

The Future of Corporate Reform
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1. The governance context in Latin American and particularly in Brazil: the prevalence of controlling ownership and the opportunities and challenges resulting from this ownership model.
 - High market concentration, low free float.
 - predominance of majority ownership in Latin American companies
 - LATAM averages¹ :
 - Market capitalization/42% GDP
 - free float 22,8%
 - Largest shareholder % of voting shares 2012: 56.4%
 - Five largest shareholders 78.4%
 - Some sign of dispersion increasing thought. At the end of 2011, Brazil counted 47 companies with no controlling shareholder.
 - In Brazil SOEs accounted for approximately 25% of total market capitalization in 2012: state ownership comes with particular governance challenges
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Challenges

- the principal-agent problem **shifts** from being between **management and ownership** to an agency problem between **majority and minority owners**
- misalignment of interests: conflict of interest

Opportunities

- controlling owners are committed with the company: they do care
- they have a long term perspective

2. What are the recent trends observed
 - CVM Rule 480 of 2009 requires the disclosure of compensation practices, corporate governance practices, risk management policies, and director background in the annual reference form, the *Formulário de Referência* (Reference Form).
 - CAF: Brazilian takeover panel created as a self-regulatory body.
 - seeks to fill deficiencies in legal and regulatory frameworks by reviewing the transparency, fairness and independence of

¹ Source: OECD 2013, Trends and Factors Impacting on Latin American Equity Market Development

takeover bids and corporate reorganizations in order to protect the rights of minority shareholders

- The 2013 board elections for Brazil's state controlled oil giant Petrobras showed how concerted investor efforts can pave the way for meaningful investor participation.
 - In the 2012 Petrobras board elections, minority shareholders attempted to nominate two directors to the Petrobras board to represent independent minority shareholders. However, state-sponsored pension funds and government financing and development institutions used their voting power to defeat the proposed candidates easily and elect their own candidates with close ties to the government as minority representatives. After considerable pressure from the Brazilian association of capital market investors (AMEC) and an investigation by the CVM, Petrobras allowed the nomination of minority shareholder candidates in advance of the annual meeting for the 2013 board elections.

3. What to take care when investing in Brazilian companies.

- if the interests of majority owners and management are closely aligned so external minority investors need to ensure the rightful consideration of their interests:
 - Shareholder rights, especially for minorities,
 - the handling of related-party transactions,
 - the disclosure of ownership interests, and
 - nomination procedures for the board of directors all gain additional. The monitoring costs for investors rise significantly in this context.
 - Minority shareholder protection in LATAM ranges from the right to vote on important matters, including mergers and acquisitions and the sale of substantial assets, to participation in the election of the board and the right to participate in transfers of control. These rights are generally legally established in the region
 - in order for investors to be able to exercise these rights effectively, voting must be facilitated and information easily available for shareholders. These are two areas where significant challenges exist for investors in the region.
 - Proxy and electronic voting are two critical components.
- Investors must be careful about engaging with companies who view corporate governance as a box-ticking exercise, since strategy, controls and compliance are key in a risky region such as ours. The nomination of the board is, however, still a largely informal process, driven by the controlling shareholder.
- A formalized and independent search process, starting with the determination of the required director profile and involving an

objective and structured decision process, is still rare in the region and can, if at all, only be observed with larger or multinational companies.

- investors are generally required to have a much deeper understanding of a company's governance and ownership model in order to be able to formulate specific demands and put forward the right candidates for the specific context.