
Brazil

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI Ratings about 75 companies in Brazil as of 31 August 2012.

Leaders in the Brazilian security markets have made great efforts in recent years to distinguish Brazil from other prominent emerging markets in order to attract investment; as a result, the market has evolved rapidly and undergone significant change. A set of voluntary listing levels focused on corporate governance has clearly improved accountability and thereby enhanced Brazil's image as an investor-friendly market. Nevertheless, the high percentage of publicly held companies with controlling shareowners continues to deter some foreign investors.

Although listed companies are required to disclose their bylaws, these documents do not always explicitly address shareowner rights (e.g., majority or plurality voting in the election of board members and the right to act in concert through written communication). Many companies do not post other key governance documents (e.g., corporate governance guidelines and committee charters) on their corporate websites. Moreover, only some companies make their key governance documents, such as bylaws and articles of association, easily accessible to the public, which prevents analysts and investors from fully understanding shareowners' rights in this market.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent board members on public company boards (% independent board members)?	28%	
What percentage of companies have fully independent audit committees?	14.7%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	65.3%	
Is voting by proxy permitted?	Yes	This practice is common in Brazil.
Must shares be deposited or blocked from trading in order to vote?	No, mostly	Few companies specify that shares must be deposited.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are there share ownership limitations in this market?	No, mostly	Only a few companies in “sensitive” industries, such as aerospace and defense, have such limitations.
Are there (other) common restrictions on the rights of shareowners to vote in person or by proxy?	Somewhat	Shareowners in Brazilian companies can appoint proxies. The proxy may be a shareowner, a corporate officer (e.g., the company secretary), a lawyer, or a financial institution. However, voting at annual meetings must be done in person, by a shareowner or his proxy. Mail or electronic voting is not the norm. This makes it difficult for investors with a large number of diverse holdings to attend and vote at every meeting.
Do companies adhere to a majority voting standard in the election of board members?	Yes, mostly	
Do companies allow for cumulative voting in the election of board members?	Yes	Any shareowner holding at least 5% of shares may request that cumulative voting be adopted.
Are shareowners able to affect a company’s remuneration policy through shareowner approval (binding or non-binding) of the remuneration committee report, the proxy’s Compensation Discussion and Analysis section, or something comparable?	No	Shareowners do not affect company remuneration in this way.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or something comparable?	Yes	Under Brazilian corporate law, shareowner approval is required for the adoption of equity compensation plans.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	No, usually	Although a general right to propose a dissident resolution at an annual general meeting (AGM) is not provided for under relevant laws, dissident resolutions can be put on the agenda of an extraordinary general meeting (EGM) by the person requesting that meeting. The support of 10% of company shares is needed to place the proposal on the agenda. Therefore, although a dissident resolution is technically possible, this right is difficult to exercise in practice.

(continued)

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	Shareowners representing at least 5% of shares have the right to convene an EGM or special meeting.
What percentage of companies include golden shares in their capital structure?	2.7%	
Are shareholder rights plans (poison pills) allowed in this market?	No	Because of the high concentration of voting power in Brazilian companies, takeovers have been relatively uncommon. However, more companies without a single controlling shareowner are emerging, particularly in the Novo Mercado listing segment (discussed later). In these companies, usually a controlling shareowner group is formed through a shareowners' agreement. Some companies are also beginning to adopt provisions in their bylaws requiring that a shareowner make a mandatory tender offer if the shareowner acquires a number of shares that exceeds a certain threshold percentage—usually 20%. These “porcupine provisions,” which are sometimes mistakenly referred to as poison pills, afford minority shareowners an opportunity to tender their shares at a fair price. The threshold for the mandatory bid is lower than usual in the Brazilian market but not out of line with some markets.
If shareholder rights plans are in use, do they have to be approved by shareowners?	No	As stated above, shareholder rights plans are not currently used in Brazil. But other takeover defenses used in this market require shareowner approval.
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	

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Do companies require a supermajority vote to approve a merger?	Sometimes	This right must be determined on a company-by-company basis. It is usually contained in the bylaws. Although not commonly found, some companies may require a supermajority without disclosing it.
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	No	Only companies listed in the Novo Mercado section are (voluntarily) subject to a fair price provision.
Are class action suits commonly used in this market?	No	
Are derivative suits commonly used in this market?	No	

Current Engagement Practices and Shareowner Rights Developments

In December 2000, Brazil's primary stock exchange, Bovespa, launched a separate listing segment. The Novo Mercado (New Market) provides publicly held companies an opportunity to voluntarily comply with more stringent corporate governance rules than are required by Brazilian corporate law and the Comissão de Valores Mobiliários (CVM), Brazil's securities and exchange commission. The Bovespa has four levels of listing requirements, with increasing degrees of rigor (the key requirements are listed below): Bovespa's original listing requirements, Level 1, Level 2, and the Novo Mercado level. From its inception in 2000 to June 2008, nearly 100 listed companies joined the Novo Mercado.

Given the highly concentrated voting power found in the majority of publicly held companies in Brazil, shareowner engagement practices are somewhat limited. It is common in Brazil for the founding family of a company to enjoy a majority shareholding position; usually, this ownership structure is maintained by issuing both voting common shares and nonvoting preferred shares. Often, the controlling shareowner group owns the majority of the common shares and elects a majority of the board members.

Brazil does not require companies to maintain a certain number of independent board members, although the law stipulates that no more than one-third of board members may be executives of the company. (At least 20% of the board members of companies listed

on Level 2 or the Novo Mercado must be independent.) Minority common shareowners holding at least 15% of a company's outstanding common shares have the right to elect one representative by a majority vote.

Preferred shareowners are also entitled to elect a board member when at least 10% of shareowners are present at the meeting or 10% of preferred shares are under free float¹ (regardless of whether 10% of shareowners are present or represented at the meeting). If minority shareowners do not meet the 15% threshold for common shares or the 10% threshold for preferred shares, they may still elect a board member as a group if they can muster 10% of the *total* shares.

Cumulative voting in the election of board members is another method minority shareowners of common stock can use to gain representation on the board. Under Brazilian corporate law, any shareowner holding at least 5% of a company's outstanding common shares may request adoption of cumulative voting. A recent study of Brazilian corporate governance² found that in practice, however, cumulative voting is seldom used. Indeed, only 12% of the companies surveyed reported that cumulative voting had been used in the past five years.

The power and influence wielded by controlling shareowners has diminished somewhat in recent years. For example, companies listed on the Novo Mercado must maintain a free float of at least 25% of the shares representing their capital stock. In July 2008, in an effort to make company managers more accountable to minority shareowners, legislation was enacted to require mutual funds to vote their shares at company meetings. Opinion is divided, however, over the impact this regulation will have on companies. If mutual funds are required to vote, some corporate governance analysts argue, they may simply vote in favor of management, thereby muffling the dissident voices of more informed and active shareowners.

Shareowners in Brazilian companies can appoint proxies to cast their votes. A proxy can be a corporate officer (e.g., the company secretary), a lawyer, or a financial institution.

However, voting at annual meetings must be done in person by a shareowner or her proxy. Mail or electronic voting is not the norm. This requirement makes it difficult for investors with a large number of diverse holdings to attend and vote at every meeting.

¹Free float is the proportion of shares that are not held by large owners or insiders or shares with sales restrictions.

²Bernard S. Black, Antonio Gledson De Carvalho, and Erica Gorga, "An Overview of Brazilian Corporate Governance," University of Texas Law and Econ Research Paper No. 109, Cornell Legal Studies Research Paper No. 08-014, ECGI Finance Working Paper No. 206/2008 (July 2008).

“Tag-along” rights—sometimes referred to as “takeout” rights—are an aspect of shareowner rights unique to Brazil. Pursuant to Brazilian corporate law, a new controlling shareowner who acquires 50% of the common shares is required to offer to buy all remaining common shares at 80% of the per-share price paid for the controlling shares. Preferred shareowners, however, are not necessarily entitled to any tag-along rights; that is, minority owners of common shares and owners of preferred shares are subject to inequitable treatment when a change of control occurs. A company listed on Level 2 of the special corporate governance levels is required to grant the same rights to majority and minority owners of common shares, and owners of preferred shares are entitled to 80% of the value of any proceeds from a sale. Companies listed in the top tier, the Novo Mercado, are not permitted to issue more than one class of stock and are also required to extend the same rights to all shareowners in such circumstances (100% tag-along rights).

AMEC—the Brazilian Association of Capital Markets Investors—was created in 2006 by a group of institutional investors. The organization boasts more than 50 institutional investor members (both local and foreign), with assets under management of about BRL500 billion in Brazilian equities. Its main goals are the protection of minority shareholders’ rights and the development of Brazilian stock markets. AMEC has become an important forum for institutional investors in Brazil on matters related to corporate governance practices and shareholders’ rights. As such, it reflects recommendations issued around the world, such as those in “The Kay Review of UK Equity Markets and Long-Term Decision Making.” AMEC’s opinions have achieved recognition among investors, companies, and regulators for their content and independence.

In 2010, the Banco Central do Brasil (central bank) passed a new law requiring all financial institutions under its supervision to establish a compensation committee to advise the board of directors on compensation of officers and directors.

In 2012, the Mergers and Acquisitions Committee (CAF), modeled on the U.K. Takeover Panel, was created by Bovespa, the Association of Financial and Capital Market Entities (Anbima), the Association of Capital Markets Investors, and the Brazilian Institute of Corporate Governance (IBGC). The CAF, which launched in October 2012, is finalizing a takeover code to protect minority shareowners.

Legal and Regulatory Framework

The CVM and the central bank govern the Brazilian security markets. The central bank has the sole authority to grant licenses to brokerage firms and is responsible for regulating foreign investments and foreign exchange transactions. Enacted in 1976, the Lei das Sociedades Anonimas (Corporations Law) established distinct rules for privately held companies and publicly held corporations (Law 6.404/76), which fostered the emergence of stock exchanges.

All publicly held companies are registered with the CVM and are subject to reporting requirements. A company registered with the CVM may have its securities traded either on the Brazilian stock exchanges or in the Brazilian over-the-counter market. Under Brazilian law, a company may request that trading be suspended in anticipation of a material announcement. The stock exchange or the CVM may also suspend trading if it believes that a company has provided inadequate information with respect to a material event or has provided inadequate responses to inquiries by the CVM or the stock exchange.

The 1976 Corporations Law provides the majority of legal and procedural restrictions for public companies in Brazil. Board members are allowed to serve terms of up to three years and may be removed at any time, with or without cause. Usually, board terms are not staggered in Brazil. Pursuant to Brazilian corporate law, the adoption of equity compensation plans requires shareowner approval. Shareowners representing at least 5% of shares have the right to convene an extraordinary general meeting.

Brazilian securities regulations require publicly held companies to disclose to the CVM and Bovespa any material development related to their business. Those companies listed on the special corporate governance levels (Levels 1 and 2 and the Novo Mercado) have greater transparency requirements. Companies listed on Level 1 must disclose an annual corporate agenda and consolidated financial statements, but these can be based on local standards. Level 2 and Novo Mercado companies must prepare quarterly and annual financial statements in English and do so according to international standards, such as U.S. generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS).

An overview of the key requirements for companies listed at each tier of the special corporate governance levels of the Bovespa exchange follows:

Companies listed at Level 1 must

- issue both common and (nonvoting) preferred shares,

- disclose an annual calendar of corporate events,
- disclose quarterly statements with cash flow demonstration (statement of cash flows),
- report related-party transactions exceeding BRL200,000 or 1% of the company's net worth, and
- maintain a free float of at least 25% of the shares representing their capital stock.

Companies listed at Level 2 must

- issue both common and (nonvoting) preferred shares,
- grant tag-along rights at a minimum of 80% to preferred shareowners,
- prepare financial statements in an internationally recognized standard (IFRS or U.S. GAAP) and include full disclosure of material related-party transactions,
- maintain a minimum of 20% independent board members, and
- maintain a free float of at least 25% of the shares representing their capital stock.

Companies listed at the Novo Mercado Level must

- issue only common shares with voting rights,
- prepare financial statements in an internationally recognized standard (IFRS or U.S. GAAP), including full disclosure of material related-party transactions,
- grant 100% tag-along rights to all shareowners,
- maintain a minimum of 20% independent board members,
- maintain a free float of at least 25% of the shares representing their capital stock, and
- disclose related-party transactions involving the greater of BRL200,000 or 1% of the company's net worth.

Under Brazilian corporate law, companies are not required to have an audit committee, nominating committee, or corporate governance committee, nor are they required to adopt and disclose a code of ethics. Few Brazilian companies establish standing board committees, but when they do, the committees usually have few decision-making powers and are often composed of inside board members.

A publicly held Brazilian company must provide for an audit board (or fiscal council) in its bylaws. The purpose of this separate body, which may not be composed of board members or members of senior management, is to review and express an opinion on the company's financial statements. According to Instruction 381 of the CVM, a company must declare whether its independent auditors supplied any non-auditing services in the past year.

The IBGC, which was created in 1995, has published a "Code of Best Practices in Corporate Governance." The CVM released a similar set of recommendations. Neither code is binding, however, and the "comply or explain" principle is not observed.

Key organizations with information relevant to shareowner rights in Brazil include the following:

Comissão de Valores Mobiliários (Securities and Exchange Commission of Brazil) (www.cvm.gov.br)

São Paulo Stock Exchange (Bovespa) and Brazilian Mercantile and Futures Exchange (www.bmfbovespa.com.br/en-us/home.aspx?idioma=en-us)

Banco Central do Brasil (Central Bank of Brazil) (www.bcb.gov.br)

Instituto Brasileiro de Governança Corporativa (Brazilian Institute of Corporate Governance) (www.ibgc.org.br)

Conselho Monetário Nacional (National Monetary Council) (www.bcb.gov.br/?CMN)

Associação de Investidores no Mercado de Capitais (Association of Capital Markets Investors) (www.amecbrasil.org.br)