



GOVERNANCE AROUND THE WORLD

ARGENTINA



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# Enrique Prini Estebecorena

- Lawyer and Solicitor, Faculty of Law and Social Sciences, B.A. University
- Master in Finance, Law & Finance Orientation. UCEMA
- Founding Partner and current Vice President of the Arg.AssEthics & Compliance.
- Corporate Legal Advice Area of Companies- U.N.B.A.-since 1988.
- National Ass. of Regulatory Utilities Comm. Regulatory Studies Program-The Eli Broad Graduate School of Management- Michigan State University- East Lansing-U.S.A.- 1998.
- Chairman of the Latin America Region, Member of the Management Committee and Founding Member of the Stakeholder Council of the GRI- Corporate Reporting Guidelines- Amsterdam- Netherland – since November 2001.
- Member of the Argentine Chapter of the World Business Council for Sust. Development.
- Certified Compliance Officer. IAE Graduate School of Management y Ethics and Compliance Officer ECOA. Massachusetts, U.S.A.- December 2013.
- International Certification in Ethics and Compliance (CEC) AAEC- UCEMA-IFCA – First Promotion. Buenos Aires. Argentina, 2014.
- Anti-Corruption Expert G20/B20 Arg. Japan, Saudi Arabia, Rome, Jakarta.
- Technical Representative to ISO, IRAM, ISO 37000 Series



# Corporate governance

Set of principles and rules that regulate the design, integration and operation of the governing bodies of the company / organization. How to tackle the players. the Argentine way.



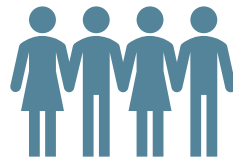
Shareholders



Board of Directors



Management

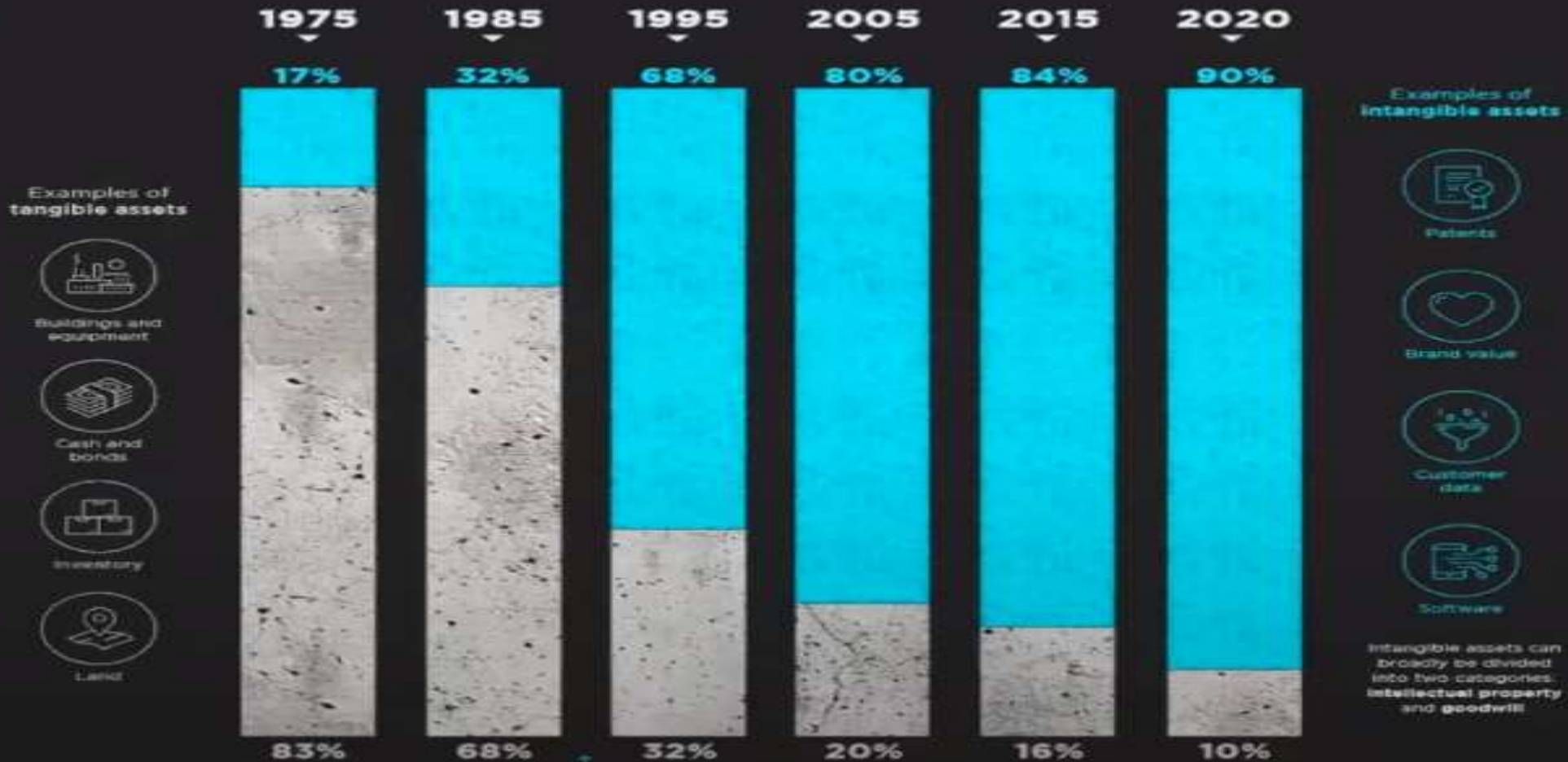


Stakeholders

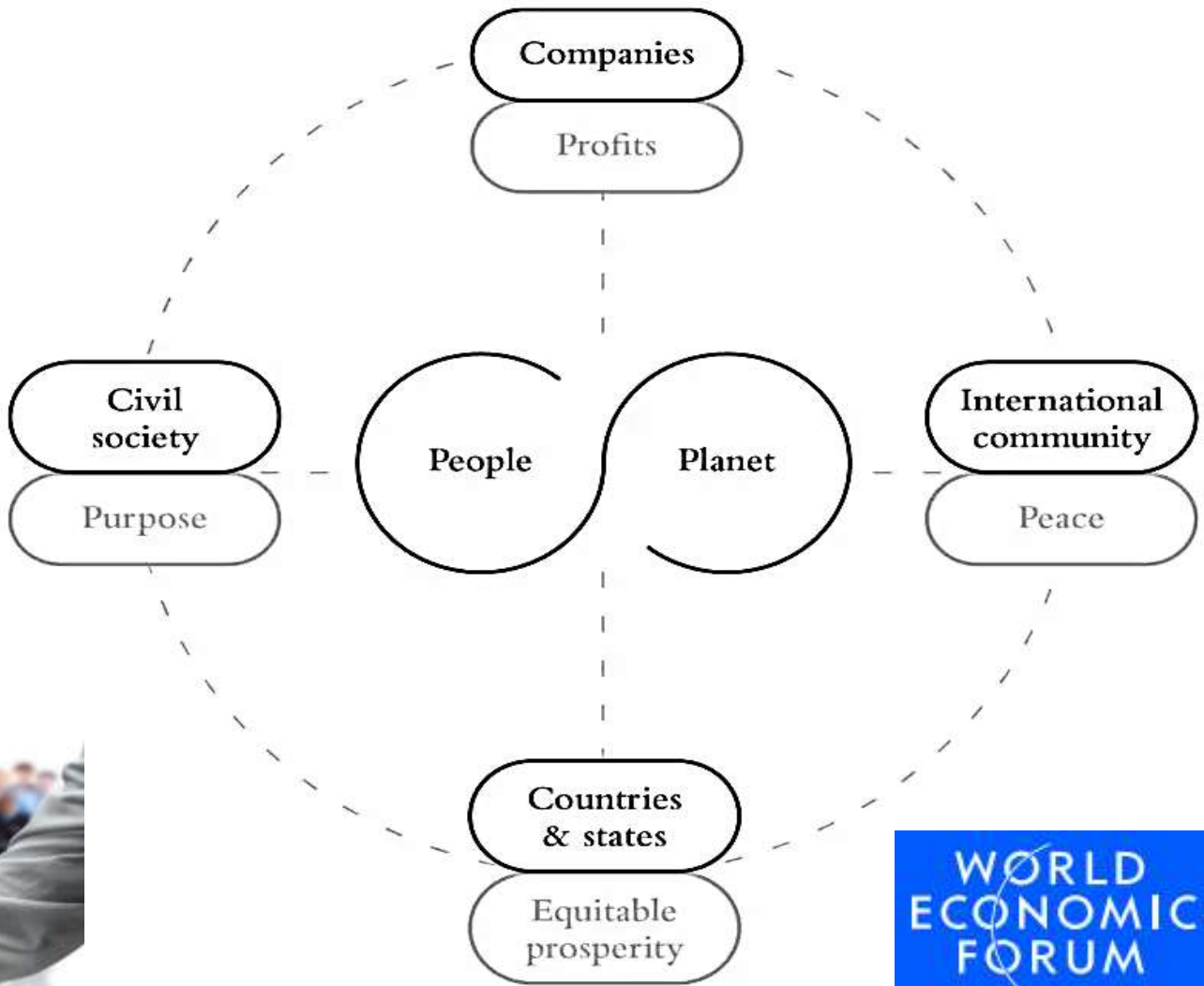
# NEW STRUCTURE – ASSETS. We have OWNERS!!!

## TANGIBLE vs INTANGIBLE ASSETS

Intangible assets currently account for 90% of the S&P 500's total assets.



# STAKEHOLDER CAPITALISM



World Economic Forum, Davos.



# CAPITALIST ECONOMIC SYSTEMS

## Stakeholders in Developing Countries

Types of Capitalism	State Capitalism	Shareholder Capitalism	Stakeholder Capitalism
Key Stakeholder	<b>Government</b>	<b>Company Shareholders</b>	<b>All stakeholders</b> matter equally
Key Characteristic	<b>Government</b> steers the economy, can intervene where necessary	The social responsibility of <b>business</b> is to increase its profits	<b>Society's</b> goal is increase the well-being of people and the planet
Implication for Companies	Business interests are <b>subsidiary</b> to state interests	<b>Short-term profit maximization</b> as highest good	Focus on <b>long-term value creation</b> and ESG measures
Advocated by		<b>Milton Friedman ('70)</b> «Shareholder Theory»	<b>Klaus Schwab ('71)</b> «Davos Manifesto» ('73)

Visualisation by Peter Vanham, World Economic Forum, based on «Stakeholder Capitalism: A Global Economy that Works for Progress, People and Planet»

# CORPORATE BODIES STRUCTURES



Good  
Governance  
Academy —

**COMMON LAW System:**  
There is a functional separation between management and control in this system. Administrative body (Board) and the **Management/CEO**.

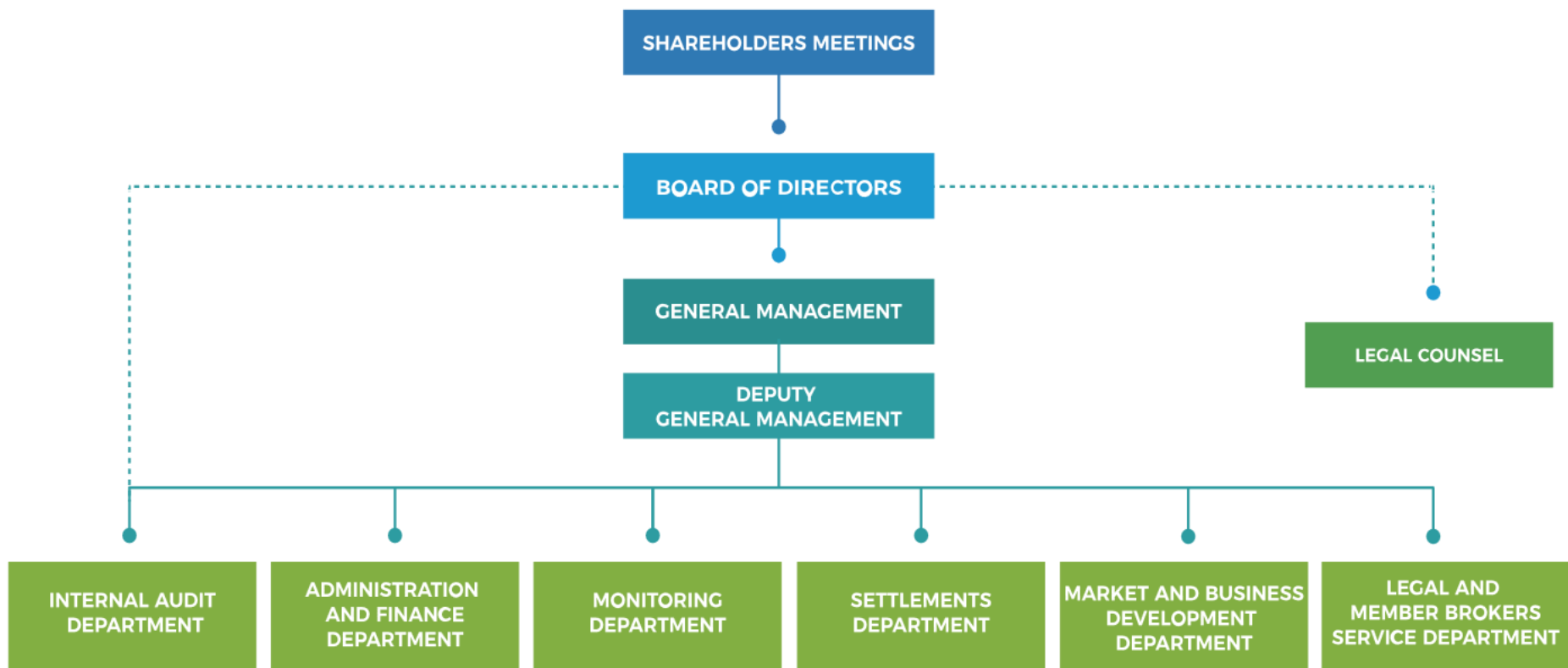
**UNIFIED System:** The management and control functions are concentrated in a single body:  
the **BOARD OF DIRECTORS**



# SOLIDARITY.

- Art. 274: "Directors are unlimited and jointly and severally liable to the company, shareholders and third parties...."
- Exception: "..... the imputation of responsibility will be made according to the individual action when functions have been assigned ....." (art. 274, second paragraph- art. 77 of law 26.831)





1. Three members of **the Stock Exchange**.
2. Six Stock **Market Brokers** or Chairmen/Vice-Chairmen of Brokerage Firms.
3. Six directors **of corporations issuers** equities, corporate bond, or trust instruments admitted to listing by the Stock Exchange.
4. Six members of the Stock Exchange **INVESTORS in** securities investments.
5. Six **deale**s in markets operating within the Stock Exchange.
6. Three **merchants**.
7. Three **industrialists**.
8. Three **financiers**.
9. Three **manufacturers**.
10. **One foreign-exchange broker** or institutional foreign-exchange agent, one auctioneer, and one insurance agent or insurance broker.
11. One **cattle breeder**, one grain grower, and one consignment agent.
12. One importer, one exporter, and one carrier or **customs clearer**.

# Objetives

- Encouragement to small investors + OCDE
- Access of SMEs to the capital market
- Prevention of abuses against small investors
- Foster a federal Capital Market
- Simplification of negotiation



# ARGENTINA: Corporate Criminal Liability

## Law N° 27.401



### OFFENSES

- BRIBERY OR “REVOLVING DOOR” AT THE NATIONAL OR INTERNATIONAL LEVEL
- BUSINESS TRANSACTIONS INCOMPATIBLE WITH PUBLIC SERVICE
- EXTORTION
- ILLICIT ENRICHMENT OF PUBLIC SERVANTS
- FALSIFICATION OF BOOKS OR RECORDS

### SUBJECTS

- OWNERS
- MANAGERS
- 3RD PARTIES

“THE COMPANY SHALL BE HELD LIABLE FOR OFFENSES COMMITTED BY ITS OWNERS, MANAGERS, OR 3RD PARTIES, DIRECTLY OR INDIRECTLY, UNDER ITS NAME OR ITS OWN INTERFERENCE, IN ITS INTEREST, OR FOR ITS BENEFIT.”



# ARGENTINA: CORPORATE CRIMINAL LIABILITY LAW N° 27.401 (III)

## COMPLIANCE PROGRAM

### BASIC ELEMENTS:

- **Code of Ethics/ Conduct**, or internal policies and procedures
- Internal regulations to prevent **improper or illegal procurement** or any other interactions with public sector
- **Regular training** for directors, managers, employees about the program

### ADDITIONAL ELEMENTS:

- PERIODIC RISK ASSESSMENT AND ACTUALIZATION OF THE PROGRAM
- “TONE AT THE TOP”
- COMPLIANCE HOTLINE, ACCESSIBLE AND PROPERLY PROMOTED
- WHISTLEBLOWER ANTI-RETALIATION PROTECTION
- INTERNAL INVESTIGATION SYSTEM
- INITIAL COMPLIANCE THIRD PARTIES SCREENING
- COMPLIANCE DUE DILIGENCE IN M&A
- CONTINUOUS MONITORING AND EVALUATION OF THE PROGRAM’S EFFECTIVENESS
- COMPLIANCE OFFICER: A PERSON IN CHARGE OF DEVELOPMENT, COORDINATION AND SUPERVISION OF THE PROGRAM
- COMPLIANCE WITH ALL OTHER REQUIREMENTS ESTABLISHED BY LAW



- **2001 Decree No. 677/01** and related resolutions of the CNV
- **2007 Res. N° 516/07 Corporate Governance Code.**
  - Companies reached exclusively: issuers of SHARES in public offer
  - Mandatory "Comply or Explain" mechanism. Validity of exercises started on 1/1/08.
- **2009 Res. No 562/09 Adoption of IFRS** for publicly offered enterprises
- **2010 Res. No 576/10 Adoption of IFRS** for publicly offered enterprises
- **2012 Res. No. 606/12** (replaces Res. N° 516/07) with effect 01/01/12 applicable to issuers of shares and Negotiable Obligations(Corporate Bonds).

**2012 Res. N° 606/12** (replaces Res. No. 516/07) **Corporate Governance Code:**

- \*Applicable to issuers of shares and Negotiable Debentures.
  - \*Transactions between related parties
  - \*Oversight of independence of external auditors
  - \*Management contracts, etc.
- 
- Endorse an effective policy of identification, measurement, management and disclosure of business risk
  - Formation of a Risk Management Committee.
  - Comprehensive risk management policies, updated according to recommendations and methodologies recognized in the field.
  - Function of Risk Officer or equivalent.
  - Communication of the results of the supervision of risk management in EEFF and Memoria.

- **2013** Capital Mkt Law N° 26.831 → Res. N° 622/13 of CNV incorporates text by Res. 606/12 as Title IV **Periodic Information Regime – Annex IV.**
- **2016** Working Group on Corporate Governance coordinated by CNV to implement **G20 guidelines in the framework of Argentina's incorporation into the OECD.**
- **2018** Administrative Decision Head of cabinet of Ministers No. 85/18: **Good Governance Guidelines for Companies with Majority State Participation in Argentina.**
- **2019** Res. Gral. N° 797/19, June 14, 2019 CNV incorporates text **"REFORM OF THE CORPORATE GOVERNANCE CODE".**
- **Comply or how/When to Comply.**

- **2019** Res. N° 788/19 of CNV, March 2019. Issuance of Social, **Green and Sustainable Marketable Securities** in Argentina" Title IV Periodic Information Regime – Annex IV. Green Bond Principles, GBP UK, International Climate Bonds Standard, CBS. CLIMATE BOND APPROVED VERIFIERS
- **2022** Res. Gral. N° 934/2022, July, 2022 CNV incorporates "Simplified and Guaranteed Regime for Issuers with **Social Impact**"





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