Analysis of the Features of Corporate Governance by the State: Similarity and Difference of Models

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Summary

The article formulates the key characteristics and features of country models of corporate governance.

It was revealed that all countries are characterized by a fairly high concentration of ownership, insider control; Key gaps in the implementation of corporate governance principles were found: transparency and disclosure of information, protection of shareholders' rights, gender diversity of boards of directors, implementation of recommendations on the share of independent directors; The criterion of countries' efficiency (total investments) was identified and recommendations for their improvement were developed.

Key words:

Corporate Governance, legal entities, country models, aspects.

1. Introduction

Interest in the issue of choosing an effective corporate model management has not subsided for three decades. The reasons for this were major events and trends that influenced the development of the world economy: the world wave of privatization of the last three decades; absorption wave in the 1980s; deregulation and integration of capital markets; the 1998 East Asian crisis, which brought corporate governance in emerging markets into focus; the Enron scandal and its bankruptcy raised serious doubts in protecting investors in the United States and have led to even greater reform and regulation of the financial market around the world.

An effective corporate governance system is designed to ensure successful long-term development of the economies of countries, attract investment and increase investor confidence.

The object of the research is the mechanisms of corporate management and conditions for their formation.

The subject of the research is the peculiarities of national corporate governance models.

In this regard, the purpose of the article is to identify the main features of national systems of corporate governance on the basis of a comparative analysis in order to develop recommendations for the policy of their improvement.

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2. Theoretical Consideration

There are two main types of legal entities in Brazil: limited liability companies (sociedades limitadas); and corporations (sociedades anônimas). Limited liability companies have a simpler structure and are usually used in small and medium-sized businesses, family businesses and as subsidiaries.

Corporations that are more complex are subject to more comprehensive regulation and are targeted at medium and large enterprises. Typically, corporations are the only ones entities that can be included in the list and have securities admitted to public trading. While corporate governance is relevant to all types of companies, the answers below cover corporations, with a focus on registered corporations.

The main sources of corporate governance requirements are corporate law, corporate organizational documents, securities law and stock exchange rules. Shareholder advocacy groups are also gaining increasing influence through the issuance of guidelines and rules best practice.

The main source of corporate regulation and Corporate Governance is the 1976 Federal Law on Corporations, which governs all corporations in Brazil, whether they are listed or not. In Brazil, only the Federal Congress is empowered to legislate on corporate matters and the securities market. The corporation law regulates all matters relating to the registration, organization, existence and liquidation of corporations, including the issuance of shares and other securities, shareholders' meetings, shareholder rights, corporate governance, duties and income of directors and officers, distribution. In Brazil, important listed corporations controlled by the government. In view of the escalation of conflicts between minority shareholders and the controlling shareholder (government) of such corporations due to allegations of corruption and the use of such corporations as instruments for the implementation of public policies that undermine shareholder value. At the end of 2016, the Brazilian Congress passed a law (Federal Law, 2016) setting out the corporate governance rules and standards to be followed by state-controlled or owned companies.

All corporations in Brazil are governed by regulations (estatuto social), which, in addition to defining the name of the corporation, its purpose, the location of its headquarters, the value of its capital stock and the number of shares issued, among other elements, may also establish the rules for meetings of shareholders, the composition and powers of of the board of directors, the powers of officers, the organization of other board committees, shareholder rights, and many other aspects of corporate governance to the extent that such matters are not regulated or imposed by the Corporation.

In the event of a conflict, Corporations Law generally has prevailing over the charter. The charter can be changed by the meeting of shareholders. The listed corporations are also required to maintain information disclosure and use policies. Such a policy will establish standards for disclosing actions and facts concerning the organization and procedures to ensure the confidentiality of information. Listed corporations are also encouraged to issue related party securities trading policies, setting the standards to be followed by the corporation, its controlling shareholders, directors, officers and members of oversight committees and other board committees when trading in securities issued by a corporation. Corporations, especially those listed, may also adopt additional guidelines such as codes of ethical business conduct, dividend policies, and charters of the board of directors and other committees. Government-controlled corporations and some listed companies are required to adopt a code of business conduct.

Listed corporations are also subject to Federal Law No. 6385/1976 governing the securities market and the Comissão de Valores Mobiliários (Brazilian Securities and Exchange Commission, referred to as “CVM”). They must adhere to various rules, regulations and guidelines issued by CVM, including: Decree 358/2002, which addresses the requirements for the disclosure and use of relevant corporation information; decree 361/2002 governing Bids from Brazil-listed companies, including delisting, hostile bids, and sale of control bids; decree 400/2003, which regulates the public offering of the distribution of securities, including the disclosure and control of internal information prior to the offer period.

Regulation 480/2009, which sets out the requirements for a corporation to obtain registration with CVM and therefore to list them. It also establishes annual, quarterly and periodic financial statements and other ongoing obligations, as well as imposes additional obligations on directors, officers persons and controlling shareholders.

Regulation 481/2009, which regulates petitions for provision of proxies and information to be disclosed to shareholders on issues to be adopted at shareholders' meetings.

Corporate Governance Code The Brazilian Institute of Corporate Governance (IBGC) is a non-profit organization founded in 1995 by a group of business people who believed in the effectiveness of corporate governance in order to create value for corporations and society at large.

An important IBGC event for promoting corporate ideas management in Brazil was the publication in 1999 of the first version "Brazilian Code of Best Practices" [20, p. 134]. Based on the codes that have already been published around the world, as the primary guidance, the Institute's Board of Directors has developed a code adapted to the Brazilian legal framework and business environment.

In 2001, the Code was changed, it was supplemented with recommendations for other employees of corporate governance, such as shareholders, managers, fiscal council and auditors, since from the very beginning it only affected the Board of Directors.

After some time, or rather three years in 2004, the Code was revised again. A distinctive feature of the Brazilian Corporate Governance Code is that it takes into account not only listed companies, but also unlisted companies and even partnerships.

Another distinguishing feature, including from the Anglo-Saxon codes, is that the Brazilian code focuses not only on activities but also on the relationship between owners, the Board of Directors and management, as well as the fiscal council (this is a special body that taken into account by Brazilian legislation to protect the rights of minority shareholders) and objective auditors. Likewise, this code “insists that the majority of the members of the Council. The directors were independent directors, and, in addition, he details the measures of this "independence".

All public companies are required to disclose information about compliance with the principles that are specified in the corporate governance code, but there is no formal obligation to follow them. Rio de Janeiro Stock Exchange Listing Rules (BOVESPA) play the most important role in promoting advanced corporate governance standards, developed in 2001 with its own set of criteria corporate governance, dividing admitted to listing issuers into companies of three levels [58, p. 82]. First-tier companies need to meet only a few, rather “soft” criteria of transparency and liquidity. At the second level, already “must provide reporting in accordance with IFRS or US GAAP, as well as fix in the charter of the mandatory bid procedure when changing control in such a way that they apply to preferred shares with a discount not exceeding 30%. ”It should be noted that the peculiarity of stock exchange regulation in Brazil is that it is focused mainly on identifying those elements of investor rights that are insufficiently protected under the law (mainly preferred 4 shareholders). On the other hand, the requirements of the exchange for the composition of the Board of Directors and committees, in particular, the audit committee / revision committee, are rather lenient.

Also, the BOVESPA CG criteria do not address "the problems associated with the uncertainty of the procedures of the general meeting of shareholders in the framework of Brazilian law."

Corporate social responsibility

To date, the obligation to implement CSR policy in Brazil is not legally enshrined at the federal level. Nevertheless, it is worth noting the existing draft law 1.305 / 2003, designed to oblige companies to disclose CSR reporting [4].

In general, the state is poorly involved in promoting social responsibility - the main body of work on the development of CSR in Brazil is carried out by the Ethos instituto organization. It is also worth noting the existing CSR indicators formulated by the Brazilian Institute for Socio-Economic Analysis (IBASE): their use is recommended in the preparation of non-financial reporting [7].

There are a number of shortcomings in the Brazilian legal environment. First, a high participation limit (up to 67%) in the authorized capital of preference shares without voting rights with a floating dividend is set. This can lead to a situation in which the majority of shareholders receive income that depends on the degree of activity of the companies, while practically not participating in management ("preferred shareholders have the right to choose only one member from the board of directors and a member of the audit committee"). In addition, they reserve the right to receive a dividend per share of 10% per ordinary share.

Secondly, "restrictions on absentee voting on the general meeting of shareholders and the possibility for companies to establish in the articles of association exceptions from the preemptive right to repurchase shares of additional issue ", enshrined in Brazilian law. For example, holders of preferred shares are often not subject to mandatory offer when changing control[11].

Thirdly, an obstacle in the judiciary, known for "its inefficiency, especially in relation to joint stock commercial conflicts ".

India

Legal environment

There are four main forms of business organization in India.

Companies incorporated under the Indian Companies Act 2013, which include:

1.private limited company that limits the number of shareholders and restricts the free transfer of shares;
2. a public limited company that can be listed on the Indian Stock Exchange and whose shares can be freely traded and transferable;
3.a non-profit company, commonly referred to as a company, the purpose of which is to promote art, trade, charity, education, science, social security and sports, and which intends to use its profits, if any, in the promotion of its facilities, prohibits the payment of dividends to its members;
4. as well as a one-person company that has only one shareholder. This is relatively new, introduced by the 2013 Act, and is not yet very popular.

Partnerships under the Indian Partnership Act 1932 Partnerships are very popular with small traders and businesses and require a registration agreement to be registered or filed.

Limited Liability Partnerships, under the Limited Liability Partnerships Act 2008. They were created primarily to help professional and service organizations create limited personal partnerships. responsibility to partners.

Individual entrepreneurs are people engaged in business. This is the simplest form of business organization and practically no requires registration or reporting for its formation[10].

Corporate Governance Code

In India, a lot of attention was paid to the control of business. In over the past seven to ten years, the emphasis has been on regulation through self-reporting, not licensing and authorization. The main the source of corporate governance is the Companies Act 2013 ("Companies Act"). Rules published in accordance with the Law on companies, and notices issued by the Ministry of corporate affairs ("MCA"). Consider further the requirements for corporate governance for public companies. Changes 2018-2019 made many disclosure requirements and management mandatory, and the government began to suspend company activities and disqualify company directors, who have not met management and reporting requirements. Companies listed in India are also required to Comply with the Securities and Exchange Board of India Regulations 2015 (Securities and Exchange Board of India) (Listing obligations and Disclosure Requirements) (the "SEBI Rules") and the listed with a stock exchange on which it may be listed company. There are also many additional provisions that affect management, such as whistleblowing policy, corporate social responsibility and related transactions parties. SEBI rules prohibit directors from working in more than ten company tips and generally

require that each company, listed on the exchange, met the following requirements:
- there must be at least one female director;
- at least 50% of the board of directors must consist of non-executive directors;
- The Council includes the Audit Committee, the Liaison Committee Stakeholders, the Risk Management Committee and the Related Party Transactions Policy;
- there must be two independent directors if the paid-in capital exceeds INR 100 million or if the turnover exceeds INR 1 billion and such directors are not entitled to any share options;
- independent directors must conduct at least one meeting during the financial year without the presence of independent directors and members.

SEBI has also developed rules for the issue of shares, foreign investments, buybacks and prevention of insider trading.

Structure and functioning of the Board of Directors

The company is governed by a Board of Directors appointed by the shareholders. In the Companies Law 2013, certain officials are identified as key management personnel who carry responsibility for the day-to-day operations and management of the company. These are the managing director, permanent director (any director working on a full-time basis in the company), CEO, CFO and company secretary (management specialist, licensed by the Institute of Company Secretaries of India). In addition, the board of directors is empowered to appoint specific committees for specific purposes. In public companies, certain committees are required[9].

The board of directors has broad powers to manage the company. Directors make decisions in accordance with Resolutions Board of Directors adopted by simple majority at regular Board meetings or by written "Circular Resolutions" (ie, decisions communicated to directors) that are passed outside of Board meetings, but require the unanimous written consent of all directors.

Public and private companies must have a minimum of three and two directors, respectively, and a maximum of 15 directors. The company's Articles of Association may specify a higher minimum number of directors on the Board, and the company may appoint more than 15 directors by special resolution. Directors can be only individuals appointed; corporations and associations cannot be directors.

Although there are no general requirements for directors residency, each company must appoint at least one resident director (that is, a person who has stayed in India for a total period of at least 182 days in the previous calendar year).

Listed companies and public companies with paid with a registered capital of Rs 1 billion or a turnover exceeding Rs 3 billion, at least one female director must be appointed.

The structure of the Board of Directors is mainly one-tier. Not there is a difference between a governing body and a supervisory board by the board, although the Companies Act recognizes the category of directors as independent directors. It prescribes that listed companies and non-listed public companies with a certain level of paid-up capital, turnover or debt must have prescribed number of independent directors. This helps to ensure transparency in corporate governance and protect the independence of independent directors.

For certain classes of companies, it is legally necessary to have the following committees: an audit committee; HR and Remuneration Committee; Stakeholder Liaison Committee; corporate social responsibility committee.

The first directors are usually listed in the company's articles of association at the time of incorporation. If no name is specified, subscribers to organizational documents are considered and become the first directors. The Board of Directors may from time to time appoint additional directors or appoint directors to fill any incidental vacancies arising from the death or resignation of a director, but subject to the total number indicated in the articles of the company. Additional directors appointed by the board of directors hold office only until the date of the next AGM, when shareholders can either appoint / confirm them as permanent directors, or appoint new directors.

Companies Law provides for significant fines for violation of directors' duties[1-3].

With regard to payments to directors / officers, the maximum ceiling for the payment of remuneration for the management of a public company to its manager, permanent director or manager cannot exceed 11% of the company's net profit for the financial year. However, at the general meeting, the company may, with the consent of the government, authorize the payment of remuneration in excess of 11% of the company's net profit.

The director is permitted to receive remuneration in the form of fees for attending meetings of the board or committee, or for any other purpose as determined by the board. The meeting fee payable to a director for attending board or committee meetings may be determined by the board of directors or the remuneration committee subject to certain established ceilings. The board of directors may decide on various remuneration for meetings, paid to independent and non-independent directors, except for directors on a permanent basis. Independent directors are also not entitled to any options (giving the holder the right to sell or buy a specific number of shares for a specific time period at a pre-agreed price) for shares.

Transparency, corruption index

In the past few years, the Ministry of Corporate has made all forms of corporate governance reporting electronic and introduced mandatory detailed financial reporting for all companies, whether private, public or non-profit. Almost all of these documents are publicly available in the government database and can be downloaded for a very small fee.

Each company must annually report on its audited financial results within six months of the close of the fiscal year and include a directors 'report and directors' responsibility report. These reports must include detailed information about the company, including the number of board meetings held in the financial year, transactions with related parties, the results of operations of subsidiaries and joint ventures.
enterprises, and the appointment and resignation of directors and key management personnel during the year. The Directors' Responsibility Report must state that the relevant accounting standards have been followed and that the directors have taken proper care of the accounting records. It should also provide information to various stakeholders regarding governance the company's performance in terms of how diligently and ethically they perform their fiduciary duties.

Each company must prepare and store in its own the registered office of books and other relevant books, documents and financial statements for each financial year that give a true and fair view of the state of affairs of the company and must provide reasonable freedom of access and verification for all shareholders[7].

There are many other compliance and management reports, which must be submitted, which are periodic or event-based. All event-based reports or registrations must be completed within 30, 45 or 90 days of the event.

Listed companies are also required to report various events on the stock exchanges within 24-48 hours (and sometimes even earlier) in accordance with their listing agreement or the rules of the Securities and Exchange Board of India.

India has adopted its own accounting standards, slightly different from IFRS. Gravitating towards US GAAP, Indian the standards are generally adequate economic activities of companies.

India is ranked 83rd in the Corruption Index with i = 41.

The board of directors is required to form the following committees in relation to risk management and internal control in a public company or companies that meet certain thresholds:

An audit committee of at least three directors, with a majority of independent directors. The audit committee recommends the appointment, remuneration and timing of the appointment of the company's auditors, reviews and monitors the independence and effectiveness of the auditor, reviews the auditors' financial statements and reports, and has the authority to investigate any of these matters.

Nomination and Remuneration Committee of three or more non-executive directors, of which at least half must be independent directors. This committee determines who can become directors and who can be appointed to leadership positions.

Stakeholder Committee, chaired by a non-executive director and other members as may be determined by the board of directors. This committee examines and resolves complaints from interested parties of the company, where during the financial year, there are more than 1000 shareholders, holders of debt liabilities, deposit holders and any other holders of securities[4].

A corporate social responsibility committee composed of three or more directors, of which at least one director must be an independent director, if the company has a turnover of Rs 10 billion or more or a net profit of Rs 50 million or
more. This committee formulates and recommends to the Board of Directors the Corporate Social Responsibility Policy and oversees its implementation by the company.

In addition, every company - private or public, regardless of size, capital, turnover or net profit, must establish an Internal Complaints Committee under the Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redress) Act 2013. This committee must have four members (the most senior employee as the chairperson, two others who understand women's issues, and one member of an external non-governmental organization dedicated to women). This committee has a responsibility to investigate, report and recommend action on every complaint of sexual harassment it receives, and to organize periodic lectures, workshops or seminars on gender in the company[12].

Corporate social responsibility

All companies that meet the established financial threshold are required to create a Corporate Social Responsibility (hereinafter CSR) committee to oversee CSR policies and activities. At least 2% of the average net profit of the respective companies for the three immediately preceding years should be spent on CSR activities in each fiscal year in a comply-or-explain mode. Any surplus arising from CSR activities will not form part of the company's commercial profit. The report should include an annual CSR report containing details of the CSR committee, a brief description of the CSR policy, prescribed CSR costs, amounts spent and unspent, details of the implementing agency, etc.

Conclusions

Thus, formally recently some other selected countries are taking quite a few steps to improve the quality of corporate governance and to implement the recommendations of their corporate governance codes and updated corporate governance principles management. The real effect of these actions is still difficult to assess, since not enough time has passed; in addition, a number of corporate governance issues still remain relevant. The quality of corporate governance in the thirteen largest Russian state-owned corporations, less than 50% of these companies have independent directors, and they are often only formally do not depend on the state or other key shareholder. At the same time, minority shareholders show low activity.

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