SAS
Simplified Stock Corporation
Vienna, Jan. 16, 2013

CONTENTS

Common Problems in Company Law in Developing Jurisdictions
The Success of the Colombian SAS
Basic features of Colombian and OAS laws
Conclusions

Common Problems in Company Law in Developing Jurisdictions

- Codification of Company Law and other Rules
- Private Law Dichotomy
- Regulatory Nature of Company Law Rules
- Multiple Member Ownership and Other Formalities

Conclusions
Common Problems in Company Law in Developing Jurisdictions

- Limited Enforceability of Shareholder Agreements
- Anullment of Company Law Contracts and Clauses
- Several Exceptions to Limited Liability
- Obsolescence of Company Registries

Excessive Incorporation Formalities
- Negative Impact of Ultra vires doctrine
- Inefficient enforcement mechanisms

“Excess incorporation formalities are a development obstacle to economic development”

“Obsolescence of company registries is another problem”

“Excessive incorporation formalities can have a functional and beneficial effect on the market”
What's the purpose of Hybrid Business Entities?

They allow to resolve four basic problems:
1. Allocation of Control
2. Risk of Loss
3. Economic Performance
4. Duration

The Rise of Hybrid Business Forms

El auge de los tipos societarios híbridos

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Statistical Analysis
Data on SAS Dec. 2008

- December: 160, 7.42%

Data SAS, 2009

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Evolution of Colombian SAS

Sociedad por Acciones Simplificada - Colombia

Francisco Reyes Villamizar

NUMBER OF SAS AS OF NOVEMBER 2012

181,742

Growth in formalización of business entities between 2009 y 2010 (25.3%)

35921

48084

ELECTRONIC INCORPORATION - BOGOTA
Today there are more than 180,000 SAS in Colombia
SAS market share is above 95%
20% of large corporations are SAS
In 2012 the average SAS inc. was above 5,000 per month

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1. Redefining the Concept of Business “Associations”:
   a. Concerning Multiple Member Ownership
   b. With Respect to the participation of Persons
   c. Regarding the Distribution of Profits and Allocation of Losses
Basic features of Colombian and OAS laws on SAS

2. Simplification of Incorporation Proceedings

3. Commercial Nature

4. Limited Liability

5. Freedom of Contract
6. Enhanced Dispute Resolution Mechanisms
   - Standards for Abuse of Right
   - Piercing the Veil
   - Fiduciary Duties of D & O

7. Unrestricted purpose clause and perpetuity of existence

8. Freedom to define internal structure

9. New Rules on Capital, Classes of Stock and Share Transfer Restrictions
10. Special rules on restructuring transactions

Basic features of Colombian and OAS laws on SAS

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Proposed legislative structure

1. Independent statute or law
2. Default provisions
3. Procedural and substantive rules
4. Adaptation to local legal environment

Final Notes

- The easy adaptation of hybrid business forms facilitates their transplant into any legal system
- The Colombian SAS shows that it is viable to undertake a material change in a legal system through comparatively simple reforms
- The impact in the economic system of such a change can be measured empirically
Final Notes

- The international expansion of these entities is a good evidence that most criticisms to hybrid forms are unsubstantiated.
- It is foreseeable that in the future HBF will play an important role in most economic systems.

Many Thanks

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