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GOVERNANCE SOLUTIONS IN LISTED COMPANIES AND NOT-FOR-PROFIT ORGANIZATIONS

by

Joaquim Rubens FONTES-FILHO*

EBAPE / Fundação Getulio Vargas

and

Michelle M. BRONSTEIN

PPGA-Unigranrio

ABSTRACT: *This study compares governance practices and structures used in stock exchange listed companies and not-for-profit organizations (NPO). It aims to identify and evaluate how these two groups of organizations develop solutions and define good organizational governance practices and implications for developments of the governance of NPOs. In order to compare governance solutions, a framework was adopted based on five categories, or building blocks, existing in a governance system and addressed in different governance codes. Information was collected from NPO's by-laws and from companies public documents. The comparison helped identify major differences and similarities between governance practices, especially targeting development aspect for NPOs.*

Keywords: corporate governance, organizational governance, not-for-profit organizations, framework

1 Introduction

Since the publication of the seminal work by Berle and Means in 1932, when they identified the increase in fragmentation of ownership and the gap between the owner's role and management, corporate governance attracts increasing attention from companies, investors and governmental organizations.

Corporate governance become a key concept in the discussion of modern companies, and best practices, organized in codes, guidelines and handbooks, went global after the UK Cadbury Report (1992). These codes offer recommendations for modelling the relationship between the governance agents in a company and ensuring investors and

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owners proper conditions in their company for them to exercise their roles of guidance and command, determining their policies and defining objectives and strategies.

The diffusion of such practices attracted the interest of other groups or organizations that, even without including investors' presence, also had arrangements linking ownership rights and management and were able to benefit from the developed benchmark and solutions, namely state-owned companies and non-profit organizations (NPOs). The challenge for the NPOs to expand their role is that by addressing growing public demands (Harrow and Phillips 2013) it has made the development of good governance crucial and no longer restricted to for-profit organizations (Jegers 2009).

However, the diversity of NPOs among the national systems and the heterogeneity within the NPO sector (Fafchamps et al. 2005) make it hard to consolidate the discoveries and proposals, resulting in recommendations not always convergent (Spear et al. 2009).

In fact, the agency problem that directed the governance solutions to companies with fragmented ownership, or corporations, gains different connotations when applied to NPOs and democratic member-based organizations, such as associations, social enterprises and cooperatives. Moreover, knowledge relating to the governance of such organizations and its influences on their role and results is still quite scarce (Aldashev et al. 2015).

Despite these differences, it is useful to understand how organizations in the different sectors are developing governance solutions and addressing their governance problems. Numerous solutions exist that can be adapted between the sectors, and broadening the framework of tools for the development of governance practices will help to understand the pros and cons of each type of solution. Thus, for instance, models of collective decisions or meetings in cooperatives, characterized by the separation of ownership, may guide practices of companies that begin to disperse their capital; the experience with the representativeness and motivation on the boards of NPOs can help to promote the development of the board in companies; non-financial incentive mechanisms in non-for-profit organizations can encourage new ideas in market organizations; and stewardship-based and democratic models of governance in NPOs could be considered alternatives to the agency problems of companies. Likewise, NPOs can also learn much from the governance practices of companies.

This article aims to identify the main issues related to the governance of NPOs and, from the comparison of the practices adopted by these organizations and listed companies, present implications and possible developments for the governance of NPOs. The idea is to identify how the main aspects inherent to governance in both groups of organizations are structured and differ in five key areas: the processes of incorporation, collective decision-making, strategic planning, management and corporate control, seeking to learn lessons from the solutions of these two sectors and what to improve in the governance of NPOs.

2 Theoretical foundations

Glaeser (2002) classified in four types the differences between NPOs and for-profit firms. The first, and certainly the most obvious, is that NPOs have tax privileges, and generally the donations they receive allow tax deduction; a second difference is the non-distribution constraint on profit or results, which eliminates incentives or justifications for deceiving donors, clients or their own employees. A third and key difference is that not-for-profit organizations do not have owners, which means that donors are not characterized as residual claimants to the revenues and assets of the non-profit, nor have control rights over the company in general. The fourth difference is that NPO boards and managers are never subject to takeovers and do not own assets which values are tied to the firm's success.

Nikolova (2014) adds three other differences between NPOs and for-profit organizations, like companies. While companies have short and long-run goals, the property is cleared assigned to shareholders, and the performance indicators like profits or share value are disseminated, in NPOs there is no consensus on the desirable objectives, the lack of a principal or owner dilutes accountability among numerous stakeholders, and there is also disagreement on how to measure their effectiveness.

A consequence is that the agency problem caused by the ownership-control separation, which directs the governance guidelines in listed companies, is of less relevance in self-managed social organizations, typically managed democratically and with voting rights allocated to the members and not the capital. On the other hand, companies are hierarchical management systems with political rights allocated in proportion to the invested capital. Moreover, agency theory is not directly applicable to NPOs by the absence of a major single, clearly defined, replaced by the presence of multiple principal-stakeholders, such as beneficiaries, members, donors, employees and the board (Nikolova 2014).

'Corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investments' (Shleifer and Vishny 1997, p. 737). Good practices of corporate governance aim to align the control, monitoring and incentive systems so that managerial decisions are made in the best interest of the owners although, in some contexts, such as in the NPOs, this right is not fully established. Hansmann (2000) refers to owners as individuals who have the rights to allocate residual profit and share the formal control rights of an organization, or have the authority to decide on aspects that cannot be foreseen and contracted by corporate policies or rules.

Governance structures do not develop separately from national contexts and markets. A number of authors have evidenced the relationship between governance practices and structures with aspects such as investor-protection legal systems and incentives to concentrate ownership (Shleifer and Vishny 1997), the origin of rules and quality of their enforcement (LaPorta et al. 1998), the systems of standards and social cohesion (Coffee 2001), and so on. In the case of NPOs, DiMaggio and Anheier (1990) comment that the nature of the not-for-profit activity cannot be understood without considering its specificities; that is, its functions, origins and behaviours of the sector's organizations, reflected in the specific legal frameworks and national public policies.

The study of the mechanisms of governance is approached from various frameworks, typologies and models. The financial literature separates the internal mechanisms, such as managerial compensation, board of directors, large-block shareholders or leverage, and external mechanisms, such as the market for managers and executives, market for corporate control and the market for products and services. The usefulness of these mechanisms depends on the characteristics of the prevailing governance system in the country, internationally classified as large-shareholder control system, and market control system (Cuervo 2002). Brazil is inserted in the first model, dominated by concentrated ownership, a lack of market for corporate control (takeover), and board of directors with reduced power and independence before the controller blockholders.

Misangyi and Acharya (2014) revise several classifications of governance mechanisms, highlighting the absence of strong evidence related to their effectiveness, but noting that when used together as complements (bundle) or as substitutes they lead to better effectiveness.

Replicating the literature of governance in companies, the role of the board in NPOs is identified as fundamental to the governance, and different theories are used to explain this role, although the functions of board and CEO are often overlapping in small organizations like associations (Kreutzer 2009). Other approaches, not financial or not directly measurable, can be more promising to understand the structure and functioning of the governance mechanisms, particularly in NPOs.

Eller (2014) proposes a set of five structural elements of the corporate governance for NPOs: multiple stakeholders; special governing body; executive director; members; supervision and control. Hartarska (2005) presents a framework based on the ownership structure, CEO and board members remuneration, board structure in terms of size and composition, auditing, information disclosure, and the market for corporate control. Fontes-Filho (2013) defines a set of six elements or building blocks that lead to the definition of a governance structure, regardless of the nature of the organization, whether public, private or third sector: identify who can participate in the property; define the distribution of property rights or equivalent; establish collective decision-making processes of stakeholders with property rights (or residual rights of control); set strategic directions for the organization; perform management activities; and establish external and internal control systems.

As the focus of this study is to compare governance mechanisms of listed companies, with shares trade in the Brazilian Stock Exchange BM&FBovespa, and NPOs operating in Brazil legally defined as private voluntary non-profit associations, we present below a description of the context of activities of these organizations in Brazil.

3 Role of NPOs and listed companies in Brazil

The NPOs are classified in national statistics based on the UN Handbook reference on non-profit institutions. According to a 2010 survey, the country had approximately 283,000 entities characterized as non-profit private associations (Instituto 2012), which were considered as universe for this research. According to Brazilian legislation (Law No. 10406 of 10 January 2002 - Civil Code), associations are formed by the union of people who are organized for non-economic purposes. It is characterized as legal entities of private law aimed at the realization of cultural objectives, social, religious, recreational, advocacy, etc. They are non-profit, as they may not have or allocate profits, and its equity is formed with the contribution of its members.

Although some NPOs have been operating in the country since the 16th century, in their scope of work and economic and social impact the NPOs do not have a consolidated regulatory benchmark to guide their operations and administrative structure, which means poor standardization in the configurations of governance and organizational practices.

On the other hand, corporate governance structure is fairly well standardized by law, governance codes and Brazilian stock market listing criteria. Since 2002 the stock market has grown substantially with the country's own economic growth, and after the organization of a special listing segment for companies with good governance practice, called the New Market, with the total trading value in US dollars soared from around 40 million in 2002 to around 800 million in 2010. The New Market and self-regulation of governance for listed companies, organized by the Brazilian Institute for Corporate Governance (IBGC), are important vectors in the spread and standardization of best practices.

The characteristic of the listed companies in Brazil and Latin America is a high concentration of ownership, meaning that, in general, the largest shareholder owns more than 50%, and even over 60% in Argentina and Brazil (Claessens and Yurtoglu 2012). This ownership structure facilitates the control of management, since it reduces the free rider and agency problems and creates incentives for controllers to oversee the management. However, this concentration shifts the problem to the principal-principal relationship (Young et al. 2008), since the controllers' power increases the risks of expropriation of the minority, evidenced in the high control premiums existing in the Brazilian market (Dyck and Zingales 2004). This problem is exacerbated by the dual class ownership structure, based on voting and non-voting shares, permitting a 66% proportion of non-voting shares and control with 17% of the capital (half the voting shares). A more detailed description of the Brazilian stock market is found in Black et al. (2010, 2014) and Rabelo and Vasconcelos (2002).

4 Methodology

To compare the governance solution in NPOs and companies, a framework was adapted from that proposed in Fontes-Filho (2013), using five building blocks to analyse their governance mechanisms based on public information available in the by-laws and reports. Therefore, the categories are: a) Incorporation of the organization; b) Collective decision-making models; c) Strategic direction; d) Management organization; and e) Supervisory and control mechanism.

Data on NPOs was collected from their by-laws that are often available on the NPO websites or in the Federal Government Agreements System (SICONV). In the end, by-laws of 158 NPOs were collected, selected only NPOs organized around cooperation for the implementation of actions for the benefit of society, advocacy and defence of ideals. For companies, the information was collected from the site of the BM&FBovespa and from two public sources: the companies' websites, where it is mandatory for them to provide investors with information, and the Reference Form, a document of compulsory disclosure for listed companies (Brazil 2009). The sample included information related to 272 companies in a universe of 358 listed companies.

The definition of the categories under analysis is as follows.

4(a) Incorporation of the organization

The organization is incorporated after a set of decisions taken *ex-ante* to outline its possibilities of future course and configure the stakeholders' power. Members can be grouped by common interests in the business (corporate) or around the mission, objectives and deliverables of the organization (NPOs). The organization's by-laws set the conditions of membership and members' rights. Unlike other third sector organizations such as trade unions, which are driven by private interests, NPOs are driven by ideals (Braun and Gearhart 2004), which makes it critical that the construction of the NPO be carried out by individuals who share the same ideals.

4(b) Collective decision-making models

According to Hansmann (2000), exercising control associated with ownership incurs both incurs both in costs of overseeing the managers and also costs for collective decision-making, the latter relating to heterogeneity of interests between owners, implying less efficient decisions or deliberation costs associated with the actual process. According to Speckbacher (2008:303), 'While contractual governance is concerned with the contractually specified claims, organizational governance is concerned with the implicit (that is, contractually not specified) claims of stakeholders concerning the joint use of the contributed specific resources'. In a stakeholder-based organization and based on tacit contracts, collective decision-making models are paramount to interpret the mission and objectives of the organization.

4(c) Strategic direction (deliberative body)

In an agency relationship, the managers operate under conditions of asymmetric information, where they have superior information vis-à-vis their principals and may behave opportunistically (Licht 2011). The asymmetric information between owners or associates and managers is directed by a strategic planning body, generally the board, understood as the most central internal governance mechanism for companies (Daily, Dalton and Cannella Jr. 2003), the major point of interest in the economic thinking on non-profit governance (Jegers 2009), and the theoretical lens of most studies on non-profit governance (Harrow and Phillips 2013, Cornforth 2004).

4(d) Management: who does the day-to-day running of the organization

Management is the *locus* for running the organization's activities, responsible for efficient use of its resources, according to objectives defined by the strategic planning body in benefit of the associates and in line with the organization's mission. Following Anheier (2005: 231) 'It is useful to think of the board as the focal point of governance, and the chief executive officer as the focal point of management'. Generally, management is an attribute of a group of executives organized in an executive board (EB). In a principal-agent relationship, managers are those that will act in benefit of the principal. In a context of asymmetric information, they must be properly selected, avoiding adverse selection, and monitored and encouraged to reduce problems of moral hazard.

Table 1 – Incorporation of the organization

Membership requirement	Freq.	%	Member (company)	Freq.	%	Member categories	Freq.	%
Free	111	70.3	Yes	59	88.1	1	2	1.3
Nomination by members	8	5.1	No	8	11.9	2	21	13.3
Specific criteria (values)	30	19.0	–	–	–	3	47	29.7
Participation in similar group	1	0.6	–	–	–	4	34	21.5
Closed	6	3.8	–	–	–	5 or more	39	24.7
N/A	**2**	**1.3**				N/A	15	9.5
Total	**156**	**100**	**Total**	**67**	**100**	**Total**	**158**	**100**

4(e) Supervisory and control mechanisms

They comprise the basic mechanisms of governance of the organizations, and can be internal (organizational control mechanisms) or external (market mechanisms), or even under supervision of peers, governmental organizations or meta-organizations (Ahrne and Brunsson 2008). In order to be effective, monitoring and ratification inherent to the control of decisions must be separate from management (Fama and Jensen 1983).

Both NPOs and companies in Brazil have an additional internal supervisory authority called the Fiscal Council (FC), with powers to oversee the acts of administrators and check the compliance of their legal and statutory duties and report to the shareholders' meeting. For companies, by law the FC is not a collegiate body and any member can raise questions independently.

5 Information analyses

This section presents, for each of the analytical categories proposed, a description of the information set forth in the by-laws of the NGOs and the reports of the listed companies, without differentiating or segregating by area of activity, size or other variables.

5.1 Incorporation of the organization

(a) *NPOs: Incorporation of the organization*

NPOs by-laws describe the criteria of the association's incorporation, identifying who can be a member, the reasons why they are attracted (mission), forms of participation and membership categories. The figures in Table 1 show that there is no restriction to free participation in 111 of the 156 NPOs (71.1%) with this information, while for the remaining 28.9% membership depends on the nomination by an existing member, commitment to the mission of the NPO, or participation in another NPO or organization. It is worth mentioning that there is a large number of different member categories (eg. founder, associate, honorary, etc.), and that 83.9% of NPOs have three categories or more.

Despite this wide range of membership categories, in around 40% of the NPOs some categories are excluded from voting or running for elective positions, like beneficiaries or employees. Moreover, only 28 of the 158 by-laws analysed included few external beneficiaries as a membership category.

(b) *Companies: Incorporation of the organization*

The dual-class system is a source of conflict when it makes voting rights (political) unequal to the cash flow rights (economic). Until 2001, companies were legally permitted to issue up to two-thirds of their shares as non-voting shares, so that a shareholder could control a company with 17% of the firm's equity. Many companies still maintain this capitalization structure, encouraging controllers to expropriate minorities, since whoever controls the company receives only a 17% share of the results. The highly concentrated ownership structure strongly impacts the company governance, including the appointment of directors and executives. Only seven of the 359 listed companies had dispersed ownership, in which the largest shareholder has less than 10% of the voting capital (EXAME 2012).

Brazilian legislation does not set constraints or impediments against investor participation in companies, except in sectors considered strategic, such as, for example, navigation, mining, and national airlines. In 2015, 133 companies were listed in the New Market and traded only voting shares (Bovespa 2015).

5.2 Collective decision models

(a) *NPOs – Collective decision models*

In the Brazilian NPOs the collective decision-making processes occur at the General Meetings (GM). According to the law, members should have equal rights, but the by-law may establish categories with special advantages, which in some cases may mean that some member categories are not entitled to vote. The decision is taken by a simple or absolute majority of votes, according to the subject being voted, the voting rights are allocated to each individual (one-member-one-vote), and not to the shares held (one-share-one-vote), nor the hierarchical position in the NPO or time of membership. Since there is no mention in the law, the GMs vary in periodicity, for example, annually in 73.5% of the 147 by-laws with this information, from two years or more in around 20%, or even quarterly in three NPOs. The call to the GM in 43% of the cases is less than 10 days, which may negatively affect participation.

A characteristic of NPO governance practices is that preparatory meetings of the members precede their participation in the GMs, so that topics are discussed beforehand in small groups, a process that is institutionalized in 82.3% of the cases.

(b) *Companies – Collective decision models*

The GM is also mandatory for listed companies, on an annual basis (Annual General Meetings – AGM), held in the company headquarters for approval of accounts and income distribution. The decisions are taken by majority of votes and, in situations provided in the by-laws, by larger quorums, requiring votes from shareholders

Table 2 – Strategic direction

n = 158	BD	DC	BT	EB
BD	23 (14.6%)	1	0	21
DC	–	10 (6.3%)	0	9
BT	–	–	2 (1.3%)	2
EB	–	–	–	152 (96.2%)

of half the voting shares, and not only those present at the meeting. The regulatory agency allows absentee voting by completion and delivery of the ballot paper by mail or Internet. Since the legal authorization for absentee voting in shareholders' meetings is recent (CVM Regulation 561/2015), there are no data as yet regarding this participation.

However, the concentration of ownership discourages attendance at the shareholders' meetings, since the controllers can organize themselves in shareholder agreements and preliminary meetings to take the key decisions, leaving little room for minority shareholder participation.

5.3 Strategic direction

(a) *NPOs: strategic direction*

Three names are used for the NPO advisory bodies: Board of Directors (BD); Deliberative Council (DC); and Board of Trustees (BT). In 123 NPOs, or 73.6% of the sample, there is no specific advisory or strategic body, a role accumulated by the Executive Board (EB), as predicted by Anheier (2005), probably because of the small number of members of the NPO or to cut costs.

The different names used for the body responsible for reducing asymmetric information between associates and managers and a deliberative authority for strategic planning makes it impossible to compare these functions and activities, and to standardize the governance practices. Table 2 demonstrates the status of the strategic body of the NPOs. The number in the cell shows the number of cases presenting the governance body listed in horizontal and vertical simultaneously.

Generally the boards have many members, with a median of 15 members to the BD. However, only 16 NPOs have this information in the by-laws. Nevertheless, this situation could be related to what the literature on resource dependence theory addresses as a form of organization to ensure access to its fundamental inputs and the board is perceived as a mechanism to reduce uncertainties in this access, strengthen connections with other organizations and resource providers, which is why it is made up of donors and their representatives (Cornforth 2004).

(b) *Companies: Strategic direction*

Brazilian companies must have a board of directors (BD) with mandatory operation and collegiate deliberation to set the general focus of the company business, appoint and dismiss executives, and oversee its management. By law, the minimum number of BD members is three, appointed and dismissed solely by the AGM, without provision of a maximum number, and consisting mostly of directors nominated by the controllers and at least one seat for the minorities, which restricts the BD independence and indirectly increases the power of the controllers over the administration and other shareholders.

Data analysis of 272 listed companies, or 76% of the total, published in the Reference Forms, shows that the average number of directors is 6.9 and median of 7.0, with a maximum of 19 members and average of 20% independent directors, without links to controllers or minority groups.

5.4 Management organization

(a) *NPO: management*

NPO management is conducted by an executive board (EB) made up both of remunerated executives (in special cases) or volunteers, sometimes also acting as directors. Executive remuneration prevents the access to partnerships and public funds, unless in the case of associations specifically habilitated by the Federal Government, a situation that expands the state controls over the organization.

In its composition, the EB has a median of six members, with 36-month term of office. According to 112 by-laws, or 96% of 126 cases with information, executives are elected in the AGM, including the president, which significantly reduces the power of the board to control the management. Moreover, the executives can be re-elected in 97.4% of the 114 cases informed, although no mention is made of a restriction in the other by-laws. In only four of 88 by-laws which reported on executive remuneration, full remuneration was authorized, and partial remuneration allowed in 84 cases. Only seven of the 158 NPOs of the sample explicitly mention rules referring to technical criteria for eligibility of the administrators, such as higher education or specific experience.

(b) *Companies: management*

Conducting business and daily activities of the organization is the responsibility of the Executive Board that must consist of two or more executives, appointed and dismissible at any time by the Board of Directors. Despite the individual limits, the by-laws may state that certain decisions are taken on a collegiate basis.

Concentrated control of the ownership of Brazilian companies reduces the agency problems and management opportunism due to less autonomy of the executives, increases the risk of majority shareholders directing company assets for personal gain (tunnelling). Evidence of this problem is seen in the high control premiums, given by the difference between the values of the controllers' shares and the others, in a transaction for the company takeover. These premiums have an average of 49% in Brazil versus 14% international sample from 40 countries (Dyck and Zingales 2004).

Another major aspect in corporate governance is executive remuneration, based on a fixed portion and long-term variable pay. Whether to minimize the agency problems or to attract top professionals, the annual executive remuneration has accompanied the substantial international growth, arriving in 2013 at the average of USD 800,022, considering the fixed and variable portions (IBGC 2015). This remuneration is a strong incentive for companies to attract good executives, especially when they face specific challenges, such as internationalization, turnaround, or merger, so that they quickly achieve crucial skills and know-how.

5.5 Supervisory and control mechanisms

(a) *NPO: control and supervisory mechanisms*

The survey has indicated the Fiscal Council (FC) as the main statutory body responsible for supervision, especially financial, of actions taken by NPO administrators. The FC exists in 93.7% of the 157 entities with information and, based on 138 by-laws detailing their composition, consists of six members in 63 NPOs, or three members in 45 NPOs, and mandate varying between 24 months (39.4%), 36 months (37.1%) and 48 months (21.2%), permitting only one re-election in 82% of the cases.

In potential contradiction, in 19 of 107 NPOs the board is responsible for appointing the FC members, and in 98.4% of the cases informed, the Board members are elected in common plate with the FC members. Both situations can jeopardize the process of supervision of NPOs as they induce the formation of tacit alliances between management and oversight. The by-laws do not inform audit requirements, but NPOs are subject to audits by the public authorities if they raise government funds. So, for most NPOs no external market controls are present.

These weaknesses in the control system were evidenced by a Parliamentary Committee of Inquiry concluded in 2010, when it discovered that in the period 2001–2006 the equivalent of USD 2.4 billion was transferred through state partnerships in 2006, but around 40% of the NPOs had submitted no information about the contracts. The Committee identified the key problems to be the deviation from the final objective of the contract, when the organization uses the resource for other unauthorized purposes, as well as the insufficient internal and external control mechanisms that would be able to prevent, correct and curb the problems arising from the partnership (Brazil 2010).

(b) *Companies: control and supervisory mechanisms*

Urged by governmental organizations and market agents, the listed companies have reinforced their control and supervisory practices, set up audit, risk and governance committees linked to the BD, as well as compliance and ombudsman areas, codes of conduct, rules for transparency and transactions with related parties, and publishing reports under International Financial Reporting Standards (IFRS). The FC is only set up when requested by the minority shareholders and is a non-collegiate supervisory body that can counterbalance the controllers' powers by having a member appointed by the minorities, fundamental to legitimize the independence of this body. Although there are no external control mechanisms such as, for example, the hostile takeover or a mass sell-off of stock, several investor associations and governmental agencies do perform an active external control of companies.

6 Comparing results: governance practices in NPOs and companies

In the composition of the organization, being a society of people NPO, not capital, avoids the concentration of economic power, strengthening the democratic perspective and the participation of its members, but reducing incentives to monitoring management. In companies, this concentration increases the risks of expropriation of the minority shareholders, which may stunt the growth of the stock market.

In NPOs the absence of profit to be distributed reduces the stress and rent seeking, but can also reduce membership, especially of donors and supporters that might have fewer incentives to have closer bonds with the organization and supervision of its activities. Accordingly, cohesion around the values and history built up around participation, reciprocity and mission achievement are essential.

The business model facilitates the coming and going of shareholders, improving agility in raising capital for projects and development, but reducing the planning capacity by focusing of the markets on short-term results. In NPOs, expansion is always harder but generally more stable, without pressures on short-term results or performance. However, the vagueness and difficulty in measuring results may lead to a concentration of political power in the hands of those who define the objectives of the NPO. In an NPO, given the impossibility to distribute profits or residual income from the asset, the residual rights of control must be understood as the right to interpret its mission, define the primary objectives and how they are best realized (corporate strategy), and the right to make the management decisions (Speckbacher 2008). As analysed by Weidenbaum (2009), In the typical NPO 'the leaders are accountable to a self-perpetuating board of directors or similar governing group. Like some corporate boards, the management tends to dominate the board membership and decisionmaking.'

Companies show less diversity in the eligibility of shareholders, generally classified with regard to voting rights, but the concentration of ownership imposes risks on minority groups and on equality in addressing shareholders. Only seven of the 359 listed companies in Brazil have diffuse control (corporations).

While for companies the shareholder has been consolidated as a predominant stakeholder, despite the controversies and criticism regarding the strategies to 'maximize shareholder value' (Ghoshal 2005, Stout 2012), this matter has not apparently been settled with regard to the NPOs. As Glaeser (2002) notes, 'What non-profits do maximize is a significant and difficult question'. Donors, fundraisers, executives and very often the employees themselves participate in the decisions at the shareholders' and board meetings. The main external stakeholder, namely those who are benefited by the actions of NPO seldom have an active voice, neither participating as a member nor on boards that could pinpoint reinforcement in accountability.

In fact, this seems to be a broader issue for the NPO. A survey in Uganda with client-communities that received interventions of 260 NPOs found that less than 60% of the beneficiaries were involved in previous decisions on the programs and activities or on the assessments and ex-post feedback. The survey also found that community participation increases satisfaction (Barr and Fafchamps 2006). These figures refer to a quote from Werker and Ahmed (2008: 78), for whom 'nongovernmental organizations face more direct incentives to manage donor satisfaction than beneficiary welfare'.

Even with problems in addressing the different shareholder groups, companies tend to have less variety of membership types than NPOs. Table 1 shows 83.9% of the NPOS had three or more categories, and 14% had six or more, many of them without powers to vote or be a candidate to positions in the NPOs, which raises considerations about the distribution of power.

Given the dispersion of political voting power in the collective decision-making process, the GM is considered more important in the NPOs, evidenced by the poor attendance in corporate GMs. Nevertheless, participation or representation is also low in NPOs. In a study with cooperatives that, although not classified as an NPOs in Brazil, have a similar democratic participation and shareholders' meeting structure, the percentage of participating members at GMs in 54% of the cases was less than 20% justified by the confidence in the administration (Ventura et al. 2009). However, the use of meetings prior to AGMs with small geographically close groups of members, and actually provided in NPO by-laws, is a relevant practice to encourage legitimate participation. In companies, despite the absence of data, copying virtual participation in the GM could be a solution.

An important aspect to differentiate this body of strategic direction between companies and NPOs is that while these administrators are rarely paid – because of the legal uncertainty regarding the permission of that remuneration – in companies the annual remuneration of a director can reach up to US $ 3.8 million. Despite these figures, the role of the board of directors is rather limited by the performance and supervision of the controlling shareholders of Brazilian companies. In NPOs, non-remunerated participation on the board is subject to voluntarism and interest in the organization's mission, weakening the possibility of charges for dedication and performance. As mentioned by Werker and Ahmed (2008: 793). 'It appears, then, that the main "perks" of working for an NGO are . . . working for an NGO'.

Possibly, the lesson from this analysis of the boards is that in both contexts it is necessary to develop their structure and operation, giving priority both to their members' independence and capacity and time to fulfil their role. However, while in companies the strategic role and support of the board prevail, in NPOs the main role is probably to balance different stakeholder interests and interpret its mission.

The possibility of receiving remuneration, as well as their amounts, is also a key difference between NPOs and companies in terms of administration, since it raises questions concerning the specialization and dedication required from the members and the structure of the incentive system. The lack of suitable forms of fixed and variable remuneration for NPO administrators, especially when compared to the corporate sector, makes it hard to attract the best available professionals, except when achieved by joining the cause or mission of the NPOs, which creates weaknesses and could negatively impact their efficiency or inhibit the role in certain areas due to lack of specific skills. Moreover, the lack of variable remuneration associated with long-term objectives may redirect the focus of the NPO administrators to current issues, relegating to a second plane the construction of the organization's future. A competitive remuneration for executives is also important for reinforcing an external control system provided by the labour market (Cuervo 2002). Executives of partner or competitor organizations generally have more knowledge and expertise to assess the effort and competence of executives of an organization in focus and, given the existence of an executive market, peer recognition is fundamental for building a career, even in other sectors.

The ambiguity and overlap between the strategic and management roles, normal in small organizations like most NPOs (Anheier 2005), although reducing costs of maintaining a governance structure, might concentrate the information and decision power in a single person or group, and also inhibit the formalization of rules and procedures. Adding this fact to the lack of constraints for executive re-election, it could reinforce managerial entrenchment. In fact, empirical evidence corroborates this analysis of longevity of NPO administrators.

The non-allocation of ownership rights in NPOs removes the figure of residual claimants, fundamental in the concept of this right, and could make the NPO similar to the commons, subject to degradation analysed by Hardin (1968). Therefore, the existence of long-term leadership, motivated by running the organization, could settle the problem of the tragedy of the commons, although it makes the organization subject to personalization and risks of its leadership. This point should be emphasized when differentiating the controls between companies and NPOs. While a large system exists to control companies, the NPOs generally only rely for this on its own members.

When considering supervisory and controlling agencies there is a major distinction between NPOs and companies. Despite recent numerous problems related to corporate governance in Brazil, good governance practices have certainly become widespread and are now a standard for listed companies. Moreover, companies have internal control mechanisms and, principally, increasingly sophisticated external control mechanisms, namely investor associations, securities & exchange commission (CVM), governance institutions, and executive and product markets. In turn, in the case of NPOs, besides the weakness of internal control systems, lack of standards, protocols and routines, these organizations do not participate in collective associations of self-regulation and supervision, and are rarely exposed to external control mechanisms. Very few of the 283,000 NPOs have some kind of government supervision or external assessment of their figures and performance, as that for most of them it is not even possible to obtain information from websites or even by phone. In short, NPO supervision ultimately depends on its own members.

Nevertheless, Akerlof and Kranton (2005) propose that the identity of the manager or worker - defined as the social category and self-image of the individual - represents an important and effective supplement to monetary compensation. For NPOs, strengthen the identity associated with the mission of the organization can make up for the weaknesses of remuneration policies and lack of external control mechanisms.

Table 3 summarizes information about the governance of organizations and companies, and brings the theoretical and practical considerations for the development of the governance of NPOs.

7 Final remarks

The international diffusion of corporate governance codes in the business world since the mid-1990s has been based on a combination of efficiency and legitimacy, and

Table 3 – Implications and possible developments for the governance of NPOs

NPOs	Listed Companies	Implications and possible developments for the governance of NPOs
Incorporation of the organization		
• Individuals with common interests guided by the mission related to social welfare • Free and voluntary participation, but eventually subject to restrictions • Voting power and candidacy for elective office is democratic • Various types of membership and political power • Absence of residual claims	• Individual with concerns related to capital gains. • No membership restrictions • Conditioned political participation to the type of action and volume of capital • Voting power associated with the concentration of investors' property. • 'Membership' with and without political rights • Stakeholder existence with concentration of power	• Residual claims absence may reduce rent seeking and tunneling, but encourage free rider • Importance of strengthening and spreading the mission and values of NPO as fundamental guidance for their activities and internal cohesion • Membership supports to long-range strategies • Residual rights of control understood as the right to interpret its mission and define objectives
Collective decision-making models		
• Collective decision-making process (GM), imposed by law, do not have regular periods • Voting rights allocated to each individual, but eventually members without voting power • Preparatory meetings encourage participation • Low participation in GMs can impair commitment of members	• Annual decision-making processes imposed by legislation (AGM) • Allowed the distance voting or by proxy • Concentration of ownership discourages participation in meetings • Shareholders Agreements and controlling meetings before AGMs leave little space to minority interest	• Political power formally distributed, but not always in practice • Participation in meetings governed by intrinsic motivations • Expansion is always harder but Generally more stable • Different types of membership raises considerations about the distribution of power
Strategic direction		
• No standardization of the name and functions of the strategic body • No standardization of minimum and maximum number of members, and term of 3 years (53% cases); • Deliberative organ can be replaced by executive • No requirements for experience or independence of members	• Board of Directors (BD) mandatory collective decision and participation of at least one representative of the minority; • BD responsible for setting the overall direction of the company's business; • Legislation requires a minimum of three members. In practice, the average number of members is seven with up to 19 members. • · Special listing levels (New Market) require 20% of independent directors and 24-month maximum term of office	• Lack of standardization allows greater freedom in setting the strategic direction body, but weakens the governance process; • Lack of a dominant stakeholder turns accountability diffuse or non-existent • Restriction on management compensation creates distinct pattern of motivation and commitment • Donors tend to have more influence than beneficiaries

(*Continued*)

Table 3 – Continued

NPOs	Listed Companies	Implications and possible developments for the governance of NPOs
Management organization		
• Management conducted by an Executive Board (EB), usually with unpaid members • EB has a median of six members, with 36-month term of office • Technical criteria for eligibility rarely defined • No prohibition against participation of directors as executive	• Daily business activities as responsibility of an executive board with remunerated members • Concentrated ownership in Brazil reduces the agency problems; • Little independence of executives to avoid actions and interests of the controllers (tunneling) • Executive remuneration, based on market values and long-term variable pay	• Importance of identity to the model of management and as a supplement to the compensation policies • Monitoring systems and internally developed control of NPOs are usually not audited; • Absence of benchmarks and external references limit the efficiency parameters for managers • Absence of variable remuneration may discourage the focus of management in the long run, as well as limiting the attractiveness of jobs • Ambiguity and overlap between the strategic and management roles
Supervisory and control mechanism		
• Fiscal Council as the main supervisory body and internal audit of the NPO; • FC as a collective body, no individual powers; • Board member selected in common plate with the FC members, weakening the independence • Audits of public authorities only when used government resources • Lack of collective supervisory bodies or self-regulation • Not mandatory audit committee or body • Absence of external market controls	• Supervision by government agencies • Usual existence of audit, risk, remuneration and governance committees linked to the board; • Reports released in international accounting standards (IFRS). • Compulsory disclosure of transactions with related parties policies • Investor associations and governmental agencies to perform an active external control	• The weakness of regulatory mechanisms and oversight of NPOs allows freedom in the structures, composition and performance of the collegiate board • Difficulty of monitoring by external agents or market • Lack of clear objectives inhibits evaluation • Lack of guidelines for governance practices commonly accepted • NPO supervision ultimately depends on its own members • Absence or difficulty of obtaining management information or results by external stakeholders

the efficiency requirements are defined in terms of compensation for deficiencies in the legal system regarding minority shareholder protection, and legitimacy in adopting practices that are socially acceptable or perceived as appropriate and effective (Aguilera and Cuervo-Cazurra 2004). More recently, codes of governance have spread to other contexts, as the OECD guidelines evidence for state-owned enterprises in 2004, and pension funds in 2005, in addition to numerous codes for various sectors as proposed by John and Miriam Carver, and the international collection on governance of non-profit organizations published by Hopt and Von Hippel (2010).

Of course, many benefits can be gained from this endeavour to discipline governance practices of organizations in the different sectors, by the size and economic and social importance of not-for-profit organizations. These organizations demonstrate a growing political influence, increasing their responsibilities that should be counterbalanced by proper accountable and transparent governance. The fact that most of them are private does not detract from their proper accountability to their stakeholders and society, which needs to have a clearer understanding of NPOs, how their tax exemptions are used, the donations allocated or public funds invested, and which guidelines they adopt for building their political agendas.

The absence of international standardization, or of governance structures even within countries as evidenced in Brazil, makes it hard to define suitable practices, organize learning and transfer the best solutions internally to the group of NPOs or other fields, whether companies or public organizations. In this article, analytical categories are used in order to compare these solutions, a methodology that, even if it still needs to be developed and assessed in greater detail, helps establish a basic framework for comparisons, including solutions for listed companies, as suggested herein.

By comparing governance solutions in both NPOs and corporations this study has endeavoured to identify aspects of development for both types of organization, and to create an avenue for comparisons and benchmarks on specific aspects of governance, escaping comparisons of general structures as provided in codes of corporate governance and other sectors. Each group of organizations has its own governance problems and solutions, and a framework for comparison could contribute to help transpose the solutions. But surely these comparisons cannot motivate simple transpositions of practices when ignoring that the values and objective guiding these organizations are fundamentally different.

An important issue to require a deepening of studies on the NPOs is about external control mechanisms. Nonprofit organizations, as they do not distribute profit, show lower propensity to behave opportunistically toward their clients and the society at large, which could imply less need for external control. However, by receiving numerous tax benefits and move bulky donor resources - a classic situation of asymmetric information - NPOs have a duty to present their results to society. Besides, the NPOs must be, at least, as transparent and accountable as organizations and markets that they oversee (Weidenbaum 2008).

The use of by-laws to understand the governance of NPOs, as a non-obstructive research technique showed potential for development due to the possibility of collecting information generally difficult to obtain through other means. However, it has the limitation of not highlight the performance of NPOs throughout its length, since the reality of much of the NPO is characterized by informality and idealism, moving the programs and actions beyond the formal procedures. Following in depth qualitative research may help to understand the extent to which the practice is far from the writing, and eventually including the reasons for the separation.

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