

**A CONFERENCE ORGANIZED BY  
THE CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE  
(CIPE) AND  
THE RONALD COASE INSTITUTE**

**PROMOTING INSTITUTIONAL REFORMS IN  
LATIN AMERICA**

**Paola Gutierrez  
CONFECAMARAS, Colombia**

**UNIVERSITY OF SAO PAULO  
SAO PAULO, BRAZIL**

**Saturday, December 13, 2003  
DAY TWO**

[TRANSCRIPT PREPARED FROM TAPE RECORDINGS.]

**MR. ZEMKO:** Now we will continue with another experience in corporate governance strengthening, Paola Gutierrez, from Confecamaras in Colombia.

**MS. GUTIERREZ:** Am I able to speak in Spanish, or should I go on in English?

**MR. ZEMKO:** You can speak in Spanish. English is better.

**Ms. GUTIERREZ:** Okay. I'll try to talk a little bit slower.

Fifty years--that's the age of corporate governance known in the world--and we just knew the concept just two years ago, when CIPE was very accurate in saying to the business community: What are the problems that you have?

Research on the index of the World Economic Forum, what were our main hindrances in the market, and we saw two things--basically, that we didn't have boards of directors or that boards didn't work well either if they are listed companies or private companies. Second, we see huge hindrances also in accounting, which have, of course, a taxation disincentive, but also it means that the companies do not know the real financial behavior of the company, because they don't have accounting or controlling standards regarding this matter.

This is why we saw that corporate governance was a complete need for emerging economies as well as transitional economies. But I was really glad to hear Mr. Novel-Price [phonetic] yesterday exhorting us that we have to be creative in the way we sell these concepts on emerging and transitional economies.

Access to capital markets is real. Corporate governance works for that. But we have little, small capital markets. In Colombia, we only have 142 listed companies and 400 issuers among--how do you say that; I always mix up numbers--148,000 formal companies that we have registered at the chambers of commerce.

So if we just focus on private companies with our corporate governance, the impact is going to be really low on emerging economies and transitional economies. But the problems of SMEs or private companies are basically the same ones that corporate governance guides--shareholder rights, function, structure, and independence of the boards of directors, disclosure of financial and nonfinancial information, and of course, the involvement of stakeholders in the companies' behavior.

This is--do you see anything? No. Well, what was supposed to be there is the real thing that is happening in Colombia, and I believe most of you will be very familiar with this characteristic. We have a huge concentration of ownership, which is 70.45 percent, which is measured by the GINI index, as you all know. That means that we don't have democratization on our capital markets or any company; we only have five real groups if you count the real beneficiaries of all these companies.

Eighty percent of these companies are SMEs, and 68 percent of all the companies of Colombia are family-owned companies. So you get to be focused on how to sell this concept to these kinds of companies. Access to markets is a really good incentive, but it does not work as well on emerging economies. So what we are using is a way to fulfill competitiveness. It is a way to fill some requirements to have access to other markets when you export, like, for example, International Accounting Standards.

We have some other plans that the international community is starting to hear, but at the beginning, we only translate corporate governance as it was known on developed markets, and it was really not working, because when we start talking about corporate governance, people start thinking about minority shareholders' rights. And corporate governance is beyond that. Such a tool is basically common sense. But our entrepreneurial community does not have much of that. They have real initiative, they can have financial muscle, but they don't know how to control and manage themselves. They concentrate a lot of power in just one person, so the main obstacle that they will get is, for example, not to have successorial procedures when the founder passed away, for example, or ways to invite external investors. I think this is basically because of what Novel Price [phonetic] says, because we have this history of the [inaudible] that didn't think long-term regarding Latin America; they just wanted to take out richness. And this is exactly what happened with our corporations. They don't think of benefits in the long-term, just the short-term benefits, and that takes away the strategic planning, formal ways of administration, which lead us to a really preoccupied index, which in Colombia, the new companies only survive for seven years.

So if you have these companies, and they are 80 percent of your economy, you can have systematic risk, because this is the base of our economy.

So those were the main obstacles that we faced when we started talking about corporate governance.

Fortunately, we have a well-structured program done by CIPE, and the first thing we did and I think all markets should do is a starting point, where you are. We did a survey with a really serious methodology which was developed by Steven Davis [phonetic], which is the CEO of David [inaudible] at Pfizer [phonetic], and this is what we saw at the beginning--respect of rights of shareholders. Our score was one over ten. One over ten--that is huge; that is, we don't respect shareholders' rights at all.

How do you measure that? You measure that knowing how anticipated is the [inaudible] for the general assembly. What are the decisions that the shareholders can make or should rely on the boards of directors to make? Do they have access to the information? Are they really being treated equitably? How about the foreign investors? Can they vote? Is the exercise of these voting rights really expensive? Like what happens in Colombia, if you want to be in Miami and invest in a company in Colombia, you have to travel all over to exercise your voting rights. You won't have the information with enough time in advance, and you don't have the supporting material to make informed decisions. So when you arrive, you have to pay hotel, you have to pay plane--those are transactional costs. You get in the Assembly, and eventually, one of the CEOs says we are trying to make a merger, or an acquisition, and you are supposed to make a decision if it is right or wrong in five minutes, with a powerpoint presentation that looks like that, more or less, and you cannot see what would be your position if the merge comes in or the acquisition comes in.

So basically, the shareholders aren't making informed decisions.

What we see regarding boards of directors, which was a little bit better index--it was eight over ten--is that we have a really good index, because 80 percent of the companies, for example, have separated the role

of the chairman and the role of the CEO. But the tricky thing is that the chairman usually doesn't do anything. He is a very important person. He is eventually the best friend of the CEO, but he doesn't take the role seriously. So we have a problem there.

Also, we don't have committees at the boards of directors. That means that the members of the board spend just a little time in taking decisions, monitoring the management, structuring profiles for executives and nomination for executives.

We do need auditing committees, and we do need nomination and compensation committees, because those are the main problems of Colombian companies.

We also don't have independent directors, because you have a certain definition of "independent," that it is internationally understood. You cannot say, "Look, I am the best friend of the majority shareholder" or the controlling shareholder, "but I promise you I will vote impartially." That does not happen. You have to fulfill certain requirements as, for example, have not been an executive or employee of the company for the past three years, have not been an employee of the company, have not had any commercial relationships with the company, and have not been a representative of any shareholder.

Those conditions are really not fulfilled by any of the members of boards, so we really don't have independent decisions. This is basically not because the companies are behaving badly, but we have certain obstacles in our regulation that prevent us from adopting international practices.

So we are overregulated in Colombia. I saw the last panel, and they said that they have lack of regulation. No, we are overregulated, and we don't want to go there anymore, but we certainly have to change some mandatory norms or mandatory issues to at least say to the company you are allowed to implement these corporate governance practices, because the commercial code cannot allow you to have independent directors. You have to have a shareholder agreement which is very difficult to enforce in the judicial system to have independent directors.

So we are not approving a whole revolution of new legislation, but we are just taking into account incentives on the regulation and the faculty of companies to decide if they should or should not come to adopt these practices.

What we saw--the other thing was disclosure. We had five over ten. Only 50 percent of our listed companies have international accounting standards, whether IAS or U.S. GAAP, but we have a national accounting standard that is not understood for any international institutional investor. As you know, CalPERS, TIAACREF [phonetic], or any strategic [inaudible] in Europe or in the United States, will ask you for your financial statement in a language that everybody can understand. It doesn't matter if the accounting standard is better or is worse, but the investors and the alliances have to understand the accounting of our companies. The cost of transactions, of translating our national accounting regime to International Accounting Standards is huge, basically because we only have four international auditors or audit firms, which charge a huge amount of money for doing this conversion of the accounting.

So it is a matter of competitiveness. It is not just access to capital or to promote capital markets.

One of the things that we saw that really worried us was that we didn't have a national benchmark, which I recommend all of you to do if you are planning to promote corporate governance in your countries.

Why? Because the national benchmark says to the company: This is how you [inaudible] corporate governance. By that, I mean to say, we respect shareholders' right--it is very easy--but how you measure specific practices is what gives you the benchmark or the code of best practices of each country. And of course, Brazil is not only my favorite partner on corporate governance, but they have a huge and great code of best practices.

We do have it. We issued this corporate governance code in 2002. And that was one of the best ideas of CIPE that they recommended this. And we include all the agents of the market. I can assure you that you need consensus for that, because the vanity of emerging economies has no limits, so you have to make the others think that they have the initiative, that they are the important ones. That doesn't matter as long as you get them informed.

So we have the stock exchange, which I can guarantee you has great vanity; we have the National Association of Pension Funds; we have the Chambers of Commerce of Bogota and Cartagena representatives of the issuers or the listed companies; we have KPMG as a specialist on auditing; we have Spencer Stewart [phonetic] as a specialist on boards of directors; the [inaudible] Magazine, which is an economic magazine which is a real key player--the journalists are real key players--in building sound corporate governance in your countries; and we have the Academy, of course, we have the University of Andes.

So this is a bunch of really important persons in Colombia, and they all endorse the code. So this has allowed us to go to a lot of people of the listed companies--

[TAPE MESA F-4, SIDE B]

**MS. GUTIERREZ [continuing]:** --and in Colombia. But we-- and I want to rephrase this and underline this--we enacted a regulation that is an incentive regulation, not a mandatory regulation. All issuers who want the money of the pension fund need to adopt a corporate governance code and make it available to the market.

At least people have corporate governance codes. The quality of the codes are not quite good. We have, like, 100 codes of listed companies, but we have five that really work. One of them is, of course, ISA [phonetic], and I am proud that the person who enacted the controlling shareholder unilateral statement is here present, and this was actually huge progress. This underlined the difference in the Colombian market and is actually a state-owned enterprise, and it sets an example.

Confecamaras and the pension funds association helped ISA [phonetic] also to build a corporate governance code after the declaration that they did, and this helps, it really helps.

We also realize that since this has real high standards, [inaudible] or a private company could just go into bankruptcy if they adopt all of these practices, so we realize and we recognize the reality of markets, so what we did was this, which is the Corporate Governance for SMEs.

So this has lower practices, but it says to the companies in a very simple way: How do you respect shareholders rights--even if you only have three shareholders, you have rights--and so on.

We also discovered the lack of literature on corporate governance in Spanish--I believe it's the same in Portuguese--is amazing. You cannot train people if you don't have elements to train people. Not everybody speaks in English. I have been forced to speak in English right now. So we started to have literature. So, for example, we issued this magazine on corporate governance, and it talks about family businesses, state-owned enterprises, regulation of the capital market. This has the survey on Colombia companies and the corporate governance code.

So we are trying to facilitate people's access to information. We also built a website; you also have to visit my website, which is [www.\[inaudible\].com.co](http://www.[inaudible].com.co). It has been really dynamic, because you can see there all the regulations regarding corporate governance, literature on corporate governance, and all the efforts that we have done.

We are now working on the National Center on Corporate Governance. The coordination of this center is going to be in Confecamaras, and the regional chapters are going to be in the chambers of commerce. The first thing that we are going to do is professionalized boards of directors.

We also have a curriculum. Thanks to the Global Forum, CIPE, USAID, and OECD and IFC, we had a training program for Latin America to build a curriculum on directors' training. We already did that, and we are working on the evaluation system for this issue. And we have made advocacy in order to incentivize companies to incorporate independent directors and professional directors into their boards, like the insolvency procedures, regulations, and of course, the new regulation of capital markets which we hope that someday will pass the Congress. We are really working.

Two years ago, we didn't know anything. Now we have become real leaders from the private sector in Latin America. We did a context with the students--you have to involve academy at some point. We had 300 students in groups, and we made them go to certain companies of the International Trade Ministry, and they had to be the corporate governance code for these companies, and they best code won a significant amount of money. That made real good sense, and people started getting involved on corporate governance--the companies and the students.

We have journalism training. We took Joe Planter [phonetic] from the Financial Times to train journalists in Colombia. This was a videoconference through the Andean Region, with more than 100 journalists, saying what is corporate governance, how do you get information to cover corporate governance, and what should you do as a journalist.

And just--because I think I am extending too much--yes, I can see the faces--the main important message here is that you have to create ways to enforce the practices, and perhaps the Securities and Exchange Commission or the judicial system is not going to be the most efficient way to enforce these practices. You have to talk to the media, and you have to talk with banks, insurance companies, and you should create some kind of risk market for SMEs.

The main thing that we are working on in some banks--and we have ECO [phonetic] on the World Bank, which is planning to do in February a

meeting in London with commercial banks, because this is a way to manage risk. So if the banks make loans, they have to be as careful as the pension funds when they invest in equity, because they can create systematic risk. So if you lend to a company that is well-governed, your risk of not being paid is going to be lower.

So the provisions that the banks have to make to the central bank should be lower. And that transactional cost will be translated to the customer at the end of the day. So we are trying to have these incentives from the banks, and I think we are starting to have some echo [phonetic].

We brought you all the stuff. I am sure that you will have it, but we creative. Be creative in your countries. We are part of the Latin American Institute. We are the executive secretary of that institute. And we don't have counterparts in Central America besides Mexico. We would love to have Guatemala, for example. We would love to get involved with Ecuador. It's just a start. It can be done. It is difficult and frustrating sometimes. But when you have a result, it's like the most amazing thing you can have. We really do need corporate governance on emerging economies.

Thank you.

[Applause.]

**MR. ZEMKO:** Thank you.