



Comparative Analysis of the Corporate Governance Codes of the Five BRICS Countries

Análise Comparativa dos Códigos de Governança Corporativa dos Cinco Países BRICS

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ABSTRACT

The objective of the study was to compare the codes of good corporate governance (CG) practices adopted by the five BRICS countries (Brazil, Russia, India, China and South Africa) using the set of practices recommended by the United Nations (UN) as categories of analysis. The present study was exploratory (our comparison of the CG codes of the five BRICS countries in light of the UN recommended practices has no precedent in the literature). Its nature is qualitative because we performed a multiple case study focused on a specific group of countries – BRICS – and used the content analysis technic to analyze and cross data with the literature reviewed. The research is documental because it is based on a review of documents and the literature. Among the five BRICS countries, the Corporate Governance codes of Brazil, Russia and South Africa are those most closely aligned with the recommendations set forth by the UN. It was observed that although these countries are developing their codes of good corporate governance practices focused on the requirements of international investors, corporate governance and codes in these countries are at very different stages. In comparison, the low level of convergence of the Chinese and Indian codes with the UN recommendations suggests a greater concern in those countries with the local context than with international standards.

Key-words: Codes of Good Corporate Governance Practices. BRICS. United Nations. Corporate Governance Convergence. Capital Markets.

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RESUMO

O objetivo do trabalho é comparar códigos de boas práticas de Governança Corporativa (GC) editados nos cinco países que compõem o acrônimo BRICS (Brasil, Rússia, Índia, China e África do Sul), usando o conjunto de práticas recomendadas pela Organização das Nações Unidas (ONU) como categorias de análise. O presente estudo foi exploratório (nossa comparação dos códigos de GC dos cinco países do BRICS à luz das práticas recomendadas pela ONU não tem precedentes na literatura). Sua natureza é qualitativa porque nós realizamos um estudo de caso múltiplo focado num grupo específico de países – BRICS – e usamos a técnica da análise de conteúdo para analisar e cruzar dados com a literatura revisada. A pesquisa é documental porque é baseada na revisão de documentos e na literatura. Entre os cinco países do BRICS, os códigos de GC do Brasil, da Rússia e da África do Sul são os mais alinhados com o conjunto de recomendações apresentadas pela ONU. Percebeu-se que embora esses países do BRICS estejam desenvolvendo seus códigos de boas práticas de GC focados nas exigências dos investidores internacionais, a GC e os códigos desses países se encontram em fases muito diferentes. Em comparação, o baixo nível de convergência dos códigos chineses e indianos com as recomendações da ONU indica uma maior preocupação com o contexto local do que com os padrões internacionais.

Palavras-chave: *Códigos de Boas Práticas de Governança Corporativa. BRICS. Organização das Nações Unidas. Convergência da Governança Corporativa. Mercado de Capitais.*

1. INTRODUCTION

Corporate Governance (CG) is a very broad topic involving an array of sciences and expertise including law, business, economics, accounting and sociology. As corporate governance and profitability are seen as related, investments made by foreign investors are placing demands on firms to establish good corporate governance mechanisms (CFA Institute, 2009). The rapid increase of foreign investment flows to Brazil, Russia, India, China and South Africa (hereafter, BRICS) has attracted the attention of foreign investors, in particular, Foreign Direct Investments (FDI) outflows from BRICS countries have also increased significantly throughout the last decade. Thus, BRICS countries have been pointed to in the last decade as a potential new economic block, which brings the corporate governance practices of firms from these countries under scrutiny.

The growing interest in CG in Brazil and elsewhere is reflected in the exponential increase in the literature produced in the field, much of which has focused on situations and problems related to agency conflicts, ownership structure and the separation between ownership and control.

Research on CG may be divided into three stages, or generations. Two of these are described by Denis and McConnell (2003). Later, after extensive research in the field, Silveira (2010) identified a third generation. According to Denis and McConnell (2003), the first generation is composed of research in the USA. Research of this generation analyzes the

mechanisms of CG, how they can affect firm performance and their influence on decisions such as executive replacement, investment policies, remuneration and performance systems, and strategies related to hostile acquisitions. The second generation of research on CG internationally, considers possible impacts of different legal systems on the structure and the efficiency of CG and compares these systems in different countries. The third generation of research evaluates the impact of CG quality on the value or performance of firms, generally using indexes or *ratings* (Silveira, 2010).

Although the first code of good CG practices appeared over 30 years ago and the concept has since spread all over the world, few studies have been conducted and many gaps remain in our knowledge of certain important aspects. For example, what are the main motivating factors behind the issuance of CG codes? How effectively have CG codes been adopted by firms in different countries? How has the adoption of CG codes impacted the governance of firms and capital markets? What type of institutions are responsible for issuing CG codes? How have CG codes been implemented and enforced in different countries? This kind of research can be classified as belonging to the second generation of studies on CG, and the lack of knowledge on these topics it is noticeable.

In order to standardize the disclosure of information on CG, the United Nations developed a guide to good CG practices which gathers and harmonizes practices recommended by a wide range of national and transnational institutions, such as the Organization for Economic Co-operation and Development (OECD), the International Corporate Governance Network (ICGN), the Commonwealth Association for Corporate Governance (CACG) and the European Association of Securities Dealers (EASD), in addition to codes and regulations from different countries, including the UK Combined Code on Corporate Governance and the American Sarbanes-Oxley Act (UNCTAD, 2006).

Besides the multinational companies and international organizations issuing codes of corporate governance, local institutions in many countries have issued codes listing good practices to be followed companies locally. Still, many questions about these codes remain unanswered and this study aims to answer the following research question: what are the similarities and differences of the Corporate Governance codes of BRICS countries when compared to the indicators of CG recommended by the United Nations?

The main objective of the present study was to compare the indicators of good practices of CG in the codes issued by the five BRICS countries using the set of indicators recommended by the UN as categories of analysis.

The relevance of the present study lies in its analysis of the general content of CG codes which have so far received very little attention despite the best efforts of scholars in the field (Cuervo-Cazurra, 2002; Cuervo-Cazurra & Aguilera, 2004; Aguilera & Cuervo-Cazurra, 2004; Fernández-Rodríguez, Gómez-Ansón & Cuervo-García, 2004; Bebenroth, 2005; Cromme, 2005; Enrione, Mazza & Zerboni, 2006; Hermes, Postma & Zivkov, 2007; Zattoni & Cuomo, 2008; Aguilera, Cuervo-Cazurra & Kim, 2009; Aguilera & Cuervo-Cazurra, 2009).

In addition, this study contributes to advancing existing knowledge by introducing a complementary approach to previous studies: comparing the CG codes of the five BRICS countries from the different types of institutions issuing them, comparing the national enforcement framework as opposed to studies that focus in their comparisons on a few selected practices or issues in the content of BRICS codes, as do Majumder, Maiti, Banerjea (2012), or studies such as that of Zattoni and Cuomo (2008) that compare selected aspects of the codes of Eastern European countries, or still other studies, that compare the content of

CG codes of selected BRIC countries, like that of Braendle (2014) comparing Russian advances to Brazilian ones. This study compares the CG codes of the five BRICS countries to an international model – the UN guidelines - and its recommended practices, and discuss the results using some aspects related to the enforcement framework of each country and to the institutions issuing the codes, so this is a more wide and complete approach.

The study provides an overview (updated to 2014, including the new Russian code) of the state of the art of the CG codes adopted by the leading emerging economies of the world, the so-called BRICS countries, and helps understand the characteristics and contribution of each CG code as well as identify those aspects that need further improvement for greater effectiveness.

The article is structured as follows: initially, a review and discussion about the literature on CG codes is presented; then, the evolution of CG and codes of good CG practices in the five BRICS countries is described; the CG practices recommended by the UN are outlined; the codes of good CG practices adopted by the five BRICS countries are compared; the relation between the content of CG codes in the BRICS countries and the nature of the institutions issuing them, as well as the governance environment of each country are investigated; and, finally, conclusions are presented.

2. STUDIES ON CG CODES AROUND THE WORLD

The earliest CG codes date from the 1990s. The concept spread worldwide at an astonishing speed and currently over 200 codes are in existence, issued by several types of national and transnational institutions. Despite the adoption of CG codes by most countries, which suggests the importance of these documents, little research has been conducted and many gaps remain in our knowledge of the factors motivating their issuance, the effectiveness of their adoption, their impact on the governance of firms and capital markets, the nature of the issuing institutions and the strategies used in their implementation and enforcement. A brief description follows of the most relevant studies on CG codes and their central arguments.

Cuervo-Cazurra (2002) published a critical analysis of the CG mechanisms observed in Anglo-Saxon countries, which favor the market-oriented model, and in countries on the European mainland, which favor the shareholder-oriented model. The author found that deficiencies in shareholder protection in the legal systems of both models have been compensated for by the inclusion in the CG codes of items regulating the behavior and composition of the board of directors, although the low level of compulsoriness in Continental Europe limits the effectiveness of these codes. He concludes that to maximize company value, the issuance of CG codes in Continental Europe requires a complementary expansion of market control mechanisms.

Two years later, Aguilera and Cuervo-Cazurra (2004) studied CG codes from 49 countries to test the claim that the diffusion of CG codes is motivated mainly by the need for corporate efficiency and legitimacy. The results suggest that the issuance of CG codes is primarily an attempt to compensate for country-specific deficiencies in shareholder protection.

In addition, Cuervo-Cazurra and Aguilera (2004) published an analysis comparing the CG codes of fifteen common law countries and twenty codified law countries. They found that the development of CG codes was accelerated by exposure to foreign investment and that, in itself, the issuance of CG codes, motivated especially by the desire to strengthen the

capital market and legitimize firms in codified law countries, did not guarantee adherence to or effectiveness of the recommended practices.

Fernández-Rodríguez, Gómez-Ansón and Cuervo-García (2004) analyzed the reaction of the market to the announcement of the adoption of CG practices by Spanish firms and evaluated the relation between specific company characteristics and observed earnings. Reactions were positive overall due to the prospect of changes in board composition, but the study did not identify effects related to specific recommendations of the CG code adopted. The positive effect was greater for firms with low leverage and firms with many directors.

In an empirical analysis, Bebenroth (2005) evaluated the compliance of firms listed on the German stock market to the CG code issued in 2002 by the Corporate Governance Commission, which requires firms to justify any case of non-compliance. The study identified the recommendations most frequently ignored by German firms and listed some of the justifications given.

A study by Cromme (2005) examined the German CG code and the context in which it was developed and offered suggestions for how it could be improved.

Enrione, Mazza and Zerboni (2006) found that the proliferation of CG codes helps make CG systems more effective. The authors looked into the institutionalization of CG codes and the role of the different agents involved, such as legislators, multilateral organisms (e.g. OECD, UN), market institutions (e.g. stock markets and SEC) and a number of local institutions. Based on an analysis of 150 CG codes introduced in 78 countries from 1978 to 2004, the authors identified four stages of institutionalization: precipitating jolts, theorization, diffusion and reinstitutionalization. In addition, they suggested a detailed study of the content of CG codes and the likelihood of their adoption in different countries.

On the other hand, Hermes, Postma and Zivkov (2007) analyzed and compared the content of the CG codes of seven East European countries with regard to generally recommended disclosure practices, shareholder protection and board modernization. The study tested the claim commonly made in the literature that the CG codes of different countries tend to be similar due to external pressures, such as the increasing integration of nations into the global economy, the growing importance of foreign institutional investors and CG guidelines issued by international bodies. According to the authors, however, CG codes differ significantly when compared against international guidelines, probably due to the influence of country-specific circumstances and governance practices.

Zattoni and Cuomo (2008) looked at CG codes from a number of codified law countries to confirm the motivating factors most frequently adduced to explain their diffusion: the improvement of the national system of governance and the legitimization of national firms on the global financial market, with as few additional practices as possible. Comparing the most recent CG codes in codified law countries to CG codes in common law countries, the authors looked at the nature of the issuing institutions, the content and comprehensiveness of each code according to categories of analysis based on a sample of codes, and used the *t* test to detect significant differences in code contents according to category of analysis and legal system. In codified law countries, the issuance of CG codes was found to be more strongly motivated by the need for legitimacy than by the desire to improve CG practices.

Aguilera, Cuervo-Cazurra and Kim (2009) reviewed the literature on good CG practices related to the board of directors and found that, despite considerable progress, many gaps remain in our knowledge of the subject. The diffusion of CG codes worldwide is well understood, as are the factors contributing to this diffusion; but the specific content of CG

codes has been given little attention and few attempts have been made to determine the ability of existing CG codes to fulfill their intended purpose.

Aguilera and Cuervo-Cazurra (2009) assessed advances in research on CG codes around the world and concluded that more multidisciplinary studies were needed to understand the diffusion of these codes and their ability to fulfill their intended purpose. They also suggested four lines of future investigation: i) differences and similarities between CG codes, ii) the influence of the type of issuing institution on code content and effectiveness, iii) the influence of transnational institutions (e.g. OECD and World Bank) on code issuance, and iv) the evolution of CG codes over time.

In this context, two other recent studies can be cited. One, developed by Majumder, Maiti and Banerjea (2012), compared CG codes in BRICS nations using 14 selected parameters to identify similarities and differences between them. The authors concluded that each code has its own distinct and unique provisions. The other, developed by Braendle (2014), highlights the issuance of a new code in Russia in 2014 after the issuance of the first one in 2002; and, although the study mentions comparative analysis of the codes of the four BRIC countries (BRICS minus South Africa) it mainly compares the differences and similarities between the Russian and Brazilian codes. This last study uses 32 selected parameters of corporate governance.

According to Gregory (2004, 439)

Corporate governance guidelines and codes of best practices arise in the context of, and are affected by, differing national frameworks of law, regulation and stock exchange listing rules, and differing societal rules ... Therefore, to understand one nation's corporate governance practices in relation to another's, one must understand not only the "best practice" documents but also the underlying legal and enforcement framework.

The literature reviewed suggests that the general environments of international business (i.e. political, economic, cultural) can impede or promote the development of CG codes. For example, economic and political freedoms as well as a low level of corruption can lead to their effective implementation. In other words, aspects such as the legal system (codified law versus common law), the governance environment (rule-based versus relation-based), capital market coordination (market-oriented versus shareholder-oriented) etc, influence the issuance of the codes. The above literature review generated the following assumptions:

- 1) CG codes of BRICS countries intend to compensate deficiencies in shareholder protection in the legal systems by the inclusion of items regulating the behavior and composition of the board of directors;
- 2) The issuance of CG codes in the BRICS was accelerated in codified law countries by exposure to foreign investment and was intended to strengthen the capital market and legitimize firms;
- 3) The scope and extent of the CG codes issued by BRICS countries differ significantly when compared against international guidelines, probably due to the influence of country-specific circumstances and governance practices;
- 4) The scope and extent of the CG codes issued by BRICS countries differ depending on the nature of the issuing institutions and enforcement in codified law or common law countries.

The literature reviewed above displays a conspicuous lack of studies on the CG codes of the five BRICS countries, considering the importance to the world economy of these countries

in the medium and long term and the evident usefulness of a comparative analysis between these and other countries. In the following section we present and discuss aspects of the evolution of corporate governance and CG codes in the five BRICS countries, specifically.

3. CORPORATE GOVERNANCE AND CODES OF GOOD CG PRACTICES ADOPTED IN THE BRICS COUNTRIES

Jim O'Neill (2001), president of Goldman Sachs Asset Management, coined the acronym BRIC to designate a group of emerging economies which, based on numerous studies, possess a significant potential for economic growth and which, according to many scholars, are expected to overtake most of the world's leading economies (the U.S., Japan, Germany, the U.K., France and Italy) by 2050. Originally, the acronym included Brazil, Russia, India and China. Later, based on its likely future participation in the world market, South Africa was added to the group, changing the acronym to BRICS (O'Neill, 2011).

According to studies published by the International Finance Corporation [IFC] (2009) on the relation between the adoption of CG practices by emerging economies and access to global capital sources, Brazilian firms with weak CG structures could potentially raise 85-100% more capital on the international market simply by improving their CG practices. In addition, studies conducted by the UN have revealed a growing interest in corporate governance among firms in emerging economies, not only in the five BRICS countries, but in several other developing nations, as illustrated by recent studies including observations from several countries (UNCTAD, 2009, 2010a, 2010b, 2011; Oliveira, 2013).

In the following section, we present relevant aspects of the history of corporate governance and the respective CG codes of the five BRICS countries.

3.1 Overview of corporate governance in Brazil and the CG code issued by the Brazilian Institute of Corporate Governance

In the 1950s and 1960s, most Brazilian firms were controlled by families, with majority shareholders doubling as executive directors. The first boards of directors appeared in the 1970s, with signs of autonomy and power shared by shareholders and professional managers. In effect since 1976, the Brazilian law that regulates corporations (Lei das Sociedades Anônimas) established the practice of division of powers between the board of directors and executive management. The 1980s saw the birth and expansion of pension funds and collective investment schemes and the consolidation of the stock markets of São Paulo (Bovespa) and Rio de Janeiro, the Brazilian Securities and Exchange Commission (CVM) and the Administrative Council for Economic Defense (CADE).

The privatizations which occurred in the 1990s highlighted the need for the adoption of good CG practices. The question of CG became particularly relevant to privatized firms: due to the inevitable separation between control and management, majority shareholders introduced new delegation arrangements, incentives and instruments of oversight to monitor the performance of the executives.

In Brazil, regulations on CG practices stem from two different sources: government bodies and institutions, such as legislative bodies, the Brazilian Securities and Exchange Commission (CVM) and the Brazilian Central Bank (BACEN), and private institutions, such as the BM&FBovespa stock exchange, CG institutes and similar associations, investors and business groups.

The most important steps towards the implementation of Corporate Governance in Brazil were taken in the late 1990s and at the beginning of the 21st century through a set of legal and institutional measures. For example:

- the creation in 1995 of the Brazilian Institute of Corporate Governance (IBGC) with the purpose of encouraging the adoption of CG practices and issuing a code of good CG practices (1999);
- the creation by the BOVESPA stock exchange of special CG listing segments (“Level 1”, “Level 2” and “New Market”) in 2000 in order to segregate firms in accordance with their level of adherence to good CG practices;
- the approval of Law #10.303 (October 31, 2001), known as the new Brazilian Corporation Law, introducing a number of rights for minority shareholders.

In the past few years relevant changes have been made to CG practices and disclosure regulations empowering Corporate Governance in Brazil. The main Corporate Governance requirements are specified in federal laws and regulations issued by the Brazilian Securities and Exchange Commission (CVM), such as CVM Instruction #480/09 (which makes the publication of the Brazilian Reference Form (RF) mandatory) and CVM Instruction #481/09 (which covers additional requirements regarding procedures for calling, preparing and conducting general meetings of shareholders, and instruments facilitating the access of shareholders to general meetings). The rules of BOVESPA for the special CG listing segments were updated too. It is important to highlight that Brazil is a codified law system country and all these rules are part of the legal framework of CG in Brazil.

In the present study, we chose the Brazilian Institute of Corporate Governance –IBGC code to represent Brazilian CG guidelines because it is the most recently updated standard and is available as a single document including practices other than those already mandatory for Brazilian organizations at the time it was issued, e.g., proxy voting and poison pills, access to the agenda, transparency of minutes of meetings, and board efficiency. It is important to emphasize that the adoption of the IBGC code is voluntary.

The IBGC code issued in 1999 has been updated three times and is currently in its fourth edition. The principle of corporate responsibility was introduced in the 2004 edition, drawing attention to the importance of organizational sustainability through the adoption of corporate policies and values. The 2009 edition revised recommendations intended to improve governance systems and increase performance and longevity. At present the fifth edition is in preparation; and it was the subject of public hearings until August 2014, when the submission of comments and suggestions from experts were received.

The IBGC code is divided into six sections: ownership, board of directors, management, independent auditors, board of supervisors and ethical conduct/conflicts of interest. The five first sections describe practices and guidelines for each area in the CG system. The last section deals with ethical conduct and behaviors, policies and recommendations for avoiding conflicts of interest, and improper use of organizational assets and information.

3.2 Overview of corporate governance in Russia and the Russian CG code

When the former Soviet Union was dissolved following the collapse of the socialist economy, Russia (the main constituent republic) adopted a capitalist regime. The new

economy required profound adjustments in the stock market structure. In 2001, with a weak capital market and low levels of corporate governance in public firms, Russia started a long and difficult transition to Western standards. Two years earlier, in 1999, the Russian Federal Securities Commission (RFSC) was created in order to ensure the transparency of the capital market and gain the confidence of domestic and foreign investors (Ventura, 2005).

Along with government agencies and the national financial and business community, the RFSC created the Russian CG code, which was approved in 2001. As the code became the national standard of corporate governance, public firms in Russia started to make mandatory disclosure of CG practices. To draft the code, the RFSC received assistance from the World Bank, the European Bank for Reconstruction and Development, the International Financial Corporation, the International Corporate Governance Network, the Financial Stability Forum and other important institutions (Ventura, 2005).

The 2002 Russian CG code was made up of 10 chapters covering the following topics: i) principles of corporate governance, ii) the general shareholders' meeting, iii) boards of directors, iv) executive bodies, v) the corporate secretary (whose function it is to make sure the supervising and executive bodies take into account the interests and rights of all shareholders), vi) major corporate actions, vii) disclosure of company information, viii) supervision of financial and business operations, ix) dividends, and x) conflict solution. Based on OECD guidelines, the recommendations in the Russian CG code were drafted by the RFSC. The document was the only CG code in Russia; however, it was not enforceable by law.

According to Ventura (2005), in order to make the Russian market more transparent with regard to corporate governance, fairness, accountability and corporate responsibility (the four pillars of the Russian CG code), a 2004 amendment to the Russian Criminal Code declared it a crime to deliberately withhold information from or convey false information to investors. Thus, Russia took up its place on the international market as a reliable investment option.

Recent improvements in Corporate Governance in Russia include the issuance of the following legal documents: Federal Law "On the Central Depository" (07.12.2011), Amendments to the Law "On the Securities Market" (29.12.2012), Amendments to the Law "On Joint Stock Companies" (19.04.2013), FFMS Order "On the approval of the Regime of the securities admission to organized trading" (30.07.2013). (Braendle, 2014)

In addition, the Federal Service for Financial Markets of the Russian Federation drafted a new version of the code. The European Bank for Reconstruction and Development (EBRD) and the Organization for Economic Co-operation and Development also took part in this work; and due to this, the Code was evaluated and commented on by leading international experts in corporate governance (OECD, 2011).

In 2013 Russia published a Draft Code of Corporate Governance, hereafter Code 2013. This document is composed of an introduction and two parts: Part A - Principles of Corporate Governance and Part B - Recommendations on Principles of Corporate Governance, each one made up of the following items: I. Shareholder rights and equality of conditions for shareholders exercising their rights; II. Board of directors of the company; III. Corporate Secretary of the company; IV. System of remuneration due to members of the board of directors, the executive bodies and other key managers of the company; V. Risk management and internal control system; VI. Disclosure of information about the company and its information policy; and VII. Material Corporation Actions (EBRD, 2014).

According to Braendle (2014), the new Code is better adapted to international standards of corporate governance and even if the standards of Code 2013, like those of its predecessor,

are still not obligatory for application, a policy of fulfillment of the standards by the companies or explanations of the reasons of non-implication (comply or explain) is imposed. Braendle (2014) affirms that a weak legislation system for corporate relations is not the main problem in Russia's Corporate Governance but rather enforcement of the law and the fact that while practically the whole history of the Russian legal base formation followed the German (Continental) model (codified law), recent corporate practice and corporatization have been actively developed in accordance with the Anglo-Saxon (common law) tradition.

3.3 Overview of corporate governance in India and the Indian CG code

The early development of Indian firms was based on an agency system with capital pulverization combined with strong protection of minority shareholder rights. Between 1951 and 1956, with the passage of development laws and industry regulations, the process was bureaucratized. This gave rise to corruption, nepotism, inefficiency and soaring taxes, leading managers to search for loopholes in accounting regulations capable of circumventing tax laws. In addition, the Indian government provided credit based on quantitative criteria only, thereby compromising the country's economy (Chakrabarti, 2004).

Indian corporate governance changed drastically during the reforms between 1990 and 2004. Following the country's independence in 1947, the government became the main capital provider. Efficiency was rarely an issue when authorizing loans to firms. The officials in charge of loans were held accountable for the amounts loaned, not for the profitability of the investments. The government provided approximately 90% of the capital required by many firms, making it the majority shareholder, but did not monitor the performance of corporate executives. Thus, non-governmental capital providers encountered serious obstacles when trying to monitor firms receiving loans. Their only protection was in the contract and in their option to file for bankruptcy. However, contracts were difficult to enforce in the law courts and bankruptcy procedures could take from 10 to 15 years to complete (Khanna, 2009).

In 1991, India faced severe economic problems, including a balance of payment crisis. This led the government to start a process of economic regulation and to open several sectors to private initiative.

Since the liberalization of the Indian economy in 1992, big changes have been seen in laws and regulations, improving the corporate sector and the establishment of corporate governance. The creation of the Securities and Exchange Board of India (SEBI) was probably the most important factor for corporate governance and investor protection. First developed to regulate and monitor the trading of shares, it has been essential to the establishment of the minimum basic ground rules for corporate conduct in India (Chakrabarti, Megginson, Yadav, 2008).

The first Indian CG code (entitled "Desirable Corporate Governance in India - The Code") was issued in 1998 by the Confederation of Indian Industry (CII). In 1999, the Kumar Mangalam Birla Committee started work on a report on good CG practices which was eventually published in a code-like format.

Then another important initiative was taken by SEBI in 1999. It consisted of mandatory recommendations that apply to listed companies and should be applied at the level of the stock market by listing regulations (Goswami, 2002). According to Chakrabarti (2004), Indian standards of financial information disclosure have traditionally been higher than those of most Asian countries, though not as strict as those of the world's leading economies.

Later, in 2009, the Indian Ministry of Corporate Relations issued the “Corporate Governance Voluntary Guidelines” based on CII recommendations. The guidelines are divided into 6 sections covering the following topics: board of directors, responsibilities of the board, audit committee of board, auditors, secretarial audit, institution of mechanisms for whistle blowing.

In a recent scenario, the Companies Act 2013 replaced the "National Advisory Committee on Accounting Standards" with the "National Financial Reporting Authority" (NFRA), which establishes audit and accounting policies and enforces compliance to accounting and audit standards.

At present, in India, there are six mechanisms to ensure corporate governance i.e. the Companies Act of 2013, the SEBI act, discipline of the capital market, nominees on company boards, statutory audits and codes of conduct. The new Companies Act 2013 and SEBI's proactive actions paint a positive future for corporate governance in India. However, even if the country has one of the best corporate governance laws, implementation of these laws is poor. (Sharma, Rathi, 2014).

According to Sharma and Rathi (2014), the Indian corporate governance system has the basic corporate legal structure of the Anglo-Saxon model, but share ownership is more concentrated and financial institutions play an important role in financing companies.

3.4 Overview of corporate governance in China and the Chinese CG code

According to Kang, Shi, Brown (2008), the history of Chinese corporate governance may be divided into four periods: i) from 1949 to 1983 - complete predominance of government enterprises; ii) from 1984 to 1993 - beginning of privatizations in China and the establishment of the Shanghai Stock Exchange, the Shenzhen Stock Exchange and the China Securities Regulatory Commission (CSRC), the main financial regulatory body in the country; iii) from 1994 to 2005 - first experience with modern company structures, introduction of laws regulating the rights and responsibilities of modern Chinese firms, and implementation (in 2001) of the Code of Corporate Governance for Listed Companies in China; iv) from 2006 to present - continued development of Chinese corporate governance, including laws aimed at reducing the power asymmetry between state and private shareholders. However, even though the legal system in China resembles that of the codified law group, the judicial branch is not independent and is heavily influenced by administrative interventions (Kang, Shi, Brown, 2008).

In China, CG practices were implemented to promote the custom of hiring independent directors due to existing conflicts of interest between stakeholders and the board in both public and private firms. Executives have to negotiate with government officials who sometimes seize the opportunity to extract benefits from firms. Therefore, only particularly well connected individuals tend to have access to loans, especially long-term bank loans (Fan, 2009).

A number of reforms in Chinese public institutions, favoring democracy, court efficiency, labor legislation and environmental legislation, among others, have helped sustain long-term development. Many such measures are in progress but, due to the Communist regime, political reforms have been slow. Chinese economic growth is highly dependent on structural change and the adoption of good CG practices (Fan, 2009).

China's capital market is characterized by the Chinese banks' preferential treatment of state-owned enterprises, the difficulty in issuing corporate bonds, and the lack of preferred

shares (Kang, Shi, Brown, 2008). The year of 2011 marks the 20th anniversary of the Chinese capital market. According to OECD (2011), it started from scratch and experienced an extraordinary growth with market size increasing from small to big and market coverage from regional to nationwide.

The Chinese capital market has developed under the joint effort of the government and market participants, with the former playing a leading role in the construction and improvement of the corporate governance legal framework. The Chinese legal system for corporate governance has developed fairly quickly and is increasingly full-fledged (OECD, 2011).

The China Securities Regulatory Commission (CSRC) and the National Economic and Trade Commission jointly issued the *Code of Corporate Governance of Listed Companies* in early 2002. This document is based on the OECD Corporate Governance Principles and gives particular consideration to the circumstances and outstanding issues of listed companies in China. The first edition of the Chinese CG code featured 8 chapters divided into 19 sections and 95 articles. The second edition (2004) has 8 chapters divided into 6 sections and 78 articles. The code covers topics such as shareholder rights, shareholder meetings, the relationship between public firms and shareholders, boards of directors and their members, boards of auditors and their members, the Chinese CG agency responsible for auditing corporate finances, legal requirements of board members, the performance of managers and their participation in shareholder meetings, executive directors, control mechanisms, the relationship between public firms and their clients, and general guidelines. The CSRC requires that listed companies adhere to its governance rules. The content of the 2004 edition was used in the present analysis.

3.5 Overview of corporate governance in South Africa and the South African CG code

In the 1980s, the managers of many South African firms had very little autonomy and were often complacent with actions injurious to corporate ethics. At this time, the government protected domestic firms through trade embargoes and discouraged the participation of the Institute of Directors in Southern Africa [IDSA] (2001).

The increasing importance of financial services to the economy together with market reforms necessary to improve transparency and efficiency have contributed to increased investor activity in the local stock market, both by local and international investors. Adding further emphasis to the need for higher standards has been South Africa's admission to the World Trade Organization (WTO) and its participation in a number of other important multilateral arrangements and accords. These have given further impetus to a series of domestic regulatory initiatives directed towards fostering a market-oriented corporate culture (Armstrong, Segal, Davis, 2005)

According to Dutra et al (2009), in 1994 the King Committee on Corporate Governance took the first initiative to publish information on internal controls and corporate governance in South Africa. The publication was called "the King Report on Corporate Governance – King I" after president Mervyn King.

The 2002 edition (King II) proposed restructuring boards and committees (including independent directors) to achieve greater independence and avoid negative influences and conflicts of interest due to the appointment of board members with multiple affiliations (IDSA, 2002). The second King Report followed a review of the developments that had taken place in the South African economy and in the global markets since 1994 (Armstrong, Segal,

Davis, 2005)

The 2009 edition (King III) incorporated new rules established by the 2008 Companies Act, in part as a result of scandals involving governance principles. The report was based on principles of leadership, sustainability and corporate citizenship (IBGC, 2009). According to Waweru (2014), the code was revised in 2002 and again in 2009 to reflect changing trends both in South Africa and internationally. However, it is important to highlight that compliance with the recommendations of the King Report is voluntary, although the JSE Listing Code (2005) requires firms to disclose in their annual reports the extent of their compliance with the King Report and reasons for non-compliance (Waweru, 2014).

King III has 9 sections covering ethical management and corporate citizenship, boards and their members, audit committees, risk management, IT management, compliance with laws, regulations, codes and standards, internal audits, stakeholder relations, integrated reports and disclosure. The sections are subdivided into elements of governance, principles and recommended practices. Waweru (2014) mentions that South Africa's corporate governance model has historically been predominantly Anglo-American (shareholder) in orientation, with firms expected to serve the interests of their shareholders; but nowadays its model uses a modified (hybrid) Anglo-Saxon approach.

In addition, in 2010 a draft code for institutional investors was issued by the Committee on Responsible Investing by Institutional Investors in South Africa as a complement to King III.

4. THE UN GUIDE ON GOOD PRACTICES IN CORPORATE GOVERNANCE

Corporate governance became part of the UN agenda in 1989 through the establishment of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR). In 2004, after twenty-one sessions, ISAR launched a series of reviews of the implementation status of corporate governance disclosure in countries around the world.

In 2006, the UN issued a guide entitled "Guidance on Good Practices in Corporate Governance Disclosure", containing recommendations for the disclosure of CG practices, including financial information (financial and operational results), non-financial information (e.g. company objectives), owner/shareholder rights, general meetings (holding of meetings, voting, accessibility/availability of documents), timeliness and means of communication (objectivity and communication with shareholders), and best practices of compliance (recommending the adoption of international CG practices by all countries) (UNCTAD, 2006).

The guide has served as reference for a number of UN studies on corporate governance disclosure. For example, one study included 12 emerging economies (UNCTAD, 2010b), while another looked at CG disclosure practices in 10 emerging economies, including the five BRICS countries. The sample consisted of 100 firms (the top 10 firms of each of the ten major emerging economies listed as UN members). The study defined a benchmark with 53 items distributed in five groups of practices: (i) ownership structure and the exercise of control rights, (ii) financial transparency and disclosure of information, (iii) audits, (iv) corporate responsibility and legal compliance, and (v) board and management structure and procedures), reflecting the recommendations of the UN guide (UNCTAD, 2009).

Other transnational and international organizations (OECD, IFC) and institutions have published guides with recommended CG practices, each with its own scope and emphasis. In

this study, however, we adopted the UN guide with its 52 CG practices distributed in 5 groups as parameter against which to compare the contents of the CG codes of the five BRICS countries. It is important to note that prior UNCTAD studies included 53 items and one of them was removed because of substantive overlap with another item. The ISAR benchmark is subject to periodic review and change.

5. METHODOLOGY

The present study was exploratory (our comparison of the CG codes of the five BRICS countries in light of the UN document “Guidance on Good Practices in Corporate Governance Disclosure” has no precedent in the literature). Its nature is qualitative because we performed a multiple case study focused in a specific group of countries – BRICS – and analyzed data in depth by the use of content analysis techniques instead of analyzing a large quantity of data using statistical tools to generalize the results. The research is documental because it is based on a review of documents and the literature.

The information on good CG practices recommended in the five BRICS countries was collected from five major codes issued by national institutions:

Brazil	Issued by the Brazilian Institute of Corporate Governance (IBGC, 2009)
Russia	Issued by the Federal Service for Financial Markets of the Russian Federation (EBRD, 2014)
India	Issued by the Ministry of Corporate Affairs (2009)
China	Issued by the China Securities Regulatory Commission (2004)
South Africa	Issued by the Institute of Directors in Southern Africa (King III) (2011)

The data collected were submitted to content analysis. The names of the 5 categories and 52 subcategories of the UN guide (e.g. ownership structure, exercise of control rights, general meetings) were used as key words in the analysis of the codes of the BRICS countries. With this procedure, the level of convergence of each national CG code to the UN guide was assessed. Following the example of Zattoni and Cuomo (2008), a dummy variable was created for each practice described in the UN guide. The variable was scored according to whether it was included in each national CG code (0 = absent, 1 = present).

Rather than attempting to quantify the object of study, we laid emphasis on a comparison of the practices contained in each national CG code with the recommendations in the UN guide and looked into the nature of the issuing institutions, the purpose of the adoption of the codes – if related to capital market enforcement in view of the globalized environment or if related to local firms' enforcement of corporate governance. This study does not compare the content of the different countries' codes to each other in detail but rather the respective contents to the recommendations of international institutions, represented by UN.

6. DATA PRESENTATION AND ANALYSIS

The CG codes of Brazil, Russia, India, China and South Africa were compared against the 5 categories and 52 subcategories (specific practices) of the UN document “Guidance on Good Practices in Corporate Governance Disclosure”. Table 1 shows the results of the

comparison. Convergence to UN-recommended practices was scored as 1 (present), non-convergence as 0 (absent).

Table 1: Comparative analysis of codes of good CG practices adopted in the five BRICS countries, in light of the CG practices recommended by the United Nations.

CG practices recommended in the UN guide		Brazil	Russia	India	China	S.Africa
Ownership structure and the exercise of control rights		9	9	1	8	8
1	Ownership structure	1	1	0	1	0
2	Process for holding of annual general meeting	1	1	1	1	1
3	Changes in shareholdings	1	1	0	1	1
4	Availability and accessibility to meeting agenda	1	1	0	1	1
5	Control structure	1	1	0	0	1
6	Control rights	1	1	0	1	1
7	Control and corresponding equity stake	1	1	0	1	1
8	Rules and procedures governing the acquisition of corporate control in capital markets	1	1	0	1	1
9	Anti-takeover measures	1	1	0	1	1
Financial transparency and information disclosure		7	8	3	6	6
10	Financial and operational results	1	1	0	1	1
11	Nature, type and elements of related-party transactions	1	1	1	1	1
12	Company objectives	0	1	0	1	1
13	The decision making process for transactions with related parties	1	1	1	1	1
14	Rules and procedure governing extraordinary transactions	1	1	0	1	1
15	Board's responsibilities regarding financial communications	1	1	1	1	1
16	Critical accounting estimates	1	1	0	0	0
17	Impact of alternative accounting decisions	1	1	0	0	0
Auditing		7	7	6	6	7
18	Process for interaction with external auditors	1	1	1	1	1
19	Process for appointment of external auditors	1	1	1	1	1
20	Internal control system	1	1	1	1	1
21	Process for interaction with internal auditors	0	1	0	1	1
22	Process for appointment of internal auditors / scope of work and responsibilities	1	1	1	1	1
23	Rotation of audit partners	1	0	1	0	0
24	Auditors' involvement in non-audit work and the fees paid to the auditors	1	1	0	0	1
25	Board confidence in independence and integrity of external auditors	1	1	1	1	1
26	Duration of current auditors	0	0	0	0	0
Corporate responsibility and compliance		5	5	3	1	5
27	Policy and performance in connection with environmental and	1	1	0	0	1

	social responsibility					
28	Mechanisms protecting the rights of other stakeholders in business	1	1	1	1	1
29	A Code of Ethics for the Board and waivers to the ethics code	0	0	0	0	0
30	A Code of Ethics for all company employees	1	1	1	0	1
31	Impact of environmental and social responsibility policies on the firms sustainability	1	1	0	0	1
32	The role of employees in corporate governance	0	0	0	0	0
33	Policy on whistleblower protection for all employees	1	1	1	0	1
Board and management structure and process		18	15	13	15	15
34	Governance structures, such as committees and other mechanisms to prevent conflict of interest	1	1	1	1	1
35	Composition of board of directors (executives and non-executives)	1	1	1	1	1
36	Role and functions of the board of directors	1	1	1	1	1
37	Composition and function of governance committee structures	1	1	1	1	1
38	Qualifications and biographical information on board members	1	0	0	0	0
39	Determination and composition of directors' remuneration	1	1	1	1	1
40	Material interests of members of the board and management	1	1	1	1	1
41	Independence of the board of directors	1	1	1	1	1
42	Existence of procedure(s) for addressing conflicts of interest among board members	1	1	0	1	1
43	"Checks and balances" mechanisms	1	1	1	0	1
44	Risk management objectives, system and activities	1	1	1	0	1
45	Duration of director's contracts	1	1	1	0	1
46	Types and duties of outside board and management positions	1	0	0	1	0
47	Existence of plan of succession	1	1	1	1	1
48	Professional development and training activities	1	1	1	1	1
49	Number of outside board and management position directorships held by the directors	1	1	0	1	0
50	Performance evaluation process	1	1	1	1	1
51	Availability and use of advisorship facility during reporting period	1	0	0	1	1
52	Compensation policy for senior executives departing the firm as a result of a merger or acquisition	0	0	0	1	0
UN-recommended practices adopted in the BRICS countries		46	44	26	36	41

Source: The authors.

In the category "Ownership structure and the exercise of control rights", the Indian CG code was the least convergent with the UN guide (1 of 9 items). The codes of China and South Africa were nearly fully convergent (8 of 9 items), with the exception the item "control structure" and "ownership structure" subcategories, which were absent from each code, respectively. The Brazilian and the Russian codes, in this category of analysis were completely convergent with the UN recommendations on good CG practices.

As pointed out earlier, since the CG models of the BRICS countries were generally characterized by governmental or third-party (debt) funding, the questions of ownership

structure and control rights have only recently gained importance. Also, due to their peculiar cultural, political and economic aspects, some of these countries have traditionally been closed to foreign investment and international trade. These aspects appear to be reflected in the results observed for this category of analysis. Therefore, we can affirm that the Indian code is more focused on the domestic context and the Brazilian, Russian, Chinese and South African codes are more focused on the capital market and external investors.

It is important to remember that as pointed out in the literature review, compliance with the Indian code is voluntary and recent legal rules were issued in India related to CG. These facts can explain the absence of seven relevant items in the Indian code in this category.

In the category “financial transparency and information disclosure”, the Indian code was the least convergent with the UN guide (3/8). Russia is completely convergent (8/8), as was expected, considering the legal concern of the Russian government with punishment for omission or disclosure of false information, as seen in the literature review. The other three codes included almost all the items, with the exception of “company objectives” in the Brazilian code and “critical accounting estimates” and “impact of alternative accounting decisions” in both the Chinese and South African codes.

The category “Board and management structure and process” contains the largest number of practices dealing with power structure and its effectiveness. The Brazilian code is the most convergent with the UN guide (18/19), followed by the new Russian code, the South African code and the Chinese code, all of which adopt 15 of 19 UN-recommended practices. The least convergent was the Indian code (13/19).

The very representative convergence of the content of the CG codes of BRICS countries to the UN-recommended practices related to Board and management structure and process confirms the intention to compensate deficiencies in shareholder protection in the legal systems by the inclusion of items regulating the behavior and composition of the board of directors.

Considering that as mentioned in the literature review the Chinese Securities Regulatory Commission (CSRC) requires that listed companies adhere to the code practices, that in Russia a policy of fulfillment of the new Code 2013 by the companies or explanations of the reasons of non-implication (comply or explain) is imposed, and that in South Africa the disclosure in the annual reports of the extent of compliance by the firms with the King Report and reasons for non-compliance is required, we can conclude that the issuance of these codes is more strongly motivated by the need for legitimacy than by the desire to improve CG practices of the firms in these countries in which legal systems are so weak and could be enforced by the adoption of the practices recommended in these codes.

In Brazil and India, adherence to their codes is voluntary and the recent legal rules related to CG of these countries have required the adoption of advanced practices that were previously only recommended in the Brazilian code or inexistent in the Indian case.

In the category “Corporate responsibility and compliance”, the Chinese code was the least convergent (1/7), followed by the Indian code (3/7). The Brazilian, Russian and South African codes were convergent with five of the seven items in the UN guide. None of the codes presented recommendations related to “A Code of Ethics for the Board and waivers to the ethics code” and “The role of employees in corporate governance”.

In the category “Auditing”, the Brazilian, Russian and South African codes were convergent with 7 of 9 UN-recommended items. The Indian code and the Chinese code converged on more than half the items (5/9). Duration of current auditors and Rotation of auditors partners were the items least present in the BRICS' codes..

Despite differences in legal systems (India has common law system, South Africa a hybrid legal system that mixes Roman-Dutch codified law and English common law, Russia and Brazil have codified law systems, and China has a codified law system influenced by administrative interventions), the adoption of the codes of CG practices studied is voluntary in all the BRICS countries.

Based on the literature review and the empirical data collected, we can conclude that the issuance of CG codes in the BRICS was accelerated in codified law countries (Brazil, Russia, China, South Africa – hybrid system) by exposure to foreign investment and intended to strengthen the capital market and legitimize firms. The support to this affirmation is the fact that except by the Chinese code, all the other codes are in at least their third version and they are advancing in the direction of a stakeholder model of corporate governance, in other words, towards an inclusive model instead of a pure shareholder model.

The CG codes of Brazil and South Africa are already in their third edition and are supported by market institutions, regulatory bodies and professional institutions, such as accounting firms and associations, indicating a context of change and a greater concern with market forces and external CG mechanisms. The same comments can be made on the second edition of Russian code that was supported by OECD. This is reflected in the inclusion of topics like corporate responsibility in the latest editions of the CG codes of all these countries. In these three countries, corporate governance and the respective CG codes may be considered to be in the reinstitutionalization stage: the purpose of their codes is no longer simply to legitimize firms but to improve the overall CG system.

In India, Corporate Governance and the CG code have evolved beyond the precipitating jolts stage to the theorization stage, as described earlier. This is borne out by the nature of the institution that served as reference for the drafting of its CG code (CII) and the early stage of this document. Thus, it may be concluded that legitimization is currently the main reason for adopting good CG practices in this country.

The Chinese CG code was updated only once, ten years ago, indicating Chinese corporate governance is in the diffusion stage.

Finally, it's correct to affirm that the scope and extent of the Brazilian, Russian and South African CG codes do not differ significantly when compared to international guidelines.

7. FINAL CONSIDERATIONS

The CG code issued in 2009 by the Brazilian Institute of Corporate Governance was found to converge with the UN guide with regard to 46 of 52 items (88%).

The CG code issued in 2014 by the Federal Service for Financial Markets of the Russian Federation was found to converge with the UN guide with regard to 44 of 52 items (85%).

The CG code issued in 2011 by the Institute of Directors in Southern Africa (King III) was found to converge with the UN guide with regard to 41 of 52 items (79%). The stated purpose of the code is to offer international investors greater information transparency.

The CG code issued in 2001 by the China Securities Regulatory Commission was found to converge with the UN guide with regard to 36 of 52 items (69%). The observed convergence suggests a concern with the demands of international investors.

The CG code issued in 2009 by the Indian Ministry of Corporate Affairs was found to converge with the UN guide with regard to 26 of 52 items (50%). This represents the lowest

level of convergence among the BRICS countries, indicating a greater concern with the local context than with international standards.

In short, among the five BRICS countries, the CG codes of Brazil, Russia and South Africa are those most closely aligned with the recommendations set forth in the UN document “Guidance on Good Practices in Corporate Governance Disclosure”. In these countries, the development of corporate governance is clearly focused on the demands of international investors, especially in the categories “ownership structure and the exercise of control rights”, “board and management structure and procedures” and “financial transparency and information disclosure”. Comparatively speaking, the convergence of the codes of these three countries was higher than that of the codes of India and China.

However, the convergence of all five BRICS codes to the UN guide categories “auditing” and “corporate responsibility and compliance” was somewhat low, indicating the need to focus more on practices of corporate social responsibility and accounting information, especially in China and India.

On the other hand, the implementation of corporate governance is a recent initiative, even in the countries which pioneered the concept. Thus, regardless of current shortcomings, the issuance and diffusion of CG codes in emerging economies is in itself an important step toward greater transparency and corporate citizenship.

For future research, we suggest a comparison of the content of the codes using quantitative analyses. There are two studies comparing some aspects using a qualitative approach (Braendle, 2014, Majumder, Maiti, Banerjea, 2012), but although one of them predates the issuance of the new Russian code and the other one compares only Brazilian and Russian Codes (even though the title mentions analysis of BRIC codes). Neither uses an international standard for comparison, as does the study reported here, which is also qualitative. Therefore, a quantitative study to compare the content of BRICS codes would be opportune.

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