CORPORATE GOVERNANCE IN LATIN AMERICA AND SPAIN: A COMPARATIVE STUDY OF REGULATORY FRAMEWORK

Guadalupe del Carmen Briano Turrent*, Eva Argente Linares**, María Victoría López Pérez, Lázaro Rodríguez Ariza*******

Abstract

Based on institutional theory, this study presents a comparative analysis of the regulatory framework for corporate governance to be found in the most important emerging markets in Latin America (Argentina, Brazil, Chile and Mexico), which represent most of the stock market capitalization in the region. In addition, we analyzed the situation of Spain, representing the European economy, given this country's strong investment presence in the Latin American stock market. The aims of the study are: 1) to extend the current literature related to corporate governance in Spain and emerging Latin American economies; 2) to highlight the evolution of the institutional and regulatory framework for corporate governance in these countries; and 3) to compare the diverse regulatory framework, with particular focus on the laws and corporate governance codes in the above mentioned countries. Despite the trend for international convergence of corporate governance systems toward the Anglo-Saxon model, both in legislation and in good governance codes, there are significant differences between countries. The present convergence is promoted by different institutions; systems differ, thus, in their implementation and application of good governance practices. The countries in question have adopted a hybrid model based, on the one hand, on laws and decrees, and on the other, on the voluntary adoption of codes of good governance. The aim of these measures is to enhance investor protection, to define the functions of the Board and of the Audit Committee, and to improve transparency, especially regarding conflicts of interest, related party transactions and corporate risk for listed companies. The evidence presented in this paper suggests that Argentina, Brazil and Chile have strengthened their legislation in the case of minority investor protection and market transparency (Circular No. 3531 in Argentina, Law No. 10303 in Brazil and the Take-over Law in Chile). On the other hand, Mexico and Spain have issued regulations focused on transparency information (the Transparency Law in Spain and the CUE Circular in Mexico). Codes of good governance have been adopted by all countries except Chile, which bases its corporate governance on the OPAs (Take-over bids) Act. The practices addressed in corporate governance codes are focused on the Board, whose main function is to monitor and supervise management performance. These codes contain a set of recommended practices defining the functions, structure, composition and creation of different committees that support the Board, together with aspects related to COB-CEO duality. Spain and Chile are the countries that have adopted most such practices. The audit function is another important corporate governance dimension in the codes, concerning the role, liabilities and composition of the Audit Committee. This body is responsible for ensuring full and transparent disclosure of company transactions. Mexico is the country that pays most attention to the audit function. Practices relating to the general meeting, disclosure, conflicts of interest and Board support committees are established in all governance codes, especially in Argentina, Brazil and Mexico.

Keywords: Corporate governance, institutional transparency, Latin America, Spain, emerging markets

**gbriano@correo.ugr.es*
Universidad de San Luís Potosí (Mexico)
***evargente@ugr.es*
****mvlopez@ugr.es*
*****lazaro@ugr.es*
Universidad de Granada (Spain)

Introduction

The current global crisis and financial scandals such as Enron, Andersen and WorldCom in the USA, and Ahold and Parmalat in Europe, have highlighted the importance of good corporate governance (CG). Moreover, factors such as globalization, the integration of financial markets, the privatization and institutionalization processes that have taken place in certain countries and the active participation of institutional investors and stakeholders, all remind companies of the need for better management. Thus, many countries have opted to strengthen their institutions and governance mechanisms, considering these to be strategic tools that help organizations achieve their goals, thus enhancing investor protection and market transparency through new regulations, control mechanisms and regulatory procedures.

CG research was initially focused on the USA. However, in recent years, such studies have also been made concerning countries like the UK, Japan and Germany. There has also been a large body of research into CG in Continental European countries, Asia and emerging economies. Various theoretical approaches have contributed to the evolution of CG. On the one hand, classical theories such as property rights, transaction costs, agency theory and the old institutional theory underpinned the initial studies of CG. In recent decades, new theories have emerged, incorporating stakeholders and introducing the new institutional theory, for analyzing CG under a different conceptual framework. The recognition of institutional pressures and the participation of a wide range of parties (stakeholders) in CG have impelled many countries towards global convergence in governmental regulation of this issue.

In this paper, we examine the CG policy framework in Latin America, long considered one of the world's weakest regions regarding legal protection for investors with respect to expropriation problems and where financial markets have been relatively underdeveloped (Chong & López de Silanes, 2007). Such institutional characteristics, and low levels of investor protection, give rise to a conflict of interest between principal-principal, i.e. between majority and minority shareholders (Young et al., 2008). In this context, the market's lack of corporate control, takeovers, the presence of pyramid structures, preferred shares and cross-shareholding are often ineffective or nonexistent (Schleifer & Vishny, 1997). Nevertheless, emerging countries in Latin America are now strengthening their institutions to overcome these weaknesses and to become competitively integrated within global markets (Lins, 2003).

As well as Latin America, we also analyze the case of Spain, which follows a continental system (Ooghe & De Langhe, 2002). The Spanish market is constituted of a considerable number of medium-sized listed companies, where most of the major shareholders are usually groups of families (Fernández-Rodríguez et al., 2004), and where the three largest shareholders often own 50% or more of the company's shares. When this is so, ownership is said to be highly concentrated (La Porta et al., 1999).

The purpose of this study is to analyze and compare the CG regulatory framework in Latin America and Spain from an institutional perspective. In the sample examined, we included the four most developed markets in Latin America – Argentina, Brazil, Chile and Mexico – which account for 70% of market capitalization in Latin America (S&P, 2010). Moreover, the Spanish market, which is representative of the European economy, is characterised by its strong investment presence in Latin America.

In general, studies in this field have focused on Anglo-Saxon and Continental countries. The main contribution of our paper is that it provides a comparative study of the regulatory framework and codes of good CG between a country with a continental system (Spain) and the most important emerging countries in Latin America. This study, moreover, is based on institutional theory, unlike most others, which have focused on agency theory. The World Bank, in its reports for 2001, 2002 and 2005, recognized the importance of both formal and informal institutions as determinants of national growth and economic development. Consequently, institutions are in an excellent position to improve the investment climate in their countries, playing four main roles: 1) facilitating consultation; 2) facilitating coordination; 3) reviewing current laws and policies; 4) reviewing new policies and regulatory proposals (World Bank, 2001, 2002 and 2005).

This paper is structured in four sections. In the first, we integrate the theoretical background to CG. In the second, we analyze the regulatory framework that is implemented in Argentina, Brazil, Chile, Mexico and Spain. In section three, we present a comparative analysis of the regulatory framework and codes of good governance in these countries. Finally, we state our conclusions, acknowledge certain limitations and suggest lines for future research.

1. Conceptual Framework

The concept of CG has arisen in an economic scene where national and international agencies are calling for greater disclosure of corporate information, thus highlighting the importance of transparency in this respect. In 1999, the OECD published its "Principles of Corporate Governance", which have become the benchmark for investors, politicians, businesses and other stakeholders around the world. The publication of these principles, since revised and updated, was mainly aimed at making the above-mentioned agents more aware of the substantial benefits to be derived from good CG, and thus at promoting the development of good corporate practices. These principles are now the basic pillars of the concept of

CG as implemented worldwide, by both OECD and non-OECD member countries.

Good CG concerns the provision of corporate information by both those who own a company (shareholders) and those who manage it (managers), in response to the need of minority shareholders to be informed about their investment and its prospects (Shleifer & Vishny, 1997). CG provides greater security to investors, promoting practices of good governance, and thus generating greater confidence among domestic investors, reducing the cost of capital, ensuring the good functioning of financial markets and, finally, attracting more stable sources of finance (OECD, 2004). Foreseeably, the greater a company's transparency, and the more information it provides, the greater the confidence that investors will have in it.

The concept of CG is coming to be granted almost the same degree of importance as that of company performance. James Wolfensohn (President of the World Bank) said that this concept is as important as the governments of countries. CG is not only postulated as a goal of compliance, but also as one of the greatest challenges in the business world today. In this sense, firms are discovering that a good system of CG raises company income, providing better risk management, improving customer satisfaction and its commercial reputation among investors and providing better access to capital markets (Ramaswamy, Ueng & Carl, 2008). Therefore, companies are willing to adopt organizational changes, adopting good corporate practices, in view of the benefits to be gained from good CG, or under social pressure.

The evolution of the concept of CG has evolved from a purely financial one, in which the only really important concern was how investors' money was being managed and what future expectations they had, to another, quite different one that included aspects of company organization and design. The first-named definitions were developed within the framework of agency theory, referring to protecting the rights of shareholders (Jensen & Meckling, 1976; Fama, 1980; Claessens, et al., 2000 and 2002). In this sense, the firm is understood as a relationship of implicit and explicit contracts, requiring a theory of stakeholders' property rights and their importance in the creation and distribution of economic value (Freeman, 1983; Hill Jones, 1992; Asher et al., 2005; Atanassov & Han Kim, 2009). In recent years, the existence of a macro level has been recognized, consisting of market, institutional and global pressures on CG (North, 1994; Hoskisson et al., 2000; Wright et al., 2005).

1.1. Concept Of Corporate Governance

In line with the above considerations, CG can be defined as a system through which companies are directed and controlled (OECD, 2004). It is a set of principles and rules, comprising two basic elements: firstly, the structure determines the distribution of rights and responsibilities among the governing board, the shareholders and the Board of Directors; secondly, it establishes other procedures necessary for decision making on strategic and corporate issues.

According to the World Bank, CG is promoted through corporate fairness, transparency and accountability to stakeholders (Ramaswamy, Ueng & Carl, 2008). In this sense, it protects shareholders' rights and guarantees equal treatment to all, including minority and foreign shareholders. It is based on accountability, recognizing the rights established by law to all stakeholders, and encourages active cooperation between businesses and stakeholders in creating wealth, jobs and sustainable enterprises. Transparency ensures the adequate and timely disclosure of all matters relating to the company, including its financial situation, performance, ownership and governance structure. Finally, accountability provides a strategic direction for the company, effective monitoring of management and accountability to stakeholders. It is therefore a cyclical process that requires the continuous participation of all stakeholders of a company so that the full benefits offered may be derived.

The term "CG" is also defined in accordance with the codes of good governance in different countries. Thus, in Argentina, Brazil, Mexico, Chile and Spain, these codes are referred to control to the management or business conduct of the company. In this sense, CG is the system by which businesses are directed and controlled in order to ensure their long-term continuity in the market.

1.2. Corporate Governance Around The World

Many factors make CG systems in the world differ and affect their impact on company performance: on the one hand, specific aspects of the firm, such as its capital structure, executive remuneration mechanisms, and decision making and control systems; and on the other hand, external factors such as the legal system, the market for corporate control, the managerial labour market and the degree of competition (Garcia & Sanchez-Meca Ballesta, 2009). However, there is a series of rules and principles that characterize and identify a range of good governance practices that are common to all. CG systems are strongly influenced by the legal system prevailing in a country; this is an important factor in the protection of investors' rights and in the development of financial markets (Jensen, 1993; La Porta et al., 2002). Two models of corporate governance have been distinguished: 1) the Anglo-Saxon model or shareholder/outsider system, based on the market and whose main representatives are the USA and the UK; 2) the continental European model of stakeholder/insider, which is typified in countries such as Germany, Japan and Spain (Ooghe & De Langhe, 2002).

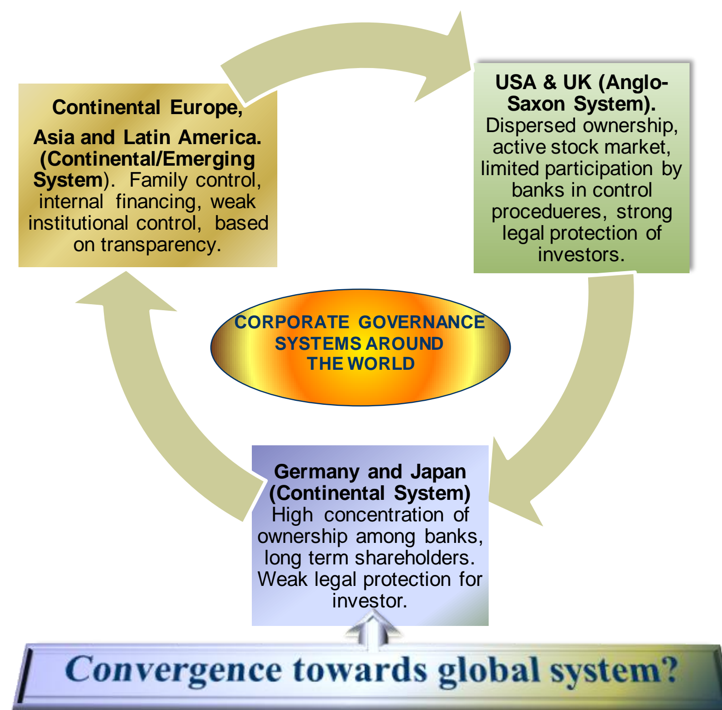
The Anglo-Saxon system is derived from common law (of English origin). It is characterised by flexibility, common practices and prior judicial interpretations of the law and of regulations that are applicable to litigation. In comparison to the continental European model, it has a better institutional system, lower levels of corruption and more efficient courts (La Porta et al., 1998). Property is dispersed among a large number of shareholders. This system has governance structures that protect the interests of investors, and well developed financial and capital markets in which property and property rights are traded, and where takeover bids are frequent. This model contrasts with the system derived from continental civil law (of Roman origin), in which laws are announced by parliaments and assemblies, and applied by judges, with only limited reference to accepted practice. The system is divided into three traditional groups of law: French, German and Scandinavian. French law is the weakest in protecting investor rights, while German and Scandinavian laws are located at a medium level (La Porta et al., 1998, 2000). Property ownership in these countries is more concentrated, with a large proportion of shares being held by families or banks. Under this system, financial markets are less developed and investor protection is lower, this being the main consequence of the subordination of the shareholders' interests.

Currently, a third model or system is emerging. This system, known as the emerging or institutional model, is typical of emerging markets (Krambia-Kapardis & Psaros, 2006). It is based on factors such as government, banks and other institutions, and its main pillar is institutional transparency (Millar et al., 2005). This system is characterized by a high concentration of ownership, with control in the hands of corporations, banks or families; there is a high probability of conflicts of interest between controlling shareholders, management and minority shareholders (La Porta et al., 1997).

1.3. Convergence Of Corporate Governance Systems

Although none of the above systems has achieved perfect CG, current trends are for convergence towards the Anglo-Saxon model, with the aim of achieving greater market transparency, active participation by shareholders, closer control of the Board and standardized remuneration systems for executives, in both the short and the long term (Raven, 2002). However, recent studies have focused on the emerging countries, and the framework of a new institutional theory has been adopted, in the view that a different governance model is required for different legal and institutional environments. Accordingly, it might be inquired whether the Anglo-Saxon model is really the most appropriate for promoting growth and transparency in financial markets. The characteristics of each system are presented in Figure 1.

Figure 1. Systems of Corporate Governance around the world



Source: Based on Schleifer & Vishny, 1997

These governance systems tend toward global convergence in which managers' performance is aimed at protecting the rights of shareholders. Privatizations, the growing presence of institutional investors and the globalization of capital markets are forces that promote more transparent disclosure by the Board and the emergence of new monitoring practices (Raven, 2002). In addition, changes in legal systems also facilitate the convergence of systems.

In this context, the CG model adopted will depend on the institutional and social characteristics of each country and its legal traditions. Direct foreign investment, the influence of international investors, the degree of ownership concentration and the degree of market development all suggest the adoption of a hybrid model that has applicable elements in each country. On the other hand, barriers to the harmonization process are presented by difficulties in changing legal and institutional systems, the political power of interest groups, the culture of stakeholder model relating to a particular social ideology in Europe, political pressures that limit change and differences in the degree of development of countries and markets (Raven, 2002). In reality, thus, convergence has evolved faster regarding practices of good governance than in national regulatory frameworks (Hansmann & Kraakman, 2001).

2. Corporate Governance Regulatory Framework In Latin America And Spain

There is worldwide debate as to whether governments should develop mandatory mechanisms for companies' corporate governance, such as the Sarbanes-Oxley Act (2002) in the USA, or whether voluntary codes of good governance provide sufficient protection. In either case, the aim of such mechanisms is to reach a balance between management and shareholders' interests in order to improve company performance and long term value (Aguilera & Cuervo-Cazurra, 2009).

Mandatory mechanisms are implemented through the development of strong corporate laws and address the relations between the company, management and shareholders. According to the philosophy of the Sarbanes-Oxley Act, GC practices need to be imposed, rather than allowing businesses and markets to self-regulate, in order to prevent scandals such as Enron. Voluntary codes of good governance, on the other hand, focus on topics not contained in the legal framework, but which are relevant to companies' internal control procedures. Such a code of voluntary company compliance is set out, for example, in the Cadbury Report, which gave rise to the principle of "comply or explain". Public listed companies are not required to comply with the code of best practice, but they have to report the degree of compliance and account for areas of non-compliance.

This principle of "comply or explain" is closely related to the concept of flexibility, as discussed by MacNeil and Li (2006). These authors view flexibility from the standpoint that it is not possible to apply a single model of governance to all firms and all situations, because they differ in size, structure and organization.

The role of the capital market is related to flexibility, in that its function is to evaluate the adequacy of governance practices. The principle of "comply or explain" is based on the assumption that the market is responsible for monitoring compliance with the code; thus, non-compliance will be reflected in falling share prices, and firms will have to accept this consequence or explain the circumstances of non-compliance. Accordingly, companies have an incentive to comply; for investors, the code represents a benchmark of good corporate practices, and so companies that do not comply suffer certain consequences or must justify their position.

In addition to the "comply or explain" principle, the voluntary nature of such codes has led to discussion as to whether they constitute an effective tool for achieving good CG or whether, on the contrary, stricter, mandatory rules of government are needed to ensure adequate compliance, especially in countries where institutions are weak and governance systems underdeveloped (Aguilera & Cuervo-Cazurra, 2009).

This is the background to the new institutional theory, whose main exponent is Douglass North (1994). This theory has been widely used to analyze company management, especially in emerging economies (Hoskisson, Lau & Wright, 2000; Wright et al., 2005). Both in Spain and in Latin America, company power tends to be concentrated in the hands of a small group of shareholders. Therefore, these countries have based their CG model on institutional transparency and on strengthening laws and institutions, in order to enhance the protection of investors and other stakeholders. According to Rutherford (2001), it is institutions and institutional change that reduce transaction costs and uncertainty and generate collective benefits. Institutions embody rules that define human interaction, rules that have been classified into formal and informal (North, 1994). On the one hand, formal institutions are integrated by sets of laws, regulations and procedures that are issued in a particular jurisdiction, while in the informal institutions there exist ideas, beliefs, attitudes and values, standards and ethics and codes of conduct. All these institutions define a society and the structure of its economy (North, 1990).

In this paper we analyze the evolution of the regulatory framework of CG, with particular reference to Argentina, Chile, Brazil, Mexico and Spain. We review the diverse codes of good CG that are applied and the legislation applicable in this respect.

2.1. Corporate Governance In Latin America

Globalization pressures and the institutional arrangements particular to each system are factors that determine the CG structure (Siddiqui, 2010), which implies that countries frequently change government practices in order to legitimize their economic systems; this, in turn, increases receipts of foreign investment and the inflow of funds to capital markets. Experience in Latin America has shown that the provision of legal protection to investors and the existence of appropriate forms of CG are related to lower capital costs, higher valuations, better performance and higher dividend payments across countries (Chong & Lopez de Silanes, 2007). Although this region has not suffered important financial scandals in the last decade, and investor protection levels have improved, it remains among the least developed regions with respect to protecting the rights of shareholders. The reform movement is not homogeneous in Latin America, and there is a notably scarce development of institutional reforms in the financial markets, which has placed companies in a difficult situation with respect to external equity financing in an increasingly competitive market (Chong & Lopez de Silanes, 2007). The slow movement towards legal reform is partially responsible for the poor development of financial markets in Latin America, as a result of which listed firms have opted to participate in international markets. Moreover, a wave of foreign acquisitions in these countries has seriously threatened the growth of local markets in the region. Hence the importance of reforming CG, with a view to reducing capital costs.

We see, thus, that CG, from an institutional perspective, has influenced the design and implementation of business strategies in Latin America. An initial problem encountered is that formal institutions are often inefficient, and CG mechanisms receive little formal institutional support (Peng, 2004; Peng et al., 2003). Furthermore, informal institutions, such as relationships, business groups, family relations and government contacts, are often highly influential in CG in these countries (Peng and Heath, 1996; Yeung, 2006). Thus, the strengthening of institutional variables, such as accounting practice harmonization, greater investor protection, enforcement of legislation, market competitiveness, greater transparency and generalized compliance with obligations, all tend to reduce the private benefits of control, which in turn enhances the position of the financial development market and reduces the cost of capital (Dyck & Zingales, 2004).

Emerging countries have a CG system that reflects their institutional environment, in which there exists a situation of conflict among the principals; the position of minority shareholders is severely restricted by the combination of high ownership concentration and weak institutional protection for minority shareholders (Young et al., 2008). In the particular case of Latin America, the most important developments in CG took place early in the 1990s, following the privatization processes that took place in Eastern Europe (CAF, 2006). Later in the same decade, these countries came to be considered emerging markets, representing a major destination for investors. Thus, Latibex, the international market for Latin American securities, represented an ideal framework for the efficient channelling of European investment to Latin America, with the presence of 32 listed companies from 6 Latin American countries: Mexico (12), Brazil (13), Chile (3), Argentina (2), Peru (1) and Puerto Rico (1), allowing them ready access to an efficient European capital market (Latibex, 2010).

Latin America offers an opportunity for companies to send strong, reliable signals to investors through the voluntary adoption of good CG practices and policies, which to some extent compensates for weaknesses in the legal framework (Garay & González, 2008). In 1999, the OECD published its "Principles for Corporate Governance", which have come to be considered an international benchmark concerning CG, and the basis for various reform initiatives, both governmental and in the private sector (Lopez Herrera & Rios Szalay, 2005). These principles recognize the existence of differences in legal, political and institutional systems, which inhibit the development of a single model of CG, whilst acknowledging the fact of common elements (OECD, 1999). The OECD, in diverse contexts and with the participation of the World Bank, offers an effective framework for continuing policy dialogue and for a multilateral exchange of experiences. This is the background of the White Paper on CG developed by the Latin American Roundtable on CG, the aim of which is to summarize common policy objectives and reform priorities (OECD, 2004). On the other hand, we find the Guidelines for an Andean Code on Corporate Governance, whose application is voluntary and which has been designed considering international standards and recognizing the characteristics and business environment pertaining in each country (CAF, 2006). Countries like Argentina, Brazil, Chile and Mexico have taken the OECD Principles as a reference to design their own codes, together with the above mentioned documents issued by international organizations. The International Finance Corporation (IFC), part of the World Bank, is one of the most important international institutions that promote governance practices in the region, and supports the private sector in developing countries (IFC OG, 2009). In Latin America and the Caribbean, IFC is working to improve the business environment, promoting sustainability through good governance, and environmental and social practices. Another important institution is the Global Corporate Governance Forum (GCGF), founded by the World Bank and the OECD, whose mission is to promote the

private sector as the main engine of growth, reducing vulnerability to financial crises in transition economies and providing incentives to increase corporate investment and achieve socially responsible performance (IFC OG, 2009).

In May 2005, the Latin American Companies Circle was constituted, on the recommendation of the Roundtable on Corporate Governance in Latin America, composed of leading figures in good CG in five countries: Costa Rica, Colombia, Peru, Mexico and Brazil (14 companies). Its aim is to work to promote better understanding of governance practices in the region, promoting dialogue about experiences, and monitoring and evaluating progress on CG in the region. In 2009, it published the "Practical Guide to Corporate Governance: Experiences from the Latin American Companies Circle", aimed at providing support for companies setting out to improve their GC and at providing tools to assess and measure their progress (IFC, 2009). The next section describes the regulatory CG framework for each Latin American country analyzed.

The case of Argentina. Situations of financial crisis have obliged the country to enhance its CG. During the crisis of 1989-1991, the Government had to take strong compensatory measures, creating a new institutional framework and instituting property reform to allow more freedom in the market (Apred, 2001). Subsequently, the crisis of 2001-2002 produced uncertainty and provoked the appearance of conflicts of interest, requiring disciplinary measures to strengthen CG with regard to insider information (Bebczuk, 2005). With respect to property control, since 1991 ownership structures in Argentina have changed dramatically; formerly in the hands of large family groups, control has passed to foreign groups and investment funds, following a wave of privatizations, restructuring, mergers and acquisitions. Thus, the former civil-legal tradition has evolved to become a system based on the capital market (Apred, 2001). Hence, a considerable body of laws has been proclaimed, with the active commitment of banks, lawyers and consulting firms to this process. However, law enforcement seems to be the weak point in Argentina, and so reform of the judicial system is needed. In this respect, the National Securities Commission took into consideration Argentina's history and the most relevant standards of comparative law in adapting its CG system in accordance with constitutional rules and characteristics, and the country's traditions and idiosyncrasies (MERVAL, 2010). This Commission is responsible for promoting various legal reforms on CG, among the most important of which is the Commercial Companies Law No. 19,550, covering the Board's duties and responsibilities, shareholders' rights and the regulation of the General Assembly. Moreover, Chapter VIII of the Public Offering Law (No. 17,811), establishes rules on disclosure, the functions of the General Assembly (Article 72) and acts or contracts with related parties (Article 73) for issuers on stock market. Decree No. 677/2001 regulates transparency about insider information, stakeholders' rights, external audit and audit committee procedures, public information, mergers and acquisitions procedures and good governance practices for listed companies (Apred, 2001). In this sense, Decree 677 states that "from the perspective of globalized financial markets, good governance practices are an added value that influences the risk rate". The aim of such practices is to integrate the stock markets with institutional savings sources (pension funds, investment funds, insurance companies, etc.) and individual investors (MERVAL, 2010). Other relevant laws include Foreign Investment Law No. 21382, Law No. 22169, which focuses on the functions of the National Securities Commission, Law No. 23576 on corporate bonds, and the Code of Best Practices for Government Organizations in Argentina (Gutierrez, 2005). Recently the Investor Protection Code has been published, setting out a set of practices to ensure transparency and investor protection, and incorporating a procedure for receiving and handling investors' complaints. The body responsible for promoting good CG is the Argentine Institute for Corporate Governance, which recommends that public listed companies should comply with the Code, this being applicable, also, to private companies, whether large or small (IAGO, 2010).

The case of Brazil. When the Brazilian market was opened up to international trade, company structures began to change (Rabelo & Vasconcelos, 2002). During the period 2002-2003, Brazil was faced with the devaluation of the dollar against the Brazilian real, resulting in a wave of uncertainty about the future of the country. The privatization process that started in the 1990s produced significant changes in CG in the country. Ownership is concentrated in family business groups and multinational companies, there is a conflict of interest between controlling and minority shareholders (Rogers et al., 2008), and the pyramidal structure still predominates. While there has been a growth of institutional investors, particularly pension funds, the State continues to be the major shareholder in many Brazilian corporations. In Brazil is has been observed that institutions like long-term pension funds can form part of an important strategy for improving governance structures. In relation to the regulatory framework, in 1976 the Securities and Exchange Commission of Brazil was created and Company Laws (Nos. 6385/76 and 6404/76) were enacted. With respect to CG, the Brazilian Institute of Corporate Directors was created in 1995; this body changed its name to the Brazilian Institute of Corporate Governance in 1999 and the first version of its Code of Best Practice was issued. Moreover, in 1997, the Companies Act No. 9457 was amended by Act No. 1997, which eliminated shareholders' tag-along rights in order to facilitate the

process of privatization. In 2000, a special section of Bovespa's Corporate Governance for listed companies was created, in which companies voluntarily undertook to increase CG levels: Level 1, Level 2 and Novo Mercado or Level 3 (Di Miceli da Silveira & Franco Donaggio, 2009). Moreover, Act No. 10303, passed in 2001, amended the Companies Act and established new rights for minority shareholders. Instructions 358 and 361 were published by the National Securities Commission of Brazil, establishing good governance standards related to takeover bids, information disclosure, accounting standards, restrictions on shareholders and independent directors (Gutierrez, 2005). In 2001, the Commodities and Futures Exchange (BM/BOVESPA) introduced its special sections for shares in companies that voluntarily undertook to comply with CG standards, in addition to those required by Brazilian law. The Sao Paulo Stock Exchange developed the "Novo Mercado" index, based on agreement between issuers and the Stock Exchange. The CG issues addressed include aspects such as directors' independence, disclosure, arbitration and conciliation. The National Securities Commission requires public companies to include in their annual reports the level of compliance with respect to the practices described in the code, in application of the concept "comply or explain" (BOVESPA, 2009). By late July 2008, BM/FBOVESPA contained 443 listed companies, 103 of which were listed on the Novo Mercado, 18 at level 2 and 44 at level 1, representing 61.6% of the total market capitalization. Regarding private sector involvement in the promotion of good governance, Brazil is one of the most advanced in Latin America. The Center for Corporate Governance in Brazil has issued a Code of Best Corporate Practices and implements training programmes for senior executives, establishing itself as an independent assessor of the market and good governance (IBGC, 2004).

The case of Chile. Chile was the first country in Latin America to revamp its securities law, in the early 1980s, followed by other countries of the region in the 1990s (Chong & Lopez de Silanes, 2007). The need to improve corporate practices was reflected in the above legislation on corporations and the stock market; Act No. 19705, on take-over bids and CG, was enacted in 2000, imposing restrictions on majority shareholders and Initial Public Offerings, while Act No. 20382, enacted in 2009, introduced improvements related to the regulation of CG. However, Chile does not possess a code of good governance, only a draft code of best corporate practices proposed in 2001. The Superintendency of Securities and Insurance of Chile has promoted several policy changes related to good governance, chief among which are the Corporations Law No. 18046 and the Securities Market Law No. 18045, which focus on the governance of listed firms and on corporate control. The Securities Market Act (SVS, 2010) addresses issues related to good governance, such as the Audit Committee, related party transactions, withdrawal rights and civil actions related to CG. The Chilean legal system presents a high degree of investor protection. On the other hand, the capital market is subject to strong informational asymmetries and has inadequately regulated the question of information transparency. Ownership is highly concentrated and Board directors in many cases are the direct representatives of shareholders. CG contains various dimensions, but reforms in Chile are primarily focused on the Board (structure, functioning, responsibilities, functions, shareholder relationships, executives, suppliers, etc.), and engage to a lesser extent with the question of shareholders. Public listed corporations are generally controlled by large groups, integrated in pyramidal form (Agosin & Grassland, 2003). However, since the global financial crisis of 1997-1998, the Chilean capital market has tended to decline (Leal & Carvalhal-da-Silva, 2005). The system has evolved in recent years, partly due to pressure from institutional investors and the monitoring by banking institutions of the performance of majority shareholders (Agosin & Grassland, 2003).

The case of Mexico. As in other emerging markets, the political process in Mexico has gone beyond the search aiming at macroeconomic stability. In the next decade, the process will be focused on institutional building (Chong, Guillen & Lopez de Silanes, 2009), including the development of financial institutions, legal infrastructures and regulatory mechanisms. Thus, factors such as the banking and economic crisis of 1994-1995, the highly competitive environment brought about by the North American Free Trade Agreement and the absence of significant legal reforms has led to the publication of regulations and codes of good governance. Mexico now has new regulations for its Securities Market and ten years' experience in implementing its Code of Best Corporate Practices, since 1999 when the first revision was issued, and including the latest review, published in 2006. The evolution and state of progress in CG is the concern of both public agencies and the private sector, prominent among which is the National Banking and Securities Commission (CNBV, 2010). Among the most important acts of legislation relating to good governance are the General Corporations Law enacted in 1934, and the Securities Market Act (2006), which defines three new classes of companies: 1) Limited Company Stock, 2) Company Stock Investment Promotion, and 3) Investment Promotion Corporation. Moreover, the CUE Circular, modified in 2009, required listed companies to disclose in the annual report their degree of compliance with the Code of Best Corporate Practices (BMV, 2010). The aim of the latter Code is to strengthen the system of corporate governance, by increasing corporate transparency, and thus to enhance investors' confidence in Mexico. It also

places special emphasis on the loyalty and duties of due diligence incorporated into the new Securities Market Law, which is applicable to Board members and CEOs.

2.2. Corporate Governance In Spain

By the mid-1990s, there was a general consensus in Spain regarding the need to rethink the role and nature of the principal organs of CG, and especially that of the Board of Directors (Círculo de empresarios, 1996). The main reason for this was the increasing worldwide recognition of the importance of good governance within the company, this being understood to have a direct effect on the value of the firm (Fernández & Gómez-Anson , 1999; Del Brio et al., 2006, Ooghe & De Langhe, 2002).

Therefore, analyses were made of CG in countries like France (Vienot Report, 1995), the Netherlands (Peters Report, 1997) and the UK (Cadbury Report, 1992). The recommendations made in the Cadbury report were based on issues relating to the Board, the executive directors and non-executive control and disclosure of information, and these recommendations gave rise to a similar study that had a major influence in Spain (the Olivencia Report).

In February 1997, and at the initiative of the Spanish Securities Market Commission (CNMV), the Government approved the creation of a committee to write the first draft of a Code of Good Governance (CGG) for public listed companies. This Committee, chaired by Manuel Olivencia, gave rise to a reform aimed at enhancing the business environment in Spain through the supervision and control of companies, in order to align the objectives of the management with those of shareholders (who provide resources and ultimately support business risk). The Commission published the Spanish Code of Best Practices (the Olivencia Report) in February 1998, and it became applicable from 1999.

This was the first attempt to introduce a CGG in Spain as an initiative of the CNMV. It contained 23 recommendations, including regulations on Board structure and on the behaviour and the remuneration of its members. The aim of this code was to reflect the institutional characteristics of Spanish companies, seeking to ensure transparency of the company and shareholder confidence in managing it, through the protection of minority interests.

During the same period, the OECD announced its Principles of Corporate Governance (1999). These principles, subsequently amended in 2004 to adapt them to changing circumstances experienced in the economy and by businesses, addressed CG issues that were common to all member countries, including shareholders' rights and equitable treatment, the role of social interest groups, transparency in information and the liability of the Board. In the same respect, let us note the publication in 2002 of the Sarbanes-Oxley law in the USA, a significant legislative initiative in the field of global CG.

The global restructuring of CG, the lack of compliance with the Olivencia Code and the weaknesses detected in the drafting of the latter, led to the creation in July 2002 of a new commission whose main objective was to find a balance between regulation oriented toward the legal protection of shareholders' rights and the self-regulation of listed companies. Other principles, such as transparency, loyalty and diligence, follow this principle of freedom. As a result, the Aldama Code, published in January 2003, is more rigid than its forerunner.

The main advantage of the Olivencia Code with respect to the Aldama Code is that it provides a measure of good CG. Observing the 23 recommendations that comprise the Olivencia Code, one may conclude that the more recommendations complied with, the better a company's CG. The Aldama code, on the other hand, is only an explanatory document, and companies are not obliged to apply rules or explain non-compliance, as was the case with the previous code. The final report addressed issues relating to the transparency of information, the duty of loyalty, providers of professional services and, in a final paragraph, it reflected the scope and application of some of the recommendations. This report provided more security and information to investors than others, but did not result in great improvements in CG, failing to provide any in-depth consideration of fundamental issues such as the independence of directors and the concentration of power in the CEO, two questions that are taken very seriously in the codes influenced by Anglo-Saxon model.

In 2002, the Finance Act 44/2002 was enacted, containing measures to reform the financial system. This law obliged listed companies to establish an audit committee and systematized the legal status of the audit and standards of conduct in securities markets.

Following the recommendations contained in the Aldama Code, in July 2003 Parliament approved Law 26/2003, amending Law 24/1988, on the Stock Market and revised the text of the Limited Companies Act (approved by Royal Decree 1564/1989 of 22 December, 1989). This law, also known as the Transparency Law, was developed to enhance the transparency of listed companies and to improve the disclosure of information to investors and the market.

On 26 December 2003, Order ECO/3722/2003 was issued (CG Annual Report and other information about listed companies and other entities). This Order developed the content of the Transparency Law, establishing the minimum information that should be included in the annual CG report, that is, the ownership structure of the company, the structure of its corporate administration, intra-group related operations, risk control systems, the functioning and the development of the sessions of the General

Meeting and, finally, the degree of monitoring of CG recommendations.

In addition to the above legislation, the CNMV published Circular 1/2004 on 17 March 2004, which set out requirements for the annual CG report by listed companies and other entities trading on official secondary securities markets, as well as other information requirements for listed companies.

On 16 September 2005, the CNMV Special Working Group was set up, with the aim of standardizing and updating the recommendations of previous reports, as well as making additional recommendations. This group consisted of five experts from the private sector and two professional more. The group took into consideration all the recommendations presented to it since the publication of the Aldama report. Thus, in addition to the OECD Principles of Corporate Governance, the group took into account recommendations and proposals made by the European Commission and the recommendations on CG for banks approved by the Committee of Banking Supervisors of Basle. As a result of this work, the Unified Code was produced in May 2006. This Code was addressed at all listed companies regardless of their size and level of capitalization, and for the year 2007, these firms were required to adapt their CG reports to the stipulations of this Code. On 27 December 2007, the CNMV published its Circular 4/2007, amending its model of good governance to meet the requirements of this new code.

In view of the large number of companies in the market to which the Code applies, presenting significant differences in key issues such as turnover and capital structure, it should be borne in mind that many of the recommendations contained in it will not be applicable to all companies, especially the smaller ones. Thus, the Code exempts such companies from certain recommendations. However, these firms are then required, following the principle of "comply or explain", to express the reasons justifying this decision, and explaining their particular circumstances so that both investors and shareholders, and the market in general, can make an informed assessment as to whether the non-compliance is reasonable.

3. Comparative Analysis Of Latin America And Spain

Good governance practices can be implemented through legal obligations, voluntary codes or a combination of the two. The countries analyzed in this study have opted to issue regulations that require listed companies to comply with certain practices. However, the publication of codes of good governance containing voluntary recommendations has taken place in all these countries except Chile, which set out its governance practices in Law No. 19705, in 2000, which protected the rights of shareholders and Law No. 20382, passed in 2009, which redefined the rules concerning CG. The Cadbury Report stated (paragraph 1.10): "We believe our approach, based on the combination of acceptance and transparency of voluntary code compliance, will be more effective than the imposition of a legal code". Therefore, we consider it useful to compare the practices of good governance, seeking to identify the ones that are most significant in the countries analyzed. For this purpose, we created two tables (Table 1 and Table 2). The first table presents the concept of CG adopted by each code and the principles on which each one is based, while Table 2 compares the CG practices addressed in the codes and regulations of each country.

Note that the CG definitions used in the codes are based on principles and concepts proposed by the OECD, which refer to company control, its management or business ethics, in the understanding that the CG system is the mechanism by which firms are directed and controlled in order to ensure their long-term continuity in the market. With regard to the good governance principles, Argentina takes as a reference those issued by the OECD, and they are very similar in the cases of Brazil and Chile. Transparency, fairness and responsibility are the most important of these principles. Mexico extends the number of principles to ten, focusing on practical aspects such as stakeholders, identification risks, conflicts of interest, disclosure and providing confidence to investors. Spain differs from the other countries analyzed in the formal aspect required for listed companies, such as the obligation to publish an annual report.

Table 2 shows that all countries have adopted codes of good CG, with the exception of Chile which has addressed CG practices through corporate legislation and Law No. 19705 (OPAs and Corporate Governance Law). In this sense, with respect to the Latin American countries, we have identified CG practices within a regulatory framework and its respective codes. 14% of these refer to the Annual General Meeting, except in Spain, where the corresponding figure is 9%. These practices relate to competences, operation and information dissemination regarding the AGM, together with representation and voting mechanisms.

Table 1. Concept and Principles on Corporate Governance

Good Governance Code	Argentina	Brazil	Chile	Mexico	Spain
Corporate governance concept	System of company management and monitoring for societies focused on sustainable value creation.	System of business supervision that involves relations between owners, the Board of directors, executives, independent auditors and the Fiscal Council.	Following the OECD definition: adopting the contractual theory and conceiving social interest as a factor common to all partners, related to the company's object and purposes.	Company management and control system focused on sustainable value creation.	Following the OECD definition: "system by which companies are directed and controlled".
Corporate Governance Guidelines	1. Effective GC framework. 2. Shareholders' rights. 3. Equitable treatment for shareholders. 4. The function of stakeholders. 5. Disclosure and transparency information. 6. Responsabilities of the Board.	1. Transparency. 2. Fairness. 3. Accountability. 4. Corporate Responsability.	1. Fairness. 2.Transparency. 3.Accountability. 4. Probity.	1. Equal treatment and protection of shareholders. 2. Interested third parties. 3. Disclosure. 4. Ensure strategic guidance for the firm. 5. Identify and control risks. 6. Ethics and corporate responsability. 7. Conflicts of interest . 8. Disclosure of improper acts. 9. Regulatory compliance. 10. Investors' confidence.	1. Publication of annual report ("comply or explain" principle). 2. Binding definitions. 3. Market assesment. 4. Addressed to the whole body of listed companies.

Source: The authors, based on corporate governance codes.

The dimension of CG that has acquired major importance in the countries analyzed is the Board of Directors, as an important mechanism of managerial monitoring. In Latin America, on average 35% of CG practices addressed concern the Board, although in Chile, and also in Spain, this factor is granted more importance, with respective figures of 59% and 67%. The principles are focused mainly on the functions, rights and structure of the Board. In Chile, Law No. 20382 defines the size and composition of the Board, while Brazil has developed 16 practices that define Board composition and structure. The other countries analyzed have a smaller number of practices in this respect. The Board sizes proposed in the codes of each country vary considerably, ranging from 5 to 9 in Brazil, from 5 to 7 in Chile, from 3 to 15 in Mexico, and from 5 to 15 in Spain. In Argentina, the Board size is not specified. Furthermore, within the same dimension, the independence of the Board is considered an important mechanism regarding the degree of transparency in the firm, although some countries do not suggest a specific percentage of independent directors. Chile proposes there should be at least one independent director, while for Mexico at least 25% of Board members should be independent, and Spain establishes a corresponding value of 33%. Another important aspect of the Board of Directors is the COB-CEO duality; most countries maintain that the positions should be filled by different people, although Mexico makes no specification in this respect.

The audit function has become more important, especially in Mexico (27% of practices referred to), in issues related to the functions and selection of auditors, internal control and the review of financial information. In all other countries, 13% of references to practices focus on improvements to the role of the Audit Committee, its independence and composition, and on the selection of external auditors.

In Latin America, 13% of the practices referred to concern other Committees or auxiliary bodies to the Board of Directors. In Spain, 9% of these practices describe the functions of the Nomination and Remuneration Committee, while the Latin American countries consider the composition and functions of the Nominating, Compensation and Planning and Finance Committees; Brazil has created the Fiscal Council, whose function is to monitor the actions of administrative bodies and to give its opinion on certain issues regarding shareholders.

These good governance codes have also considered aspects such as management of the company (6%) and requirements on information disclosure (6%), in the case of Argentina, Brazil and Chile. Finally, issues concerning conflicts of interest and related party transactions are incorporated into the same codes, with 12% of references in the Latin American countries, while for Spain the corresponding figure is only 2%. Brazil suggests the adoption of a code of conduct within the good governance practices.

Table 2. Comparative governance practices

Código de Gobierno	Argentina	No. Prácticas	%	Brasil	No. Prácticas	%	Chile	No. Prácticas	%	México	No. Prácticas	%	España	No. Prácticas	%	Prom. LA.
Asamblea de Accionistas	• Principios y operación de la junta (Celebración, convocatoria, orden del día, mecanismos de representación y votación, ADR's)	9	12%	• Asamblea General de Accionistas y su participación en la propiedad y el control	19	15%	•Objetivos y derechos de la Asamblea	4	15%	• Información y orden del día de la Asamblea de Accionistas y la comunicación con el Consejo de Administración.	6	12%	• Información y competencias de la junta	5	9%	14%
		9	**12%**		**19**	**15%**		**4**	**15%**		**6**	**12%**		**5**	**9%**	
Consejo de Administración	• Responsabilidades del Directorio	9	12%	• Responsabilidades del Consejo	14	11%	• Funciones, derechos y perfil del Consejo	11	41%	• Funciones y responsabilidades del Consejo	4	8%	• Consejeros y sus competencias	17	29%	35%
	• Constitución e independencia del Directorio	5	6%	• Composición y estructura del Consejo	16	13%	• Tamaño y composición (Art. 50 bis Ley 20.382)	1	4%	• Tamaño e Integración del Consejo	6	12%	• Tamaño y estructura funcional	6	10%	
	• Evaluación, capacitación y remuneración	2	3%	• Compensación	1	1%	• Remuneraciones de los consejeros y ejecutivos	1	4%	• *Vease Comité de evaluación y compensación*			•Aprobación y transparencia en las retribuciones	2	3%	
	• Funcionamiento del Directorio	4	5%	• Organización y reuniones del Consejo	4	3%				• Operación del Consejo	4	8%	• Desarrollo de sesiones, evaluación periódica, información periódica y dedicación	8	14%	
	• Comités del Directorio	1	1%	• Comités de apoyo	4	3%	• Comités de apoyo	2	7%	• Estructura (Órganos intermedios de apoyo)	2	4%	• Comisiones	4	7%	
	• Presidente del Directorio	2	3%	• El Presidente del Consejo	3	2%	• Presidente del directorio	1	4%				• Presidente del Consejo	2	3%	
		23	**30%**		**42**	**34%**		**16**	**59%**		**16**	**31%**		**39**	**67%**	
Función de Auditoría	• Responsabilidades generales y específicas del Comité de Auditoría	4	5%	• Comité de Auditoría	5	4%	• Funciones del Comité de Auditoría	1	4%	• Funciones del Comité de Auditoría	10	20%	• Función de auditoría	7	12%	13%
	• Miembros y organización	1	1%	• Perfil y Composición	2	2%				• Selección de auditores	4	8%	• Perfil del auditor	1	2%	
	• Auditoría externa	2	3%	• Independencia del auditor	7	6%	• Empresas de auditoría externa (Ley 20.382, Art. 239)	1	4%							
		7	**9%**		**14**	**11%**		**2**	**7%**		**14**	**27%**		**8**	**14%**	
Otras Comisiones	• Comité de Nominaciones y Gobierno Corporativo	4	5%	• Consejo Fiscal	12	10%							• Comisión de Nombramientos	3	5%	13%
	• Comité de Remuneraciones	4	5%							• Comité de evaluación y compensación	6	12%	• Comisión de Retribuciones	2	3%	
	• Comité de Planeación y Finanzas	4	5%							• Comité de finanzas y planeación	7	14%				
		12	**16%**		**12**	**10%**					**13**	**25%**		**5**	**9%**	
Gestión de la empresa				• Responsabilidades del CEO y	11	9%	• Funciones de la gestión	3	11%							6%
				• Compensación	1	1%										
				• Responsabilidades hacia accionistas y stakeholders	2	2%										
					14	**11%**		**3**	**11%**							
Revelación de información	• Revelación de información	10	13%	• Revelación de información	1	1%	• Revelación de información	1	4%							6%
	• Informe anual de Gobierno	1	1%	• El informe anual	4	3%										
	• La página web	1	1%													
		12	**16%**		**5**	**4%**		**1**	**4%**							
Conflictos de interés y responsabilidad social	• Conflictos de interés y resolución de controversias	7	9%	• Conflictos de interés	14	11%										12%
							• Operaciones con partes relacionadas (Art. 146 Ley 20.382)	1	4%	• Operaciones con partes relacionadas	2	4%	• Cotización de sociedades integradas en grupos	1	2%	
	• Grupos de interés y responsabilidad	7	9%	• Código de conducta	3	2%										
		14	**18%**		**17**	**14%**		**1**	**4%**		**2**	**4%**		**1**	**2%**	
		77	**100%**		**123**	**100%**		**27**	**100%**		**51**	**100%**		**58**	**100%**	

Source: The authors, based on corporate governance codes.

4. Conclusions

Although there is worldwide convergence today of CG systems towards the Anglo-Saxon model, both in legislation and in good governance codes, prompted by institutions and by companies themselves, in practice there are significant divergences in the importance granted to, and the execution of certain CG practices. The countries analyzed have adopted a hybrid model that is based, on the one hand, on laws and decrees and, on the other, on the voluntary adoption of good governance codes, aimed at improving investor protection, defining the responsibilities of the Board and of the Audit Committee, improving information transparency and avoiding conflicts of interest and corporate risk, with particular reference to listed companies.

In this paper, we analyze the four most developed markets in Latin America: Argentina, Brazil, Chile and Mexico, which account for 70% of market capitalization in Latin America; and we compare these with the case of Spain, a representative country of the European economy, characterised by its strong investment presence in Latin America. Given that most previous studies in this field have focused on Anglo-Saxon countries and Continental, the main contribution of this work was to obtain a comparative study of the regulatory framework and good governance codes in a country featuring the Continental system (Spain) and emerging countries of Latin America that present an institutional system.

The results obtained show that Argentina, Brazil and Chile have recently strengthened their legislation related to minority shareholder protection and to the market (Circular No. 3531 in Argentina, Law No. 10303 in Brazil and the Takeover Law in Chile). On the other hand, Mexico and Spain have issued regulations focused on information transparency (the Transparency Law in Spain and the CUE Circular in Mexico). With regard to good governance codes, these have been adopted by all countries, except Chile, which only imposes CG requirements in the form of the Law regulating take-over bids.

Within the practices integrated in these codes, the Board of Directors was observed to be the main pillar for monitoring and supervising management performance; in this context, the codes establish a set of practices to define the Board's functions, structure, composition and support committees, and the question of CEO independence, with larger numbers of such practices being addressed by Spain and Chile.

The audit function is another important dimension in corporate governance codes in aspects related to the role, responsibilities and composition of the Audit Committee, which must ensure and validate the information on and transparency of company operations. Mexico is the country that pays most attention to these issues. On the other hand, practices relating to the AGM, disclosure, conflicts of interest, and support Committees to the Board are of greater relevance for Argentina, Brazil and Mexico.

In the light of these findings, we consider that convergence towards a global system is a difficult task, but not impossible. However, it is important that each country should adapt its own code of good CG practices to its particular legal and institutional environment, and this aspect is addressed in the present paper.

Our limitations are referred to a limited number of countries in Latin America and Europe and do not include an empirical analysis of the incidence of legal framework evolution on CG compliance in each country. Thus, we identify the following useful lines for future research: 1) analyze the influence of the regulatory framework and of good governance codes on the compliance level of firms, measured by a corporate governance index applied to listed companies; 2) measure the incidence of compliance rates on company performance; 3) extend the comparison to other emerging countries and to other European countries.

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