

ESG, Friedman and Brazil's corporations law

06.05.2021 3 min read

Authors

Luiz Antonio de Sampaio Campos

Related areas

Corporate and M&A

Topics

Corporate and M&A ESG

COVID-19 Luiz Antonio Campos

Discussion over ESG matters in corporations has been growing worldwide, and Brazil is no different. Investors' hearts and minds – and their pockets too – have been engaged by environmental, social and governance principles.

Discussion over ESG matters in corporations has been growing worldwide, and Brazil is no different. Investors' hearts and minds – and their pockets too – have been engaged by environmental, social and governance principles.

It's natural, therefore, that companies, their controlling shareholders and their management are including ESG issues on their agendas, whether out of conviction or out of necessity. As a result, debate has arisen in various countries over what constitutes the purpose of a company – and if the primacy of a company's shareholders should give way to the interests of other stakeholders, a subject of heated discussions led by such figures as Harvard professor Lucien Bebchuk on one side, and on the other, the mythic attorney Martin Lipton, with echoes that reached as far as the Davos Forum.

In fact, in 2019, the Business Roundtable, which brings together many of the U.S.'s largest companies, changed its "Statement on the Purpose of Corporations" to extend it considerably beyond shareholders' interests.

In many countries, the debate involves a change to the governing legislation, to set aside the allegedly "Friedmanian" idea that the sole purpose of a company is to generate profit for its shareholders. France took the step in 2019 when it amended article 1833 of the French Civil Code; in the United States the scope of management's fiduciary duties is under discussion; and the U.K. has reformed its Companies Act of 2006 (section 172).

The good news is that in Brazil, thanks to Alfredo Lamy Filho and José Luiz Bulhões, and their great public spirit, vision and even genius, both privately- and publicly-held companies have been equipped to deal with these matters since the Brazilian Corporations Law, Law 6404, was adopted in 1976.

Despite their belief in capitalism, free enterprise and the market economy, Lamy Filho and Bulhões Pedreira did not fall blindly under the spell of Friedman's seminal essay (now 50 years old) on the purpose of business companies. The drafters of Brazil's Corporations Law took care to deal with what are now called ESG principles, recognizing their reality both at the level of the controlling shareholder and at the management level, and preparing the ground even for widely-held corporations where, Lamy recognized, in the absence of a controlling shareholder, true power resides with management and not with the shareholders.

The Corporations Law already speaks, in articles 116 and 154, of “social interest”, the satisfaction of “the requirements of the public good and the social function of the business”, respect for the “rights and interests of employees and the community in which the corporation operates”, and its “social responsibility”.

There is thus no need, in Brazil, to enter into discussion over short-term versus long-term social interest: if controlling shareholders and management of Brazilian corporations wish to promote an ESG agenda beyond a simple greenwash, they have the legal means and the legal backing to do so, as do other stakeholders.

The social function of businesses, the public interest, respect for the community in which the company does business, and social responsibility are all terms that encompass ESG and many other principles, and provide the legal basis for the solidarity shown by many Brazilian companies during the pandemic. And who knows? Perhaps the corporate solidarity awakened during the pandemic is here to stay.

The ESG agenda is important; the ESG trend is irreversible; and ESG principles should be pursued, preferably out of conviction.

But before thinking about changes to the Brazilian Corporations Law, we must first understand it and explore its potential. Although Law 6404/1976 is close to 50 years old, its ability to deal with ESG issues is eloquent proof of its youthful spirit.

**This content is part of the e-book "A Post-Covid World, the ESG Agenda and Other Trends in 2021: Insights for Foreign Investors in Brazil". [Click here to view all the articles.](#)*

› PROFESSIONALS

Professionals who combine legal insight and market perspective



Luiz Antonio de Sampaio Campos