

CORPORATE GOVERNANCE IN LATIN AMERICA:
CONVERGENCE OR DIVERGENCE?

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Trends in Corporate Governance in Latin America: Convergence or Divergence?

Abstract

The purpose of this paper is to examine corporate governance law and practice in Latin America's four largest capital markets: Brazil, Mexico, Chile and Argentina to determine whether these legal systems are converging with the American, shareholder-centered model. This will be done through a comparative study of corporate governance law in Latin America and the United States. The reason for this comparative analysis is two-fold: this approach will present a point of reference for those unfamiliar with Latin American legal systems and will also test the validity of the 'corporate governance convergence theory' with regards to this part of the world.

The 'corporate governance convergence theory' predicts that efficiency considerations will drive corporate governance laws and practice around the world towards the most effective system of administering firms. Convergence scholars predict such system will be similar to the prevalent model of corporate governance in the United States: the shareholder-centered model. This assumes that the American model of corporate governance is the best suited for the efficient organization of the firm. It also assumes that efficiency considerations are the main force shaping corporate governance.

These assumptions have not only driven some scholars to recommend that foreign jurisdictions amend their laws to resemble those of the United States, but also to move international organizations, such as the World Bank and the OCED, to make similar suggestions to developing countries.

The findings described in this paper suggest that corporate governance law in Latin America is showing some movement in the direction suggested by convergence advocates. However, structural and cultural factors in the jurisdictions under study prevent the law on the books from becoming the reality of corporate governance practice. Weak market pressures, the existence of controlling shareholders, the lack of depth and liquidity of the capital markets in Latin America, and the lack of strong, powerful and skilled judiciary preclude the full operation of some institutions contained in Latin American corporate statutes and the development of American-style corporate governance law and practice. As a result, full convergence on the American system of corporate governance practice is not taking place in Latin America.

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