

Essay Theoretical on the Conflicts of Agencies and the Mechanisms of Corporate Governance in the Public-Private Partnerships in the Transport Segment in Brazil

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Abstract: This theoretical essay is based on theories of corporate governance such as the Agency theory to bring theoretical propositions about governance among public-private companies that in the regulated sectors as is the case of the transport and logistics segment in Brazil. This research will also try to fill a little more the gap in the discussion of the main aspects of the agency theory that is the assumptions about the behavior of the shareholders and executives in the companies; delegation of authority to administrators; agency costs resulting from the organization's decision making and management behavior control mechanisms which help in financial sustainability in the transportation and infrastructure sector of the countries. Based on the essential elements of this theory, corporate governance mechanisms are developed, focused on ownership structure, board of directors and legal system, aimed at maximizing the value of the company and protecting the investments of its owners, aiming at a better relationship of the investments and contribution of financial resources of the private companies with the sustainable policy of the government in maintaining the sectors of infrastructure and transport privatized. Three propositions of studies are presented that can encourage future empirical investigations on the subject.

Key words: Agency theory, corporate governance, private companies, political connections of the regulated sectors, studies, subject

INTRODUCTION

The Brazilian economy throughout the 1990's underwent changes with trade liberalization, the return of foreign capital flows to the country and the process of privatization of large state-owned companies, helping to rethink the structure of Brazilian companies. Brazilian legislation has contributed with the state to decentralizing infrastructure investments to private companies without removing the state's responsibility to monitor and supervise the way services are provided. Therefore, the privatization movements and the impacts on the governance practices of newly privatized companies.

The government's policy decisions regarding its disposition and development of the infrastructure, logistics and transportation sector have brought growth for the entire economy. The infrastructure of a nation is a critical issue for the operation and efficiency of modern economies. Infrastructure, particularly road transport is an important element linked to the productivity, costs and competitiveness of a society (Guasch, 2004).

According to Serman (2008), road concessions arose in view of the need to invest in order to guarantee the

construction, recovery, maintenance, maintenance and improvement of infrastructure as well as the search for efficiency and modernity in the provision of essential services to society.

The quality and quantity of freight and passenger transport infrastructure play an important role in the development of other sectors of the economy, since the final cost of goods depends on the cost of transportation. In the face of information from the road sector, the growth and investment of the Federal Government in infrastructure, transportation and logistics is visible which aims to increase the partnership with private companies for road concession programs. Through the National Council for the Integration of Transport Policies (CONIT) (Anonymous, 2004), exercised by the minister of transportation and the executive secretariat by the planning and logistics company SA-EPL (Decree 7,789, of 2012, Article 7). The purpose of the EPL is to provide services in the area of projects, studies and research aimed at subsidizing logistics and transportation planning in the country, considering the infrastructures, platforms and services pertinent to road and other modes (Law No. 12,404, of 4 May 2011, Article 3). According to

Constitutional Amendment No. 90, dated September 15, 2015, transportation is a social right guaranteed by the Federal constitution (Anonymous, 2012, 2015).

The main reason behind the government's strategy to bring private sector participation in infrastructure has been the urgent need for considerable investment. To improve performance and coverage as most state-owned enterprises urgently need investments. Given the scarcity of public resources for investment and investment needs in current social sectors, most countries have opted for the transfer of infrastructure provision services to the private sector, so, private sector participation can and has been carried out in a variety of forms, ranging from management contracts, concessions and privatizations (Coyle *et al.*, 2006; Yescombe, 2007). The participation of the private sector has been accompanied by a structuring of the regulatory agencies regarding the transfer inspection and application of a legal framework to regulate and protect investors from arbitrary and politically motivated intervention by the government with the protection of those involved in the competitive process in the infrastructure sectors (Guasch *et al.*, 2003).

The ownership structure of the company brings investments which in turn affects the agency relations, the sending of information and determining the composition of the Board of Directors is related to the generation of value based on the market (Cho, 1998). Therefore, the share concentration may benefit the controlling shareholders of a company in order to dominate the decision-making process of the company in addition to favoring the expropriation of the wealth of the minority shareholders (Caixe and Krauter, 2014). To a certain extent, many companies with dispersed capital have the principal-chief type of agency conflicts which concentrates the company's management on the board's role. When there is a controlling shareholder, on the other hand, the role of the board in monitoring management tends to be reduced, since the controller himself is interested in assuming this role (Desender *et al.*, 2013).

Objectives of the study: This study aims to analyze theoretically the agency theory and its developments on corporate governance in order to control and give sustainability to private companies in the regulated sector in the transportation segment in Brazil. For this, a review of the existing theory will be made and from there, theoretical propositions are formulated applied to the regulated sectors. It is hoped that the propositions made from the analysis of the theory may be the inspiration for future hypothesis-testing studies.

Literature review

Fundamentals of agency theory: The main agency conflicts within the organization may vary depending on

the type of ownership structure the company has. If the company is a company whose property is dispersed or can be said to be pulverized, the main agency conflict is between the interests of the managers and the shareholders (Shleifer and Vishny, 1997) but if the company has concentrated ownership characteristics having a majority, its main agency conflict tends to be between majority and minority interests (Andrade and Rossetti, 2009).

The control and ownership structure are pointed out by Thomsen and Pedersen (1997) as differences in firm performance and value. In particular, the researchers affirm certain criteria: the concentration of ownership by large shareholders will encourage them to take an active position; the separation of control and ownership may encourage the expropriation of minority shareholders; the identity and origin of the owner's capital (Foreign, family, state institutional) are indicative of their strategies and priorities; the liquidity of the property will affect the time preference of the owners and the behavior of the investments of the corporations; Shareholders with diversified portfolios will not be averse to a firm's more risky posture while owners with a significant portion of their wealth in a single firm tend to propose low-risk corporate strategies (Table 1).

In the case of publicly traded companies where control is generally entrusted to an executive body, a matter of agency described in the literature is the fact that the interests of shareholders are not fully reflected in the behavior of managers from the company. The main sources of conflict between owners and managers, according to Jensen and Meckling (1976) are the following: risk exposure differentials; different time horizons; superinvestment; choice of effort level; "stewardship"; disputes over optimal levels of dividends and investments between creditors and shareholders; conflicts between partners. Thus, Shleifer and Vishny (1997) argue that the agency relationship can also occur in situations where there is no overtly defined main-agent relationship such as between creditors, clients, suppliers and corporate managers and between government, the community and the company which these relations present in common is the division between ownership and control. According to the Table 2, the types of agency conflicts.

The conjuncture between the conflicts of interests of the shareholders such as the managers of the companies, emerges the need to adopt control measures that are intended to safeguard the organization of the various existing or potential transaction costs, due to the established network of contractual relations. According to Aldrighi and Mazzer (2007), the evolution of the ownership structure in Brazil's publicly-traded companies identified that households prevailed among the last majority shareholders (54.7%), followed by foreign

Table 1: Relationship between principal and agent

Home-agent	Main expectations regarding agent actions
Shareholders-managers	Maximizing your wealth
Debenture holders-managers	Guarantee your return
Creditors-managers	Compliance with financing agreements
Customers-managers	Receipt of products of value according to your preferences (quality, time, service and cost)
Government-managers	Compliance with company tax, labor and social security obligations
Community-managers	Preservation of community interests, culture, values and environment
Management-consulting	Work with the best of your efforts to meet your expectations
Managers-suppliers	Supply material requirements, when needed in the quantities requested
Principal-principal minority and major shareholders	Your interests are ensured so that there is no expropriation of your wealth

Adapted from Jensen and Meckling (1976), La Porta *et al.* (1999) and Young *et al.* (2008)

Table 2: Evolution of corporate governance perspectives in agency theory

Perspective/Approach	Researchers
Separation between ownership and control in companies	Berle and Means (1932) and Jensen and Meckling (1976)
Problems related to firm contractual nexus and agency conflicts	Hart and Jensen <i>et al.</i> (2008)
Asymmetry of information between the contracts, the company and the managers	Arrow, Eisenhardt, Milgrom and Roberts
The problem of limited rationality and opportunistic behavior	Williamson (2005), Fama and Jensen (1983) and Demsetz (1995)
Issues of distribution of power and responsibilities	Rajan Zingales and La Porta <i>et al.</i> (1998)
Impacts of the various KM mechanisms (capital and ownership structure, performance composition of the board of directors, executive compensation, among others) on corporate performance proxies (profit, profitability, market value among others)	Stulz, Morck <i>et al.</i> , Harris and Raviv (1988), Shleifer and Vishny (1997), La Porta <i>et al.</i> (1997, 1990, 1999, 2000, 2002) Claessens and Djankov e Lang (2000), Claessens <i>et al.</i> (2000, 2002)

Lameira and Junior (2007) and Macedo-Soares (2007)

investors (18 and 4%), government (7.5%) and investment funds (5.2%); Pension funds represent only 2.0%, evidencing the lack of professionalization of Brazilian companies.

Finally, the stock concentration and the role of the board of directors is an example of the substitution effect. In companies with dispersed capital where the most common agency conflicts are of the principal-agent type, there is a greater emphasis on the role of the board in monitoring management. When there is a controlling shareholder on the other hand, the role of the board in monitoring management tends to be reduced, since, the controller himself is interested in assuming this role (Desender, 2009). Based on the issues raised in the agency theory, the following propositions are stated.

Proposition 1 (P1): Agency conflicts tend to decline in companies that have the identity of a “Foreign shareholder” as the owner as the behavior of the ownership structure is more fragmented and the conflict of interest is of the principal-agent type (shareholder and executives) where there is a greater emphasis on the role of the board interfere in the management of enterprises with public-private partnerships.

Proposition 2 (P2): On the other hand, agency conflicts may increase in firms that have the identity of “family, bank or government shareholder” as the owner, since, the behavior of the ownership structure is more concentrated and the conflict of interest is of the principal-principal

type (majority shareholder and minority shareholders) where the role of the board tends to be reduced, since, the controller himself has an interest in taking over the control that in this case interferes with public-private partnerships.

Definition of corporate governance: Corporate governance is the system by which companies are managed and controlled. Its specific structure is the distribution of rights and responsibilities between the different participants of the company such as board of directors, board of directors, owners and other stakeholders, among them, employees, suppliers, customers and the community in general. It is added that corporate governance is a set of mechanisms, both organizational and institutional that induce controllers to self-interest of their company in maximizing value in the market. Or in another option as according to Shleifer and Vishny: “Corporate governance deals with the ways in which corporate finance providers have ensured the return on their investment” (1997).

Corporate governance mechanisms can also be understood as legal and economic institutional rules which can be changed through a political process, without this process necessary to balance the relationship between managers and shareholders with a view to solving the agency problem (Shleifer and Vishny, 1986).

According to CAMILO (2011), the analysis of the corporate governance structure as a process where the

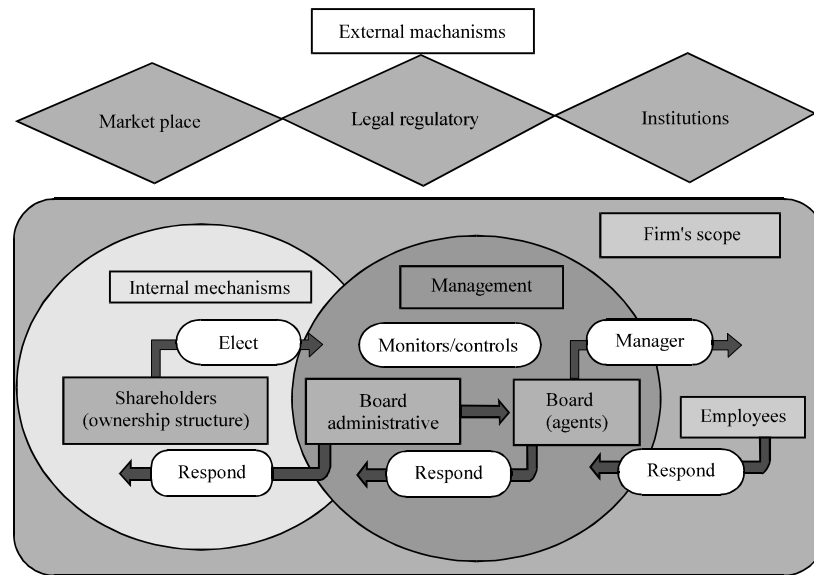


Fig. 1: Interaction of governance mechanism and the scope of the company (CAMILO, 2011)

shareholders elect the members of the board of directors, the latter is subordinate to the former and also accounts for it. The board indicates, monitors and controls the activities of the board, monitoring whether it is in fact generating value for the firm. Although, the company's management is comprised of both the board and the board of directors, it is only the latter that represents and manages the company to which the employees are subordinate. Regarding the scenario as a whole the market, the legal and regulatory system as well as the institutions act on the firm in order to promote balance between this and the other stakeholders. Figure 1 shows the whole process: four basic governance models can be found in companies according to Turnbull.

Stakeholders model, considers the interests of all those involved with the institution, not only the shareholders. In this model, the community, employees, governments, the environment, suppliers and customers are considered when making decisions about corporate governance. It is clearly found in German companies.

Model, of stewardship, the main manager of the company is the representative of the shareholders and the one that guarantees the return of investments made in the company. In this case, the role of the board of directors simply resolves the decisions of the manager. This model is most often practiced by Japanese companies; Political model is defined by the way in which governments favor the various constituents of the companies, from the current legislation. In other words, the company conducts its business according to what the law determines. There may be privileges for some stakeholder but they are all determined by laws as in the case of French firms.

And finally, financial or finance model, widely found in the United States and in England, the central problem of KM is the elaboration of rules and incentives (contracts) to effectively align the behavior of the manager with the aspirations of the and that the characteristics of the Latin Model in which Brazil fits are related to a strong concentration of property in the hands of few shareholders and In a high concentration of power in the hands of a leader or a specific institution. In this model, the state also has direct participation in the companies, either as owner or as a regulator of productive activities (Table 3).

It presents a set of studies that confirm the relationship between practices related to the characteristics of the ownership structure, the Boards of Directors and the protection of minority shareholders and the market value of the firms. Therefore, property rights (Demsetz, 1968) suggest that privatized firms outperform companies with government participation as control and income rights given to private firms allow them to maximize profit objectives. The agency theory (Jensen and Meckling, 1976), postulates that the performance of the company depends on the distribution of the shareholding between the managers and other external owners. This theory supports privatization because it describes private owners more motivated than government officials to monitor, discipline and reward their managers in order to improve company performance (Ng *et al.*, 2009).

Corporate governance mechanisms: With changes in the economy in the 1980's, Jensen (1993) analyzed and described the factors responsible for corporate

Table 3: Corporate governance model

Models	Characteristics
Model stakeholders in German companies)	It considers the interests of everyone involved with the company and not just the shareholders. It has two levels of (Found advice: one of supervisory (half of its members is elected by unions and employees) and one of directors, who are responsible for making the company's decisions
Model Stewardship in Japanese companies)	It presents the principal manager as the representative of the shareholders. The market is strongly influenced by the (Found government and Japanese law establishes a unitary, representative, internally recruited council
Model political in French companies)	It is characterized by the actions of the company conducted according to what the law determines. In the composition (Found of the board are executives of the company
Model financial (Found in North American)	It is set by strong market orientation and dispersed ownership. The board is unitary, in which the positions of chairman and CEO are usually exercised by the same person and counts on other executives as directors of the same person and counts on and English companies other executives as directors of the board
Model Latino in Brazilian companies)	There is a strong concentration of ownership in the hands of a few shareholders whose government has ownership or (Found regulatory status. It is characterized as a patriarchal society with oligarchies and distances between social and economic classes

Scott (1997), Turnbull (1997) and Carlsson (2001)

Table 4: Classification of corporate governance mechanisms

Researchers	Classification	Mechanism details
Jensen (1993)	Control forces	Capital market, mergers and acquisitions; Legal, political and regulatory system; Competitive market; Internal control system
Babic and Janosevic (2001)	Internal mechanism	Administrative Council; Concentration of ownership; Management gratification; Multidivisional organizational structure
Okimura <i>et al.</i> (2007)	External mechanism	Corporate control market
	Internal mechanism	Administrative Council; Property; Administrative incentives
Denis and McConnell (2002)	External mechanism	Legal system; Control; External audit; Activity of the stakeholders; Classification of organizations; Means of communication
	Internal mechanism	Ownership structure; Administrative Council
Hitt <i>et al.</i> (2007)	External mechanism	Legal system; Fusions and acquisitions
	Internal mechanism	Ownership structure represented by the types of shareholders; Board of Directors to monitor the agents and control the incentive of executive compensation
Silveira (2004)	External mechanism	Legal system and regulatory market for corporate control
	Internal mechanism	Ownership structure; Administrative Council;
Aguilera <i>et al.</i> (2015)	External mechanism	Hostile takeover market; Competitive labor market; Periodic accounting reports;
	Internal mechanism	Administrative Council; Ownership structure; Administrative incentives;
	External mechanism	Legal system; Control; External audit; Activity of the stakeholders; Classification of organizations; Means of communication

Adapted by the researchers (2016)

performance growth and the factors that triggered the corporate inefficiency of corporate controls. According to Jensen (1993), there are four corporate governance forces to solve agency problems which are caused by the divergence between manager's decisions and optimal decisions for shareholders. These are: the capital market; the legal, political and regulatory environment; the competitive market of the actuation sector and internal control systems led by the board of directors.

In short Aguilera *et al.* (2015) exposes the review of mechanisms as internal and external. First, the board of directors, the property and the administrative incentives are found and then they are pointed out: the legal system, the control, external audit, activity of the stakeholders, classification of the organizations and the means of communication. The following chart presents a general presentation on the mechanisms of governance (Table 4).

For this research will be used the classification proposed by Hitt as shown in Table 5 as it relates the classifications already mentioned in Table 4 giving greater emphasis to the focus subject of this dissertation, property structure, council and in what concerns to the

organization scenario the legal system that makes the corporate control. In this way in order to reduce agency conflicts internal and external mechanisms of corporate governance (Denis and McConnel, 2003) are used and the more aligned the interests of both parties are the lower the cost and the greater the cost. Availability for investment in innovation. The researchers highlight the internal mechanisms such as the board of directors and shareholding in the company structure and on the other side, the external mechanisms regarding the stock market and the legal legal system (Babic and Janosevic, 2001).

Aspects of property structure; concentrated or sprayed: This mechanism differs significantly between countries because of national disparities in the ownership structures and composition of the board and ownership has a great influence on this composition and consequently on the value of the firm (Harris and Raviv, 1988). The problem of separation between ownership and control has made it into an environment where property is diffuse. Berle and Means (1932) when analyzing the ownership structure of companies in the United States, observed the prevalence of publicly owned

Table 5: Types of property structure

Categories	Description	Characteristics
Family property	When a relevant shareholder is part of a family group	Commitment to firm survival in the long run, however, prone to risk
Government	When the relevant shareholder is the government (Union, States or Municipalities) as well as pension funds whose companies are controlled by the government	The non-maximizing behavior of the firm predominates. However, access to credit at lower cost
Institutional investor	When the relevant shareholder is a financial institution, insurance company and private pension funds	Low risk aversion and long term horizon
Foreign investor	When the relevant shareholder is a foreigner	The maximizing behavior of the firm predominates

Carvalho (2004)

Table 6: Classification of the roles of the Board of Directors

Role of the board	Main features
Monitor	Before the context of the property pulverized seeks to monitor the actions of the agent, aiming to align to the interests of the principal
Strategic	It acts in the strategic direction of the company in which trust in the manager replaces control. It acts to improve external relations, facilitating access to resources and strengthening the legitimacy of the company
Relationship	It acts to facilitate access to trading partners and acts as an element of interconnection with other companies in order to acquire specific resources, skills and knowledge
Legitimate	It seeks to facilitate the acceptance of the company by society, through credibility and help in the adequacy of the processes
Coordinator	It trades because of the convergence of interests between controlling and minority shareholders in an attempt to equalize their of interests
Contingency	It exercises any of the roles: controller, strategic, legitimating relationship or interests coordinator, depending on the context

Fama (1980)

companies with diluted property among several small minority shareholders. This idea was widely adopted as the model of corporation in modern economies. The nature of Latin American companies, often marked by the presence of a controlling shareholder in the management of companies, may possibly mitigate such risks by controlling the risk of agency between controllers and minority shareholders which is in accordance with Jensen and Meckling (1976).

Regarding the type of controlling shareholder Okimura classify these into five types of controllers: an individual or controlling family institutional investor (such as pension funds), financial institution (such as banks insurance companies, etc.), the government and the group of investors (such as corporate holdings, companies holding interests in other companies, both domestic and Foreign). For this study, the type of shareholding control was approached with respect to the ownership structure, using as criteria and definitions those brought according to Table 6.

The ownership structure has an important influence on the priorities set by the council and that these priorities will determine the ideal composition of the board. In contrast to seeing the priority of monitoring where directors with financial experience are important, prioritizing the provision of resources could benefit from directors with different characteristics, the CEO's presence on the board and a larger board size (Desender *et al.*, 2009).

Characteristics of the board of directors; size independence and duality: In the Brazilian context, the Board of Directors is a mandatory body for Brazilian publicly-traded companies, according to the second

paragraph of Article 138, of Law No. Martins and Rodrigues (2005) demonstrate that the main role of directors is to be involved in corporate strategy, followed by the development of the corporate vision, determination of the risk position, monitoring of company health and control of change strategy. These are attributions of great importance to the organizations, thus justifying the inclusion of the Boards of Directors of the companies in the center of attention of the debates on the reforms of the political governance of the countries (Martins and Rodrigues, 2005).

The importance for the increase in the firm value of the existence of a Board of Directors composed of a majority of external members is highlighted in the codes of good practices of corporate governance. This recommendation is supported by Fama and Jensen (1983), who argue that the inclusion of professional external counselors increases the effectiveness of the board and reduces the possibility of collusion of senior executives with a view to expropriating shareholder wealth. Table shows the characteristics of the board.

Because there are different companies in different countries and with different cultures, it is perfectly understandable to assume that the Boards of Directors perform different functions. According to the country in which the company operates, the Board of Directors, according to Denis and McConnell (2003) is an internal mechanism of organizations which exists mainly to hire, dismiss, monitor and compensate management, aiming at maximizing of shareholder value. Among the various functions of the board of directors is the selection, review, compensation, development and dismissal of the CEO or other important members of the Board of Executive Officers, participation in co-development and evaluation

of corporate strategy and culture, budget development, planning and financial control, reporting to shareholders and carrying out their self-assessment (Martins and Rodrigues, 2005).

Finally, the Board of Directors has the function of aligning the ownership and the executive board, monitoring the management of investment risks, reducing conflicts and agency costs (Andrade and Rossetti, 2009), especially, the existing agency costs between shareholders and managers and between controlling shareholders and minority shareholders (Silveira, 2004). In addition, Gillan (2006) discusses the shareholder's responsibility to provide strategic and follow-up direction in the governance structure of the organizations but the board of directors for Hermalin and Weisbach (2003) is a market solution that helps soften The problems of agencies that afflict any large organization as well as a legal and regulatory system, resulting from imposition of the state or the stock exchanges through codes or differentiated levels of governance.

Parameters of the legal system; guidelines and regulation: The characteristics of the various governance systems around the world such as that of Claessens, Djankov and Lang, record the fact that in less developed countries the corporate sectors are controlled by a mix of government agencies and few households and Shareholder rights are less protected by law. In advanced countries, these problems of agency are smaller but governance systems show important differences, marked by the state's financial role of families and of the capital market.

The privatization movements and the impacts on corporate governance practices studied by Johnson and Shleifer show that privatized companies without good governance tend to perform poorly, coming to the conclusion that a key way of protecting Investors is to increase domestic legal protection and enforcement in order to minimize expropriation by controlling shareholders and company management. Law enforcement or regulation can be understood as the mechanisms that support minority investors when their rights are violated. Among others, this activity or intermediation may be performed by the board of directors, public and private regulatory bodies (stock exchanges, Central Bank, CVM, etc.) and by the Judiciary. The market in order to minimize such impacts, turns to arbitration as an alternative to the slowness of the Judiciary. Os atributos das empresas influenciam a escolha das praticas de governanca e interagem com o ambiente legal onde estao inseridas. The attributes of companies influence the choice of governance practices and interact

with the legal environment where they are inserted. The researchers develop a theoretical model that results in three predictions: growth opportunities, the need for external financing and the concentration of ownership are the three main attributes that lead companies to adopt better governance practices); companies with best practices are more valued by the market); the adoption of better governance practices and more relevant in countries with weak legal protection for investors (Durnev and Kim, 2005).

With the development of the capital market and pressures for improvement in governance have impacted the corporate system of Brazilian companies in recent years (Andrade and Rossetti, 2009). However, the practice of corporate governance of Brazilian companies was a way to attract foreign investors, one of the indicators was the effects of the leverage of the participation of foreign shareholders in its capital which seek the best standards of Foreigners were attracted and interested by certain companies regulated by regulatory agencies (Agrawal and Knober, 2001). According to the practices, mechanisms of governance and regulation of the sectors, the following proposition is declared.

Proposition 3 (P3): Governance mechanisms tend to reduce agency disputes in regulated sector firms, mainly because they receive investments from public-private partnerships as the demand for legal practices and requirements from majors tends to be greater because other investors such as financial institutions or funds linked to government agencies.

STUDIES IN BRAZIL ON CORPORATE GOVERNANCE AND REGULATION

The Brazilian business model underwent an important restructuring which intensified the debate around corporate governance. Privatizations, the entry of new investors into the Brazilian market (national and international institutions), the global merger and acquisition movement and the reduction of the cost of capital, among others have been generating a transition from the model of exclusively family and oligopolistic companies to a new model that presents greater participation of institutional investors and the search for a reduction in the concentration of control as well as efficiency and transparency in management.

Therefore, the increase in Foreign investments in the country, the privatization process of state-owned enterprises and the growing number of Brazilian companies accessing international markets have stimulated and made essential the effort in search of good corporate governance practices through agencies and

Table 7: Practices of Corporate Governance in the privatized public sector

Laws and regulations	Institution	Characteristics
Differentiated levels of governance (Traditional market, level 1, 2 and new market)	BM&F Bovespa (2016)	Adhering to Bovespa's differentiated levels of corporate governance gives greater visibility to the company's efforts to improve investor relations and increases the potential for valuation of its assets; this gives greater prominence to the company's efforts to improve investor relations
New Law of SA 10.303/01	Governo Federal (2001)	Main objective to strengthen the capital market in Brazil, increasing the legal protection of the rights of minority shareholders; strengthen the capital market in Brazil, giving it more transparency and credibility. It was based on the premise that the alignment of interests generates value
Code of good corporate governance practices	IBGC (2009)	Indicate ways for all types of companies (public and private limited companies, limited companies or civil companies), in order to improve their performance and facilitate access to capital. The code is divided into six parts: ownership, board of directors, management, audit, oversight and ethics/conflict of interest
Corporate governance recommendations primer	Anonymous (2003)	It seeks to stimulate the development of the Brazilian capital market through the dissemination of good corporate governance practices. Its purpose is to guide issues that can significantly influence the relationship between managers, directors, independent auditors, controlling shareholders and minority shareholders
Support program for new corporations	BNDES (2000)	Assist small and medium-sized companies through risk capital operations and encourage their adoption of appropriate corporate governance practices
Principles of corporate governance of the G20 and OECD	OCDE (1997)	It helps policy makers assess and improve the legal, regulatory and institutional framework for corporate governance. They also provide guidelines for stock exchanges, investors, companies and others with a role in the process of developing good corporate governance; improve developments in the financial and corporate sectors that can influence corporate governance policies and practices

agencies that regulate public policies and sectors of the economy. Among the main initiatives to stimulate and improve the corporate governance model in Brazil are (Table 7).

The need to privatize sectors of the Brazilian economy was preceded by the federal deregulation program, established by Decree No. 99,179 of 1990. This program had as its principles, preference for market rules, the strengthening of the State's oversight function in the fight against economic abuse in the decentralization of administrative actions in the disrespect to the consumer and substitutions of the specific norms by general norms of regulation. Its main objective was to increase the degree of competition in the economy to restrict the power of monopolies and oligopolies to dismantle cartels and to define prices and quantities through competition (Gomes, 2000).

To control the effects of the market, the responsibilities of supervision, advice and coordination of regulation, governments use organs or mechanisms that operate at their different levels. These structures may be either directly dependent on the executive branch or independent, being classified into four groups by the OCDE (1997): ministerial departments are part of the central government and do not have the status of a separate legal entity; Ministerial agencies are executive agencies, administratively subject to the ministry and may or may not have their own budget and management autonomy; Independent advisory bodies are bodies with the power to provide official advice and expertise

to government, legislators, companies in regulating specific aspects of the industry; independent regulatory authorities are bodies tasked with regulating the specifics of an industry. Its management is autonomous and its budget may be under a ministry. However, there is no possibility of political or ministerial intervention in the body's activities intervention is limited only to providing advice on general policy issues for regulated sectors.

Regulatory agencies: In Brazil, regulation through agencies began in 1995 with the need to reduce the wealth-providing state to a state that acted in actions that were fundamental to society such as education, health, basic sanitation.

Regulatory agencies are persons in the form of special, statutory autarchies with the purpose of disciplining, controlling and governing some of the most important sectors of the economy with normative, administrative and quasi-judicial functions. These concepts, even today are present in the regulatory systems and in the norms that create and define the functions and competencies of regulatory agencies. Then began a series of privatizations of economic sectors that were held by the state monopoly such as electricity, telecommunications, transportation, oil and natural gas. These privatizations could not be left free by market rules because they ran the risk of becoming private monopolies. It was necessary to increase the capacity of the State to plan, regulate, control, monitor and change its role to less performing and direct service functions. Fadul states that

the Brazilian regulatory agencies were created with the purpose of controlling the delegated public services, ordering their operation and achieving efficiency.

It should be noted that the regulation of public services has two objectives: to encourage investment and to support efficiency in the production and use of regulated services. According to Levy and Spiller (1994), regulation can be considered as a problem of regulatory design, containing two basic elements. The first is related to regulatory governance and mechanisms to curb discretionary government action as well as to provide solutions to conflicts between firms and regulators. The second is the regulatory incentive which involves the establishment of specific rules related to the price regime, subsidies, competition policy, universalization, barriers to entry, among other means.

The creation of new independent and sectoral regulatory agencies gives rise to a potentially important agency problem: regulators tend to act for their own interests and against the intentions with which they were originally established (Maegli *et al.*, 2008). According to Nunes *et al.*, the agencies' functioning has been criticized for overcoming their nature and "regulatory limits in proposing and executing public policies whether because of the "politicization" found in the appointment of presidents and directors [...]. Therefore, in Brazil, the government has created an institutional mechanism to govern the concessions which are the regulatory agencies.

In the 2010 Report of the Brazilian Association of Road Concession (ABCR) and the international bank for reconstruction and development. The world bank Washington show the Brazilian growth in the regulated road concession sector and the development in the regulatory process of companies compared to other countries such as shown in Fig. 2.

Studies on the effects of regulation in different economic sectors are controversial. Some show a positive impact on economic growth, the capital market, corporate efficiency and performance while others prove otherwise. In addition, Carvalhal (2004) warns that agencies have a fundamental role in complying with policies determined by the state with a managerial, technical and control role over regulated entities. However, to reduce transaction costs and evidence of asymmetry and contract opportunism among stakeholders, Williamson (2005) describes three items laws and standards that ex-ante, restrict the ability and limit the desire of agents with Opportunistic actions) establishment of mechanisms to monitor adherence to contracts and) creation and maintenance of legal sanctions used to punish those who violate the contract (Hill, 1995).

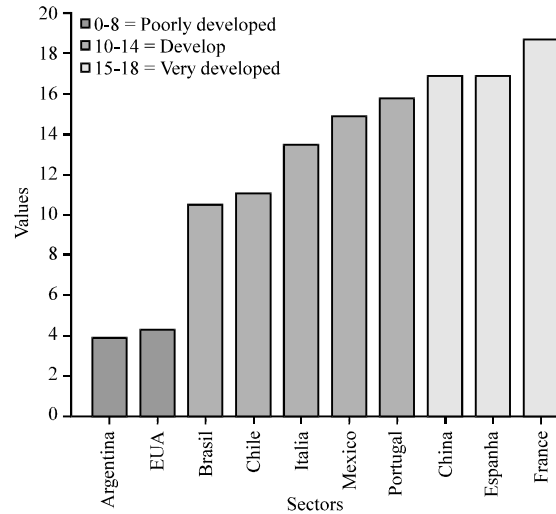


Fig. 2: Number of Road concessions and development of the regulated sector: The graph reflects data from 1999-2010, World Bank Washington (2010)

Then began a series of privatizations of economic sectors that were held by the state monopoly such as electricity, telecommunications, transportation, oil and natural gas. These privatizations could not be left free because of the market rules and because they could turn into private monopolies. It was necessary to increase the capacity of the state to plan, regulate, control, supervise and change its role to less performing and direct service functions. Regulation is the determination of rules for economic activity, aimed at ensuring its balanced functioning, according to public objectives (Ramires, 2005). From this mechanism, the state supervises strategic sectors of the economy or of public interest whose direct delivery is carried out by the private initiative. However, the understanding of the indispensability of regulation to public services is not a matter of peace. Demsetz (1967, 1995), for example, argues that the theory of natural monopoly does not provide sufficient grounds to justify the regulatory action of the state which could bring excessive costs to economic agents. It will be related below, these organisms (agencies associations and laws) that control the regulated segments, according to the Table 8.

So much, so that, in Brazil as in other countries, the creation of regulatory agencies is related to the slowing down of the role of the state and the need for reforms in the economy of these countries. Its denomination materializes this double movement that is "agency" represents the mechanism that allows the flexibility of the public management and "regulatory" that defines the role of the state in the post-privatization period. Thus, through

Table 8: Guidelines for the regulated transport sector

Legislative orientation	Institution	Characteristics
Concession and Public Services Permit Law No. 8.987/95	Federal Governo (1995)	This law regulates public service concession contracts. The concession contract is an administrative contract like any other and therefore almost all other rules seen in the previous summary also apply to it
Law of Delegations No. 9.277/96	Federal Governo (1996)	It created the possibility for States, Municipalities and the Federal district to request the delegation of stretches of Federal highways to include them in their road concession programs, established by the Ministry of Transportation measures to reduce investment in road infrastructure
Law of Public Private Partnerships 11.079/04	Federal Governo (2004)	They contributed with the State to decentralizing the investment in No. infrastructure to private companies, without removing the responsibility of the state to monitor and supervise the way in which the services have been provided
Decree No. 7.789 of 2012, Article 7 ^o -Planning and Logistics S.A-EPL	Federal Governo (2012)	Provide services in the area of projects, studies and research to support the planning of logistics and transportation in Brazil, considering the Company infrastructure, platforms and services relevant to road and other modes (Law 12404, of May 4, 2011, Article 3)
Provisional Measure No. 727-05/2016- Investment Partnerships Program	Federal Governo (2016)	Strive for a balance between the necessary regulation between the actions of private agents in the sectors granted and, at the same time, guarantee the stability of the public policies focused on infrastructure
ANTT-National Agency of Land Transport	Federal Governo (2001)	Agency responsible for supervising and regulating the concession of railways, highways and rail transport related to the operation of the infrastructure;
ARTESP-Regulatory Agency of Public Services Delegates of Transportation of the State of Sao Paulo	Governo do Estado de Sao Paulo (2002)	Implement the state transport policy; exercise regulatory power; elaborate models of concessions, permissions and authorizations; ensuring the the provision of adequate services; ensure the preservation of the economic and financial balance of the contracts and encourage the improvement of the provision of public transport services
Law of Private Public Partnerships No. 12.766/12	Federal Governo (2012)	Fostering investments in infrastructure through public-private partnerships; definitively expanded the percentage limit of commitment of net current revenue of the States, Federal District and Municipalities with expenses in PPP contracts; included in terms partially different from those of MP 575, the figure of the "contribution of resources" by the public authority in favor of the private partner, providing for the possibility of applying a differentiated tax regime for this situation; reduced the minimum period in which the private partner could activate the guarantee fund of the PPP in order to increase the liquidity of the guarantee and dealt with the level of detail of the engineering studies for PPP (novelty not previously foreseen in the MP)

regulatory agencies, governments execute and follow public policies defined in laws and regulations. This intervention controls the services and operation of the company and is determined by the regulatory body. The setting of minimum costs and the rate of return on capital requires the companies a strategic process for the property structure with direct negotiation with the regulatory body in the Brazilian case, the legislations, agencies and regulatory associations.

Final considerations: It should be emphasized that studies related to corporate governance emphasize, above all, the search for shareholder value generation and analyze the mechanisms adopted for the sustainability of organizations in order to increase and protect investor's wealth. In Brazil, MP 727/16 was recently granted which further encourages shareholders to invest even more in developments in the transportation infrastructure segment.

The control mechanisms aim to ensure the protection of shareholders and avoid or minimize potential conflicts of interest. For Denis and McConnel (2003), the

mechanisms of corporate governance can be classified as internal or external to the organization. They consider the board of directors as an internal mechanism whose mission is to generate value to the company and the ownership structure has the determining mission in the formation of the board of directors. Analyzing shareholder participation in management, Cho (1998) considers that the ownership structure of the company brings investments which in turn affects the relations of the agency, sending information and determining the composition of the Board of Directors is related to the generation of Based value.

The alignment of interests of the ownership structure between shareholders, members of the board of directors and executives is a recurring problem in governance (Jensen, 1993). Certain governance mechanisms contribute to minimizing conflicts of interest between shareholders and management. The alignment between them can be obtained by combining the mechanisms (Denis and McConnell, 2003). The mechanisms of corporate governance are economic and legal institutions that can be modified by process policies, sometimes for

the better (Shleifer and Vishny, 1997). In agreement, according to new theories, capital structure decisions can be affected by a number of factors, among which corporate governance and ownership structure are an important element, according to Agyei and Owusu (2014) study on manufactures listed in Ghana. Thus, corporate governance mechanisms are developed with the aim of improving the performance of companies by controlling the agents that participate in the decision-making process (Ebrahimabadi and Asadi, 2010).

CONCLUSION

In this way, corporate governance mechanisms are developed with the purpose of improving the performance of companies, through the control of the agents that participate in the decision making process. This analysis focuses on the structure of ownership, composition of the board of directors of companies, taking into account that this dimension is closely linked with the others. Therefore, corporate governance can be analyzed from the point of view of the dissociation of the ownership structure between concentrated and pulverized and the board of directors between dependence and independence of the managers of the companies. And finally, the legal system represented by agencies, agencies and laws that control the economy of companies and oversee the regulated sector. According to Santos and Soares (2016), the analysis of agency conflicts centralizes the structure of control/ownership and composition of the board of directors of companies, taking into account that this dimension is closely linked with the others. Therefore, corporate governance can be analyzed from the point of view of the dissociation of the ownership structure between concentrated and pulverized and the board of directors between dependence and independence of the managers of the companies. Therefore, La Porta *et al.* (1997) argue that the extent to which a country's laws protect shareholder's rights and these laws are effectively enforced exists for finance and corporate governance to evolve and that the regulatory, political and legal systems can be viewed as being instruments that try to solve the problems of inefficiencies of the managers, also called waste of managerial behavior (Jensen, 1993).

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