

FUNDAÇÃO GETULIO VARGAS

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**EVOLUTION OF CORPORATE GOVERNANCE OF PRIVATELY
CONTROLLED BRAZILIAN COMPANIES**

Dissertação de Mestrado apresentada à Escola de
Administração de Empresas de São Paulo da Fundação
Getulio Vargas, como requisito para a obtenção de título
de Mestre em Administração de Empresas

Campo de Conhecimento:

Finanças Corporativas

Orientador:

Prof. Dr. Antonio Gledson de Carvalho

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Resumo

Nesta dissertação, nós fornecemos um panorama da evolução das práticas de governança corporativa no Brasil ao longo do tempo com base preliminarmente em empresas privadas brasileiras que responderam o *Survey* de Governança Corporativa no Brasil realizado em 2005 e 2007. Este estudo aborda questões relacionadas com o número de conselheiros independentes e não independentes, conselho de administração, controle das companhias, comitês de auditoria e conselho fiscal. Direitos dos acionistas, acordos de acionistas, mecanismos de transparência e de transações com conflito de interesse, também serão discutidos neste trabalho. Constatamos que a evolução das práticas de governança corporativa tem sido mais significativa em algumas áreas. Todavia, outros ainda são menos adotados pelas empresas brasileiras. Independência do conselho é uma área relativamente fraca: apenas 13% das empresas em 2007, contra 11% em 2005 tem 50% ou mais conselheiros independentes. O número de empresas que fornece direitos de proteção aos acionistas minoritários em uma venda do controle, além do mínimo exigido pela lei brasileira, aumentou. Há um aumento da formalidade dos processos do conselho, como sistema de avaliação de CEO, plano de sucessão de CEO, sistema para avaliar outros diretores e o envio de materiais antes da reunião. Além disso, divulgações de informações financeiras melhoram consideravelmente durante este período.

Palavras-Chave: Brasil, governança corporativa, conselho de administração, acionistas minoritários

ABSTRACT

In this dissertation we provide an overview of the evolution of corporate governance practices in Brazil over time based primarily in Brazilian private firms which responded to the 2005 and 2007 Brazil Corporate Governance (CG) Survey. This study address issues related to the number of independent directors and non-independent, board structure and control of companies, audit committees and fiscal board. Shareholder rights, shareholder agreements, mechanisms for transparency, and transactions with conflict of interest will also be discussed in this work. We found that the evolution of corporate governance practices has been more significant in some areas. However, others are still less adopted by Brazilian companies. Board independence is an area relatively weak: only 13% of companies in 2007, versus 11% in 2005 have 50% or more of independent directors. The number of the companies that provide takeout rights to minority shareholders on a sale of control beyond the minimum required by Brazilian law has increased. There is an increase in formality of board processes, like system to evaluate CEO, CEO succession plan, system to evaluate other officers and materials before meeting. Moreover, financial disclosure has improved considerably during this period.

Keywords: Brazil, corporate governance, boards of directors, minority shareholders

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1. Introduction

There are few detailed governance-related studies, and this may be, in general, due the scarcity of public data on this theme. This dissertation aims to show the evolution of the main aspects related to corporate governance practices in privately controlled Brazilian companies. The contribution of this study to the existing literature is a detailed analysis of the evolution of corporate governance practices over time in Brazil. Thus, this study will address issues related to the number of independent and non-independent directors, board structure and control of companies, audit committees and fiscal boards. Shareholder rights, shareholders' agreements, mechanisms for transparency and transactions with conflict of interest will also be discussed in this work.

The development of Brazilian capital market in recent years has aspects that go beyond the IPO boom that recently occurred in the Brazilian market. Also, there is a trend towards good practices of corporate governance. Furthermore, some Brazilian companies have accessed the external capital market by listing their shares in foreign stock exchanges, especially the New York Stock Exchange, in the form of American Depositary Receipts (ADR), in order to capitalize through the release of securities abroad. Several rules imposed by the Securities and Exchange Commission (SEC) must be followed by firms that list their shares in stock exchanges in the U.S. Some of these rules are related to accounting procedures, transparency and disclosure – the so-called "principles of corporate governance."

Some governance practices are required by the Brazilian legislation, one example, is a recently law (law 11638/07), which is close to the IFRS International Financial Reporting Standard and that public companies must adopt up to 2010¹. Thus, some companies have voluntarily adopted the different levels of corporate governance in BMF&FBovespa. The result of all these changes is that some aspects of governance had a significant evolution in recent years. However, other aspects are still less adopted by Brazilian companies. E.g., board independence is a relatively weak area: although the number of companies that have no independent directors were reduced during this

¹ Law 11.638 of 28 December 2007, amends and repeals provisions of Law No. 6404 of 15 December 1976, and Act No 6385 of 7 December 1976, and extends to companies large changes to the development and dissemination of financial statements.

period, only 13% of companies in 2007, versus 11% in 2005 have 50%. There is a decrease in the average of the non-independent directors on the board that may be related to the increase of representation of minorities on boards. The number of companies that provide takeout rights to minority shareholders on a sale of control beyond the minimum required by Brazilian law has increased. This increase is not only a result of the entry of new firms in Level 2 or Novo Mercado, but also an improved governance practices adopted by these companies. There is a trend toward more firms have audit committees and fiscal board, but there is an apparent trend toward more firms have both. There is an increase in formality of board processes, like system to evaluate CEO, CEO succession plan, system to evaluate other officers and materials before meeting. Moreover, financial disclosure has improved considerably during this period.

We will work with two surveys to compare the evolution of corporate governance practices in Brazil. The first survey was held in 2005 with 88 privately controlled firms, while the second was held in 2007 with 121 companies privately controlled firms. The number of companies that responded to both questionnaires was 36. We sent a questionnaire to companies with several issues that form the basis for this study. During this period, some of the changes in governance practices are in part related with the change of some companies to BM&FBovespa segments. In addition, many companies that went public in the period from 2005 to 2007 entered in the Level 2, or Novo Mercado of BM&FBovespa. These different levels of governance will be discussed in further details in the next sections of this dissertation. Table 2 shows that, of the 88 companies participating in the 2005 survey, only two (2%) were listed in the Novo Mercado, and in 2007, from 121 participants, forty-five (37%) were in this segment.

The remainder of this dissertation proceeds as follows: section 2 discusses the related literature on corporate governance in emerging markets and Brazil. Section 3 describes our survey and data set. Section 4 discusses the overall size of the Brazilian public market, and the cross-listing. The remainder of this dissertation concentrates on Brazilian private firms and covers boards of directors (Section 5); board and committee procedures (Section 6); audit committee, fiscal board and independent auditor (Section 7); shareholder meetings and shareholder rights (Section 8); conflict of interest transactions (Section 9); financial disclosure (Section 10); control and shareholder

agreements (Section 11); and compensation (Section 12). We end with the conclusion in section 13.

2. Literature Review

Some general governance studies have been performed by Patel Balic and Bwaka (2002) that discuss issues related to the transparency of companies and Bruno and Claessens (2007) which give a general overview of corporate governance. There are some studies with more specific aspects of governance, such as Zheka (2006) in Ukraine; Drobetz, Schillhofer and Zimmerman (2004) in Germany; Black, Love and Rachinsky (2006) in Russia. Also, Choi, Park and Yoo (2007) provided details on the structure of the boards of Korean companies during 1999-2002. Balasubramanian, Black and Khanna (2009) studied more specific and detailed measures of governance in India. Some studies that have focused on indicators of legal systems found that laws protecting minority shareholders significantly differ from country to country due to different legal origins (LA PORTA et al., 1998). There are several approaches to corporate governance. In the U.S., the corporate governance provides legal protection to investors against expropriation of wealth by managers, while in Japan and Germany it tends to concentrate power in the hands of large investors who may exercise good corporate governance practices (VISHNY; SHLEIFER, 1997).

There are few studies of corporate governance aspects on Brazilian companies. Leal (2007) conducted an extensive survey on corporate governance in Brazil. Da Silveira, Leal, Carvalhal-da-Silva and Barros (2008) conducted a study showing the evolution of corporate governance practices in Brazilian firms in the period from 1998 to 2004. These studies found that, although governance practices in Brazil have improved during this period, in general, it is still low when compared with developed countries like the U.S. Valadares and Leal (2000) and Leal, Carvalhal-da-Silva and Valadares (2000) showed a high degree of concentration of voting power of Brazilian companies. In Brazil, listed companies can voluntarily adopt corporate governance mechanisms, without information disclosure requirements, or may decide to adopt a special segment of corporate governance of BM&FBovespa, which is perceived as a seal of quality. De Carvalho (2003) showed that migration to different levels of governance of BM&FBovespa can be a good choice, since their results showed that migration has a

positive impact on abnormal returns on trading volume and liquidity of the shares. Dutra and Saito (2002) studied the composition of the 142 most actively traded companies in Brazil and found little use of cumulative voting. Da Silveira, Barros and Famá (2004) studied the association between the value of the firm and board size, composition and separation of CEO and chairman. They found a positive association of the separation between the CEO and chairman with the Tobin's q. De Carvalho and Pennacchi (2009) found evidence that companies that open capital or move to the highest level of governance of BM&FBovespa, have lower underpricing, positive reaction to the stock price after migration, and high liquidity after migration.

3. Data and Descriptive Statistics

This study is based mainly on surveys conducted in 2005 and 2007 sent to all companies listed on BM&FBovespa. Table 1 shows an overview of the companies which participated in surveys conducted in 2005 and 2007. This table shows an increase of the responding companies. In 2005, 116 companies participated in the survey, including 88 Brazilian private firms, 17 from government-controlled firms and 11 from subsidiaries of foreign companies. In 2007, the number of respondents to the questionnaire increased to 172, and among these, 121 companies were privately held national, 21 were from state control and 30 were foreign. Because there are significant differences between the three groups of companies (private, state control and foreign), this work will focus on the analysis of companies in Brazilian private control. Both the 88 and the 121 Brazilian private companies that participated in this survey represent well the Brazilian financial market, as they respond to 28% and 42% respectively of all companies listed on BM&FBovespa. Using the market capitalization of firms with active trading (traded at least 26 days during the year), this sample becomes more significant, with 63% and 65% respectively of the Brazilian stock market. Some companies did not answer to all questions, and these cases will be mentioned during the study.

Additional sources were used to complement this study. The list of companies traded on the BM&FBovespa. Financial data from the database of Economática and information on companies listed on foreign exchanges are provided by Bank of New York, Comissão de Valores Mobiliários (CVM), Deustsch Bank, and JP Morgan.

Table 1 - 2007 - all firms (172 firms; 121 private firms)**Sample Characteristics: All Firms and Responding Firms**

Total number of firms and market capitalization for (i) all publicly traded Brazilian firms, (ii) firms with active trading (trading on at least 26 days during 2007), and (iii) firms which responded to the 2007 Brazil CG Survey, separated into firms with Brazilian private control, state control, and foreign control. Data is as of December 2007. Exchange rate as of December 31, 2007 is R\$1.77 per US\$1.

Number of firms	All Public Firms	Responding Firms	Percent	Actively Traded Firms	Responding Firms	Percent
All Firms	392	172	44%	289	140	48%
private	290	121	42%	209	94	45%
state	35	21	60%	26	17	65%
foreign	67	30	45%	54	28	52%
Market Cap. (R\$ billions)						
All Firms	2239	1520	68%	2115	1467	69%
private	1337	842	63%	1221	793	65%
state	318	135	42%	316	134	42%
foreign	584	543	93%	578	540	93%

Table 1 - 2005 - all firms (116 firms; 88 private firms)**Sample Characteristics: All Firms and Responding Firms**

Total number of firms and market capitalization for (i) all publicly traded Brazilian firms, (ii) firms with active trading (trading on at least 26 days during 2004), and (iii) firms which responded to the 2005 Brazil CG Survey, separated into firms with Brazilian private control, state control, and foreign control. Data is as of January 2005. Exchange rate is R\$2.62 per US\$1.

Number of firms	All Public Firms	Responding Firms	Percent	Actively Traded Firms	Responding Firms	Percent
All Firms	358	116	32%	229	87	38%
private	313	88	28%	194	66	34%
state	24	17	71%	19	14	74%
foreign	21	11	52%	16	7	44%
Market Cap. (R\$ billions)						
All Firms	871	441	51%	833	433	52%
private	557	337	61%	523	332	63%
state	167	51	31%	165	50	30%
foreign	147	54	36%	144	51	35%

Table 1 - 2007 overlapping private firms
Sample Characteristics: All Firms and Responding Firms

Total number of firms and market capitalization for (i) all publicly traded Brazilian firms, (ii) firms with active trading (trading on at least 26 days during 2007), and (iii) firms which responded to the 2005 and 2007 Brazil GC Survey, separated into firms with Brazilian private control, state control, and foreign control. Data is as of December 2007. Exchange rate as of December 31, 2007 is R\$1.77 per US\$1. These informations are referred to the 2007 Brazil GC Survey.

Number of firms	All Public Firms	Responding Firms	Percent	Actively Traded Firms	Responding Firms	Percent
All Firms	392	36	9%	289	29	10%
private	290	36	12%	209	29	14%
Market Cap. (R\$ billions)						
All Firms	2239	370	15%	2115	361	15%
private	1337	370	28%	1221	361	30%

Table 1 - 2005 - overlapping private firms
Sample Characteristics: All Firms and Responding Firms

Total number of firms and market capitalization for (i) all publicly traded Brazilian firms, (ii) firms with active trading (trading on at least 26 days during 2004), and (iii) firms which responded to the 2005 and 2007 Brazil GC Survey, separated into firms with Brazilian private control, state control, and foreign control. Data is as of January 2005. Exchange rate is R\$2.62 per US\$1. These informations are referred to the 2005 Brazil GC Survey.

Number of firms	All Public Firms	Responding Firms	Percent	Actively Traded Firms	Responding Firms	Percent
All Firms	358	36	10%	229	24	10%
private	313	36	12%	194	24	12%
Market Cap. (R\$ billions)						
All Firms	871	124	14%	833	121	15%
private	557	124	22%	523	121	23%

Table 2 shows the respondents by quartile and volume of capitalization. As can be seen in 2007 companies with lower trading volume, located in quartiles 3 and 4, had an improvement in participation in relation to the highest. In 2005, 62% of companies in the survey were in the first quartile with the highest volume of trading. This number increased to 66% on 2007. In 2005, only 12% of the companies listed in the last quarter participated in the survey, whether in 2007 this number increased to 29%. Of the 36 companies that participated in both surveys, 23% of companies with higher trading volume were in the survey in 2005, in 2007 that number increased to 31%. In the other quartiles there were no significant changes. In other words, we had better response for smaller firms as can be seen in the quartiles 2 and 4, and only slight improvement for

largest firms. These changes may produce some results with bias due to number of small firms in the survey. We will discuss better these results in other sections.

Table 2 - 2007 - all private firms
Sample Characteristics: Brazilian Private Firms, by Size Quartile

Total number of firms and market capitalization for Brazilian private firms which responded and did not respond to the 2007 Brazil CG Survey, divided into quartiles based on market capitalization. Market capitalization is in R\$ millions. Data is as of December 2007. Exchange rate is R\$1.77 per US\$1

Quartile	Size Range in millions of reais R\$	Number of firms			Market capitalization			
		Total	responding firms	responding as % of quartile	All firms in quartile	% of total	responding firms	responding as % of quartile
1	5,874 to 429,922	72	35	49%	1.156	86%	764	66%
2	1,483 to 5,874	72	33	46%	121	9%	57	47%
3	299 to 1,482	73	29	40%	36	3%	14	39%
4	0 to 298	73	24	33%	24	2%	7	29%
Total		290	121	42%	1.337	100%	842	63%

Table 2 - 2005 - all private firms
Sample Characteristics: Brazilian Private Firms, by Size Quartile

Total number of firms and market capitalization for Brazilian private firms which responded and did not respond to the 2005 and 2007 Brazil CG Survey, divided into quartiles based on market capitalization. Market capitalization is in R\$ millions. Data is as of January 2005. Exchange rate is R\$2.62 per US\$1.

Quartile	Size Range in millions of reais R\$	Number of firms			Market capitalization			
		Total	responding firms	responding as % of quartile	All firms in quartile	% of total	responding firms	responding as % of quartile
1	1,061 to 86,739	78	32	41%	515,919	93%	322,734	62%
2	172 to 991	78	24	31%	35,151	6%	12,478	36%
3	20 to 158	78	21	27%	5,592	1%	1,666	30%
4	0 to 19	79	11	14%	465	0,1%	54	12%
Total		313	88	28,10%	557,128	100%	336.933	60,50%

Table 2 – 2007 - overlapping private firms**Sample Characteristics: Brazilian Private Firms, by Size Quartile**

Total number of firms and market capitalization for Brazilian private firms which responded and did not respond to the 2005 and 2007 Brazil CG Survey, divided into quartiles based on market capitalization. Market capitalization is in R\$ millions. Data is as of December 2007. Exchange rate is R\$1.77 per US\$1. These informations are referred to the 2007 Brazil GC Survey.

Quartile	Size Range in millions of reais R\$	Number of firms			Market capitalization			
		Total	responding firms	responding as % of quartile	All firms in quartile	% of total	responding firms	responding as % of quartile
1	5,874 to 429,922	72	15	21%	1,156	86%	359	31%
2	1,483 to 5,874	72	3	4%	121	9%	5	4%
3	299 to 1,482	73	10	14%	36	3%	4	11%
4	0 to 298	73	8	11%	24	2%	2	8%
Total		290	36	12%	1,337	100%	370	28%

Table 2 - 2005 - overlapping private firms**Sample Characteristics: Brazilian Private Firms, by Size Quartile**

Total number of firms and market capitalization for Brazilian private firms which responded and did not respond to the 2005 and 2007 Brazil CG Survey, divided into quartiles based on market capitalization. Market capitalization is in R\$ millions. Data is as of January 2005. Exchange rate is R\$2.62 per US\$1. These informations are referred to the 2005 Brazil GC Survey.

Quartile	Size Range in millions of reais R\$	Number of firms			Market capitalization			
		Total	responding firms	responding as % of quartile	All firms in quartile	% of total	responding firms	responding as % of quartile
1	1,061 to 86,739	78	16	21%	515,919	93%	120,334	23%
2	172 to 991	78	4	5%	35,151	6%	2,818	8%
3	20 to 158	78	7	9%	5,592	0%	481	9%
4	0 to 19	79	9	11%	465	0%	11	2%
Total		313	36	12%	557,128	100%	123,644	22%

4. Levels list of BM&FBovespa and Cross-Listing

The listing of Brazilian companies in international markets, mainly in the form of American Depositary Receipts, has increased significantly in recent years. Pagano et al. (2002) cite the reasons that lead companies to list internationally and the empirical implications of this decision. One of the reasons that cause companies to take this decision is the commitment to transparency and governance standards. This is especially relevant to companies located in countries with lower regulatory standards, as is the case in Brazil. In 2000, the BM&FBovespa developed three listing segments of

corporate governance for companies that could list voluntarily. Its main features are briefly listed below.

²Level 1 aims to improve the transparency of companies requiring a free-float of at least 25% of the capital. The company needs to adopt mechanisms that promote the dispersion of capital, provide quarterly reports with financial statements with an accompanying external audit. It is necessary to make disclosure of monthly transactions by controlling shareholders, and disseminate an annual calendar of corporate events. At Level 2, companies must adopt corporate governance practices that promote additional protection to minority shareholders by establishing a two-year term to the board, which must be at least 5 members, of whom at least 20% shall be independent. Disclosure of annual balance sheet shall be made in accordance with USGAAP or IFRS standards. If the shareholders of the control block want to sell their participation, the preferred shares should have at least 80% of price of the control block (tag along). It is given the right to vote for preferred shares granted in some circumstances: transformation, merger, consolidation or spin-off of the company, approval of contracts between the company and other companies within the group and obligation of public offer by the economic value, in addition, it established an arbitrage panel to resolve corporate dispute. In the Novo Mercado only common shares can be issued. In other levels, companies need to use mechanisms that favor capital dispersion, while maintaining a free-float of at least 25% of the capital. The other requirements are similar to those placed on Level 2.

Table 3 provides an overview about listing on foreign exchanges and different BM&FBovespa Levels in the years 2005 and 2007. In 2005 only two of 88 Brazilian private control respondents were listed on the Novo Mercado. In 2007 45 of 121 companies belonged to the Novo Mercado. Addition, 78 of the 110 IPOs that occurred between 2004 and 2008 were in Novo Mercado. The National Association of Investment Banking and Fixed Income (ANBIMA) allows its members to only participate in IPOs of companies that are listed at least Level 1 of corporate governance, except in those IPOs of companies that have shares listed abroad³. In 2005 only 14% of the 36 companies were listed on Level 2 or Novo Mercado, in 2007 46% of companies

² The full name on BM&FBovespa for Level 1 (2) is Differentiated Level of Corporate Governance 1 (2)

³ The ANBIMA regulation is available at www.anbima.com.br.

were listed on these levels⁴. As can be seen there is a trend of migration to the Novo Mercado and Level 2 over time.

**Table 3 - 2007 – 121 Brazilian private companies
Listing on Foreign Exchanges and Different Bovespa Levels**

Firms which have common shares, non-voting preferred shares, or both cross-listed on a foreign stock exchange. Sample is 121 Brazilian private firms which responded to the 2007 Brazil CG Survey. Three firms are listed both on the NYSE and on a non-U.S. exchange.

Panel A. FOREIGN CROSS-LISTING					
Type of shares	Common	Preferred	Both	Neither	Total
Sample firms					
US cross-listed firms	5	16	2	98	121
(% of firms in sample)	4%	13%	2%	81%	100%
NYSE	5	13	2	–	20
Level 3	3	8	1	–	12
Level 2	0	6	0	–	6
Level 1 (OTC)	1	1	0	–	2
Level 4 (Portal)	1	1	1	–	3
non-U.S. listing	0	1	1	–	2
All private firms (at year-end 2007)	5	18	2	267	290
% of all private firms	2%	6%	0%	92%	100%
All Brazilian firms	12	18	3	359	392
% of all Brazilian firms	3%	5%	1%	92%	100%
Panel B. BOVESPA LISTING LEVEL					
	Regular	Level 1	Level 2	Novo Mercado	Total
Sample firms					
Bovespa level	41	24	11	45	121
% of sample	34%	20%	9%	37%	100%
All private firms (at year-end 2007) Bovespa level	159	36	17	78	290
% of all private firms	55%	12%	6%	27%	100%

⁴ As Table 3 indicates, some Brazilian firms have cross-listed common shares, some have cross-listed preferred shares, and some have cross-listed both types of shares. If a firm has shares cross-listed on more than one level, we report the highest listing level, based on regulatory stringency (level 3 > level 2 > level 1 > level 4).

Table 3 - 2005 – 88 Brazilian private companies
Listing on Foreign Exchanges and Different Bovespa Levels

Firms which have common shares, non-voting preferred shares, or both cross-listed on a foreign stock exchange. Sample is 88 Brazilian private firms which responded to the 2005 Brazil CG Survey. Three firms are listed both on the NYSE and on a non-U.S. exchange.

Panel A. FOREIGN CROSS-LISTING					
Type of shares	Common	Preferred	Both	Neither	Total
Sample firms					
US cross-listed firms	1	17	2	68	88
(% of firms in sample)	1%	18%	2%	79%	100%
NYSE	1	15	2	–	18
Level 3	0	5	2	–	7
Level 2	1	10	0	–	11
Level 1 (OTC)	0	1	0	–	1
Level 4 (Portal)	0	0	0	–	0
non-U.S. listing	0	6	1	–	7
All private firms (at year-end 2007)	4	18	3	288	313
% of all private firms	1%	6%	1%	92%	100%
All Brazilian firms	6	25	4	323	358
% of all Brazilian firms	2%	7%	1%	90%	100%
Panel B. BOVESPA LISTING LEVEL					
	Regular	Level 1	Level 2	Novo Mercado	Total
Sample firms					
Bovespa level	66	17	3	2	88
% of sample	75%	20%	3%	2%	100%
All private firms (at year-end 2007) Bovespa level	260	30	8	15	313
% of all private firms	82%	10%	3%	5%	100%

Table 3 - 2007 - 36 overlap private firms
Listing on Foreign Exchanges and Different Bovespa Levels

Firms which have common shares, non-voting preferred shares, or both cross-listed on a foreign stock exchange. Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2007 Brazil GC Survey.

Panel A. FOREIGN CROSS-LISTING					
Type of shares	Common	Preferred	Both	Neither	Total
Sample firms					
US cross-listed firms	1	10	0	25	36
(% of firms in sample)	3%	28%	0%	69%	100%
NYSE	1	9	0	–	10
Level 3	1	6	0	–	7
Level 2	0	4	0	–	4
Level 1 (OTC)	0	0	0	–	0
Level 4 (Portal)	0	0	0	–	0
non-U.S. listing	0	5	0	–	5
All private firms (at year-end 2007)	5	12	1	272	290
% of all private firms	2%	4%	0%	94%	100%
All Brazilian firms	12	18	3	359	392
% of all Brazilian firms	3%	5%	1%	91%	100%
Panel B. BOVESPA LISTING LEVEL					
	Regular	Level 1	Level 2	Novo Mercado	Total
Sample firms					
Bovespa level	13	12	3	8	36
% of sample	36%	33%	8%	22%	100%
All private firms (at year-end 2007) Bovespa level	159	36	17	78	290
% of all private firms	55%	12%	6%	27%	100%

**Table 3 - 2005 - 36 overlap private firms
Listing on Foreign Exchanges and Different Bovespa Levels**

Firms which have common shares, non-voting preferred shares, or both cross-listed on a foreign stock exchange. Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2005 Brazil GC Survey.

Panel A. FOREIGN CROSS-LISTING					
Type of shares	Common	Preferred	Both	Neither	Total
Sample firms					
US cross-listed firms	1	10	0	25	36
(% of firms in sample)	3%	28%	0%	69%	100%
NYSE	1	9	0	–	10
Level 3	1	6	0	–	7
Level 2	0	4	0	–	4
Level 1 (OTC)	0	0	0	–	0
Level 4 (Portal)	0	0	0	–	0
non-U.S. listing	0	5	0	–	5
All private firms (at year-end 2007)	4	16	1	292	313
% of all private firms	1%	5%	0%	93%	100%
All Brazilian firms	6	25	4	323	358
% of all Brazilian firms	2%	7%	1%	90%	100%
Panel B. BOVESPA LISTING LEVEL					
	Regular	Level 1	Level 2	Novo Mercado	Total
Sample firms					
Bovespa level	19	12	3	2	36
% of sample	53%	33%	8%	6%	100%
All private firms (at year-end 2007) Bovespa level	260	30	8	15	313
% of all private firms	83%	10%	3%	5%	100%

Table 4 shows the evolution of cross-listing and governance levels of the BM&FBovespa over time. This table presents all publicly traded Brazilian firms that are listed at different levels of BM&FBovespa from 2000 to 2009. In addition, Table 4 also indicates the number of Brazilian companies that cross-listed in the U.S. from 2005 to 2009. Cross-listing in the U.S. has increased due to factors such as the protection of minority shareholders. To Stulz (1999) and Coffee (1999,2002), cross-listing improves the protection of investors and consequently reduces the agency costs. The ADR programs, according to Miller (1999), bring the benefits of increased liquidity in emerging markets, transparency and ease of trading common to the American market. When international investors issue ADRs, the agents of the capital markets are under pressure to improve standards of transparency and legal aspect of investor protection. Due to this characteristic, many companies have sought to benefit from making the issue of ADRs in the U.S. market. Therefore, it is possible to note that cross-listing has increased significantly over the years. Although there is this growing trend, since 2002, the number of companies that decided to cross-list decreased, which can be explained

by signals on corporate governance that is offered to companies that are listed at Level 2 or Novo Mercado. This could reduce the value of the additional signal provided by cross-listing on level 2 or 3⁵.

Table 4
Listing Decisions over Time: Cross-listing and Bovespa Level

Number of Brazilian public companies which are cross-listed outside Brazil (principally in the U.S.) and listed on the indicated Bovespa levels. Some firms with a regular Bovespa listing have public debt but not public equity. Data is provided by Bovespa, and is at year-end except for 2009.

Foreign cross-listing				Bovespa listing			Total
Year	NYSE or NASDAQ	U.S. (total cross-listings)	Regular	Level 1	Level 2	Novo Mercado	
1995	2	23	577				577
1996	3	35	589				589
1997	7	39	595	these levels were created in 2000			595
1998	17	53	599				599
1999	19	56	534				534
2000	22	60	494	0	0	0	494
2001	26	66	450	18	0	0	468
2002	33	72	407	24	3	2	436
2003	34	72	374	31	3	2	410
2004	35	76	343	33	7	7	390
2005	35	79	316	37	10	18	381
2006	32	82	300	36	14	44	394
2007	33	95	293	40	18	82	433
2008	35	103	266	41	20	99	426
2009	33	110	263	37	19	103	422

5. Board of Directors

One of the goals of the board is to protect the wealth of the equityholders. The board must determine the strategies of the company, elect and remove directors, monitor managers and choose the external auditors. Therefore, the board has an important role in the corporate governance of any company. Brazilian law requires the board to have at least three members. The CVM and IBGC recommend that boards have between five to nine members⁶. Companies listed at Level 2 or Novo Mercado of the BM&FBovespa must have at least five members. In table 5 we can see an increase in the average size of

⁵ In Table 4, we show cross-listing in the U.S. but not in other countries. Relatively few Brazilian firms cross-list in other countries; of these, all but one (Bradespar, cross-listed in Madrid) also cross-list in the U.S.

⁶ CVM Recommendations on Corporate Governance (2002), § 2.1; IBGC Code of Best Practice of Corporate Governance (2003), § 2.10; Bovespa Level 2 Listing Rules (2006) § 5.3 and Bovespa Novo Mercado Listing Rules (2006) §4.3.

the boards, which can be explained by new IPOs on BM&FBovespa Level 2 and Novo Mercado. If we consider only the 36 companies that responded to both questionnaires, basically no change in the number of members of the board. There is a trend to increase the size of the boards, but as this trend does not occur for firms overlap, this could be a result of entry of new companies in the sample.

Table 5 - 2007 - 121 Brazilian private companies
Size of the Board of Directors

Board size and percentage for 121 Brazilian private firms which responded to the 2007 Brazil CG Survey. Minimum board size under Brazilian law is 3 directors.

No. of Directors	No. of firms	percentage	cumulative percentage
3	10	8%	8%
4	6	5%	13%
5	17	14%	27%
6	24	20%	47%
7	29	24%	71%
8	10	8%	79%
9	11	9%	88%
10	3	2%	91%
11	5	4%	95%
12 to 20	6	5%	100%
mean (median)		7.4 (7)	

Table 5 - 2005 - 88 Brazilian private companies
Size of the Board of Directors

Board size and percentage for 88 Brazilian private firms which responded to the 2005 Brazil CG Survey. Minimum board size under Brazilian law is 3 directors.

No. of Directors	No. of firms	percentage	cumulative percentage
3	14	16%	16%
4	3	3%	19%
5	19	22%	41%
6	11	13%	53%
7	15	17%	70%
8	6	7%	77%
9	4	5%	82%
10	4	5%	86%
11	7	8%	94%
12 to 15	4	5%	96%
22	1	1%	100%
mean (median)		6.8 (6)	

Table 5 - 2007 - 36 overlap private firms**Size of the Board of Directors**

Board size and percentage for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Minimum board size under Brazilian law is 3 directors. These informations are referred to the 2007 Brazil GC Survey.

No. of Directors	No. of firms	percentage	cumulative percentage
3	4	11%	11%
4	2	6%	17%
5	2	6%	22%
6	5	14%	36%
7	12	33%	69%
8	3	8%	78%
9	1	3%	81%
10	3	8%	89%
11	3	8%	97%
12	1	3%	100%
mean (median)		7.1 (7)	

Table 5 - 2005 - 36 overlap private firms**Size of the Board of Directors**

Board size and percentage for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Minimum board size under Brazilian law is 3 directors. These informations are referred to the 2005 Brazil GC Survey.

No. of Directors	No. of firms	percentage	cumulative percentage
3	5	14%	14%
4	0	0%	14%
5	5	14%	28%
6	4	11%	39%
7	8	22%	61%
8	4	11%	72%
9	3	8%	80%
10	3	8%	88%
11	1	3%	91%
12	1	3%	94%
13	0	0%	94%
14	1	3%	97%
22	1	3%	100%
mean (median)		7.3 (7)	

Table 6 is a division of the size of the board by quartile of capitalization. We didn't have major changes in both samples. However, we can see that there is a relationship between size of company and directors. Larger firms located in the first quartile have also more directors.

Table 6 - 2007 - 121 Brazilian private companies
Size of the Board of Directors by Size Quartile

Board size and percentage for 121 Brazilian private firms which responded to the 2007 Brazil CG Survey. Minimum board size under Brazilian law is 3 directors. Quartiles are based on market capitalization as of Dec. 2007. Amounts in R\$ millions.

Quartile	Size Range in reais R\$	firms in sample	percentage	mean	median	min.	max.
1	2,852 to 429,922	37	31%	8.1	7	4	20
2	910 to 2,851	34	28%	6.4	6.5	3	12
3	104 to 909	30	25%	6.1	5	3	12
4	0 to 103	20	17%	6.3	6	3	10
Total		121	100%	7.4	7	3	20

Table 6 - 2005 - 88 Brazilian private companies
Size of the Board of Directors by Size Quartile

Board size and percentage for 88 Brazilian private firms which responded to the 2005 Brazil CG Survey. Minimum board size under Brazilian law is 3 directors. Quartiles are based on market capitalization as of Jan. 2005. Amounts in R\$ millions.

Quartile	Size Range in reais R\$	firms in sample	percentage	mean	median	min.	max.
1	1,061 to 86,739	32	36%	8.6	8	3	22
2	172 to 991	24	27%	6	6	3	10
3	20 to 158	21	24%	5.6	5	3	11
4	0 to 19	11	13%	5.6	5	3	11
Total		88	100%	6.8	6	3	22

Table 6 - 2007 - 36 overlap private firms
Size of the Board of Directors by Size Quartile

Board size and percentage for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Minimum board size under Brazilian law is 3 directors. Quartiles are based on market capitalization as of Dec. 2007. Amounts in R\$ millions. These informations are referred to the 2007 Brazil GC Survey.

Quartile	Size Range in reais R\$	firms in sample	percentage	mean	median	min.	max.
1	2,852 to 429,922	15	42%	8.9	8	7	11
2	910 to 2,851	3	8%	6	6	5	7
3	104 to 909	10	28%	6.3	7	3	7
4	0 to 103	8	22%	4.7	4	3	10
Total		36	100%	7.1	7	3	11

Table 6 - 2005 - 36 overlap private firms
Size of the Board of Directors by Size Quartile

Board size and percentage for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Minimum board size under Brazilian law is 3 directors. Quartiles are based on market capitalization as of Jan. 2005. Amounts in R\$ millions. These informations are referred to the 2005 Brazil GC Survey.

Quartile	Size Range in reais R\$	firms in sample	percentage	mean	median	min.	max.
1	1,061 to 86,739	16	44%	8.6	8	5	22
2	172 to 991	4	11%	6	6.5	5	7
3	20 to 158	7	19%	6.3	7	3	10
4	0 to 19	9	25%	5.4	5	3	10
Total		36	100%	7.3	7	3	22

5.1 Board Independence

The composition of the board is one of the aspects of great importance in corporate governance. The presence of independent directors is based on the premise of ensuring that the board is not just an extension of the controlling shareholder. Brazilian law has been concerned with this issue, as demonstrated in reform happened in 2001⁷. This reform created new criteria for the composition of the board of directors of public companies, ensuring the election of members of the minority shareholders and/or preferred to have certain percentage of ownership required by law.

Brazil law has only one requirement on the proportion of directors that limits one third the proportion of directors who may be employees of the company⁸. For the CVM the number of independent directors should be as large as possible, but is not specified what would be that number. The composition of the board, according to the IBGC, can range from five to nine members. Moreover, depending of the organizational structure, their recommendation is that it is mostly composed of independent directors, but this recommendation is rarely followed, as the research data show. According to the rules of governance levels of BM&FBovespa: at least 20% of directors must be independent to enable companies to list at Level 2 or Novo Mercado⁹. The NYSE rules require that a majority of the board is composed of independent directors. To Dutra and Saito (2002),

⁷ Law 10.3003. Art.1

⁸ Law 6404/76, art. 143, § 1

⁹ CVM Recommendations on Corporate Governance (2002), § 2.1, IBGC Code of Best Practice of Corporate Governance (2003), § 2.12, Bovespa Level 2 Listing Rules (2006) § 5.3 and Bovespa Novo Mercado Listing Rules (2006) § 4.3.

the participation of independent directors in the Brazilian represents 21% of the total members, against 64% in the U.S.

Table 7 shows the proportion of independent directors and non-independent from the companies that participated in both surveys 2005 and 2007. The definitions used for this research were:

- **Non-independent directors:** they are directors or former directors or are members or representatives of a controlling shareholder, shareholder group or controlling family.
- **Independent Directors:** are people who are not officers or former officers and are independent of the controlling shareholder, controlling shareholder group, or controlling family.

We can see that Brazilian firms have fewer independent directors. Although the number of companies that have no independent director has decreased from 35% to 15%, the average of independent directors is still low. The fall in the number of companies without independent directors is related to companies that were listed during this period at Level 2 or Novo Mercado that require a minimum of 20% of independent directors. There was a small increase in the proportion of independent directors in the sample with all firms, since in the sample with 36 companies the average remained the same. This increase may reflect the entry of new firms in the sample. Although the number of companies that have no independent directors has been reduced in both samples, only 8% of companies in 2007, versus 5% in 2005 have 51% or more of independent directors.

Table 7 - 2007 - 121 Brazilian private companies**Proportion of Independent Directors**

Number and percentage of independent directors, for 121 Brazilian private firms which responded to the 2007 Brazil CG Survey and provided data on board composition. In computing proportion of independent directors, percentages are rounded up to next whole number.

No. of Independent Directors	number of firms	cumulative percent	Proportion of Independent Directors	number of firms	cumulative percent
0	18	15%	0%	18	15%
1	29	39%	1-10%	2	17%
2	37	69%	11-20%	22	35%
3	24	89%	21-30%	23	54%
4	8	96%	31-40%	17	68%
5	5	100%	41-50%	18	83%
			51-60%	11	92%
			61-70%	9	99%
			71% or more	1	100%
mean		1.9	mean		0.3
median		1.5	median		0.25
total	121		total	121	

Table 7 - 2005 - 80 Brazilian private companies**Proportion of Independent Directors**

Number and percentage of independent directors, for 80 Brazilian private firms which responded to the 2005 Brazil CG Survey and provided data on board composition. In computing proportion of independent directors, percentages are rounded up to next whole number.

No. of Independent Directors	number of firms	cumulative percent	Proportion of Independent Directors	number of firms	cumulative percent
0	28	35%	0%	28	35%
1	14	53%	1-10%	1	36%
2	16	73%	11-20%	10	51%
3	13	89%	21-30%	9	60%
4	5	94%	31-40%	15	78%
5	0	94%	41-50%	9	89%
6	4	99%	51-60%	5	95%
7	1	100%	61-70%	2	98%
			71% or more	1	100%
mean		1.6	mean		0.24
median		1	median		0.2
total	80		total	80	

Table 7 - 2007 - 36 overlap private firms
Proportion of Independent Directors

Number and percentage of independent directors, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and provided data on board composition. In computing proportion of independent directors, percentages are rounded up to next whole number. These informations are referred to the 2007 Brazil GC Survey.

No. of Independent Directors	number of firms	cumulative percent	Proportion of Independent Directors	number of firms	cumulative percent
0	7	19%	0%	7	19%
1	6	36%	1-10%	1	22%
2	10	64%	11-20%	7	42%
3	10	92%	21-30%	7	61%
4	1	94%	31-40%	5	75%
5	2	100%	41-50%	4	86%
			51-60%	3	94%
			61-70%	2	100%
			71% or more	0	100%
mean		2	mean		0.29
median		2	median		0.3
total	36		total	36	

Table 7 - 2005 - 36 overlap private firms
Proportion of Independent Directors

Number and percentage of independent directors, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and provided data on board composition. In computing proportion of independent directors, percentages are rounded up to next whole number. These informations are referred to the 2005 Brazil GC Survey.

No. of Independent Directors	number of firms	cumulative percent	Proportion of Independent Directors	number of firms	cumulative percent
0	12	33%	0%	12	33%
1	3	42%	1-10%	0	33%
2	10	69%	11-20%	3	42%
3	7	89%	21-30%	3	50%
4	1	92%	31-40%	2	56%
5	0	92%	41-50%	9	81%
6	2	97%	51-60%	3	89%
7	1	100%	61-70%	2	94%
			71% or more	2	100%
mean		1.9	mean		0.28
median		1.5	median		0.3
total	36		total	36	

Table 8 shows that the low presence of independent directors is not just a characteristic of small firms. Classifying firms by quartile of market capitalization, we can see that even large firms have fewer independent directors. By analyzing the changes for 2005 and 2007, we can see a small increase in the average of independent directors in all quartiles. Companies that have no independent directors declined significantly, especially in the quartile with the companies with the highest volume of capitalization. In 2005, in the two first quartiles there were 17 companies that have no independent directors, while in 2007 this number decreased to only 3 companies. We can see that

there is a percentage of independent directors higher in all size quartiles in 2007 versus 2005. There is not a strong trend toward higher percentage independent directors at larger versus smaller firms (within each sample year). This change can also be seen in the sample with 36 companies. In 2005, there were 5 companies (31%) that have no independent directors, in 2007 this number decreased to only 1 company (7%). There are no strong trends of larger companies having more independent directors in relation to small.

Table 8 – 2007 - 121 Brazilian private companies
Board Independence by Size Quartile

Number and percentage of independent directors, by size quartile, for 121 Brazilian private firms which responded to the 2007 Brazil CG Survey and provided data on board composition. Quartiles are based on market capitalization as of Dec. 2007.

Size Quartile	firms in sample	Number of independent directors				Percentage	
		firms with zero indep. directors	mean	median	max.	mean	median
1	37	3 (8%)	2.3	2	5	30	25
2	34	0 (0%)	1.8	2	6	30	30
3	30	7 (23%)	1.9	2	5	34	40
4	20	8 (40%)	1.3	1	5	21	25
total	121	18 (16%)	1.9	1.5	5	30%	25%

Table 8- 2005 - 80 Brazilian private companies
Board Independence by Size Quartile

Board size and percentage for 80 Brazilian private firms which responded to the 2005 Brazil CG Survey. Minimum board size under Brazilian law is 3 directors. Quartiles are based on market capitalization as of Jan. 2005. Amounts in R\$ millions.

Size Quartile	firms in sample	Number of independent directors				Percentage	
		firms with zero indep. directors	mean	median	max.	mean	median
1	30	8 (27%)	2	2	6	20	25
2	21	9 (43%)	1.4	1	6	17	21
3	18	9 (50%)	1.1	1	4	9	16
4	11	2 (18%)	2	2	7	40	38
total	80	28 (35%)	1.65	1	7	24%	20%

**Table 8 - 2007 - 36 overlap private firms
Board Independence by Size Quartile**

Number and percentage of independent directors, by size quartile, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and provided data on board composition. Quartiles are based on market capitalization as of Dec. 2007. These informations are referred to the 2007 Brazil GC Survey.

Size Quartile	firms in sample	Number of independent directors				Percentage	
		firms with zero indep. directors	mean	median	max.	mean	median
1	15	1 (7%)	2.3	2	5	27	28
2	3	0 (0%)	2.3	2	3	39	40
3	10	2 (20%)	2.1	2	5	36	31
4	8	4 (50%)	0.9	0.5	3	18	12
total	36	7 (19%)	2	2	5	29%	28%

**Table 8 - 2005 - 36 overlap private firms
Board Independence by Size Quartile**

Number and percentage of independent directors, by size quartile, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and provided data on board composition. Quartiles are based on market capitalization as of Jan. 2005. These informations are referred to the 2005 Brazil GC Survey.

Size Quartile	firms in sample	Number of independent directors				Percentage	
		firms with zero indep. directors	mean	median	max.	mean	median
1	16	5 (31%)	1.9	2	6	24	24
2	4	1 (25%)	2.7	2.5	6	44	45
3	7	3 (43%)	1.4	1	6	23	13
4	9	3 (33%)	1.8	2	7	31	33
total	36	12 (33%)	1.86	2	7	28%	31%

5.2 Representatives of minority shareholders

The board has an extremely important role in the organizational structure of a corporation. It makes the interface between the shareholders, holders of capital, and the management that effectively represents the company. The shareholders elect the board members so that they represent the interests of those in the company, thus the board couldn't be only a pure and simple reviewer of acts of managers. Moreover, ensure greater respect for the rights of minority shareholders is a main concern of corporate governance in various countries. A positive change in direction to give more representation of minorities was the review of the law 10.303/01 that gave more importance in the representation of minority shareholders on the board.

Table 9 shows the independent directors who are representatives of minority shareholders (the preferred shareholders or minority common shareholders). The representatives of the minority common shareholders decreased from 42% (22/52) in 2005 to 32% (33/103) in 2007. The representatives of the preferred shareholders also decreased from 42% (20/48) in 2005 to 12% (6/52) in 2007, this large decline may be related to the amount of companies that have preferred stock that has declined over time. In 2005, 84% (74/88) of the companies had preferred shares, while in 2007, this number decreased to 53% (64/121). In the sample of 36 companies there was an increase of the representatives of the preferred shareholders, from 33% (5/15) in 2005 to 42% (10/24) in 2007. The representatives of the minority common shareholders also increased in this period, in 2005, 32% (8/25) of the boards had one or more independent directors representatives of minority common shareholders, while in 2007, this number increased to 56% (16/29). We can see that the representation of minorities in these companies has improved over the years. It went from 24% (6/25) in 2005 to 69% (20/29) in 2007, the representation of minorities in these 36 companies; this is related to the many companies that today are listed at Level 2 or Novo Mercado.

**Table 9 - 2007 - 103 Brazilian private companies
Whom Do Independent Directors Represent?**

Number of directors who represent preferred shareholders or minority common shareholders, for 121 Brazilian private firms which responded to the 2007 Brazil CG Survey, provided data on board composition, and have at least one independent director. Of these firms, 52 have issued preferred shares.

Number of Directors in category	Director represents					
	Preferred shareholders	Percent	Minority common shareholders	Percent	Either preferred or minority common shareholders	Percent
none	46	88%	70	68%	59	57%
1	5	10%	23	22%	31	30%
2	1	2%	7	7%	9	9%
3	0	0%	1	1%	2	2%
4	0	0%	0	0%	0	0%
5	0	0%	1	1%	1	1%
6	0	0%	1	1%	1	1%
Total	52	100%	103	100%	103	100%
one or more	6	12%	33	32%	44	43%

Table 9 - 2005 - 52 Brazilian private companies
Whom Do Independent Directors Represent?

Number of directors who represent preferred shareholders or minority common shareholders, for 52 Brazilian private firms which responded to the 2005 Brazil CG Survey, provided data on board composition, and have at least one independent director. Of these firms, 48 have issued preferred shares.

Number of Directors in category	Director represents					
	Preferred shareholders	Percent	Minority common shareholders	Percent	Either preferred or minority common shareholders	Percent
none	28	58%	30	58%	19	37%
1	17	35%	14	27%	16	31%
2	2	4%	7	13%	13	25%
3	1	2%	1	2%	3	6%
4	0	0%	0	0%	1	2%
Total	48	100%	52	100%	52	100%
one or more	20	42%	22	42%	33	63%

Table 9 - 2007 - 29 overlap private firms
Whom Do Independent Directors Represent?

Number of directors who represent preferred shareholders or minority common shareholders, for 29 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and have at least one independent director in 2007. Of these firms, 24 have issued preferred shares.

Number of Directors in category	Director represents					
	Preferred shareholders	Percent	Minority common shareholders	Percent	Either preferred or minority common shareholders	Percent
none	14	58%	13	45%	9	31%
1	6	25%	11	38%	7	24%
2	2	8%	4	14%	8	28%
3	2	8%	0	0%	4	14%
4	0	0%	0	0%	0	0%
5	0	0%	1	3%	1	3%
6	0	0%	0	0%	0	0%
Total	24	100%	29	100%	29	100%
one or more	10	42%	16	55%	20	69%

Table 9 - 2005 - 25 overlap private firms
Whom Do Independent Directors Represent?

Number of directors who represent preferred shareholders or minority common shareholders, for 25 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey, and have at least one independent director in 2005. Of these firms, 15 have issued preferred shares.

Number of Directors in category	Director represents					
	Preferred shareholders	Percent	Minority common shareholders	Percent	Either preferred or minority common shareholders	Percent
none	10	67%	17	68%	19	76%
1	3	20%	6	24%	4	16%
2	1	7%	1	4%	0	0%
3	1	7%	1	4%	1	4%
4	0	0%	0	0%	1	4%
Total	15	100%	25	100%	25	100%
one or more	5	33%	8	32%	6	24%

Until 2006, minority shareholders could elect only one representative member from a list of three names nominated by the controlling shareholder. In 2001, after the last reform of corporate law, preferred shareholders, minority common shareholders, or both together, can vote separately to elect one representative by majority vote of all shares in the indicated group, as follows¹⁰:

- Election of a representative of the minority common shareholders, if the minority has at least 15% of total common shares;
- Election of a representative by the preferred shareholders, if the preferred shares totaling at least 10% of total shares¹¹;
- Election of a representative, if none of the above two conditions is satisfied, but all shareholders together have at least 10% of the total shares.

The common shareholders who own at least 10% of all shares can demand the right to cumulative voting. The cumulative voting is not much used in Brazil. Only 17 (14%) who answered the questionnaire in 2007 and 10 (12%) of respondents in 2005 reported

¹⁰ Law 6404/76 art. 141, § 4-5, as amended by Law 10.303/2001. These rights are available only to shareholders who have held shares continuously for the 3 months preceding the meeting

¹¹ Through 2006, the controlling shareholder could require the preferred shareholders to choose their representative from a list of three persons proposed by the controlling shareholder. Law 10.303/ 2001, art. 8, § 4.

that the cumulative voting was used at least once in the last five years. In 2005, four companies used only once, four companies, only two times, and one company three times. Only one company used the cumulative voting in each year for the past five years. In 2007: seven companies used only once, four companies, two times, six companies used the cumulative voting in each year for the past five years.

Much of the board of Brazilian companies is compounded of non-independent directors. Table 10 presents many companies which have three or more non-independent directors; moreover, there were not many changes from 2005 to 2007. On Table 10 we can check the number of non-independent directors who are employees or former employees, the number of directors who are not employees or former employees, but represent the controlling shareholder and the number who also sit on the boards of one or more related firms. The participation of employees on the board is relatively small, since by law, they can not be more than 1 / 3 of the board. Table 10 shows that much of the board that is not independent is composed of representatives of the family or group controlling of the company. For both samples there was a decrease in the average of the non-independent directors on the board. In 2005, the average was 5.3 directors non-independent by board, in 2007 that average decreased to 4.9. In the sample of 36 firms, the average in 2005 was 5.6, in 2007 was 5.0. The decrease of the average of the non-independents directors may be related with the increased of representation of minorities on boards.

Table 10 - 2007 - 121 Brazilian private companies
Non-independent Directors

Number of non-independent directors who are (i) officers; (ii) representatives of the controlling shareholder or group, or (iii) also on the boards of one or more related firms, for 121 Brazilian private firms which responded to the 2007 Brazil CG Survey (118 responses for board composition and for question about related firms). Percentage is of firms which answered each question.

No. of directors	All non-independent directors	Percent	Officers or former officers	Percent	Represents controller (but not officer)	Percent	On the board of related firm(s)	Percent
0	1	1%	26	22%	39	33%	70	59%
1	4	3%	30	25%	17	14%	9	8%
2	7	6%	25	21%	22	19%	11	9%
3	24	20%	18	15%	12	10%	8	7%
4	23	19%	13	11%	8	7%	5	4%
5	29	25%	5	4%	5	4%	9	8%
6 or more	33	27%	1	1%	15	13%	6	5%
Total	121	100%	118	100%	118	100%	118	100%
mean	4.9		1.8		2.3		1.4	
median	4.2		1		2		0.8	

Table 10 - 2005 - 88 Brazilian private companies
Non-independent Directors

Number of non-independent directors who are (i) officers; (ii) representatives of the controlling shareholder or group, or (iii) also on the boards of one or more related firms, for 88 Brazilian private firms which responded to the 2005 Brazil CG Survey (80 responses for board composition; 88 responses for question about related firms). Percentage is of firms which answered each question.

No. of directors	All non-independent directors	Percent	Officers or former officers	Percent	Represents controller (but not officer)	Percent	On the board of related firm(s)	Percent
0	0	0%	14	16%	21	24%	59	67%
1	2	3%	35	40%	9	10%	9	10%
2	4	5%	16	18%	17	19%	4	5%
3	25	31%	12	14%	11	13%	0	0%
4	9	11%	7	8%	7	8%	2	2%
5	10	13%	3	3%	7	8%	3	3%
6 or more	30	38%	1	1%	16	18%	11	13%
Total	80	100%	88	100%	88	100%	88	100%
mean	5.3		1.7		3.1		1.5	
median	4		1		2		1	

Table 10 - 2007 - 36 overlap private firms
Non-independent Directors

Number of non-independent directors who are (i) officers; (ii) representatives of the controlling shareholder or group, or (iii) also on the boards of one or more related firms, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Percentage is of firms which answered each question. These informations are referred to the 2007 Brazil GC Survey.

No. of directors	All non-independent directors	Percent	Officers or former officers	Percent	Represents controller (but not officer)	Percent	On the board of related firm(s)	Percent
0	1	3%	11	31%	14	39%	18	50%
1	1	3%	8	22%	3	8%	3	8%
2	1	3%	6	17%	5	14%	4	11%
3	7	19%	3	8%	5	14%	2	6%
4	5	14%	6	17%	2	6%	3	8%
5	8	22%	2	6%	3	8%	5	14%
6 or more	13	36%	0	0%	4	11%	1	3%
Total	36	100%	36	100%	36	100%	36	100%
mean	5		1.7		2.3		1.7	
median	5		1.5		2		1	

Table 10 - 2005 - 36 overlap private firms
Non-independent Directors

Number of non-independent directors who are (i) officers; (ii) representatives of the controlling shareholder or group, or (iii) also on the boards of one or more related firms, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Percentage is of firms which answered each question. These informations are referred to the 2005 Brazil GC Survey.

No. of directors	All non-independent directors	Percent	Officers or former officers	Percent	Represents controller (but not officer)	Percent	On the board of related firm(s)	Percent
0	1	3%	6	17%	11	31%	19	53%
1	3	8%	12	33%	2	6%	2	6%
2	1	3%	6	17%	8	22%	4	11%
3	9	25%	6	17%	3	8%	1	3%
4	4	11%	3	8%	2	6%	3	8%
5	4	11%	3	8%	3	8%	4	11%
6 or more	14	39%	0	0%	7	19%	3	8%
Total	36	100%	36	100%	36	100%	36	100%
mean	5.6		1.9		3		1.94	
median	5		1.5		2		0	

5.3 Chairman and CEO

When CEO and Chairman are the same person, we have a negative aspect mentioned by IBGC that recommends splitting these two positions. CVM also recommends distinction persons occupying the positions of CEO and Chairman¹². Based on this characteristic, the recommendations released by the CVM indicate that the board oversees the

¹² CVM Recommendations on Corporate Governance (2002) , § 2.4.

management of directors. And, therefore, to avoid conflicts of interest, the chairman should not also be CEO. According to Jensen (1993) "(...) for a board to be effective, it is important to separate the CEO of the Chairman". In other words, a common governance recommendation is that the CEO and Chairman positions should be split, to prevent the CEO from having too much power over the firm. Most Brazilian companies have different people in these positions, in 2005: 62 of 88 companies (71%) and in 2007: 84 of 121 companies (70%) separated these roles.

5.4 Who composes the board?

The board, according to the CVM, must have five to nine members technically qualified with at least two members with experience in finance and responsibility to monitor more closely the practices adopted¹³. The IBGC recommends diversifying the board, using criteria such as financial and accounting knowledge. The IBGC also recommends that each company has an audit committee with at least three members, which must have familiarity with finance and accounting practices. In addition, many companies with ADRs are subject to Sarbanes-Oxley Act that establishes requirements for audit committee and a minimum number of independent directors, among others.

The characteristics and experience of directors are summarized in Table 11. It is common to have directors with experience in finance, accounting or law. In both years, the scholars formed smaller numbers: in 2005 only eight of 88 and 2007 only 4 of the 121 companies that responded to this question have one on your board. There is possibly a trend for companies to have more financial experts. Most companies have at least one director who is specialist in finance (74% in 2005 and 80% in 2007). Directors with expertise in accounting are also very popular (57% in 2005 and 58% in 2007). The involvement of politicians or former politicians has increased in 2007 compared to 2005. The decline in participation of foreign directors may reflect the participation of small businesses in the sample. The 36 companies that completed both questionnaires showed similar changes in some aspects of composition of the board in this period.

¹³ CVM Recommendations on Corporate Governance (2002), § 2.1; IBGC Code of Best Practice of Corporate Governance (2003), §§ 2.9.2, 2.17.

Table 11 - 2007 - 121 Brazilian private companies**Director Expertise and Background**

Characteristics and background of directors of 121 Brazilian private firms which responded to the 2007 Brazil CG Survey and provided data on board composition. Percentage is of firms which answered each question.

One or more directors that are	Yes	% yes	If yes:	
			Mean	Median
Financial sector specialist	97	80%	3.4	2
Accounting specialist	70	58%	2.3	2
Lawyers	65	54%	1.4	1
Female	36	30%	1.4	1
Politician or former government employee	63	52%	2.2	1
Foreign	21	17%	1.8	2
Employee representative	8	7%	1.1	1
Scholar	4	3%	1	1

Table 11 - 2005 - 88 Brazilian private companies**Director Expertise and Background**

Characteristics and background of directors of 88 Brazilian private firms which responded to the 2005 Brazil CG Survey and provided data on board composition. Number of responses varied from 85-88. Percentage is of firms which answered each question.

One or more directors that are	Yes	% yes	If yes:	
			Mean	Median
Financial sector specialist	64	74%	3.2	2
Accounting specialist	50	57%	2.4	1
Lawyers	46	52%	1.5	1
Female	29	33%	1.5	1
Politician or former government employee	26	31%	2.4	2
Foreign	22	25%	2.6	2
Employee representative	11	12%	1.2	1
Scholar	8	10%	1.3	1

Table 11 - 2007 -36 overlap private firms**Director Expertise and Background**

Characteristics and background of directors of 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and provided data on board composition. Percentage is of firms which answered each question. These informations are referred to the 2007 Brazil GC Survey.

One or more directors that are	Yes	% yes	If yes:	
			Mean	Median
Financial sector specialist	28	78%	2	1.5
Accounting specialist	24	67%	1.2	1
Lawyers	20	56%	0.9	1
Female	11	31%	0.4	0
Politician or former government employee	19	53%	1.5	1
Foreign	5	14%	0.2	0
Employee representative	3	8%	0.1	0
Scholar	0	0%	0	0

**Table 11 - 2005 - 36 overlap private firms
Director Expertise and Background**

Characteristics and background of directors of 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and provided data on board composition. Percentage is of firms which answered each question. These informations are referred to the 2005 Brazil GC Survey.

One or more directors that are	Yes	% yes	If yes:	
			Mean	Median
Financial sector specialist	29	81%	2.1	2
Accounting specialist	24	67%	1.6	1
Lawyers	20	56%	0.9	1
Female	17	47%	0.6	0
Politician or former government employee	16	44%	1	0
Foreign	7	19%	0.5	0
Employee representative	1	3%	0.05	0
Scholar	4	11%	0.1	0

5.5 Mandates of Directors

In general, the recommendation on the number of members is that the board should be large enough to ensure broad representation, and not so great that it adversely affects efficiency. Unified mandates facilitate the representation of minority shareholders on the board. Brazilian law stipulates that the mandate is not more than three years, but don't say anything about the mandates being unified or not¹⁴. Table 12 shows that only 2% (2/88) of companies in 2005 and 1% (1/121) in 2007 had not unified their mandates. In other words, it is still rare presence of companies with mandates not unified.

Most of the mandates are longer than a year. In 2005, 40 of 88 (46%) were the mandates of three years, another 15 companies (17%) established the two-year terms and 31 companies (35%) reported having a term of one year. In 2007, 24 of 121 (20%) had three-year terms; other 46 companies (38%) set the two-year terms and 50 companies (41%) reported having one-year terms. This change is due to the fact that in 2007 several companies were listed at Level 2 or Novo Mercado, companies at these levels must have a mandate of one year or two unified¹⁵. BM&FBovespa originally demanded annual mandates, but this was modified to allow two-year terms, because of a request of institutional investors who prefer longer terms for their own nominees. The same trend can be observed in the sample with 36 companies. In 2005, (12/36, 33%)

¹⁴ Law 6404/76, art. 140

¹⁵ Bovespa Novo Mercado Listing Rules (2006) § 4.4; Bovespa Level 2 Listing Rules (2006) § 5.4 .

were the mandates of three years, other 6 companies (17%) had two-year terms and 18 companies (50%) reported having one-year terms. In 2007, (7 / 36; 19%) had three-year terms; other 10 companies (28%) had two-year terms and 19 companies (53%) reported having one-year terms.

Table 12- 2007 - 121 Brazilian private companies
Board Terms: Staggered and Non-Staggered

Number of years of directors' terms and whether they are staggered, for 121 Brazilian private firms which responded to the 2007 Brazil CG Survey.

Number of years	Staggered		Non-Staggered		Total Number of firms
	Number of firms	percent	Number of firms	percent	
1	-	-	50	41%	50
2	1	1%	46	38%	47
3	-	-	24	20%	24
Total	1	1%	120	99%	121

Table 12 - 2005 - 88 Brazilian private companies
Board Terms: Staggered and Non-Staggered

Number of years of directors' terms and whether they are staggered, for 88 Brazilian private firms which responded to the 2005 Brazil CG Survey.

Number of years	Staggered		Non-Staggered		Total Number of firms
	Number of firms	percent	Number of firms	percent	
1	-	-	31	35%	31
2	-	-	15	17%	15
3	2	2%	40	46%	42
Total	2	2%	86	98%	88

Table 12 - 2007 – 36 overlap private firms
Board Terms: Staggered and Non-Staggered

Number of years of directors' terms and whether they are staggered, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2007 Brazil GC Survey.

Number of years	Staggered		Non-Staggered		Total Number of firms
	Number of firms	percent	Number of firms	percent	
1	-	-	19	53%	19
2	-	-	10	28%	10
3	-	-	7	19%	7
Total	-	-	36	100%	36

Table 12 - 2005 - 36 overlap private firms
Board Terms: Staggered and Non-Staggered

Number of years of directors' terms and whether they are staggered, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2005 Brazil GC Survey.

Number of years	Staggered		Non-Staggered		Total Number of firms
	Number of firms	percent	Number of firms	percent	
1	-	-	18	50%	18
2	-	-	6	17%	6
3	-	-	12	33%	12
Total	-	-	36	100%	36

6. Board Procedures

6.1 Minutes and Board Meeting

IBGC recommends that the Board formalize their meetings through documentation, agenda and minutes. It also suggests that no more than one meeting is held per month, so as not to interfere in the operation of the business¹⁶. In addition, the expenses for attending meetings of the director should be covered by the organization. For CVM, the board must adopt a regiment with procedures on their assignments and minimum frequency of meetings, and provide for specialized committees to examine certain issues in details. The statute must authorize any member of the board to convene meetings when necessary, when the director in charge does not. Although CMV also recommends that a minimum frequency for meetings of the board be established, it does not specify a number. The Brazilian legislation makes no requirements on the minimum number of board meetings.

Table 13 provides data on the number and type of board meetings in 2004 and 2006. When considering four-person meetings per year as a synonym of a minimum efficient board, only three (4%) companies failed this test in 2005, while eight (10%) companies failed this criterion in 2007.

In 2005, 58 of 84 (68%) of the participant companies held between 4 and 12 meetings

¹⁶ CVM Recommendations on Corporate Governance (2002), § 2.2; IBGC Code of Best Practice of Corporate Governance (2003), § 2.30

per year, which is considered as a normal number by international standards. However, many companies reported a high number of meetings. In 2005, 15 companies reported 19 or more meetings, probably many of these meetings were short, which might make sense in small businesses, especially those without independent directors. In 2007, the ratio between 4 and 12 meetings per year was maintained, 46 of 80 (57%) companies had such histories. Conference calls are being more frequently used, although they are not common yet; in 2005, only 11 of 84 (13%) companies used this option and, in 2007, 19 of 80 (24%) companies made use of this. In 2007, the number of companies that had no meetings increased, as well as those having 1 to 3 meetings. This may reflect the entry of small firms in the sample. Another common recommendation in corporate governance, and a requirement of the Brazilian legislation, is that minutes of board meetings should be prepared. IBGC recommends that companies send their minutes to BM&FBovespa or CVM. Only five (5/84; 6%) companies in 2005 and four (4/80; 5%) in 2007 said they did not keep written minutes, despite the legal requirement.

Table 13 - 2007 - 80 Brazilian private companies
Meetings of the Board of Directors

Number of total, physical, and telephonic board meetings in 2006 for 80 Brazilian private firms which went public in 2005 or earlier, responded to the 2007 Brazil CG Survey and provided this information.

Number of Meetings	Total meetings	Percent	Physical meetings	Percent	Telephone meetings	Percent
0	0	0%	0	0%	61	76%
0 - 3	8	10%	9	11%	10	13%
4 - 6	12	15%	19	24%	5	6%
7 - 9	12	15%	14	18%	1	1%
10 - 12	22	28%	22	28%	1	1%
13 - 18	15	19%	11	14%	1	1%
19 or more	11	14%	5	6%	1	1%
Total	80	100%	80	100%	80	100%

Table 13 - 2005 - 84 Brazilian private companies
Meetings of the Board of Directors

Number of total, physical, and telephonic board meetings in 2004 for 84 Brazilian private firms which went public in 2001 or earlier, responded to the 2005 Brazil CG Survey and provided this information.

Number of Meetings	Total meetings	Percent	Physical meetings	Percent	Telephone meetings	Percent
0	0	0%	2	2%	73	87%
0 - 3	3	4%	5	6%	4	5%
4 - 6	22	26%	23	27%	4	5%
7 - 9	16	19%	15	18%	1	1%
10 - 12	20	24%	17	20%	1	1%
13 - 18	8	10%	12	14%	0	0%
19 or more	15	18%	10	12%	1	1%
Total	84	100%	84	100%	84	100%

Table 13 - 2007 – 36 overlap private firms
Meetings of the Board of Directors

Number of total, physical, and telephonic board meetings in 2006 for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and provided this information.

Number of Meetings	Total meetings	Percent	Physical meetings	Percent	Telephone meetings	Percent
0	0	0%	0	0%	27	75%
0 - 3	1	3%	1	3%	3	8%
4 - 6	5	14%	8	21%	4	11%
7 - 9	5	14%	7	18%	1	3%
10 - 12	14	39%	13	34%	0	0%
13 - 18	7	19%	5	13%	1	3%
19 or more	4	11%	2	5%	0	0%
Total	36	100%	36	100%	36	100%

Table 13 - 2005 – 31 overlap private firms
Meetings of the Board of Directors

Number of total, physical, and telephonic board meetings in 2004 for 31 Brazilian private firms which went public in 2001 or earlier, responded to the 2005 Brazil CG Survey and provided this information.

Number of Meetings	Total meetings	Percent	Physical meetings	Percent	Telephone meetings	Percent
0	0	0%	1	3%	27	87%
0 - 3	1	3%	1	3%	2	6%
4 - 6	6	19%	7	23%	1	3%
7 - 9	7	23%	7	23%	0	0%
10 - 12	10	32%	9	29%	0	0%
13 - 18	2	6%	3	10%	0	0%
19 or more	5	16%	3	10%	1	3%
Total	31	100%	31	100%	31	100%

6.2 Board Processes

According to IBGC, the Board should establish performance goals of the CEO at the beginning of the year and make a formal evaluation of this executive on an annual basis. Moreover, the CEO must assess the performance of his team and establish a

development program. The result of the executives should be submitted to the Board with the proposition of remaining in office or not. Thus, the Board must review and approve the recommendation of the CEO in relation to the goals established at the beginning of the year as well as the evaluation. It is recommended that the CEO address the board with the organization's executives to re-examine the potential candidates for succession¹⁷. CVM also recommends that the board have an annual system of formal evaluation of the CEO's performance¹⁸.

Table 14 reports some of the practices of the Brazilian companies on board processes. Although these processes are not required by the Brazilian legislation, many of them are recommended by CVM and IBGC. In general, the directors of Brazilian companies are not used to formalize many of their processes. But, as can be seen in Table 14, companies have sought to formalize more their processes and procedures. These changes can be seen as positive from the transparency process perspective. The improvement tendency is similar for both samples. There was a significant increase of respondents in relation to: evaluation of the CEO's performance, succession plan of the CEO, evaluation system of other directors, and dispatch of material before meetings. Regulation of boards, evaluation system and specific age limit for retirement of independent directors did not show major changes. There was a major change in the independent directors' ability to hire external companies at the company's expense¹⁹. However, exclusive meetings with only independent directors are still uncommon.

¹⁷ IBGC Code of Best Practice of Corporate Governance (2003), §2.27

¹⁸ CVM Recommendations on Corporate Governance (2002), § 2.1; IBGC Code of Best Practice of Corporate Governance (2003), § 2.26

¹⁹ CVM again so recommends. CVM Recommendations on Corporate Governance (2002) § 2.2

Table 14 - 2007 - 121 Brazilian private companies
Board Processes

Number of firms which adopted the indicated board processes, for 121 Brazilian private firms which responded to the 2007 Brazil CG Survey. Questions relating to independent directors apply only to 103 firms with one or more independent directors. The survey asked for yes answers, but not no answers, so we cannot distinguish no from missing.

Process	Yes	% Yes	No/missing	Total
Affecting all directors				
Regular system for evaluating the CEO's performance	48	40%	73	121
Succession plan for the CEO	34	29%	87	121
Regular system for evaluating other officers	64	54%	57	121
Specific bylaw to govern the activity of the board of directors	67	56%	54	121
Company code of conduct or ethics	76	64%	45	121
Board members receive materials in advance of board meetings	113	95%	8	121
Affecting only independent directors				
Independent directors can obtain outside advice at company's expense	36	35%	67	103
Regular system for evaluating independent directors	17	17%	86	103
Retirement age for independent directors	5	5%	98	103
Annual meeting exclusively to independent directors	2	2%	101	103
none of the above	0		121	121

Table 14 - 2005 - 88 Brazilian private companies
Board Processes

Number of firms which adopted the indicated board processes, for 88 Brazilian private firms which responded to the 2005 Brazil CG Survey. Questions relating to independent directors apply only to 52 firms with one or more independent directors. The survey asked for yes answers, but not no answers, so we cannot distinguish no from missing.

Process	Yes	% Yes	No/missing	Total
Affecting all directors				
Regular system for evaluating the CEO's performance	28	32%	60	88
Succession plan for the CEO	15	21%	73	88
Regular system for evaluating other officers	34	39%	54	88
Specific bylaw to govern the activity of the board of directors	48	55%	40	88
Company code of conduct or ethics	45	51%	43	88
Board members receive materials in advance of board meetings	80	91%	8	88
Affecting only independent directors				
Independent directors can obtain outside advice at company's expense	7	14%	45	52
Regular system for evaluating independent directors	6	12%	46	52
Retirement age for independent directors	3	6%	49	52
Annual meeting exclusively to independent directors	1	2%	51	52
none of the above	0		88	88

Table 14 - 2007 – 36 overlap private firms**Board Processes**

Number of firms which adopted the indicated board processes, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Questions relating to independent directors apply only to 29 firms with one or more independent directors. These informations are referred to the 2007 Brazil GC Survey.

Process	Yes	% Yes	No/missing	Total
Affecting all directors				
Regular system for evaluating the CEO's performance	19	53%	17	36
Succession plan for the CEO	14	39%	22	36
Regular system for evaluating other officers	22	61%	14	36
Specific bylaw to govern the activity of the board of directors	18	50%	18	36
Company code of conduct or ethics	25	69%	11	36
Board members receive materials in advance of board meetings	35	97%	1	36
Affecting only independent directors				
Independent directors can obtain outside advice at company's expense	16	55%	13	29
Regular system for evaluating independent directors	5	14%	24	29
Retirement age for independent directors	3	8%	26	29
Annual meeting exclusively to independent directors	1	3%	28	29
none of the above	0		36	36

Table 14 - 2005 – 36 overlap private firms**Board Processes**

Number of firms which adopted the indicated board processes, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Questions relating to independent directors apply only to 24 firms with one or more independent directors. The survey asked for yes answers, but not no answers, so we cannot distinguish no from missing. These informations are referred to the 2005 Brazil GC Survey.

Process	Yes	% Yes	No/missing	Total
Affecting all directors				
Regular system for evaluating the CEO's performance	9	25%	27	36
Succession plan for the CEO	4	11%	32	36
Regular system for evaluating other officers	15	42%	21	36
Specific bylaw to govern the activity of the board of directors	21	58%	15	36
Company code of conduct or ethics	20	56%	16	36
Board members receive materials in advance of board meetings	32	89%	4	36
Affecting only independent directors				
Independent directors can obtain outside advice at company's expense	4	17%	20	24
Regular system for evaluating independent directors	3	13%	21	24
Retirement age for independent directors	3	13%	21	24
Annual meeting exclusively to independent directors	1	4%	23	24
none of the above	0		36	36

Of the 88 companies completing the questionnaire in 2005, only 1/3 (28/88, 32%) evaluated the CEO. The evaluation system for other directors are more frequent (34/88,

38%). In 2007, 40% (48/121) of companies evaluated the CEO and 64 (54%) had a rating system for other directors. When analyzing the companies completing both questionnaires, only 25% (9/36) in 2005 evaluated the CEO, in 2007, this number had increased to 53%. The evaluation system for other directors in 2005 was 42% and, in 2007, it had increased to 61%. IBGC proposes that the board have a succession plan for the CEO or another key person of the organization. Only 11% (4 / 36) of companies had such a plan in 2005 and, in 2007, this number had increased to 39% (14/36) of companies. However, many companies are likely to have an informal succession plan in the family or controlling group, but this possible plan was not asked about. These changes are due to the additional practice of corporate governance that these companies have adopted and that are not required by any level list of BM&FBovespa.

According to CVM and IBGC, the board should adopt a regiment to govern its meetings and determine their obligations²⁰. In 2005 as well as in 2007, only half of the companies answered that they had this regiment. Most companies (32/36, 89%) in 2005 and (35/36, 97%) 2007 provide their directors with material containing information about the next meeting in advance. A major change that occurred in the direction of governance practices was that, in 2005, only a low proportion of companies (4 / 36, 17%) formally provided for independent directors to retain their own advisors, at the company's expenses, and in 2007 this number had increased to 55% (16/36) of companies. IBGC recommends that companies have a code of conduct adopted by the board regulating the relationship between the board, shareholders, employees, suppliers, or any other parties²¹. A little more than half (20/36; 56%) of companies stated to have a code of conduct in 2005 and, in 2007, that number had increased to 69% (25/36). These changes are similar in the sample with all firms.

When asked whether the board evaluates the performance of independent directors every year, only 3 of 36 companies in 2005 and 5 of 36 companies in 2007 with such directors performed this assessment. In the sample with all firms, only 6 of 88 (12%) companies in 2005 and 17 of 121 (17%) companies in 2007 assessed the performance of independent directors.

²⁰ CVM Recommendations on Corporate Governance (2002) § 2.2; IBGC Code of Best Practice of Corporate Governance (2003), § 2.5

²¹ IBGC Code of Best Practice of Corporate Governance (2003), § 2.19

IBGC also recommends the establishment of a time limit for a person to stay in the board²². It was asked whether the companies have an age at which independent directors should retire: only three of 36 companies in 2005 and 2007 reported to have such policy. For the sample with all firms, three in 2005 and five in 2007 reported to have an age at which independent directors should retire. It is also advisable that independent directors regularly meet without the presence of other directors, as they can evaluate the performance of management, which makes sense only for companies with three or more independent directors. In our sample, 16 of 36 companies have this number of directors, but only one followed this practice in 2005 and two in 2007. This number was also small when considering the sample with all firms

6.3 Board Actions

Table 15 shows the results on the important actions taken by the board in the last five years

**Table 15 - 2007 – 67 non-IPO Brazilian private companies
Actions of the Board**

Number of firms which adopted the indicated board processes, for 67 Brazilian private firms which responded to the 2005 Brazil CG Survey. Questions relating to independent directors apply only to 50 firms with one or more independent directors.

Within the last 5 years, has	Yes	% Yes	No/missing	Total
the board replaced the CEO	20	30%	47	67
the board replaced (or asked the CEO to replace) one or more other officers	21	31%	46	67
the board asked an independent directors to resign, or did not propose reelection of an independent director	6	12%	44	50
an independent director resigned because of a dispute over policy	3	6%	47	50

**Table 15- 2005 – 85 non-IPO Brazilian private companies
Actions of the Board**

²² IBGC Code of Best Practice of Corporate Governance (2003), § 2.19

Number of firms which adopted the indicated board processes, for 85 Brazilian private firms which responded to the 2005 Brazil CG Survey. Questions relating to independent directors apply only to 49 firms with one or more independent directors. The survey does not let us distinguish "no" answers from missing responses.

Within the last 5 years, has	Yes	% Yes	No/missing	Total
the board replaced the CEO	20	24%	65	85
the board replaced (or asked the CEO to replace) one or more other officers	21	25%	64	85
the board asked an independent directors to resign, or did not propose reelection of an independent director	4	8%	45	49
an independent director resigned because of a dispute over policy	0	0%	49	49

**Table 15 - 2007 – 36 non-IPO overlap private firms
Actions of the Board**

Number of firms which adopted the indicated board processes, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Questions relating to independent directors apply only to 29 firms with one or more independent directors. The survey does not let us distinguish "no" answers from missing responses. These informations are referred to the 2007 Brazil GC Survey.

Within the last 5 years, has	Yes	% Yes	No/missing	Total
the board replaced the CEO	11	31%	25	36
the board replaced (or asked the CEO to replace) one or more other officers	12	33%	24	36
the board asked an independent directors to resign, or did not propose reelection of an independent director	3	8%	26	29
an independent director resigned because of a dispute over policy	2	6%	27	29

**Table 15 - 2005 – 33 non-IPO overlap private firms
Actions of the Board**

Number of firms which adopted the indicated board processes, for 33 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Questions relating to independent directors apply only to 21 firms with one or more independent directors. The survey does not let us distinguish "no" answers from missing responses. These informations are referred to the 2005 Brazil GC Survey.

Within the last 5 years, has	Yes	% Yes	No/missing	Total
the board replaced the CEO	5	15%	28	33
the board replaced (or asked the CEO to replace) one or more other officers	9	27%	24	33
the board asked an independent directors to resign, or did not propose reelection of an independent director	0	0%	21	21
an independent director resigned because of a dispute over policy	0	0%	21	21

In 2005, the board replaced the CEO in five (5 / 36, 14%) companies and, in 2007, that number had increased to 11 (11/36, 31%) companies. This may include dismissal for

poor performance or a usual replacement, caused by the retirement of the CEO or illness. This increase was only for the overlap firms, but not for overall firms, which may be related to the new companies in the sample. For example, companies that went to public recently are less likely to change the CEO. Similarly, 28% of companies in 2005 (10/36) and 33% (12/36) in 2007, the board replaced or requested the CEO to replace one or more executives.

For the sample with all firms, the board replaced the CEO in 20 (20/88, 23%) companies in 2005 and 30 (30/121, 25%) in 2007. In 2005, the board of 21 companies (21/88, 25%) replaced or asked for the CEO to replace one or more executives, in 2007, this number was 21 (21/67; 31%). In general, the sample with all companies had some changes between 2005 and 2007.

It was asked whether the Board had asked some independent director to resign or had not re-appointed him or her for the position in the last five years. Three of 121 (2%) companies and two of 36 (5%) companies in 2007 with independent directors adopted this conduct; in the same year, two companies said that an independent director resigned due to a dispute over company policies. In 2005, no companies participating in the survey said to have adopted this policy. It is also important to note the emergence of cases in which an independent director resigned due to a dispute over policy (3 for overall and 2 for overlap firms in 2007).

6.4 Board Committees

For IBGC, the boards should encourage the establishment of the Audit Committee to review financial statements, promote accountability, and oversee the business. The committee should follow the code of conduct of the organization. Thus, the committee should also highlight aspects of accounting (financial statements, independent audit), highlighting aspects of management and internal controls (monitoring and accountability of the financial, reliable internal controls, internal audit, review, code of conduct). This perspective differs from others by highlighting the service of the board towards ethical relationships with internal audit, external audit and society.

Audit committee is the only specific committee recommended by CVM and IBGC. BM&FBovespa makes no requirement as to the committees.

Table 16 - 2007 - 112 non-bank private firms**Board Committees**

Number of firms which adopted the indicated board processes, for 112 Brazilian private firms which responded to the 2007 Brazil CG Survey. Question on existence of committee minutes (content of minutes) apply only to 40 firms with one or more standing committees (37 firms which prepare committee minutes).

Within the last 5 years, has	Yes	% Yes	No/missing	Total
Does the board have standing committees?	40	36%	72	112
If the board has standing committees, are minutes prepared for meetings of the committees?	37	93%	3	40
If minutes are prepared for committee meetings, are directors' votes recorded in the minutes?	19	51%	18	37

Table 16 - 2005 - 83 non-bank private firms**Board Committees**

Number of firms which adopted the indicated board processes, for 83 Brazilian private firms which responded to the 2005 Brazil CG Survey. Question on existence of committee minutes (content of minutes) apply only to 21 firms with one or more standing committees (17 firms which prepare committee minutes).

Within the last 5 years, has	Yes	% Yes	No/missing	Total
Does the board have standing committees?	21	25%	62	83
If the board has standing committees, are minutes prepared for meetings of the committees?	17	81%	4	21
If minutes are prepared for committee meetings, are directors' votes recorded in the minutes?	9	53%	8	17

Table 16 - 2007 – 34 overlap non-bank private firms**Board Committees**

Number of firms which adopted the indicated board processes, for 34 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Question on existence of committee minutes (content of minutes) apply only to 14 firms with one or more standing committees (13 firms which prepare committee minutes). These informations are referred to the 2007 Brazil GC Survey.

Within the last 5 years, has	Yes	% Yes	No/missing	Total
Does the board have standing committees?	14	41%	20	34
If the board has standing committees, are minutes prepared for meetings of the committees?	13	93%	1	14
If minutes are prepared for committee meetings, are directors' votes recorded in the minutes?	4	31%	9	13

**Table 16 - 2005 - 34 overlap non-bank private firms
Board Committees**

Number of firms which adopted the indicated board processes, for 34 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Question on existence of committee minutes (content of minutes) apply only to 12 firms with one or more standing committees (11 firms which prepare committee minutes). These informations are referred to the 2005 Brazil GC Survey.

Within the last 5 years, has	Yes	% Yes	No/missing	Total
Does the board have standing committees?	12	35%	22	34
If the board has standing committees, are minutes prepared for meetings of the committees?	11	92%	1	12
If minutes are prepared for committee meetings, are directors' votes recorded in the minutes?	9	82%	2	11

In 2005, only 21 respondents (21/83; 25%) had permanent committees in their boards and, in 2007, this number increased to 40 (40/112; 36%) companies. In 2005, 17 (81%) companies with committees would prepare the minutes of committee meetings and 9 companies recorded the votes of committee members. In 2007, 37 (93%) companies with committees would prepare the minutes of committee meetings and 19 companies recorded the votes of committee members. Of the 36 companies completing the two questionnaires, approximately 35% in 2005 and 41% in 2007 had standing committees without significant changes in this period. The tendency for companies to have more committees may be related with the entry of new firms in the sample, once no major change was seen in the control sample. When a committee exists, minutes are more often prepared in the sample with all firms, but little change is seen in the overlap sample, with only 1 overlap firm not preparing minutes.

7. Audit Committee

Audit committees aim to assist the board in matters relative to accounting and auditing the financial activities of the company, seeking to provide greater transparency of information from administrators. With the 2002 Sarbanes-Oxley Act, audit committees now have more importance, as its establishment by public and foreign companies trading ADRs has become mandatory in the USA²³. The Central Bank of Brazil also started to demand the implementation of an audit committee in large-sized Brazilian

²³ The Sarbanes–Oxley Act of 2002 (Pub.L. 107-204, 116 Stat. 745, enacted July 30, 2002), also known as the 'Public Company Accounting Reform and Investor Protection Act' (in the Senate) and 'Corporate and Auditing Accountability and Responsibility Act' (in the House) and commonly called Sarbanes–Oxley, Sarbox or SOX, is a United States federal law enacted on July 30, 2002.

financial institutions. Although these measures have been taken, there are few companies counting with an audit committee in Brazil. Both CVM and IBGC recommend that the board constitute an audit committee²⁴. BM&FBovespa does not require an audit committee for any level.

Table 17 provides details about the audit committee. In 2005, only 12 (12/83, 14%) companies had audit committees, and in all of them, the committee had at least one accounting expert; in 14 companies the committee held meetings with an external auditor at least once a year. In 11 companies, the functioning of the committee is governed by a regiment. In 2007, this number had increased to 29 (29/112, 26%) companies, 21 of these companies had at least one accounting expert; 26 companies in the committee held meetings with an external auditor at least once a year. In 20 companies, the functioning of the committee is governed by a regiment. As can be seen, there is a higher tendency for Brazilian companies to set up audit committees; however, some of these companies do not have an accounting expert. In the sample with all firms and overlap firms, there is a tendency for committees to have at least one independent director and also the minority shareholders can elect one representative. The participation of independent directors strengthens the role of the audit committee to submit an independent assessment of the financial statements of the company. In 2005, 6 (6 / 12; 50%) companies had at least one independent director and, as early as 2007, that number had increased to 18 (18/29, 62%) companies. In the sample of 36 companies, 5 (5/8; 63%) of them had at least one representative in 2005. In turn, in 2007 this figure had small decreased to 6 (6 / 10, 60%) companies. This shows a positive evolution of Brazilian companies in setting up an audit committee, but some of the new committees do not have an accounting expert. There is a tendency towards more committees with at least one independent director. Also, there is a higher incidence of audit committees with exclusively independent directors and there is a tendency towards power of minority to elect one or more members of the audit committee for both overall and overlap firms²⁵. For committees with both inside and

²⁴ CVM Recommendations on Corporate Governance (2002) § 4.3; IBGC Code of Best Practice of Corporate Governance (2003) § 2.9

²⁵ IBGC, recommends that all members of the audit committee should be independent. IBGC Code of Best Practice of Corporate Governance (2003), § 2.9.1. CVM recommends that the audit committee should not include *company officers*, but does not recommend that all members be independent. CVM

independent members, there is a mild tendency towards separate meetings for independent member(s).

A usual activity of audit committees is the oversight of external auditors of the company. The Brazilian legislation is explicit regarding to the duty of the board to select and replace the independent auditors. Thus, this duty cannot be delegated. So, the audit committee may recommend the hiring or dismissal of the external auditor, but the effect depends on the board.

**Table 17 - 2007 - 112 non-bank private firms
Audit Committee of the Board of Directors**

Number of firms which have audit committees, and related procedures, for 112 Brazilian private firms which responded to the 2007 Brazil CG Survey. Questions on procedures apply only to 29 firms with an audit committee. Last question applies only to 14 firms which are known to have both independent and non-independent members on the audit committee.

	Yes	% Yes	No	Missing/do not apply	Total
The firm has an audit committee	29	26%	83	0	112
For firms with an audit committee:					
The committee includes a member with expertise in accounting	21	72%	8	0	29
The committee meets with the external auditor at least once per year	26	90%	3	0	29
There is a bylaw to govern the committee	20	69%	9	0	29
Audit committee independence:					
The committee includes at least one independent director	18	62%	11	0	29
The committee consists solely of independent directors	6	21%	23	0	29
Minority shareholders can elect one or more members of the committee	14	48%	15	0	29
If the committee includes both inside and independent directors, the independent members meet separately with the external auditor at least once per year	9	64%	5	0	14

Recommendations on Corporate Governance (2002) § 4.3. Our survey did not ask whether officers served on the audit committee.

Table 17 - 2005 - all firms (83 non-bank private firms)**Audit Committee of the Board of Directors**

Number of firms which have audit committees, and related procedures, for 83 Brazilian private firms which responded to the 2005 Brazil CG Survey. Questions on procedures apply only to 12 firms with an audit committee. Last question applies only to four firms which are known to have both independent and non-independent members on the audit committee.

	Yes	% Yes	No	Missing/do not apply	Total
The firm has an audit committee	12	14%	72	0	83
For firms with an audit committee:					
The committee includes a member with expertise in accounting	12	100%	0	0	12
The committee meets with the external auditor at least once per year	11	92%	1	0	12
There is a bylaw to govern the committee	9	75%	3	0	12
Audit committee independence:					
The committee includes at least one independent director	6	50%	5	1	12
The committee consists solely of independent directors	2	17%	9	1	12
Minority shareholders can elect one or more members of the committee	4	33%	8	0	12
If the committee includes both inside and independent directors, the independent members meet separately with the external auditor at least once per year	3	75%	1	0	4

Table 17 - 2007 - 34 overlap non-bank private firms**Audit Committee of the Board of Directors**

Number of firms which have audit committees, and related procedures, for 34 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Questions on procedures apply only to 10 firms with an audit committee. Last question applies only to five firms which are known to have both independent and non-independent members on the audit committee. These informations are referred to the 2007 Brazil GC Survey.

	Yes	% Yes	No	Missing/do not apply	Total
The firm has an audit committee	10	29%	24	0	34
For firms with an audit committee:					
The committee includes a member with expertise in accounting	8	80%	0	2	10
The committee meets with the external auditor at least once per year	8	80%	0	2	10
There is a bylaw to govern the committee	6	60%	2	2	10
Audit committee independence:					
The committee includes at least one independent director	6	60%	3	1	10
The committee consists solely of independent directors	2	20%	5	3	10
Minority shareholders can elect one or more members of the committee	5	50%	5	0	10
If the committee includes both inside and independent directors, the independent members meet separately with the external auditor at least once per year	4	80%	1	0	5

**Table 17 - 2005 - 34 overlap non-bank private firms
Audit Committee of the Board of Directors**

Number of firms which have audit committees, and related procedures, for 34 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Questions on procedures apply only to 8 firms with an audit committee. Last question applies only to four firms which are known to have both independent and non-independent members on the audit committee. These informations are referred to the 2005 Brazil GC Survey.

	Yes	% Yes	No	Missing/do not apply	Total
The firm has an audit committee	8	24%	26	0	34
For firms with an audit committee:					
The committee includes a member with expertise in accounting	8	100%	0	0	8
The committee meets with the external auditor at least once per year	7	88%	1	0	8
There is a bylaw to govern the committee	6	75%	2	0	8
Audit committee independence:					
The committee includes at least one independent director	5	63%	1	2	8
The committee consists solely of independent directors	1	13%	2	5	8
Minority shareholders can elect one or more members of the committee	1	13%	7	0	8
If the committee includes both inside and independent directors, the independent members meet separately with the external auditor at least once per year	3	75%	1	0	4

7.1 Fiscal Board

Brazilian Law determines the aspects of fiscal board's composition and functioning²⁶. Most importantly, both public and non-public companies are required, statutorily, to create a fiscal board, which shall be optional. It is mandatory for public companies, pursuant to art. 177, Law of Corporations, to submit its financial statements to external audit. According to CVM, the fiscal board should be composed of not less than three and not more than five members. Minority shareholders, excluding the group of control, will be entitled to elect the same number of members as that elected by the group of control. The fiscal board must adopt a regiment with procedures related to its mission, focusing on the relationship with the auditor, and not limit the actions of any individual director. According to the principles of good corporate governance, the majority of the fiscal board should not be elected by the controlling shareholder. Moreover, aiming at

²⁶ Law 6404/76, art. 161 §1

the effectiveness of the performance of the body itself, the regiment should include provisions on timing and method of convening fiscal board meetings, early release of materials to be discussed, rights and obligations of their relationship with the management and auditors, and procedures for requesting information. The fiscal board should also meet when requested by the representative of minority. The board must provide adequate facilities for the proper functioning of the fiscal board, such as notices and place of meetings, agenda preparation, and assistance to inquiries from fiscal directors.

For IBGC, the fiscal board is part of the governance system of Brazilian organizations. According to the statute, it may be permanent or not. Its installation in the second case may be the result of a request of any shareholder or group of members. The fiscal board shall have the right to query the external professionals (lawyers, accountants, tax specialists, human resources, etc.) paid by the organization to obtain data on relevant matters. The fiscal board members have power as individuals, regardless the organ being collegial.

The shareholders' meeting may establish a temporary board by requiring a group of shareholders holding at least 10% of the common shares or 5% of the preferred shares. The authority of the temporary board ends at the next annual shareholders' meeting, but the demand of the minority may be renewed at the next meeting. Table 18 shows companies with permanent fiscal boards, with approximately 39% of (34/88) companies in 2005 and 41% (44/108) of companies in 2007. For the overlap firms, approximately 28% (10/36) of companies in 2005 and 50% (18/36) of companies in 2007 reported to have permanent fiscal boards. There is a trend toward companies have more fiscal board over time for overlap firms. If there is a fiscal board, the law requires that minutes of its meetings are prepared. In the sample of 36 companies in 2005, all of the 10 companies that had permanent fiscal boards reported to prepare minutes of meetings, while 2 stated not to have such a regiment, which is required by law. Eight companies with permanent fiscal boards (8 / 10, 80%) had at least one member with expertise in accounting. In 2007, all of the 18 companies reported to have a bylaw for the same. In the 2007 questionnaire, there was no question about minutes of meetings of the supervisory board, because all companies said that they had the practice

in previous research. In both samples, a tendency to have at least one member with accounting expertise can be seen.

Table 18 - 2007 - 121 Brazilian private companies
Fiscal Board

Number of firms which have a permanent fiscal board, and related procedures, for 121 Brazilian private firms which responded to the 2007 Brazil CG Survey. Questions on procedures apply only to 44 firms with a permanent fiscal board.

	Yes	% Yes	No	Total
Does the company have a permanent fiscal board?	44	41%	64	108
For firms with a permanent fiscal board				
minutes are prepared for meetings of the board	-	-	-	-
there a bylaw to govern the fiscal board?	42	95%	2	44
when minutes are prepared, directors' votes are recorded in the minutes?	-	-	-	-
the board includes a member with expertise in accounting	32	73%	12	44

Table 18 - 2005 - 88 Brazilian private companies
Fiscal Board

Number of firms which have a permanent fiscal board, and related procedures, for 88 Brazilian private firms which responded to the 2005 Brazil CG Survey. Questions on procedures apply only to 34 firms with a permanent fiscal board.

	Yes	% Yes	No	Total
Does the company have a permanent fiscal board?	34	39%	54	88
For firms with a permanent fiscal board				
minutes are prepared for meetings of the board	34	100%	0	34
there a bylaw to govern the fiscal board?	29	85%	5	34
when minutes are prepared, directors' votes are recorded in the minutes?	22	65%	12	34
the board includes a member with expertise in accounting	18	53%	16	34

Table 18 - 2007 - 36 overlap private firms
Fiscal Board

Number of firms which have a permanent fiscal board, and related procedures, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Questions on procedures apply only to 18 firms with a permanent fiscal board. These informations are referred to the 2007 Brazil GC Survey.

	Yes	% Yes	No	Total
Does the company have a permanent fiscal board?	18	50%	18	36
For firms with a permanent fiscal board				
minutes are prepared for meetings of the board	-	-	-	-
there a bylaw to govern the fiscal board?	18	100%	0	18
when minutes are prepared, directors' votes are recorded in the minutes?	-	-	-	-
the board includes a member with expertise in accounting	17	94%	1	18

**Table 18 - 2005 – 36 overlap private firms
Fiscal Board**

Number of firms which have a permanent fiscal board, and related procedures, for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Questions on procedures apply only to 10 firms with a permanent fiscal board. These informations are referred to the 2005 Brazil GC Survey.

	Yes	% Yes	No	Total
Does the company have a permanent fiscal board?	10	28%	26	36
For firms with a permanent fiscal board				
minutes are prepared for meetings of the board	10	100%	0	10
there a bylaw to govern the fiscal board?	8	80%	2	10
when minutes are prepared, directors' votes are recorded in the minutes?	6	60%	4	10
the board includes a member with expertise in accounting	8	80%	2	10

Table 19 provides details about the size of the permanent fiscal boards and how many times the board met with an external auditor. Both in 2005 and 2007, there were 3 and 4 companies, respectively, with a board with at least six members, despite the legal requirement of three to five members on the board. In general, the fiscal board meetings with an external auditor are held quarterly. In 2005, 47% (16/34) of companies had meetings with an external auditor on a quarterly basis and, in 2007, that number had increased to 62% (28/44) of companies. In the overlap firms, the same tendency can be observed: 30% (3 / 10) of companies in 2005 and 66% (12/18) in 2007 met with an external auditor on a quarterly basis. Few companies reported that they never met with an external auditor – only 9% (3 / 34) of companies in 2005 and 4% (2 / 44) in 2007. Possibly, these companies went to public recently.

**Table 19 - 2007 - 44 Brazilian private companies
Permanent Fiscal Board: Size and Meetings with Auditors**

Size of fiscal board and number of meetings with external auditor, for 44 Brazilian private firms which have a permanent fiscal board and responded to the 2007 Brazil CG Survey.

Number of members	Number of firms	No. of meetings of board (per year)	Number of firms	Number of meetings between fiscal board and external auditor	Number of firms
3	26 (59%)	0	0	0	2 (4%)
4	4 (9%)	1 - 3	3	1	5 (11%)
5	10 (23%)	4 - 6	6	2 or 3	3 (7%)
6 or more	4 (9%)	7 - 9	6	4	28 (62%)
		13 - 18	9	5 or more	6 (13%)
		19 or more	5		

Table 19 - 2005 - 34 Brazilian private companies
Permanent Fiscal Board: Size and Meetings with Auditors

Size of fiscal board and number of meetings with external auditor, for 34 Brazilian private firms which have a permanent fiscal board and responded to the 2005 Brazil CG Survey.

Number of members	Number of firms	No. of meetings of board (per year)	Number of firms	Number of meetings between fiscal board and external auditor	Number of firms
3	17 (50%)	0	0	0	3 (9%)
4	4 (12%)	1 - 3	2	1	11 (32%)
5	10 (29%)	4 - 6	10	2 or 3	3 (9%)
6 or more	3 (9%)	7 - 9	6	4	16 (47%)
		13 - 18	7	5 or more	1 (3%)
		19 or more	4		

Table 19 - 2007 – 18 overlap private firms
Permanent Fiscal Board: Size and Meetings with Auditors

Size of fiscal board and number of meetings with external auditor, in 2007 for 18 Brazilian private firms which have a permanent fiscal board and responded to the 2005 and 2007 Brazil CG Survey.

Number of members	Number of firms	No. of meetings of board (per year)	Number of firms	Number of meetings between fiscal board and external auditor	Number of firms
3	10 (55%)	0	0	0	0 (0%)
4	0 (0%)	1 - 3	0	1	2 (11%)
5	6 (33%)	4 - 6	3	4	12 (66%)
6 or more	2 (11%)	7 - 9	3	8	1 (6%)
		13 - 18	7	12	3 (17%)
		19 or more	4		

Table 19 - 2005 – 10 overlap private firms
Permanent Fiscal Board: Size and Meetings with Auditors

Size of fiscal board and number of meetings with external auditor, in 2005 for 10 Brazilian private firms which have a permanent fiscal board and responded to the 2005 and 2007 Brazil CG Survey.

Number of members	Number of firms	No. of meetings of board (per year)	Number of firms	Number of meetings between fiscal board and external auditor	Number of firms
3	6 (60%)	0	0	0	1 (10%)
4	0 (0%)	1 - 3	1	1	5 (50%)
5	3 (30%)	4 - 6	2	4	1 (10%)
6 or more	1 (10%)	7 - 9	2	8	3 (30%)
		13 - 18	4		
		19 or more	0		

7.2 Representation of minority interests in fiscal board

Below is an overview of the representation of minority shareholders in fiscal boards.

Holders of preferred shares with no or restricted voting rights, have the right to elect, in

a separate vote, a member and a substitute. Minority common shareholders have the same right, provided that they collectively account for 10% or more of the shares entitled to vote. The other shareholders entitled to vote may elect the members and substitutes, in any case, equal in number to those elected under the Corporations Law²⁷. The group of control can elect the remaining members, in the same number as those elected by the preferred shares and the minority shareholders plus one, which guarantees that the majority shareholders control the fiscal board.

CVM has a set of recommendations on the fiscal board's composition: shareholders should be entitled to elect one (respectively two) member of all three (respectively five) if the controlling group is to elect one (respectively, two) member. The controlling group should then assign their right to elect the last member. This should be elected by the votes of shareholders with common and preferred shares, each having one vote. IBGC's recommendations are similar²⁸. In the questionnaire, it was not asked whether any company has taken on this complex structure, but some companies reported to have three representatives elected by minority shareholders, possibly by following this proposal.

Table 20 provides information on the representation of minority shareholders in permanent fiscal boards. In 2005, only three (3 / 34, 9%) companies did not have a representative of the minority; 19 other (19 / 34, 65%) companies had one, and only three (3 / 34, 12%) companies had three or more representatives of the minority (which, therefore, make up the majority of the board). In 2007, five (5 / 44, 11%) companies did not have a representative of the minority, other 5 (5 / 44; 11%) companies had one, and 9 (9 / 44, 7%) companies had three or more representatives of the minority. The representative of the minority shareholders had a slight increase in the sample with all firms. But considering the 36 companies that participated in both surveys, there was improvement, mainly in the number of companies that have three or more representatives of the minority. In 2005, only one firm (1 / 10; 10%) did not have a representative of the minority; 4 (4 / 10, 40%) other companies had one, and only three (3 / 10; 30%) companies had three or more representatives of the minority (which,

²⁷ Law 6404/76 Art. 161, § 4 b

²⁸ CVM Recommendations on Corporate Governance (2002) § 4.2; IBGC Code of Best Practice of Corporate Governance (2003) § 5.2

therefore, make up the majority of the board). In 2007, two (2 / 18; 11%) companies did not have a representative of the minority, other 5 (5 / 18, 28%) companies had one, and 6 (6 / 18, 33%) companies had three or more representatives of the minority. There is a trend for more companies with majority of fiscal board members to represent the minority for all and overlapped firms.

Table 20 - 2007 - 44 Brazilian private companies
Minority Representation on Permanent Fiscal Board: Crosstabulation

Minority shareholder representatives on fiscal board for 44 Brazilian private firms which have a permanent fiscal board and responded to the 2007 Brazil CG Survey.

No. of directors who represents minority shareholders	number of firms	cumulative percent	Proportion of minority shareholders representants	number of firms	cumulative percent
0	5	11%	0%	5	11%
1	18	52%	1-10%	0	11%
2	12	80%	11-20%	1	14%
3	6	93%	21-30%	3	20%
4	2	98%	31-40%	15	55%
5	1	100%	41-50%	7	70%
			51-60%	4	80%
			61-70%	3	86%
			100%	6	100%
mean		1.7	mean		0.45
median		1	median		0.3
total	44		total	44	

Table 20 - 2005 - 34 Brazilian private companies
Minority Representation on Permanent Fiscal Board: Crosstabulation

Minority shareholder representatives on fiscal board for 34 Brazilian private firms which have a permanent fiscal board and responded to the 2005 Brazil CG Survey.

No. of directors who represents minority shareholders	number of firms	cumulative percent	Proportion of minority shareholders representants	number of firms	cumulative percent
0	3	9%	0%	3	9%
1	19	65%	1-9%	0	9%
2	9	91%	10 -19%	0	9%
3	2	97%	20 - 29%	6	26%
6	1	100%	30 - 39%	14	68%
			40 - 49%	8	91%
			100%	3	100%
		1.45	mean		0.36
		1	median		0.33
total	34		total	34	

Table 20 - 2007 - 18 overlap private firms**Minority Representation on Permanent Fiscal Board: Crosstabulation**

Minority shareholder representatives on fiscal board for 18 Brazilian private firms which have a permanent fiscal board and responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2007 Brazil GC Survey.

No. of directors who represents minority shareholders	number of firms	cumulative percent	Proportion of minority shareholders representants	number of firms	cumulative percent
0	2	11%	0%	2	11%
1	5	39%	1-10%	0	11%
2	5	67%	11-20%	0	11%
3	3	83%	21-30%	1	17%
4	1	89%	31-40%	4	39%
5	2	100%	41-50%	3	56%
			51-60%	1	61%
			61-70%	2	72%
			100%	5	100%
mean		2.1	mean		0.53
median		2	median		0.40
total	18		total	18	

Table 20 - 2005 - 10 overlap private firms**Minority Representation on Permanent Fiscal Board: Crosstabulation**

Minority shareholder representatives on fiscal board for 10 Brazilian private firms which have a permanent fiscal board and responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2005 Brazil GC Survey.

No. of directors who represents minority shareholders	number of firms	cumulative percent	Proportion of minority shareholders representants	number of firms	cumulative percent
0	1	10%	0%	1	10%
1	4	50%	1-9%	0	10%
2	2	70%	10 -19%	0	10%
3	2	90%	20 - 29%	0	10%
6	1	100%	30 - 39%	4	50%
			40 - 49%	2	70%
			100%	3	100%
		2	mean		0.51
		1.5	median		0.37
total	10		total	10	

There are several discussions about whether it is appropriate for the fiscal board to exercise the function of the audit committee; some companies have implemented the "turbinated Fiscal Board" – a fiscal board that executes some or most of the functions assigned to the committee audit. There is an open discussion in this direction, but the principle that the audit committee and the fiscal board are substitutes can be assumed.

Table 21 shows that companies have not necessarily seen fiscal boards and audit committees as substitute organs. In 2005, of the 10 companies with audit committees, eight also had permanent fiscal boards. Of the 70 companies without audit committees, 47 (47/88, 59%) had permanent fiscal boards, but the other 23 (23/88, 28%) did not have either. In 2007, of the 11 companies with audit committees, nine also had permanent fiscal boards. Of the 52 companies without an audit committee, 30 (30/63, 48%) had permanent fiscal boards, but the other 22 (35%) did not have either. Of the 36 companies completing both questionnaires, 37% did not have either permanent fiscal boards or audit committees in 2005 and, in 2007, the number had decreased to 27% of companies. Although the decline in the number of companies without either a permanent fiscal board or an audit committee was small in the sample with all firms, the decline was much greater in the control sample, which may indicate a positive tendency towards good governance practices corporate by these companies. Also, there is a trend for more companies with majority of fiscal board members to represent the minority, for both overlap and overall firms.

Table 21 - 2007 – condensed - 63 Brazilian private companies
Crosstabulation: Audit Committee and Permanent Fiscal Board

Crosstabulation for firms with audit committee, permanent fiscal board, both, or neither, for 63 Brazilian private firms which responded to the 2007 Brazil CG Survey.

	Permanent and near permanent fiscal board		Occasional and without fiscal board		Total
	No. of firms	Percent	No. of firms	Percent	
Audit committee	9	14%	2	3%	11 (17%)
No audit committee	30	48%	22	35%	52 (83%)
Total	39	62%	24	38%	63 (100%)

Table 21 – 2005 - condensed - 80 Brazilian private companies
Crosstabulation: Audit Committee and Permanent Fiscal Board

Crosstabulation for firms with audit committee, permanent fiscal board, both, or neither, for 80 Brazilian private firms which responded to the 2005 Brazil CG Survey.

	Permanent and near permanent fiscal board		Occasional and without fiscal board		Total
	No. of firms	Percent	No. of firms	Percent	
Audit committee	8	10%	2	3%	10 (13%)
No audit committee	47	59%	23	28%	70 (87%)
total	55	69%	25	31%	80 (100%)

Table 21 - 2007 – condensed - 30 overlap private firms
Crosstabulation: Audit Committee and Permanent Fiscal Board

Crosstabulation for firms with audit committee, permanent fiscal board, both, or neither, for 30 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2007 Brazil GC Survey.

	Permanent and near permanent fiscal board		Occasional and without fiscal board		Total
	No. of firms	Percent	No. of firms	Percent	
Audit committee	6	20%	1	3%	7 (23%)
No audit committee	15	50%	8	27%	23 (77%)
total	21	70%	9	30%	30 (100%)

Table 21 - 2005 - condensed – 30 overlap private firms
Crosstabulation: Audit Committee and Permanent Fiscal Board

Crosstabulation for firms with audit committee, permanent fiscal board, both, or neither, for 30 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2005 Brazil GC Survey.

	Permanent and near permanent fiscal board		Occasional and without fiscal board		Total
	No. of firms	Percent	No. of firms	Percent	
Audit committee	5	17%	1	3%	6 (20%)
No audit committee	13	43%	11	37%	24 (80%)
total	18	60%	12	40%	30 (100%)

Table 22 provides information about the companies that have non-permanent fiscal boards. It was asked how many times, in the last five years, investors demanded the creation of a fiscal board that was not permanent. In 2005, of the 51 companies that answered this question, 24 reported that the fiscal board was not permanent, although in practice it was permanent or close to being permanent as this was set up four or five times. Only in 12 companies the fiscal board had not been convened at least once in the last five years (three of these 12 companies had audit committees). In 2007, of the 33 companies that answered this question, eight constituted the board four or five times. Also, 17 companies said they had not called at least once the fiscal board over the past five years. This may be due to the entry of new firms in the sample, with no time for having multiple non-independent boards called.

In the sample of 36 companies, there were no major changes in this period. However, further investigation is needed to understand its advantages and disadvantages in comparison with an audit committee and the reason for the company to have a fiscal board, an audit committee, or both.

Table 22 - 2007 - 33 non-IPO Brazilian private companies**Non-Permanent Fiscal Board: How Often Used**

Number of times non-permanent fiscal board was convened during last five years, for 33 Brazilian private firms which do not have a permanent fiscal board and responded to this question on the 2007 Brazil CG Survey.

Number of times convened	number of firms	percentage
0	17	52%
1	3	9%
2	1	3%
3	4	12%
4	1	3%
5	7	21%
Total	33	100%
Permanent board	32	

Table 22 - 2005 - 51 non-IPO Brazilian private companies**Non-Permanent Fiscal Board: How Often Used**

Number of times non-permanent fiscal board was convened during last five years, for 51 Brazilian private firms which do not have a permanent fiscal board and responded to this question on the 2005 Brazil CG Survey.

Number of times convened	number of firms	percentage
0	12	24%
1	6	12%
2	4	8%
3	5	10%
4	10	20%
5	14	27%
Total	51	100%
Permanent board	34	

Table 22 - 2007 - 15 non-IPO overlap private firms**Non-Permanent Fiscal Board: How Often Used**

Number of times non-permanent fiscal board was convened during last five years, for 15 Brazilian private firms which do not have a permanent fiscal board and responded to this question on the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2007 Brazil GC Survey.

Number of times convened	number of firms	percentage
0	8	53%
1	0	0%
2	0	0%
3	2	13%
4	1	7%
5	4	27%
Total	15	100%
Permanent board	17	

**Table 22 - 2005 - 22 non-IPO overlap private firms
Non-Permanent Fiscal Board: How Often Used**

Number of times non-permanent fiscal board was convened during last five years, for 22 Brazilian private firms which do not have a permanent fiscal board and responded to this question on the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2005 Brazil GC Survey.

Number of times convened	number of firms	percentage
0	11	50%
1	2	9%
2	0	0%
3	1	5%
4	5	23%
5	3	14%
Total	22	100%
Permanent board	10	

7.3 External Auditor

The presence of external audit has aimed at internal control by shareholders, owners, or administrators. In this sense, it can be said that there is a relationship narrowing between the external audit and good corporate governance practices. The external audit aims to monitor and assist in the evolutionary process of corporate governance, which is, according to the positive response obtained by the market, an essential process for companies in general. In order to achieve better results, it is important to align the two audits – internal and external. Therefore, financial statements in Brazil of public Brazilian firms must, by law, be audited by an external auditor²⁹.

CVM requires companies to make a rotation of the external auditor every five years and the auditor waived as a result of the rotation should not rehired for the next three years³⁰. For IBGC, external auditors must report the following items to the Audit Committee and, when failing to do this, directly to the Board: discussion of the main accounting policies, material weaknesses and significant gaps in internal controls and procedures, alternative accounting treatments, and cases of disagreements with the Board, risk assessment and analysis of the possibility of fraud. In addition, auditors, for the benefit of their independence, should be hired for a period of default and may be rehired after evaluation that is developed and documented by the Audit Committee and/or Board of Directors on their independence and performance, in compliance with

²⁹ Law 6404/76 Art. 177, § 3

³⁰ Instruction CVM No. 308 (1999), art. 31.

the professional legislation and regulations in force. It is recommended that the potential renewal of an auditing firm, after a maximum of 5 (five) years, be subject to the approval of the majority of members present at the Annual Meetings. If rehired after 5 years, then the Board / Audit Committee should confirm that the external auditor promotes the rotation of the key team professionals, as provided in professional standards.

We asked whether the companies had replaced their external auditors in the last five years. Only 49 companies answered affirmatively in 2005 and 22 in 2007. Of these, 31 gave legal reasons (probably the requirement of rotation) in 2005, including that six of the auditors retired from business, six were unhappy with the prices charged by the auditors, and six companies mentioned other reasons. In 2007, only 22 companies reported to have changed their external auditors. Of these, 11 gave legal reasons (probably the requirement of rotation), including that 2 of them were unhappy with the level of charges, 2 for reasons of discrepancies in accounting practices, and 7 mentioned other reasons. Other reasons given in 2005 include: 2 wanted to use the same auditor as the parent company, 1 company moved to a more internationally known auditing firm, and 1 mentioned unspecified problems. In 2007, 2 alleged change of the controller, 5 said it was due to the IPO. The decrease in the number of replacements in 2007 is likely to be due to the huge number of companies that went public during that period. Also, it was asked whether the external auditor paid other services than auditing. The other services may create a conflict of interest for the auditor because auditors losing audit services are also likely to lose the services unrelated to audit. CVM recommends that companies do not hire their auditors for other services and to limit fees for audit-unrelated services to a percentage of total fees that are paid to the auditor. IBGC's recommendations say that auditors cannot audit their own work. Therefore, as a rule of thumb, they should not carry out consultancy work for the organization they audit. The Audit Committee or, when failing that, the Board should be aware of all services (including fees) provided by external auditors to ensure that the auditor's independence is not put into question and avoid potential conflicts of interest³¹.

³¹ CVM Recommendations on Corporate Governance (2002) § 4.4; IBGC Code of Best Practice of Corporate Governance (2003) § 4.6

Table 23 - 2007 - 121 Brazilian private companies
Relation with External Auditor

Information about external auditor for 172 Brazilian private firms which responded to the 2007 Brazil CG Survey. Responses on replacement of auditor exclude replacement for legal reasons (mandatory rotation).

	Yes	Yes %
Within the last 5 years		
Company employs external auditor for non-audit services	24	20%
Company replaced the external auditor	11	9%
Reason for replacing auditor		
Auditor went out of business	0	0%
Fees charged	2	2%
Disagreement over accounting policy	2	2%
Other reasons	7	6%

Table 23 - 2005 - 88 Brazilian private companies
Relation with External Auditor

Information about external auditor for 88 Brazilian private firms which responded to the 2005 Brazil CG Survey. Responses on replacement of auditor exclude replacement for legal reasons (mandatory rotation).

	Yes	Yes %
Within the last 5 years		
Company employs external auditor for non-audit services	16	18%
Company replaced the external auditor	18	20%
Reason for replacing auditor		
Auditor went out of business	6	7%
Fees charged	6	7%
Disagreement over accounting policy	0	0%
Other reasons	6	7%

Table 23 - 2007 – 36 overlap private firms
Relation with External Auditor

Information about external auditor for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Responses on replacement of auditor exclude replacement for legal reasons (mandatory rotation). These informations are referred to the 2007 Brazil GC Survey.

	Yes	Yes %
Within the last 5 years		
Company employs external auditor for non-audit services	8	22%
Company replaced the external auditor	2	6%
Reason for replacing auditor		
Auditor went out of business	0	0%
Fees charged	1	3%
Disagreement over accounting policy	0	0%
Other reasons	1	3%

Table 23 - 2007 - 36 overlap private firms**Relation with External Auditor**

Information about external auditor for 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. Responses on replacement of auditor exclude replacement for legal reasons (mandatory rotation). These informations are referred to the 2005 Brazil GC Survey.

	Yes	Yes %
Within the last 5 years		
Company employs external auditor for non-audit services	4	11%
Company replaced the external auditor	5	14%
Reason for replacing auditor		
Auditor went out of business	0	0%
Fees charged	4	11%
Disagreement over accounting policy	0	0%
Other reasons	1	3%

In 2005, only 18% (16/88) of companies acquired audit-unrelated services from their auditors; in part, this may occur because of the rotation requirement that prevents long-term relationships, making hiring an auditor for other unrelated services less attractive. In 2007, 20% (24/121) of companies said they purchased unrelated services from their auditors. In the sample of 36 firms, there is a similar trend.

8. Shareholder Meetings and Shareholder Rights

The capital market is growing because of the increased entry of individuals through equity funds and investment clubs. Therefore is important to improve and expand the mechanisms of protection for minority shareholders. During this section, aspects relative to shareholders' meetings, sale of control, securities offerings, and other matters will be discussed.

8.1 Shareholders' Meetings

For CVM, anual meetings shall be held at a date and time that does not hinder the access of shareholders. IBGC recommends that the choice of place, date and time must be made in a manner to stimulate the presence. The convening notice of shareholders' meetings must contain detailed description of the matters to be discussed. The board should include in the agenda relevant and timely issues suggested by the minority shareholders, regardless the percentage required by law to call a shareholders' meeting. According to the Brazilian legislation, companies must convene a shareholders' meeting

at least 15 days in advance. However, both CVM and IBGC recommend a minimum of 30 days. For companies that are part of international markets, CVM recommends 40 days³². Table 24 reports some aspects of the shareholders' meeting.

Table 24 shows that only 7% (6/84) of companies in 2005 and 21% (19/89) of companies in 2007 convened a meeting at least 30 days in advance. The Act provides that the notice to shareholders must include the agenda of the meeting. IBGC suggests that the agenda and the documentation relative to the meeting should be as detailed as possible³³. It was only asked whether the names of candidates for directors are included in the call. In 2005, only 13% (11/88) of companies answered yes, and in 2007, this number had increased to 24, i.e., 24 of 89 (27%) companies that participated in the survey. In 2005, only 19% (16/84) of companies said they considered possible conflicts with the annual meetings of other companies in the same industry, and in 2007, that number had decreased to 15% (13/89) companies of the sample. The companies listed in levels of governance of BM&FBovespa should disclose to investors at the end of January of each year a calendar with the corporate events of that year, including the date of annual shareholders' meeting. A reasonable number in 2005 – 39% (33/84) of companies – answered to follow this practice, while in 2007 they were 63% (56/89) of companies. This improvement in governance practices may be due to companies that are listed in different levels of BM&FBovespa as well as the additional practices of governance that these companies have adopted. This can be seen in the sample of 36 companies that participated in both surveys. In 2005, only one (1/34, 3%) companies convened meetings at least 30 days in advance, and this number had increased to 6 (6 / 36, 17%) companies in 2007. There is some tendency in overlapped firms as well, but only 7 out of 36 disclosed names prior to meetings. Regarding both the issues of disclosing the agenda of major corporate events and considering possible conflicts with the annual meetings of other companies in the same industry, there is a trend of improvement in these companies.

³² Law 6404/76, art. 124, § 1, item II; CVM Recommendations on Corporate Governance (2002) § 1.2; IBGC Code of Best Practice of Corporate Governance (2003) § 1.5.2.

³³ Law 6404/76, art. 124; CVM Recommendations on Corporate Governance (2002) § 1.1; IBGC Code of Best Practice of Corporate Governance (2003) § 1.5.4.

Table 24 - 2007 - 89 Brazilian private companies
Shareholder Meetings

Sample is 89 Brazilian private firms which responded to the 2007 Brazil CG Survey and provided information on shareholder meetings.

Provision	Yes	% yes
Company provides at least 30 days notice of annual meeting	19	21%
Company discloses director candidate names in advance of annual meeting	24	27%
Company considers conflicts with annual meetings of others companies in the same industry when it schedules its annual meeting	13	15%
Company discloses an annual agenda of corporate events	56	63%

Table 24 - 2005 - 84 Brazilian private companies
Shareholder Meetings

Sample is 84 Brazilian private firms which responded to the 2005 Brazil CG Survey and provided information on shareholder meetings. Number of responses varies from 84 to 86.

Provision	Yes	% yes
Company provides at least 30 days notice of annual meeting	6	7%
Company discloses director candidate names in advance of annual meeting	11	13%
Company considers conflicts with annual meetings of others companies in the same industry when it schedules its annual meeting	16	19%
Company discloses an annual agenda of corporate events	33	39%

Table 24 - 2007 - 36 overlap private firms
Shareholder Meetings

Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and provided information on shareholder meetings. These informations are referred to the 2007 Brazil GC Survey.

Provision	Yes	% yes
Company provides at least 30 days notice of annual meeting	6	17%
Company discloses director candidate names in advance of annual meeting	7	19%
Company considers conflicts with annual meetings of others companies in the same industry when it schedules its annual meeting	11	31%
Company discloses an annual agenda of corporate events	23	64%

Table 24 - 2005 - 34 overlap private firms
Shareholder Meetings

Sample is 34 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and provided information on shareholder meetings. These informations are referred to the 2005 Brazil GC Survey.

Provision	Yes	% yes
Company provides at least 30 days notice of annual meeting	1	3%
Company discloses director candidate names in advance of annual meeting	6	18%
Company considers conflicts with annual meetings of others companies in the same industry when it schedules its annual meeting	7	21%
Company discloses an annual agenda of corporate events	16	47%

8.2 Rights of Preferred Shareholders

Ensuring greater respect for the rights of minority shareholders has been a major concern of the movement of corporate governance around the world. In Brazil, after a history of successive scandals where groups of control benefited at the expenses of minority shareholders, whose interests were rarely taken into account, some steps were taken in seeking a balance between both sides. Brazilian Law also has repressed the abuse and misuse of power, covering all damage to the rights of other shareholders and any unjust enrichment³⁴. However, many times these rights were not respected.

The number of Brazilian companies that have preferred shares, although still large, has declined in recent years. In 2005, of the 86 companies answering questions about the rights of shareholders, 74 had preferred shares issued, while in 2007, of the 121 companies answering the survey, only 64 had issued preferred shares. Table 25 reports some of the rights of preferred shareholders. Brazilian law stipulates that companies with preferred shares should offer to these actions, in relation to common shares, at least one advantage out of a list of three. These advantages are: 10% higher dividend than those paid to common shares, at least 25% dividends of the net, right to tag along at least 80% of the price paid per share of the controlling block.

³⁴ Law 6404/76, art. 17. Under Law 6404/76, art. 111, preferred shares acquire voting rights if no dividends are paid for a period specified in the bylaws, which cannot exceed 3 years.

Level 2 of BMF&Bovespa requires that listed companies offer tag along with a minimum of 80% for preferred shares. IBGC also recommends giving the right to tag along to 100% for common or preferred shares³⁵. Of the 17 (17/74, 23%) companies that answered in 2005 that they provided tag-along rights for preferred shares, 12 did that at 80% and five at 100%. In 2007, 28 (28/64, 44%) respondent companies provided tag along rights for preferred, eight at 80% and twenty at 100%. In 2005, 11 of 36 (11/31, 35%) companies participating in both surveys and 11 (11/25, 44%) respondents in 2007 provided tag along rights for preferred shareholders. In 2005, 4 companies said they provided 80% and 7 at 100%. In 2007, 3 companies said they provided 80% and 8 at 100%.

**Table 25 - 2007 - 64 Brazilian private companies
Selected Rights of Preferred Shareholders**

Sample is 64 Brazilian private firms which responded to the 2007 Brazil CG Survey and have preferred shares.

	Yes	% yes
Firm has preferred shares	64	53%
Special rights (one of these is required by law)		
10% higher dividends than on common shares	30	47%
Dividends of at least 25% of net income	28	44%
Takeout rights, at price of at least 80% of the price paid for the control block	28	44%
Voting rights		
Mergers, transformations and similar transactions	9	14%
Transactions with controlling shareholder involving conflict of interest, which require shareholder approval	4	6%
Evaluation of non-monetary assets given in exchange for stocks	3	5%
Approving the external company which determines economic value during a freezeout	9	14%
Other rights		
Freezeout must be at price based on economic value of the company	19	30%
Company has a class of preferred shares that gives special voting rights to its holders when compared to other preferred shares	0	0%

³⁵ IBGC Code of Best Practice of Corporate Governance (2003) § 1.6

Table 25 - 2005 - 74 Brazilian private companies
Selected Rights of Preferred Shareholders

Sample is 74 Brazilian private firms which responded to the 2005 Brazil CG Survey and have preferred shares.

	Yes	% yes
Firms has preferred shares	74	84%
Special rights (one of these is required by law)		
10% higher dividends than on common shares	39	53%
Dividends of at least 25% of net income	25	34%
Takeout rights, at price of at least 80% of the price paid for the control block	17	23%
Voting rights		
Mergers, transformations and similar transactions	9	12%
Transactions with controlling shareholder involving conflict of interest, which require shareholder approval	6	8%
Evaluation of non-monetary assets given in exchange for stocks	2	3%
Approving the external company which determines economic value during a freezeout	3	4%
Other rights		
Freezeout must be at price based on economic value of the company	8	11%
Company has a class of preferred shares that gives special voting rights to its holders when compared to other preferred shares	3	4%

Table 25 - 2007 – 25 overlap private firms
Selected Rights of Preferred Shareholders

Sample is 25 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and have preferred shares. These informations are referred to the 2007 Brazil GC Survey.

	Yes	% yes
Firms has preferred shares	25	69
Special rights (one of these is required by law)		
10% higher dividends than on common shares	13	52%
Dividends of at least 25% of net income	11	44%
Takeout rights, at price of at least 80% of the price paid for the control block	11	44%
Voting rights		
Mergers, transformations and similar transactions	3	12%
Transactions with controlling shareholder involving conflict of interest, which require shareholder approval	0	0%
Evaluation of non-monetary assets given in exchange for stocks	1	4%
Approving the external company which determines economic value during a freezeout	2	8%
Other rights		
Freezeout must be at price based on economic value of the company	3	12%
Company has a class of preferred shares that gives special voting rights to its holders when compared to other preferred shares	0	0%

Table 25 - 2005 - 31 overlapping private firms
Selected Rights of Preferred Shareholders

Sample is 31 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and have preferred shares. These informations are referred to the 2005 Brazil GC Survey.

	Yes	% yes
Firms has preferred shares	31	86%
Special rights (one of these is required by law)		
10% higher dividends than on common shares	15	48%
Dividends of at least 25% of net income	8	26%
Takeout rights, at price of at least 80% of the price paid for the control block	11	35%
Voting rights		
Mergers, transformations and similar transactions	6	19%
Transactions with controlling shareholder involving conflict of interest, which require shareholder approval	2	6%
Evaluation of non-monetary assets given in exchange for stocks	1	3%
Approving the external company which determines economic value during a freezeout	3	10%
Other rights		
Freezeout must be at price based on economic value of the company	7	23%
Company has a class of preferred shares that gives special voting rights to its holders when compared to other preferred shares	0	0%

In some specific situations, voting rights may be given to preferred shareholders; therefore, companies were asked whether they provided this right. The rules of Level 2 of BM&FBovespa request that preferred shareholders have the same voting rights as common shareholders in the event of³⁶: 1) acquisition, merger, consolidation, spin-off company; 2) approval for transactions with conflicts of interest with the majority shareholder (assuming there is a transaction that the law or the rules of the company requires approval); 3) evaluation of non-monetary assets issued in exchange of shares; and 4) changes in laws affecting the rights of the preferred. CVM recommends that shareholders with preferred shares have the right to vote in the first three instances³⁷.

In 2005, three companies were listed in Level 2, and in 2007, this number had increased to 11 companies. Some respondent companies should not be completely familiar according to the BM&FBovespa rules, as one would expect at least 2 hits for 2005 and 11 in 2007 to those rights. A small number of companies provided the first two rights, although not listed as Level 2. The voting rights in case of mergers were offered by nine companies in 2005 and 2007, and preferred shares are entitled to vote in the transactions

³⁶ Bovespa Level 2 Listing Rules (2006), §§ 4.1(V), 10.1.1

³⁷ CVM Recommendations on Corporate Governance (2002) § 3.1. CVM also recommends that preferred shareholders have voting for alteration of the company's activity and reduction of mandatory dividends. We did not ask about this

with conflict of interest with the majority shareholder in six companies in 2005 and 4 in 2007.

Companies were also asked whether the statutes provided that, in case of delisting of the price, the shares held by preferred shareholders would be based on the company's economic value. In 2005, eight (8 / 74; 11%) answered yes, which is comparable to the 18 (18/74, 21%) companies that provided a right granted to minority shareholders. In 2007, there was an increase, with nineteen (19/62, 30%) companies saying that they gave that right to preferred shareholders.

Finally, it was asked whether the company had some special class of preferred shares that gave voting rights to special holders in relation to other shares. Three companies in 2005 reported to have such class of shares. For one, special actions were the golden shares that were retained by the government during privatization. In 2007, the company said it did not have such a class of shares. We can see that there is a strong trend toward responding firms being less likely to have preferred shares, related to Novo Mercado IPOs and similar trend among overlap firms, number with preferred shares drops from 31 to 25.

8.3 Rights of Minority Common Shareholders

Like the statutes, there may be clauses stipulating that, in case of delisting, the stock price should be determined by their economic value, and if that happens, the minority common shareholders in conjunction with the preferred shareholder shall have the right to vote to approve the company that will perform the evaluation. Table 26 summarizes the rights of withdrawal (incorporation, merger and going private) and tag along rights of minority common shareholders.

We also asked whether the statutes provided that, in case of delisting, the price of shares would be determined by their economic value, and if it happens, the minority shareholders had the right to vote to approve the company that will perform the evaluation. Both Level 2 and Novo Mercado require the two rights³⁸. For companies of Level 2, the preferred shareholders have similar rights to common shareholders, as

³⁸ Bovespa Level 2 Listing Rules (2006), § 4.1.

discussed above. In 2005, ten (10/88, 12%) companies said they were offering, in the event of delisting, to repurchase the shares based on the economic value. Five of these companies are listed in Level 2 and Novo Mercado. However, only four (4 / 10, 40%) give the minority the right to choose the appraising company (two of them are listed in Level 2 and Novo Mercado). In 2007, 60 (60/121, 50%) companies of the sample said that in the event of delisting they offered to repurchase the shares based on the economic value. Of these, 51 (51/60, 85%) companies give the minority the right to choose the appraising company (thirteen of them are listed in Level 2 and Novo Mercado). There was improvement for overlap firms as well, especially in the use of an external company to value shares (if firms makes offer at economic value and takeout of common at 100% of price paid for control). In 2005, 4 firms (4 / 9, 44%) gave that right back, and in 2007, that number had increased to 8 (8 / 10, 80%) companies.

Table 26 - 2007 - 121 Brazilian private companies
Minority Common Shareholders: Freezeout and Takeout Rights

Sample is 121 Brazilian private firms which responded to the 2007 Brazil CG Survey.

			Yes	% yes
Firm has public common shares			96	79%
Question	Bovespa rule	No. of firms governed by rule	Yes	% yes
If company goes private, it will make a tender offer for minority common shares, at a price based on the shares' economic value	Level 2	56	60	50%
If yes, the external company which determines economic value must be approved by minority shareholders:	Level 2	56	51	85%
Bylaws give takeout rights to common shareholders at 100% of per-share price paid for control			66	55%

Table 26 - 2005 - 88 Brazilian private companies
Minority Common Shareholders: Freezeout and Takeout Rights

Sample is 88 Brazilian private firms which responded to the 2005 Brazil CG Survey.

			Yes	% yes
Firm has public common shares			65	76%
Question	Bovespa rule	No. of firms governed by rule	Yes	% yes
If company goes private, it will make a tender offer for minority common shares, at a price based on the shares' economic value	Level 2	5	10	12%
If yes, the external company which determines economic value must be approved by minority shareholders:	Level 2	5	4	40%
Bylaws give takeout rights to common shareholders at 100% of per-share price paid for control			12	14%

Table 26 - 2007 – 36 overlap private firms
Minority Common Shareholders: Freezeout and Takeout Rights

Sample is 36 Brazilian private firms which responded to the 2007 Brazil CG Survey.

			Yes	% yes
Firm has public common shares			28	78%
Question	Bovespa rule	No. of firms governed by rule	Yes	% yes
If company goes private, it will make a tender offer for minority common shares, at a price based on the shares' economic value	Level 2	11	10	28%
If yes, the external company which determines economic value must be approved by minority shareholders:	Level 2	11	8	80%
Bylaws give takeout rights to common shareholders at 100% of per-share price paid for control			15	42%

Table 26 – 2005 – 36 overlap private firms
Minority Common Shareholders: Freezeout and Takeout Rights

Sample is 36 Brazilian private firms which responded to the 2005 Brazil CG Survey.

			Yes	% yes
Firm has public common shares			21	62%
Question	Bovespa rule	No. of firms governed by rule	Yes	% yes
If company goes private, it will make a tender offer for minority common shares, at a price based on the shares' economic value	Level 2	5	9	25%
If yes, the external company which determines economic value must be approved by minority shareholders:	Level 2	5	4	44%
Bylaws give takeout rights to common shareholders at 100% of per-share price paid for control			10	28%

CVM³⁹ recommends that the sale of shares of the Company's control should only be hired under the condition that the buyer makes a bid for all remaining shares of the company at the same price, regardless the type or class. According to the law, the purchaser is required to make public offering of common shares that are not members of the controlling block by at least 80% of the price paid for each share of control. According to the good corporate governance practices, the purchaser must give equal treatment to all classes or types of shares. Therefore, the price offered to minority shareholder shall extend to all other shares of the company, regardless the type or class. IBGC recommends that this offer is 100% of the price paid for the shares of the controlling block⁴⁰. For companies listed at Level 2 or Novo Mercado, the offer should be 100%. It was asked whether the company went beyond 80% of the legal requirement. In 2005, twelve (12/88, 14%) companies said yes, including five companies in Level 2 and Novo Mercado: all these rights offer 100% of the price per share to be in control. In 2007, 66 (66/121, 55%) companies said yes, and there were 45 companies in Level 2 and Novo Mercado. Of the 36 companies that participated in both surveys, 10 (10/36, 28%) in 2005 answered that they went beyond the statutory floor of 80% (four companies were listed at Level 2 or New Market). This number had increased to 15 (15/36, 42%) companies in 2007, with 10 companies being in Level 2 and Novo Mercado. This increase in the number of companies that provide these rights may result not only from the entry of new firms in Level 2 or Novo Mercado, but also the adoption of improved governance practices by these companies.

Free Float

Share liquidity is a key component for the proper functioning of the market. The shares of a company may be distributed among multiple shareholders, both controllers and minority. The free float is the percentage amount of free shares to be traded in the market. Those actions are the ones that do not belong to strategic investors, such as controllers and directors of the company and shareholders owning more than 5% of the total capital of the company. Companies listed in the Novo Mercado and Levels 1 and 2 of BM&FBovespa need to compulsorily have at least a free float of 25% of their shares

³⁹ CVM Recommendations on Corporate Governance (2002) § 2.1.

⁴⁰ IBGC Code of Best Practice of Corporate Governance (2003) § 1.6; Bovespa Novo Mercado Listing Rules 2006), § 8.1.

in free circulation in the market for trading⁴¹. This rule is intended to ensure a reasonable level of liquidity for the minority shares, and keeps a lock of soft capital, where the group of control gradually buys the minority shares, reducing liquidity and thereby depressing the price of the remaining shares. we asked how many companies had at least a free float of 25%, and 51 (51/88, 59%) companies said yes in 2005, while 101 (101/121, 84%) companies answered yes in 2007. It also asked whether the companies disclosed the level of free float to their shareholders, and 53 (53/88, 62%) companies said that they announced it in 2005, while 99 (99/121, 82%) companies did so in 2007. This increase may be related to the entry of new firms in the sample. In the control sample, for the 36 companies answering both questionnaires, there were no major changes.

9. Related Party Transactions

An important aspect of corporate governance is the procedures for transactions with conflict of interest. In these transactions, potential conflict arises from the difference between a decision that would maximize the value of the company and the decision that would maximize the outcome of the people who actually have the decision-making power.

For CVM, the board must ensure that transactions between related parties are clearly reflected in the financial statements and are made in writing and under market conditions. In addition, the status of the company should stop contracts for services from related parties based on compensation billing and revenue. Both CVM and IBGC recommend that companies do not make loans to related parties. IBGC advises that the legality of a transaction involving conflict of interest is based on an independent evaluation. CVM suggests that minority shareholders have the opportunity to request an independent entity to evaluate transactions with conflict of interest. The rules of BM&FBovespa for Level 1, Level 2 and Novo Mercado requires disclosure of related-party transactions for amounts higher than R\$ 200,000,00 or 1% of the company's equity.

⁴¹ Bovespa Level 1 Listing Rules (2006), § 3.1 (ii).

There was a tendency of change with respect to transactions with conflicts of interest between 2005 and 2007. In 2005, fewer companies reported loans to related parties (4 companies, 4 / 88, 5%), property rental from a related party (3 companies, 3 / 88, 4%), or to have bought or sold significant amounts from or to a related party (7 companies, 7 / 88, 8%). In 2007, a larger number of companies reported loans to related parties (14 companies, 14/121, 12%), property rental from a related party (19 companies, 19/121, 16%), or to have bought or sold significant amounts from or to a related party (10 companies, 10/121, 8%). This same tendency can be seen in the sample containing only 36 companies that answered the two questionnaires. This change may be related to the differentiated practices of corporate governance that these companies are adopting. Another possibility is that some companies may not have answered that question for not being allowed to respond. Most companies reported that significant transactions are disclosed to shareholders (59 companies, 59/88, 69% in 2005 and 82, 82/121, 68%, in 2007). In the control sample, 19 (19/36, 53%) companies in 2005 answered to report significant transactions to shareholders, and in 2007, that number had increased to 25 (25/36, 69%) companies.

It is difficult to interpret the remaining responses, as many companies may have answered “no” because they did not make such transactions or they do not want (or cannot) disclose this type of transaction. It was separately asked about transactions with a director or officer and transactions made with the controller. Table 27 reports the responses. The procedures seem similar for both groups. One might think that most transactions should be approved by a party without conflict of interest, directors who were not involved in the conflict of interest and perhaps by shareholders without any conflicts of interest⁴². From 2005 to 2007, there was a worsening with this respect. In 2005, only about two-thirds required approval from the board, and in 2007, only a third said to require special approval from the board. This collapse was both for the 36 companies participating in both questionnaires and for the sample with all firms.

As seen above, many boards of Brazilian companies have no or few independent

⁴² Law 6404/76, art. 115, provides that voting rights are considered to have been abused if a shareholder exercises them with the intent to obtain private advantage. Thus, in practice, if a shareholder vote is required to approve a related party transaction, approval by nonconflicted shareholders is required.

directors. In 2005, only 12 (12/88, 14%) companies reported that non-conflicting directors approve transactions between parties, and in 2007 that number had increased to 26 (26/121, 21%) companies. In 2005 and 2007, only eight companies required shareholders' approval, and only four companies in 2005 and nine in 2007 stipulated that the approval should be given by shareholders not involved in the conflict. The percent rise of no special approval procedures could be new firms that had not faced the issue yet.

**Table 27 - 2007 - 121 Brazilian private companies
Related Party Transactions**

Sample is 121 Brazilian private firms which responded to the 2007 Brazil CG Survey.

	Yes	% Yes		
Existence and Disclosure				
Has the company lent money to related parties	14	12%		
Does the company rent property from a related party	19	16%		
Does the company buy or sell a significant amount of goods or services to or from a related party	10	8%		
Are the details of significant related party transactions disclosed to shareholders	82	68%		
Approval of Related Party Transactions with				
	director or officer		controller	
	Yes	% Yes	Yes	% Yes
No special approval	42	35%	37	31%
Approval by the board of directors	36	30%	34	28%
Approval by nonconflicted directors	26	21%	21	17%
Approval by shareholders	8	7%	10	8%
Approval by nonconflicted shareholders	9	7%	7	6%

Table 27 - 2005 – 88 Brazilian private companies
Related Party Transactions

Sample is 86 Brazilian private firms which responded to the 2005 Brazil CG Survey.

	Yes	% Yes
Existence and Disclosure		
Has the company lent money to related parties	4	5%
Does the company rent property from a related party	3	4%
Does the company buy or sell a significant amount of goods or services to or from a related party	7	8%
Are the details of significant related party transactions disclosed to shareholders	59	69%
Approval of Related Party Transactions with		
	director or officer	
	Yes	% Yes
	controller	
	Yes	% Yes
No special approval	17	20%
Approval by the board of directors	58	67%
Approval by nonconflicted directors	12	14%
Approval by shareholders	8	9%
Approval by nonconflicted shareholders	4	5%

Table 27 - 2007 – 36 overlap private firms
Related Party Transactions

Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2007 Brazil GC Survey.

	Yes	% Yes
Existence and Disclosure		
Has the company lent money to related parties	4	11%
Does the company rent property from a related party	8	22%
Does the company buy or sell a significant amount of goods or services to or from a related party	5	14%
Are the details of significant related party transactions disclosed to shareholders	25	69%
Approval of Related Party Transactions with		
	director or officer	
	Yes	% Yes
	controller	
	Yes	% Yes
No special approval	18	50%
Approval by the board of directors	9	25%
Approval by nonconflicted directors	6	17%
Approval by shareholders	2	6%
Approval by nonconflicted shareholders	3	8%

**Table 27 - 2005 - overlap private firms
Related Party Transactions**

Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2005 Brazil GC Survey.

	Yes		% Yes	
Existence and Disclosure				
Has the company lent money to related parties	2		6%	
Does the company rent property from a related party	2		6%	
Does the company buy or sell a significant amount of goods or services to or from a related party	1		3%	
Are the details of significant related party transactions disclosed to shareholders	19		53%	
Approval of Related Party Transactions with	director or officer		controller	
	Yes	% Yes	Yes	% Yes
No special approval	6	17%	5	14%
Approval by the board of directors	24	67%	24	67%
Approval by nonconflicted directors	4	11%	4	11%
Approval by shareholders	1	3%	2	6%
Approval by nonconflicted shareholders	3	8%	3	8%

10. Disclosure

The transparency and accuracy of information is an important aspect of corporate governance. Some factors mentioned in the text explain the transparency-related decisions in the context of an institution that is based on ethics, quality and availability of information of general interest. The focus of this section is to see how the Brazilian has behaved in relation to aspects of disclosure.

10.1 Financial Statements

CVM recommends that companies must quarterly disclose, together with the financial statements, the report prepared by the management with discussion and analysis of the factors that most influenced the outcome and the main internal and external risk factors to the subject company.

Companies were asked about availability and spread of a series of financial information in addition to that required by the Brazilian legislation. For example, the law requires detailed financial statements, but does not require any demonstration of cash flow or that the quarterly financial statements are consolidated (only that the annual statements

must be consolidated)⁴³. BM&FBovespa requires additional financial disclosures at the highest levels of governance, including:

- Statements of cash flow (level 1 or above);
- Financial statements following the International Financial Reporting Standards (IFRS) or U.S. GAAP, with a note harmonize these statements with the approved financial statements Brazilian (Level 2 and Novo Mercado);
- Financial statements in English (Level 2 and Novo Mercado), and
- Consolidated financial statements quarterly (Level 2 and Novo Mercado)⁴⁴.

For more detailed issues relating to aspects of transparency, companies were asked about each item and also whether they provided discussion of the financial results. Table 28 reports the number of companies that provides each piece of information. Many companies make the disclosures as part of the compliance with the rules established for some of BM&FBovespa markets, but many do it regardless any BM&FBovespa rule. The table shows the total number of companies that provide private information and the number of companies that are distinctly of any BM&FBovespa rule. In 2005, almost half of the companies (41/86, 48%) disclosed their financial statements in English, 37 (37/86, 43%) companies included a statement of cash flow in their financial statements, and 26 (26 / 86; 30%) companies followed the required IFRS or U.S. GAAP standards. In addition, the vast majority (71/86, 83%) of companies provided discussion of their financial results. In 2007, the results were better, more than half (86/121, 71%) of the companies disclosed their financial statements in English, 91 (91/121, 75%) companies included a statement of cash flow in their financial statements, and 42 (42/121, 35%) companies followed the IFRS or U.S. GAAP standards. Furthermore, the vast majority (100/121, 83%) of companies provided discussion of their financial results. In many cases, companies provided financial information without the need of following the requirements of BM&FBovespa market segments. The improvement in these aspects of transparency can be observed in both samples.

⁴³ Law 6404/76, arts. 176-188 contains requirements for financial statements.

⁴⁴ Bovespa Level 1 Listing Rules (2006), § 4.2; Level 2 Listing Rules (2006), § 6.1-6.2.

When analyzing the evolution of inquiries over time, we can notice that many companies are selecting which additional financial information they will disclose. For example, for the control sample in 2005, of the 14 companies that followed the IFRS or U.S. GAAP standards, 9 companies did it as a requirement from BM&FBovespa, 3 were in accordance with the requirements to be listed in foreign exchanges, and the other two for other reasons than BM&FBovespa segmentation or the requirements from international stock exchanges. At the same time, only 7 companies in 2005 and 11 in 2007 harmonized the statements according to IFRS or U.S. GAAP financial statements in Brazil. Perhaps other companies considered that investors can do it on their own. Because the consolidated financial statements appear to be more popular, of the 36 companies participating in the two surveys, 29 (81%) firms in 2005 and 35 (97%) companies in 2007 provided consolidated financial statements quarterly. Most companies (19 companies, 53%, in 2005 and 26 companies, 72%, in 2007) reported that executives met regularly with analysts. BM&FBovespa requires companies listed at Level 1 or above to make at least one annual meeting with analysts. Among the companies that do not have annual meetings with analysts, many may be small and not have to cover an analyst⁴⁵.

**Table 28 - 2007 - 121 Brazilian private companies
Financial Statements**

Sample is 121 Brazilian private firms which responded to the 2007 Brazil CG Survey.

Area	Bovespa rule	Yes	% yes	Yes not due to listing level at Bovespa
Company provides financial statements in English	Level 2	86	71%	6
Financial statements include a statement of cash flows	Level 1	91	75%	12
Company provides financial statements which comply with IFRS or U.S. GAAP	Level 2	42	35%	7
IFRS or U.S. GAAP financial statements are reconciled to Brazilian financial statements	Level 2	24	20%	3
Company publishes consolidated quarterly financial statements	Level 2 (if has consolidated annual statements)	113	93%	33
Financial reports include discussion and analysis of factors that most influenced results and company's main risk factors (similar to U.S. MD&A disclosure)		100	83%	26
Company officers hold regular meetings with analysts	Level 1 (annual meetings)	99	82%	19

⁴⁵ Bovespa Level 1 Listing Rules (2006), § 4.4, Bovespa Level 2 Listing Rules (2006), § 6.6.

Table 28 - 2005 – 86 Brazilian private companies
Financial Statements

Sample is 86 Brazilian private firms which responded to the 2005 Brazil CG Survey.

Area	Bovespa rule	Yes	% yes	Yes not due to listing level at Bovespa
Company provides financial statements in English	Level 2	41	48%	35
Financial statements include a statement of cash flows	Level 1	37	43%	14
Company provides financial statements which comply with IFRS or U.S. GAAP	Level 2	26	30%	20
IFRS or U.S. GAAP financial statements are reconciled to Brazilian financial statements	Level 2	11	13%	5
Company publishes consolidated quarterly financial statements	Level 2 (if has consolidated annual statements)	17	43%	11
Financial reports include discussion and analysis of factors that most influenced results and company's main risk factors (similar to U.S. MD&A disclosure)		71	83%	
Company officers hold regular meetings with analysts	Level 1 (annual meetings)	53	43%	

**Table 28 - 2007 – 36 overlap private firms
Financial Statements**

Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2007 Brazil GC Survey.

Area	Bovespa rule	Yes	% yes	Yes not due to listing level at Bovespa
Company provides financial statements in English	Level 2	24	67%	13
Financial statements include a statement of cash flows	Level 1	24	67%	1
Company provides financial statements which comply with IFRS or U.S. GAAP	Level 2	16	44%	5
IFRS or U.S. GAAP financial statements are reconciled to Brazilian financial statements	Level 2	11	31%	0
Company publishes consolidated quarterly financial statements	Level 2 (if has consolidated annual statements)	35	97%	24
Financial reports include discussion and analysis of factors that most influenced results and company's main risk factors (similar to U.S. MD&A disclosure)		30	83%	
Company officers hold regular meetings with analysts	Level 1 (annual meetings)	26	72%	3

**Table 28 - 2007 - 36 overlap private firms
Financial Statements**

Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2005 Brazil GC Survey.

Area	Bovespa rule	Yes	% yes	Yes not due to listing level at Bovespa
Company provides financial statements in English	Level 2	16	44%	11
Financial statements include a statement of cash flows	Level 1	22	61%	5
Company provides financial statements which comply with IFRS or U.S. GAAP	Level 2	14	39%	9
IFRS or U.S. GAAP financial statements are reconciled to Brazilian financial statements	Level 2	7	19%	2
Company publishes consolidated quarterly financial statements	Level 2 (if has consolidated annual statements)	29	81%	24
Financial reports include discussion and analysis of factors that most influenced results and company's main risk factors (similar to U.S. MD&A disclosure)		28	78%	
Company officers hold regular meetings with analysts	Level 1 (annual meetings)	19	53%	2

10.2 Website Disclosure

The Internet has been a very important tool of communication between companies and investors. For this reason, it has enough relevance as an instrument of corporate governance. This section seeks to examine the information that is available to investors. For IBGC, the company should, as a result of a clear communication and shareholders

relationship policy, post on its website reports on all aspects of their business activity. The recommendation is to publish on the website information about related-party transactions, directors' remuneration, risk factors, etc., as well as financial and economic information required by law. These reports should also contain reports on the board and its committees' activities, as well as a detailed model of management and governance. The companies were asked whether they provided different types of information on their websites. Table 29 shows the answers given and whether the same information is also available on CVM website. In 2005, approximately half of the companies that participated in both surveys (17/36, 47%) disclosed information in English on their websites, and in 2007 this number had increased to 27 (27/36, 75%) companies. This change may be related to changes in governance practices performed by these companies as well as to the increase of companies that are listed in Level 2 and Novo Mercado.

Considering the financial disclosures, we initially have: 23 (23/36, 64%) companies in 2005 and 30 (30/36, 83%) companies in 2007 answering that they provide their annual financial statements in their websites, with many of them (23 and 30 firms, respectively) providing the quarterly statements. This information is also available at CVM. A similar number of companies disclosed annual reports to shareholders and almost 50% provided press releases.

With respect to the shareholders' meeting, 15 (15/36, 42%) companies in 2005 announced the meeting on their websites, and in 2007 this number had increased to 22 (22/36, 61%). In 2005, fewer companies (7; 7 / 36; 19%) presented voting results after meeting, and in 2007, they had increased to 13 (13/36, 36%), although this is still low. A reasonable number made their statutes available (16 companies, 16 / 36; 44%), while in 2007 this number was 24 (24/36, 67%). A slightly smaller number (12 firms, 12/36, 33%) releases the minutes of meetings of the board, and in 2007 this number was 21 (21/36, 58%). Finally, 7 (7 / 36; 19%) companies in 2005 and 3 (3 / 36, 8%) in 2007 were not very informative in their websites, containing no information about what we listed. Looking at the sample with all firms, we can see which changes are similar to the control sample. The results of this section show a positive tendency in the adoption of these transparency issues by companies participating in the survey. We can see a rise in existence of English language website and posting financial statements on website, in

information about shareholder meetings and board members and, another information. There is a similar trend for both all firms and overlap firms.

Table 29 - 2007 - 121 Brazilian private companies
Information on Company Website

Sample is 121 Brazilian private firms which responded to the 2007 Brazil CG Survey.

Process	Yes	% Yes	On CVM website
English language disclosure	94	78%	
Financial and related information			
annual financial statements	105	87%	yes
quarterly financial statements	100	83%	yes
annual report to shareholders	99	82%	
press releases	95	79%	yes
stock prices (or link to site with this information)	85	70%	
Shareholder meetings and related information			
notice of upcoming shareholder meetings	85	70%	
discussion of the results of shareholder meetings	46	38%	
background information about board members	82	68%	yes
Bylaws and minutes			
bylaws	94	78%	yes
minutes of meetings of the board of directors	87	72%	
minutes of meetings of the fiscal board*	39	32%	
Other information			
material changes in facts relevant to share price	96	79%	yes
other information material to shareholders	95	79%	yes
None of the above	8	7%	

Table 29 - 2005 - 88 Brazilian private companies
Information on Company Website

Sample is 86 Brazilian private firms which responded to the 2005 Brazil CG Survey.

Process	Yes	% Yes	On CVM website
English language disclosure	40	47%	
Financial and related information			
annual financial statements	58	67%	yes
quarterly financial statements	51	59%	yes
annual report to shareholders	53	62%	
press releases	42	49%	yes
stock prices (or link to site with this information)	35	41%	
Shareholder meetings and related information			
notice of upcoming shareholder meetings	36	42%	
discussion of the results of shareholder meetings	20	23%	
background information about board members	27	31%	yes
Bylaws and minutes			
bylaws	37	43%	yes
minutes of meetings of the board of directors	26	30%	
minutes of meetings of the fiscal board*	6	7%	
Other information			
material changes in facts relevant to share price	51	59%	yes
other information material to shareholders	48	56%	yes
None of the above	15	17%	

Table 29 - 2007 - 36 overlap private firms
Information on Company Website

Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2007 Brazil GC Survey.

Process	Yes	% Yes	On CVM website
English language disclosure	27	75%	
Financial and related information			
annual financial statements	30	83%	yes
quarterly financial statements	26	72%	yes
annual report to shareholders	28	78%	
press releases	23	64%	yes
stock prices (or link to site with this information)	22	61%	
Shareholder meetings and related information			
notice of upcoming shareholder meetings	22	61%	
discussion of the results of shareholder meetings	13	36%	
background information about board members	20	56%	yes
Bylaws and minutes			
bylaws	24	67%	yes
minutes of meetings of the board of directors	21	58%	
minutes of meetings of the fiscal board*	9	50%	
Other information			
material changes in facts relevant to share price	25	69%	yes
other information material to shareholders	25	69%	yes
None of the above	3	8%	

Table 29 - 2005 - 36 overlap private firms
Information on Company Website

Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2005 Brazil GC Survey.

Process	Yes	% Yes	On CVM website
English language disclosure	17	47%	
Financial and related information			
annual financial statements	23	64%	yes
quarterly financial statements	20	56%	yes
annual report to shareholders	21	58%	
press releases	17	47%	yes
stock prices (or link to site with this information)	14	39%	
Shareholder meetings and related information			
notice of upcoming shareholder meetings	15	42%	
discussion of the results of shareholder meetings	7	19%	
background information about board members	10	28%	yes
Bylaws and minutes			
bylaws	16	44%	yes
minutes of meetings of the board of directors	12	33%	
minutes of meetings of the fiscal board*	7	70%	
Other information			
material changes in facts relevant to share price	22	61%	yes
other information material to shareholders	18	50%	yes
None of the above	7	19%	

11. Control

Brazilian companies generally have the control of their capital in the hands of families that are sometimes also responsible for managing the business. Most Brazilian companies have one shareholder or group holding the control. Gill (2000) mentions three characteristics of family businesses: 1) the company is owned by a family that owns all or most of its capital so that it holds the control, 2) the family has a business management and can set the goals, objectives and guidelines, 3) family members are responsible for the administration, but they rely on the participation of executives in higher positions. Table 30 shows how the control of the companies participating in the survey is distributed.

In 2005, 20 (20/85, 24%) companies were directly controlled by a single shareholder, 16 were controlled by a publicly traded company, and five companies were controlled by publicly traded companies and, in turn, has a shareholder or group control. Ten companies were controlled by a family, and 30 companies by shareholder groups. Three companies indicated “others” as the form of control and only one company indicated that they had no shareholder or controlling group. In 2007, 14 (14/121, 12%) companies were directly controlled by a single shareholder, 31 were controlled by a publicly traded company, and 11 companies are controlled by publicly traded companies and, in turn, has a shareholder or group of control. 20 companies were controlled by a family, and 25 other companies by shareholder groups. Eighteen companies indicated others as a means of control and only two companies indicated to have no shareholder or controlling group. The 36 companies participating in both surveys also had changes in the aspect of control. In 2005, 7 (7 / 36; 19%) companies were directly controlled by a single shareholder, and in 2007, this number had reduced to only 1 company (1 / 36, 3%). The number of family-controlled companies also increased during this period. In 2005, 6 (6 / 36, 17%) companies were directly controlled by families, and in 2007, that number had increased to 9 (9 / 36, 25%) companies.

**Table 30 - 2007 - 121 Brazilian private companies
Controlled Firms**

Type of control, for 121 Brazilian private firms which responded to the questions on type of control in the 2007 Brazil CG Survey.

Type of control	Private Firms	
	No. of firms	% of firms
single shareholder	14	12%
another non-public company	31	26%
another public company	11	9%
family	20	17%
group of shareholders	25	21%
other	18	15%
no controlling shareholder or group	2	2%

**Table 30 - 2005 - 85 Brazilian private companies
Controlled Firms**

Type of control, for 85 Brazilian private firms which responded to the questions on type of control in the 2005 Brazil CG Survey.

Type of control	Private Firms	
	No. of firms	% of firms
single shareholder	20	24%
another non-public company	16	19%
another public company	5	6%
family	10	12%
group of shareholders	30	35%
other	3	4%
no controlling shareholder or group	1	1%

**Table 30 - 2007 – 36 overlap private firms
Controlled Firms**

Type of control, for 36 Brazilian private firms which responded to the questions on type of control in the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2007 Brazil GC Survey.

Type of control	Private Firms	
	No. of firms	% of firms
single shareholder	1	3%
another non-public company	6	17%
another public company	4	11%
family	9	25%
group of shareholders	10	28%
other	5	14%
no controlling shareholder or group	1	3%

**Table 30 - 2007 - 36 overlap private firms
Controlled Firms**

Type of control, for 36 Brazilian private firms which responded to the questions on type of control in the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2005 Brazil GC Survey.

Type of control	Private Firms	
	No. of firms	% of firms
single shareholder	7	19%
another non-public company	4	11%
another public company	3	8%
Family	6	17%
group of shareholders	13	36%
Other	2	6%
no controlling shareholder or group	1	3%

11.1 Shareholders' Agreements

There is a strong relationship between corporate governance and shareholders' agreement. For CVM, the company should make any known shareholders' agreements available to all shareholders, as well as those in which the company is a party. The recommendation is to emphasize that the awareness of the shareholders, as well as the social status, is essential for shareholders to evaluate their rights and the functioning of the society. Many of Brazilian companies have a shareholder or a group control. However, in some companies the control is very diffuse, so in this case, it is convenient to have an agreement between the shareholders to ensure the election of directors and other issues.

The Brazilian law facilitates the effectiveness of this type of agreement. After the 2001 reform in the Corporation Law, an agreement among shareholders registered in the company and made available to the public is mandatory for companies. In a meeting, the votes of shares that are part of a shareholders' agreement and breach the agreement cannot be counted. Agreements that are not registered with the company are considered as private agreements, enforceable by the parties of the agreement, but not against the company or its directors.

Directors elected by means of an agreement are required to vote in accordance with the terms of the agreement. There are no explicit exceptions for cases in which the vote in accordance with the agreement that conflicts with what the board believes is best for the

company or best for shareholders⁴⁶. Conflicting with this statement, the provisions of the old Brazilian law requires that the directors make their decisions in the company's best interest, even at the expense of those who elected them⁴⁷. The tension between these provisions has not yet been addressed by the Brazilian justice system, because the rule for shareholders' agreements is very recent. The number of companies using shareholders' agreements and their scope is still evolving. Gorga (2006) studied specific provisions for agreements between shareholders in Brazil. CVM and IBGC recommend that agreements among shareholders are disclosed to all other shareholders⁴⁸. IBGC also recommends that the agreement should not limit the voting power of directors or include any provision for the designation of directors (leaving that task to the board).

Table 31 provides the answers referring to shareholders' agreements. In 2005, a sizeable minority of companies (36 firms; 36/86, 42%) reported to have a shareholders' agreement among the members of the group or family in control. Among these companies, two thirds (24 companies) indicated that this agreement is used to ensure control. Elections of directors are a common theme to these types of agreement: 22 companies indicated that one or more directors were elected in accordance with the agreement. Of these 22 companies, nearly half (12 firms) counted with the shareholders' agreement to elect four or more directors. In each of these cases, these directors form the majority on the board. As early as 2007, only 47 (47/121, 38%) companies had shareholders' agreement between the members of the group or family in control. Among these, 40 companies indicated that this agreement is used to ensure control. Elections of directors are a common theme to these types of agreement: 38 companies indicated that one or more directors were elected in accordance with the agreement. Unlike the sample with all firms, the control sample had a somewhat opposite tendency. In 2005, 12 (12/36, 33%) companies reported to have a shareholders' agreement among the members of the family who own or control them, and in 2007, this number had increased to 15 (15/36, 42%) companies. Lower overall

⁴⁶ Law 6404/76, art. 118

⁴⁷ Law 6406/76, art. 154 § 1

⁴⁸ IBGC Code of Best Practice of Corporate Governance (2003) § 1.3; CVM Recommendations on Corporate Governance (2002) § 1.3.

use of shareholder agreements, but higher percentage among overlap firms. Perhaps these changes might be related to the entry of new firms in the sample.

**Table 31 - 2007 - 121 Brazilian private companies
Shareholder Agreements**

Sample is 121 Brazilian private firms which responded to the 2007 Brazil CG Survey.

	Yes	% Yes
There are one or more shareholder agreement(s) among a family or other shareholder group	47	39%
For firms with a shareholder agreement:		
Control is ensured through the agreement(s)	-	-
The agreement governs the election of one or more directors	38	81%
The shareholder agreement(s) are registered with the company	45	96%
Shareholder agreements are not registered with the company, but are disclosed to minority shareholders	1	50%

**Table 31 - 2005 - 86 Brazilian private companies
Shareholder Agreements**

Sample is 86 Brazilian private firms which responded to the 2005 Brazil CG Survey.

	Yes	% Yes
There are one or more shareholder agreement(s) among a family or other shareholder group	36	42%
For firms with a shareholder agreement:		
Control is ensured through the agreement(s)	24	67%
The agreement governs the election of one or more directors	22	61%
The shareholder agreement(s) are registered with the company	33	92%
Shareholder agreements are not registered with the company, but are disclosed to minority shareholders	1	33%

**Table 31 - 2007 - 36 overlap private firms
Shareholder Agreements**

Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2007 Brazil GC Survey.

	Yes	% Yes
There are one or more shareholder agreement(s) among a family or other shareholder group	15	42%
For firms with a shareholder agreement:		
Control is ensured through the agreement(s)	-	-
The agreement governs the election of one or more directors	13	87%
The shareholder agreement(s) are registered with the company	15	100%
Shareholder agreements are not registered with the company, but are disclosed to minority shareholders	0	0%

**Table 31 - 2005 - 36 overlap private firms
Shareholder Agreements**

Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey. These informations are referred to the 2005 Brazil GC Survey.

	Yes	% Yes
There are one or more shareholder agreement(s) among a family or other shareholder group	12	33%
For firms with a shareholder agreement:		
Control is ensured through the agreement(s)	6	50%
The agreement governs the election of one or more directors	8	67%
The shareholder agreement(s) are registered with the company	10	83%
Shareholder agreements are not registered with the company, but are disclosed to minority shareholders	1	50%

12. Remuneration of Directors and Executives

IBGC recommends that the director should receive the same base value of time as the chief executive, applied to the time actually devoted to the company by the director. Furthermore, the codes of the international best practices recommend that the annual report specifies the number of shares and remuneration of each of the directors and officers. IBGC also recommends that the company make the disclosure of salaries of directors and executives on an individual or collective basis. This research provides limited information about the remuneration of directors and executives; this is a result of the few answers that were sent in this section. Broader issues had a higher response rate.

Table 32 shows an overview of the return on companies that participated in the survey. In 2005, companies rarely used stock options as part of remuneration: only 12 firms (14%) of 36 companies that answered both surveys provided stock options to their directors, only two companies offered that to non-executive directors, and no company paid the non-executive party with shares. Four companies provided retirement benefits for non-executive directors. In 2007, that number had increased to 44 (36%) companies using stock options as part of remuneration. Nine companies offered this to non-executive directors; eight companies paid the non-executive party with shares. Finally, two companies provided retirement benefits for non-executive directors. The same tendency can be observed in the sample with all firms. The increase of companies that made plans to pay with stock options may be related to changes in the practices by those companies that tried to tie the compensation of their executives and directors with long-term results.

Table 32 - 2007 - 121 Brazilian private companies
Director and Officer Compensation

Sample is 121 Brazilian private firms which responded to the 2007 Brazil CG Survey and answered the general questions on compensation.

Question	Yes	% Yes
officers receive stock options	44	36%
non-executive directors receive stock options	9	7%
non-executive directors are paid partly with shares	8	7%
non-executive directors receive retirement benefits	2	2%

Table 32 - 2005 - 84 Brazilian private companies
Director and Officer Compensation

Sample is 84 Brazilian private firms which responded to the 2005 Brazil CG Survey and answered the general questions on compensation.

Question	Yes	% Yes
officers receive stock options	12	14%
non-executive directors receive stock options	2	2%
non-executive directors are paid partly with shares	0	0%
non-executive directors receive retirement benefits	4	5%

Table 32 - 2007 - 36 overlap private firms
Director and Officer Compensation

Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and answered the general questions on compensation. These informations are referred to the 2007 Brazil GC Survey.

Question	Yes	% Yes
officers receive stock options	9	25%
non-executive directors receive stock options	5	14%
non-executive directors are paid partly with shares	0	0%
non-executive directors receive retirement benefits	1	3%

Table 32 - 2005 - 36 overlap private firms
Director and Officer Compensation

Sample is 36 Brazilian private firms which responded to the 2005 and 2007 Brazil CG Survey and answered the general questions on compensation. These informations are referred to the 2007 Brazil GC Survey.

Question	Yes	% Yes
officers receive stock options	5	14%
non-executive directors receive stock options	2	6%
non-executive directors are paid partly with shares	0	0%
non-executive directors receive retirement benefits	1	3%

13. Conclusion

In this dissertation, we provide an overview of the evolution of corporate governance practices in Brazil over time. For that, we worked with two surveys in order to make comparisons of the evolution of corporate governance practices in Brazilian private firms (firms without majority ownership by the government or by a foreign company).

The results show that the evolution of corporate governance practices has been more significant in some areas.

The independence of the board is still weak, because Brazilian firms have few independent directors. Although the number of companies with no independent directors was reduced in both samples, only 13% of companies versus 11% in 2005 have 50% or more of independent directors. However, we can see that the representation of minorities in these companies has improved over the years. It went from 24% in 2005 to 69% in 2007 in the 36 companies that answered the 2005 and 2007 Brazil Corporate Governance Survey; this may be related to the many companies that today are listed at Level 2 or Novo Mercado. In addition, a decrease in the average of the non-independent directors on the board can be observed, which may be related with the increased representation of minorities on boards.

Financial disclosure has improved considerably during this period. The improvement in relation to these aspects of transparency can be observed in both samples. Although, Brazilian accounting standards do not require either a statement of cash flows or quarterly consolidated financial statements, the number of the companies that provide these has increased, generally in connection with a listing on BM&FBovespa Level 1 or higher, or cross-listing on a foreign exchange. Thus, approximately half of the companies in 2005 that participated in both surveys (17/36, 47%) disclose information in English on its websites, by 2007 this number increased to 27 companies (27/36, 75% of the sample). This change may be related to changes in governance practices by these companies and also by the increase in companies that are listed in Level 2 and Novo Mercado.

There is a trend toward more firms have audit committees and there is a greater incidence of audit committee with solely independent directors. Also, there is a trend toward power of minority to elect one or more members of audit committee for both overall and overlap firms. We can see that there is a trend toward more companies permanent fiscal board over time. For the overlap firms, approximately 28% of companies (10/36) in 2005 and 50% of companies (18/36) in 2007 reported having permanent fiscal board. Increase in formality of board processes, there was a significant increase by the respondents in relation to: evaluate the CEO's performance, succession plan of

the CEO, the evaluation system of other directors, and dispatch of material before meetings. Trends are similar for overall sample and overlap sample, but some are more pronounced for overlap sample, like CEO evaluation and succession plan for the CEO. The number of the companies that provide takeout rights to minority shareholders on a sale of control beyond the minimum required by Brazilian law has increased. This increase may be resulted not only of the entry of new firms in Level 2 or Novo Mercado, but also an improved governance practices adopted by these companies.

During this period some of the changes in governance practices are partly related to the change of some companies to BM&FBovespa segments. In 2005, of the 88 companies participating in the survey, only two (2%) were listed in the Novo Mercado, while in 2007, of 121 participants, forty-five (37%) were in this segment. This study provides an overview of Brazilian governance between 2005 and 2007. However, governance practices in Brazil are changing rapidly, thus new research can be built by exploring other aspects of corporate governance in Brazil.

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