved a couple issuers registered at the CNV and created the adequate conditions for reform. However, today, there is no momentum in Panama for such reforms.

VI. Recommend sources of information.

(Examples of data and suggestions for access to data.)

- **www.conaval.gob.pa.** Informacion del Mercado. Gobierno Corporativo.
- **"Governance and Risk".** George Dallas. 2004
- **"Corporate Finance and Governance".** Lawrence Mitchell, Lawrence Cunningham and Lewis Solomon. 1996.
- **"Instituting Corporate Governance in Developing, Emerging and Transitional Economies",** Center for International Private Enterprise. March 2002.
- **"Making Markets Work: How Domestic Capital Market Reform can improve Access to global finance".** Peter Blair Henry and Peter Lombard Lorentzen.
- **"Development of a Securities market in Panama"**. General Secretariat. Organization of American States Inter American Committee on the Alliance for Progress-Capital Markets Development Program.1973.
- **"Fundamentals of Securities Regulation".** Louis Loss and Joel Seligman.
- **"Report on the observance of Standards and Codes (ROSC). Corporate Governance Country Assessment Panama".** World Bank. June 2004.
- **"Equity and Private Debt Markets in Central America, Panama, and the Dominican Republic."** Hemant Shah, Ana Carvajal, Geoffrey Bannister, Jorge Chan-lau, and Ivan Guerra. International Monetary Fund (IMF). Working Paper. Monetary and Capital Markets Department and Western Hemisphere Department July 2007.
- **"Aspectos jurídicos del gobierno corporativo en Panama".** Carlos A. Barsallo P. VIII Latin-American Roundtable on corporate governance organized by the OECD. Argentina 22 and 23. June 2006.

- **"Gobierno corporativo en Panama".** Carlos A. Barsallo P. Compilación de artículos sobre regulación y funcionamiento del mercado de valores en Panama II. Panamanian Securities Commission. February. 2006
- **"Gobierno corporativo en Panama: Pasado, Presente y Futuro".** Carlos A. Barsallo P. Compilación de artículos sobre regulación y funcionamiento del mercado de valores en Panama I. Panamanian Securities Commission. April. 2005.
- **"Instituto de Directores para Panama".** Carlos A. Barsallo P. La Prensa. November 10, 2006.
- "**Estudio sobre Gobierno Corporativo en Panama".** Panamanian Securities Commission. June 2006.