



CorporateGovernance- AGlobalPerspective

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Corporate Governance is:

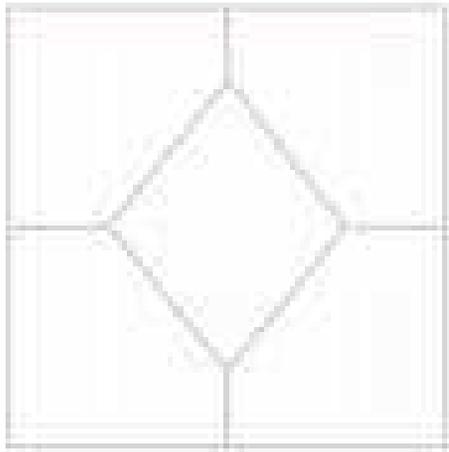
the *system* under which enterprises (in this context, enterprises that are joint stock companies) are financed, organized and operated.



The mechanisms of effective corporate governance include:

- the legal and regulatory system, the securities and company laws, and
- other complementary legislation including accounting law, commercial law, contract law, law on collective investment institutions, bankruptcy and insolvency legislation, and law on competition, banking and dispute resolution.

framework



The *framework* for corporate governance can be defined as the mix of legal, regulatory and other appropriate market driven practices that create an enabling environment for the enterprise to—

- attract financial and human capital, perform efficiently and create economic value for its shareholders for the long-term, and
- allow the enterprise to interact effectively with its stakeholders (including its employees and creditors) in a fair and proper manner.

*A primary objective of
corporate governance is-*



A primary objective of corporate governance is-

transparent management
of the enterprise



Transparency and the benefit of a *"well-regulated" securities market* (that is, a securities market defined by appropriate securities laws and regulations that is overseen by an effective market regulator or securities commission) promote the:

maximum participation by the enterprise in the organized

financial markets, and

- most efficient market behavior.

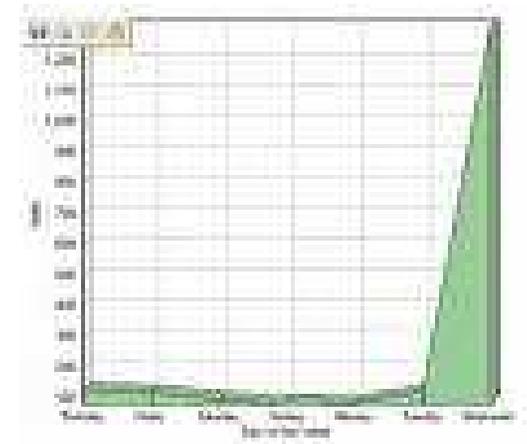


Corporate governance and an effective corporate governance system thus benefits:

- the enterprise, its shareholders and stakeholders including, managers, employees, customers, banks, creditors and suppliers, and
- the community, society and country through providing employment, domestic production, commerce, trade and exports; requiring environmental concern; attracting foreign investment; and promoting competition in the marketplace.



- **Drives international competitiveness**
- **Helps ensure the growth and survival of pension systems**
- **Promotes efficient investments into productive channels**
- **Critical to strengthening capitalmarkets**
- **Helps ensure efficient allocation of capital**





- **Voting Rights are Important & Serious**
- **Shareholders Rights especially critical**
- **Integrity of Financial Reporting and Improved Disclosure**
- **Development of effective Boards of Directors**
- **Improved Quality, Effectiveness and Predictability of Legal/Regulatory Framework Framework**
- **Continuing Regional Cooperation**



Argentina :Capital Markets Law effective since 2001, covers a broad range of governance issues, with provisions including mandatory tender offers once 35% of shares have been acquired by a single shareholder, receive a “fair price” in squeeze-outs and De-listings, majority independent audit committees, establishing of arbitration courts for conflict resolution and a greater role for shareholders. In 2002 was established IAGO.



Brazil : Corporation Law finally approved in 2001. strengthens minority shareholders rights and improve standards of discussion and organizes basic CG issues. The CVM Law (= SEC) gives CVM greater functionality and financial independence. Bovespa Launched three market segments, each one requiring a higher adherence to CG recommendations. IBGC is the leading institution supporting disciplined adoption of Corporate Governance and BNDES through reforms links its lending operations to the degree of maturity of Corporate Governance.



Chile: Was the first country to undertake significant reforms to the legal and regulatory framework for corporate governance. In conjunction with SVS (Superintendencia de Valores y Seguros) have paved the way for a safe Corporate Governance application in the country however private sector has not undertaken any major corporate governance initiatives.



Colombia: has seen various regulatory and legislative initiatives, Res 275 establishes a legal obligation for issuers who intend to be recipients of pension fund investment to disclose their governance practice in some detail. In 2002 the draft securities law was withdrawn from congress due to political pressure by target economic groups. A new draft is in progress, Confecamaras is the leading institution in evangelizing shareholders and directors about the benefit of corporate governance.



Mexico : Securities market law was approved in 2001, pretend to avoid exclusion of minority share holders from benefits of tenderoffers and basic corporate governance such as stricter enforcement, and changes the regulatory approach from a merit-based approach to a disclosure regime. IMG is the leading institution with the CCE Comité Coordinador Empresarial sponsored Mexican Code of Corporate Practices whose compliance is voluntary.



LA Region : Institutions as IDB, IIC, CAF, FIAV have taken active roles in advancing in the corporate governance agenda. Round table meetings are held on yearly basis in one of the countries to understand progress, challenges and recommend new policies.



1. One size DOESNOTfit all :

*THECHALLENGEISTOFINDTHEPATHAND
SOLUTIONSTHATFITITSCIRCUMSTANCES.*

**2.The firm must have strong internal CG
Champions**

3. Market credibility is essential

4. Good corporate governance is a journey not a destination

5.Improving governance yields positive real returns

Case Studies of Good Corporate Governance



Reversed R\$12 MQ1/04 to R\$ 166 in Q1/05

Revenue grew 15%, PTI grew 20%

Debt reduced by 13%



Feb 02 IPO R\$18 a share, Dec 04 R\$ 58 a share

Market Cap R\$ 1.5B to R\$ 5.8B

Premium = transparency and equal rights for shareholders



Sales grew 33% in 04 (R\$ 2.5B), 117% in three years

Market share from 17% to 19% in 2004

Shares appreciated 115% compared to 31% BOVESPA index

GEA Before & After CG



Access to capital markets

Bancolombia issues ADR's Level III, Bancolombia issues shares for USD 180 million

Suramericana issues shares twice (USD 40 and USD 60 million)

Argos issues bonds and commercial papers Demand = 3.4 times the offer Rates almost like sovereign debt

Highest credit rating by Duff and Phelps (Colombia)

Bonds: AAA Commercial Papers: DP1+ *Liquidity*

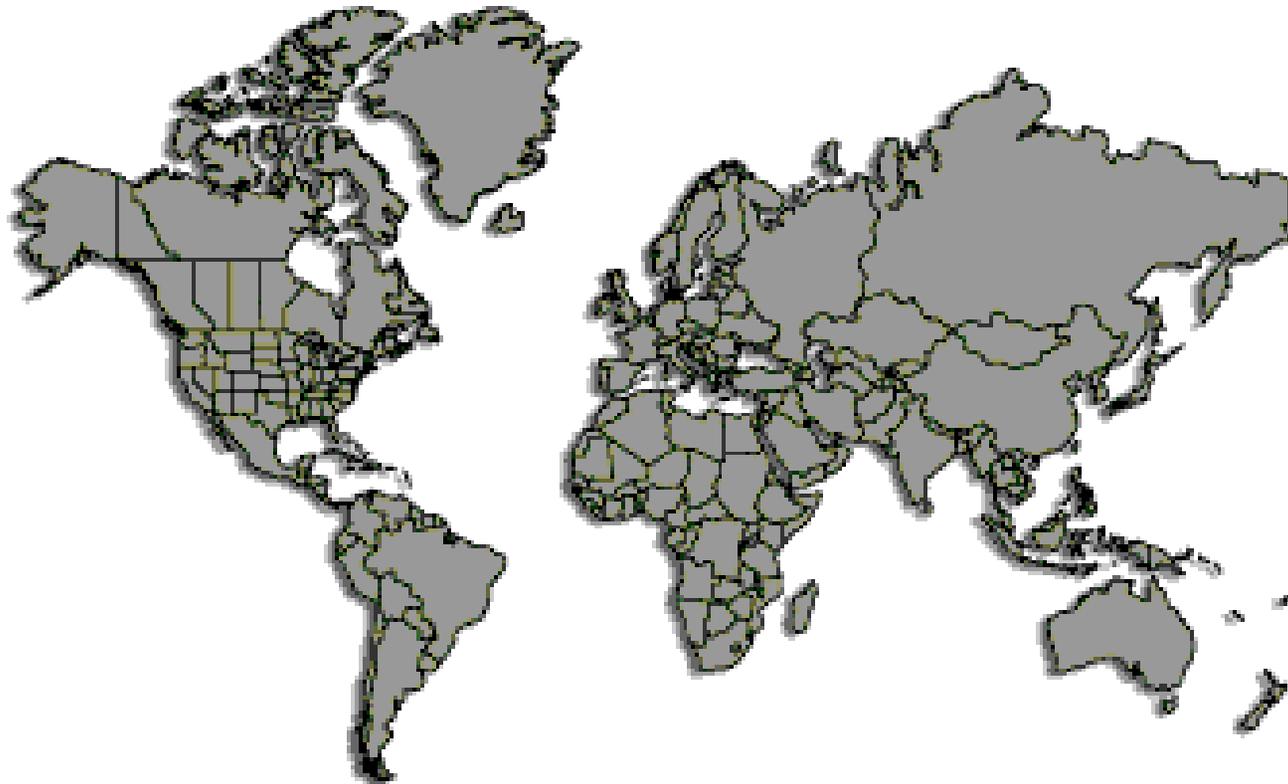
More shareholders

	<u>Before</u>	<u>After</u>	<u>Increase</u>
Argos	6.000	12.000	100%
Bancolombia	13.000	20.000	54%
Suramericana	4.000	17.000	325%
Chocolates	4.000	11.000	175%

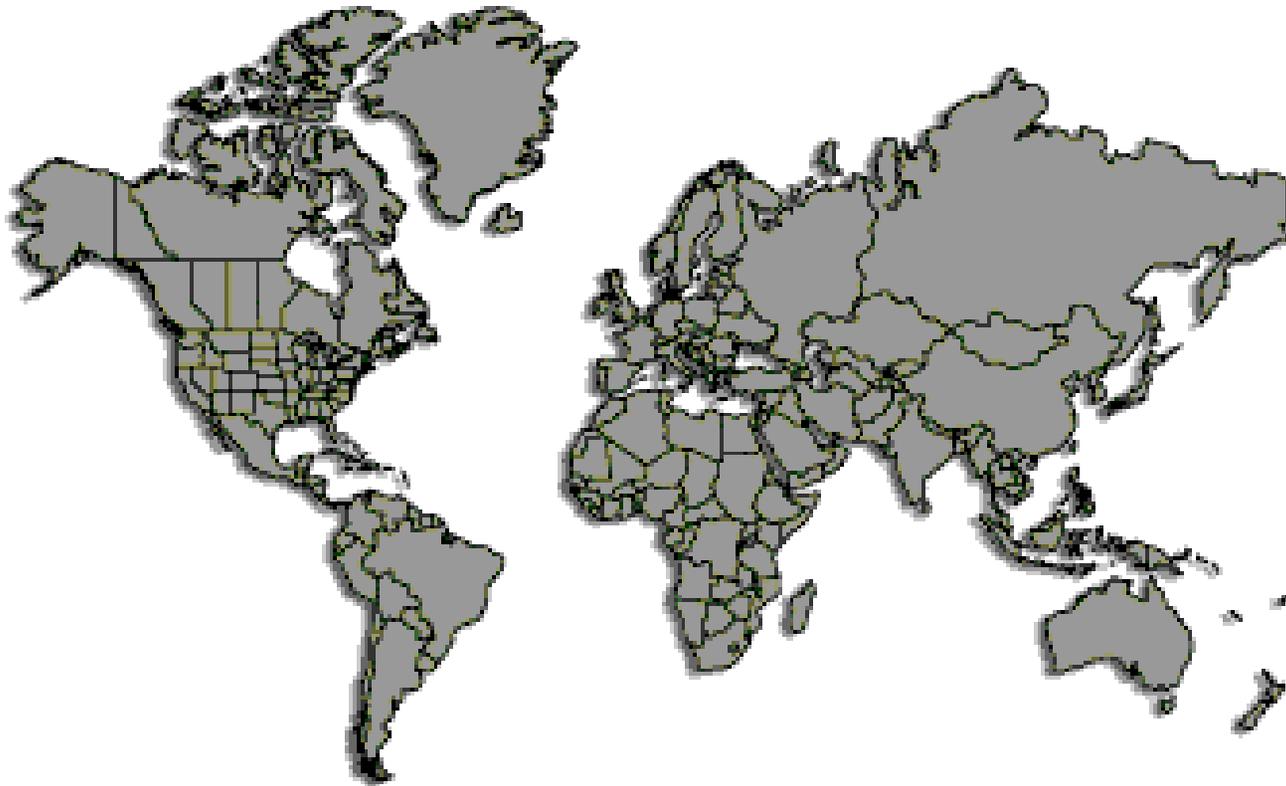
More transactions

	Ranking in Colombia
Suramericana	1
Bancolombia	2
Argos	4
Chocolates	8

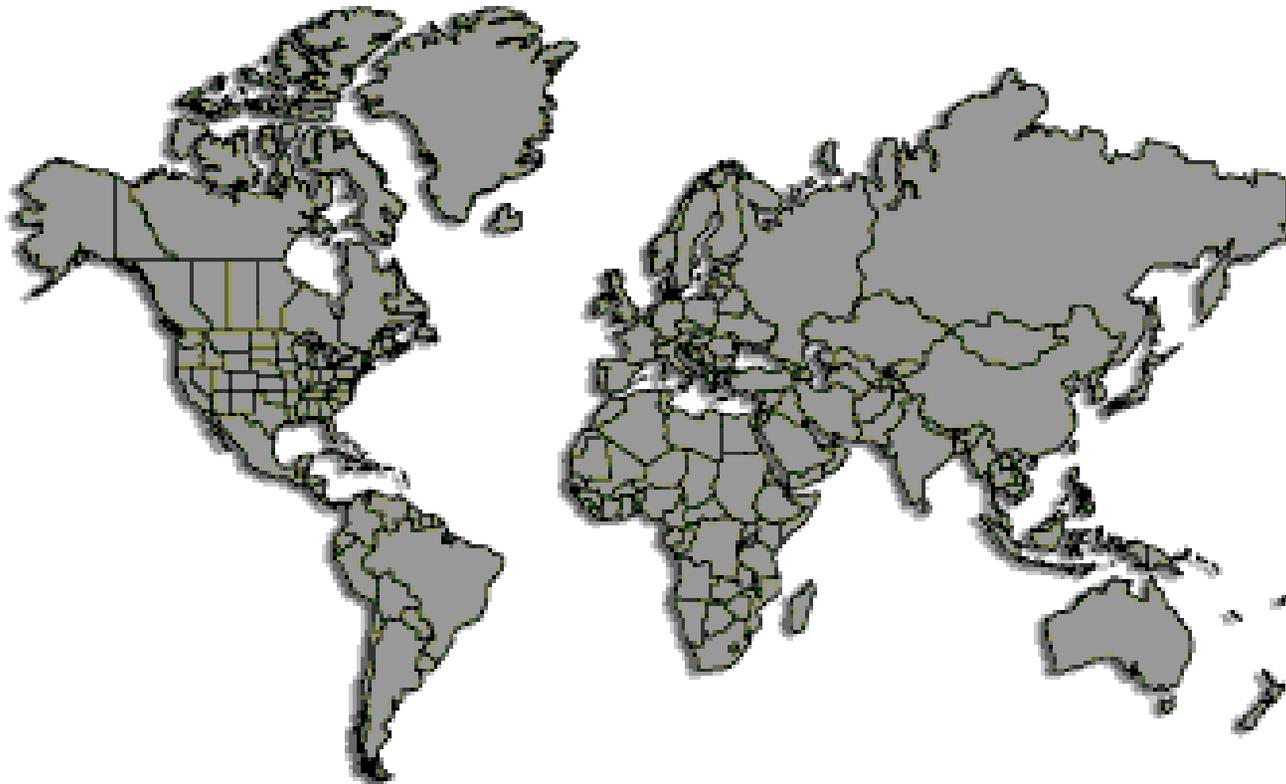
CorporateGovernancearoundtheWorld



*Each country has its own unique system of corporate governance.
These systems are constantly changing,
interacting, colliding, and evolving.*



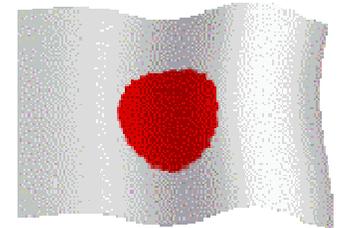
Darwin's theory of evolution— 'Survival of the fittest'— has caused the most effective corporate governance systems and market economies to emerge.



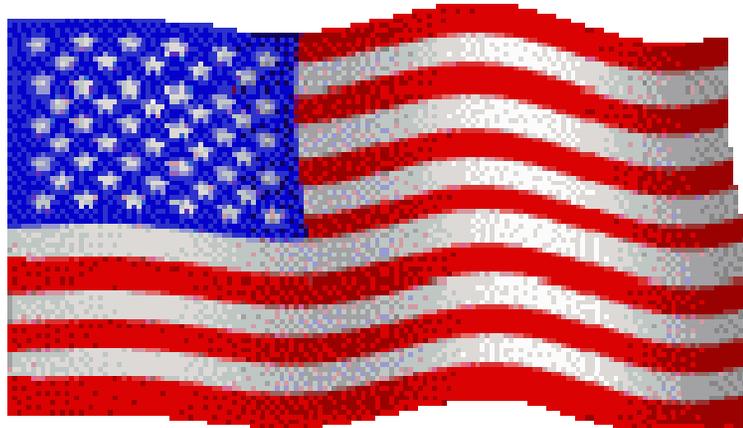
USA, Germany, & Japan



Three of the most successful systems can be found in the United States, Germany, and Japan.



CorporateGovernanceintheUnitedStates:





Corporate Governance in the United States:

- Product of constantly changing American law
- Seek to promote efficiency through antitrust laws, that separate the interests of numerous stakeholders and keep them in atomistic competition
- Seek to maintain the accountability of corporate manager to corporate owners through both the Board of Directors and an efficient proxy-voting mechanism
- Seek to prevent abuse of monopoly power and to ensure accountability to shareholders



Share ownership in America:

- Institutional share ownership has been rising since 1950, when institutions owned 8% of equity. In 2005, institutions owned more than 50% of all equity.
- Individuals own the remaining 50% of American equity, but are responsible for about 20% of the trading. Institutions do 80% of the trading.
- In 1989, pension funds held 66% of all stock held by institutions, while investment funds and endowments held equal portions of 33%. Note, no commercial banks or deposit institutions are on this list. American law prohibits such ownership. Also few if any non-financial institutions own stock.
- American Law limits pension funds and investment funds from owning more than 10% of a company's stock. Insurance companies are limited to owning less than 5% of a company's stock.



A Board of Directors is at the forefront of American Corporate Governance:

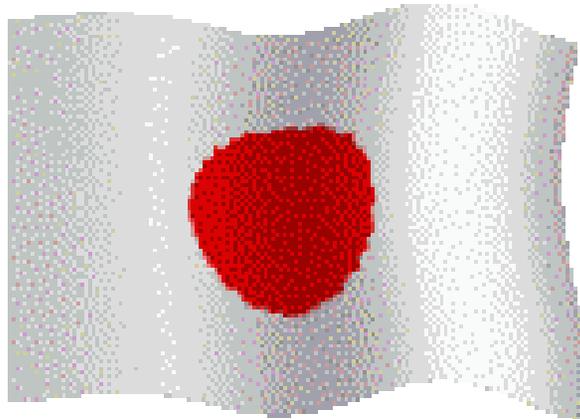
- Membership on American boards does not mirror a company's close commercial or financial relationships (as do the German and Japanese Boards)
- Boards of Directors in America reflect an affinity towards "outside directors," or those with no affiliation towards management
- In America, the emphasis is on accountability of managers to directors, and of directors to shareholders

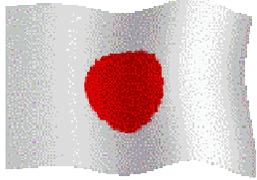


Conclusions:

- Despite large ownership by financial institutions, almost none have representation on Boards of Directors.
- Hostile takeovers are the ultimate check on the management of American corporations. If the gap between the market value and the perceived “potential value” is wide enough, a takeover will ensure that control over the company’s assets goes to those who can earn a higher return on those assets.
- Necessary ingredients for American corporate governance include a solid legal and judicial foundation as well as transparency of financial performance.
- America’s increasing institutional pool of financial resources have encouraged—even forced—companies and corporations in other countries to increase their transparency and legal enforcement.

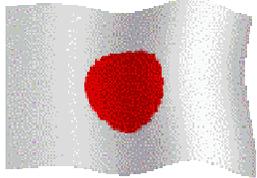
Corporate Governance in Japan





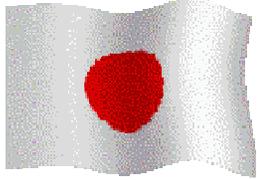
Background on Business in Japan.

- Society and the group are always more important than the individual. Professional and corporate reputation, or “face,” is paramount in Japanese society.
- Workers and managers traditionally join corporations for life and, until recently, enjoyed “lifetime employment.”
- Basic Japanese business agreements generally are broad in nature, lack specifics, and contain articles stipulating that disagreements be settled amicably upon deliberation and mutual consultation. Litigation causes individuals and corporations to lose “face” and reputation.



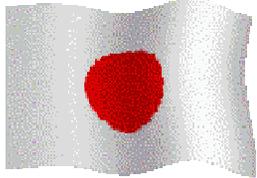
The Japanese *Keiretsu*

- Large Japanese corporations tend to engage in tight, long-term relationships called *keiretsus*. A *keiretsu* is an affiliation of related companies who are aligned through long-lasting and informal supply contracts, inter-company personnel transfers, and reciprocal equity ownership.
- Although companies belonging to a *Keiretsu* account for only 1% of all incorporated businesses in Japan, they account for 25% of total sales and 25% of total equity in Japan. More than half of the listed corporations in Japan are members of a *keiretsu*.
- Informal *keiretsu*-like network exhibits a number of common Japanese business practices, including reliance on reciprocal trade, relational contracting, management transfers, extensive information sharing, cross-shareholding arrangements, and, when necessary, selective intervention by major stakeholders, particularly banks.



Japanese Share Ownership

- About 25% of the stock of *keiretsu*-member companies are owned under cross-shareholding arrangements within the group itself. Individual ownership of listed Japanese corporations is small and declining. For example, in 1980 individuals owned less than 25% of all equity and in 1990 owned less than 15%.
- Because “face” is paramount in Japanese society, major industrial shareholders will take quick, decisive steps when non-performance becomes imminent.
- For example, Nissan Motor assumed operating control of Keiretsu-partner Fuji Heavy Industries in 1986, although Nissan owned only 4% of Fuji’s stock. Nissan repeatedly sent executives to become directors at Fuji—effectively creating a “takeover” that occurred without restructuring of any debt or a single share of stock.



The Board of Directors in Japan

- Japanese Boards of Directors differ from those in most Western countries. They include more members, typically 20 to 25. They also include "outside directors," but rather "inside managers" chosen from the ranks of top management.
- Like the USA, Directors are formally elected (usually unanimously) at annual shareholder meetings. However, unlike the West, management itself rather than shareholders nominate potential directors.
- Presidents and Directors of Japanese corporations typically are members of informal organizations of senior managers. For example, Presidents of 28 major Mitsubishi *keiretsu*-companies are members of a council that meets regularly to promote "friendship" and to exchange views on business and economic matters. Such coordination would potentially be illegal in the West.

Corporate Governance in Germany.





Corporate Governance in Germany

- Unlike Japan and the USA, corporate governance is carried out through a separate and distinct Supervisory Board and Management Board. This structure was created in the 1870s to give bankers the ability to oversee their investments.
- The Supervisory Board appoints a 5 to 15 member Management Board to run the company. (In the USA, the Board of Directors appoints a CEO who hires his own management team).
- The largest German shareholders—business corporations, insurance companies, and banks—have considerable representation on Supervisory Boards. Similar to Japan, the 9 to 21 members of a Supervisory Board also typically reflect a company's financial and commercial relationships.
- Under German Law, labor representatives may hold up to half the seats on a German Supervisory Board.



Banks drive German Corporate Governance

- An annual net-asset tax (1% per annum) on corporate assets has limited the size of the German stock market. Companies thus prefer to finance growth with debt rather than equity.
- Banks also own a significant portion of equity in German companies. As a group, banks own nearly 9% of all German company equity and more than 25% of at least 33 major industrial corporations.
- Banks also serve as depositories for stock owned by other shareholders. German law allows banks to additionally vote shares held on deposit on behalf of the depositor. Thus, German banks in the past have controlled more than 50% of German shares.
- Pressure from international investors has caused German Law to be amended, so Banks must solicit voting instructions from shareholders they represent and renew the right of proxy every 15 months.



Inter-company stock ownership also drives German Corporate Governance

- Corporations own the largest portion of Germany equity, almost 40% of the value of German equity. Like Japan, large corporations hold cross-equity ownership, but rarely exchange managers or technology.
- Labor representatives, affiliated corporations, and banks dominate Supervisory Boards in Germany:

Company	#of Supervisory Boardmembers	#of Representatives on Supervisory Board		
		#of Labor Reps	#from Financial Institutions	#from Affiliated Corporations
BMW	22	11	1	10
Daimler-Benz	21	10	6	2
Porsche	12	6	1	2
Volkswagen	20	8	3	8
Bosch	20	10	3	5
Commerzbank	21	10	1	6
Deutsche Bank	22	10	0	5
Dresdner Bank	22	10	2	6

CorporateGovernanceinBosnia-Herzegovina:





Bosnia's System of Corporate Governance is unique and will continue to evolve

- Bosnia's two entities have different corporate governance structures: the Federation's joint-stock companies follow the US model while joint-stock companies in the RS follow the German model.
- The government, privatization investment funds (PIFs), pension funds, and restitution funds all enjoy significant equity ownership. Employee shareholdings are small in the larger corporations.
- PIFs will drive corporate governance in the future. The most successful Bosnian companies will modernize and grow with the assistance of PIFs and strategic investors owning large equity stakes.

Corporate Governance in China





China's System of Corporate Governance is different for listed companies & SOEs

- Dual Boards: Supervisory Board (consists of employees and shareholder representatives) and Boards of Directors; Similar to Germany
- High level of concentration of the largest shareholder, usually the State. State ownership of listed companies averages 53% of total shares. The second largest shareholder averages 10% ownership of total shares.
- The state owns 59% of all shares on the stock market. et. 75% of listed companies are controlled by the State or State-controlled companies.

India

1. Moving away from State control to a more liberalized economy.
2. A new set of professional managers existing side by side with the old family controlled firms.
3. Judicial systems changing but not fast enough to cope with the new challenges.

Nigeria

1. Has a Code of Corporate Governance.
2. Chairman and CEO roles are separate.
3. Relationship between the board and management is distinct
4. Jointly and severally liable for misstatements and omission of material facts.
5. Equal representation of Shareholders and board members on the audit committee
6. More effective enforcement by Judiciary and other governmental organs
7. Corporate Governance Code not backed by law – moral persuasion → A Voluntary Code.

South Africa

1. Unique for the fact of Black Economic Empowerment where management and shareholders will be affected.
2. Framework uses the King II Report (Code of Corporate Governance). Specifies responsibilities of Directors (executive and non-executive) and shareholders' rights—i.e. voting procedures, salaries and ownership of directors.

Haiti

1. Family owned companies vs. state owned companies.
2. Concentrated shareholdings.
3. Absence of outside directors.
4. Incentives to create shareholder diversification and improved access to corporate financial information →
New Corporate Law to be voted upon by Congress some time in early 2006.

Brazil

1. There are a lot of companies controlled by families— some are working to improve our regulation in order to improve disclosure and transparency— a “challenge”.
2. In Brazil, you can't be a consultant and an auditor simultaneously— a conflict of interest.
3. Rotation of auditor every five years.

British Virgin Islands

1. New rules for Corporate Governance Code for Mutual Funds (based on IOSCO) expected in January 2006. 1
2. No concept of an independent director under laws or regulations → this is likely to change.
3. Board must meet regularly and record its decision .

The authors encourage comments and suggestions.

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