Corporate Governance in Brazil and India: A regulatory contrast

Board Leadership Center (India)

Over the past decade, corporate governance has emerged as a crucial element in ensuring transparency, accountability, and long-term sustainability for companies globally. In emerging markets like Brazil and India, robust governance mechanisms are particularly essential due to the dynamic and evolving nature of their economies. Both nations have undertaken substantial efforts to develop and refine their governance frameworks, aligning with international standards and addressing domestic challenges. However, the trajectories of their governance journeys have been distinct, influenced by their unique economic contexts and regulatory environments.

Evolution of corporate governance in Brazil and India

Corporate governance in Brazil has been marked by a series of strategic reforms aimed at enhancing transparency, protecting shareholders, and aligning with global standards. With establishment of the Brazilian Securities and Exchange Commission, Comissão de Valores Mobiliários (CVM) in 1976 by the Brazilian Corporate Law (Law 6.404/1976), the launch of Novo Mercado in 2000 and the Brazilian Code of Corporate Governance for publicly traded companies in 2016, the governance standards for listed companies became more stringent, requiring improved corporate governance practices and structures.

Similarly, in India, corporate governance gained importance with introduction of The Companies Act, 1956 followed by the establishment of key regulators like Securities and Exchange Board of India (SEBI) and Ministry of Corporate Affairs (MCA) which placed emphasis on board composition, role of audit committees, and rights of the shareholders.

A comparative analysis of evolution of corporate governance in Brazil and India:

Brazil		India	
1976	Corporate governance was largely developed with The Brazilian Securities and Exchange Commission, CVM, acting as the only regulatory body for securities market by the Brazilian Corporate Law (Law 6.404/1976)	1956	Enactment of The Companies Act, 1956 providing the primary legal framework for corporate governance in India
1997	The Brazilian Securities and Exchange Commission, CVM, introduced rules for publicly traded companies	1992	SEBI was established as the regulatory body for the securities market in India
2000	Launch of the differentiated segments of corporate governance by B3 (Brazilian Stock Exchange), including Novo Mercado, a listing segment with higher corporate governance requirements	1998	Formation of the Kumar Mangalam Birla Committee on corporate governance laying down recommendations for improved governance standards
2009	Launch of CVM Resolution 480, requiring information about corporate governance structure and practices in corporate disclosures that must be submitted annually by companies listed on the Brazilian stock exchange	2000	SEBI introduced clauses demanding stricter requirements for the composition of board of directors, audit committees, and independent directors
2013	Approval of the Anti-Corruption Law (Law 12.846/2013), which requires practices and structures of corporate governance, in addition to holding legal entities accountable	2013	The Companies Act, 2013 introduced a comprehensive legal framework, emphasising on core principles of governance; MCA guidelines aimed towards better governance
2016	• Revision of the Novo Mercado regulations, requiring higher standards of corporate governance • Launch of the Brazilian Code of Corporate Governance for publicly traded companies in the "comply or explain" format • Establishment of the State-Owned Enterprises Law (Law 13.303/2016) with corporate governance rules for public and mixed economy companies	2019	SEBI introduced amendments to the Listing Obligations and Disclosure Requirements (LODR) for role separation and related party transactions
2022	Introduction of mandatory ESG disclosures for listed companies as per CVM guidelines	2022	Implementation of BRSR and BRSR core requirements for top listed companies by market capitalisation.

Fundamental elements of regulatory framework in both the jurisdictions

The regulatory frameworks governing corporate governance in Brazil and India showcase their distinct yet complementary approaches to fostering transparency, accountability, and investor protection. While Brazil prioritises stringent listing standards and robust shareholder protections, India emphasises detailed legislative reforms and regulatory consolidation. Both countries have shown remarkable dedication in advancing their governance frameworks, yet India's approach has been influenced more by statutory changes and regulatory mandates, whereas Brazil's journey includes market-driven reforms and self-regulatory initiatives like the Novo Mercado.

Basis	Brazil	India
Regulators	**Main regulators** – Brazilian Securities Commission (CVM) and **Emerging regulators –** Brazilian Central Bank, Task Force on Climate-Related Financial Disclosures (TFCD)	**Main regulators -** SEBI and MCA **Emerging regulators -** NFRA, The Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI)
Share of IDs/ NEDs	• By law, the Board Chairman cannot be the CEO • Companies listed on Novo Mercado must have at least two-thirds of board members as independent directors	At least one-third of the total number of directors
Term of service of IDs/NEDs	• By law, maximum three years • For companies listed on Novo Mercado must be 2 years	Five years up to two consecutive terms
Gender diversity	Gender diversity is encouraged but no specific regulatory mandate	At least one woman on board is required and a good mix is recommended
Board-level committees	Formation of Audit and Remuneration committee is recommended by the Brazilian Code of Corporate Governance for publicly traded companies	Formation of Audit, Nomination and Remuneration, CSR committee is required by law or regulations for listed companies
Role of Audit Committee	Emphasis on sustainable business practices as a core responsibility of the Audit Committee with the burden distributed among various aspects of governance	Broad spectrum of responsibilities and heavier regulatory load, particularly in areas like financial oversight and compliance with the NFRA and SEBI regulations
Executive remuneration	Provisions for binding or advisory shareholder votes on remuneration policy and remuneration should be based on medium- or long-term results	Remuneration of all directors taken together should not exceed 11per cent of net profits of the company
Sustainability-related disclosure	Requirement to disclose climate-related risks according to TCFD's recommendations, and companies need to explain in case they prefer to use another standard	Requirement by the law or regulations as part of BRSR by listed entities.

The current picture and latest reforms in both the jurisdictions

The corporate governance landscapes in both jurisdictions reflect a strong commitment to aligning with global standards and continuously advancing their governance frameworks. In Brazil, this commitment is evident through CVM's recent mandate on ESG disclosures and the strengthening of regulations and codes to adopt global standards of corporate governance. These efforts aim to foster a more transparent, accountable, and investor-friendly corporate environment, with a particular emphasis on promoting sustainable business practices.

Meanwhile, India's governance landscape is evolving through statutory changes and regulatory reforms. The implementation of key initiatives such as the Business Responsibility and Sustainability Reporting (BRSR) and BRSR core framework by SEBI, establishment of National Financial Reporting Authority (NFRA) Act, 2018 as an independent ombudsman, and stringent norms for independent directors and Related Party Transactions (RPT), all reflect a growing emphasis on comprehensive corporate responsibilities. Notably, the Audit Committee in India has seen a disproportionate increase in regulatory burdens, despite all board committees being entrusted with significant responsibilities.

Although these latest reforms have significantly strengthened the foundations of governance in both the jurisdictions, challenges such as insider trading and market manipulation, shareholder activism, and governance of state-owned enterprises persist. Addressing these issues remains critical as both Brazil and India continue their journey toward exemplary corporate governance.

Brazil

- **Mandatory ESG Disclosures, 2023**[1] – CVM introduced mandatory ESG disclosures for listed companies aligning with global transparency
- **The Brazilian Corporate Law (Law 6.404/1976)**[2], updated in 2022 brought relevant changes to corporate governance practices

India

- **Introduction of the BRSR framework by SEBI**[3] to focus on ESG issues and replace the Business Responsibility Report (BRR)
- **The Companies (Audit and Auditors) Amendment Rules, 2021 by MCA**[4] prescribes the qualifications of auditors and auditing standards
- **NFRA Act, 2018**[5] - an independent audit regulator with power to prosecute audit firms that violate the laws
- **SEBI amendments to RPT**[6] - increased compliance for listed companies and subsidiaries

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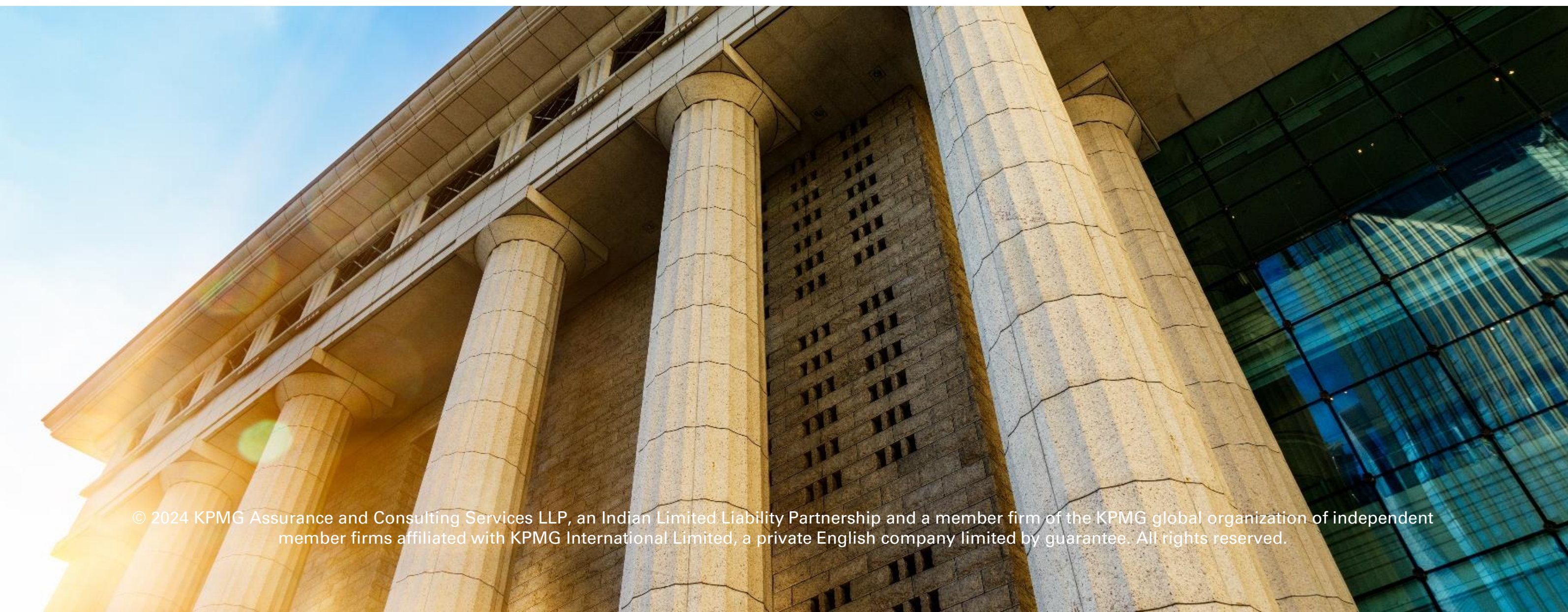
1. Brazil: CVM requires disclosure of ESG information, Rödl & Partner, October 2023
2. Brazilian Corporate Law (Law 6.404/1976), ApexBrasil
3. BRSR core framework for assurance and ESG disclosures, Securities and Exchange Board of India, July 2023
4. Audit Auditors Amendment Rules, Ministry of Corporate Affairs, March 2021
5. National Financial Reporting Authority, Government of India
6. SEBI notified amendments to related party transactions, KPMG in India, December 2021



Boardroom questions for the board of directors to consider

Given the increased focus on sustainability-related disclosures in both the countries, does the company have a defined sustainability strategy in motion? Is the company taking steps to manage its ESG risks and opportunities? Are these steps in compliance with the minimum requirements issued?

Are we fully compliant with all the relevant corporate governance laws and regulations in our jurisdiction (Brazilian Corporate Law, SEBI regulations, etc.)?

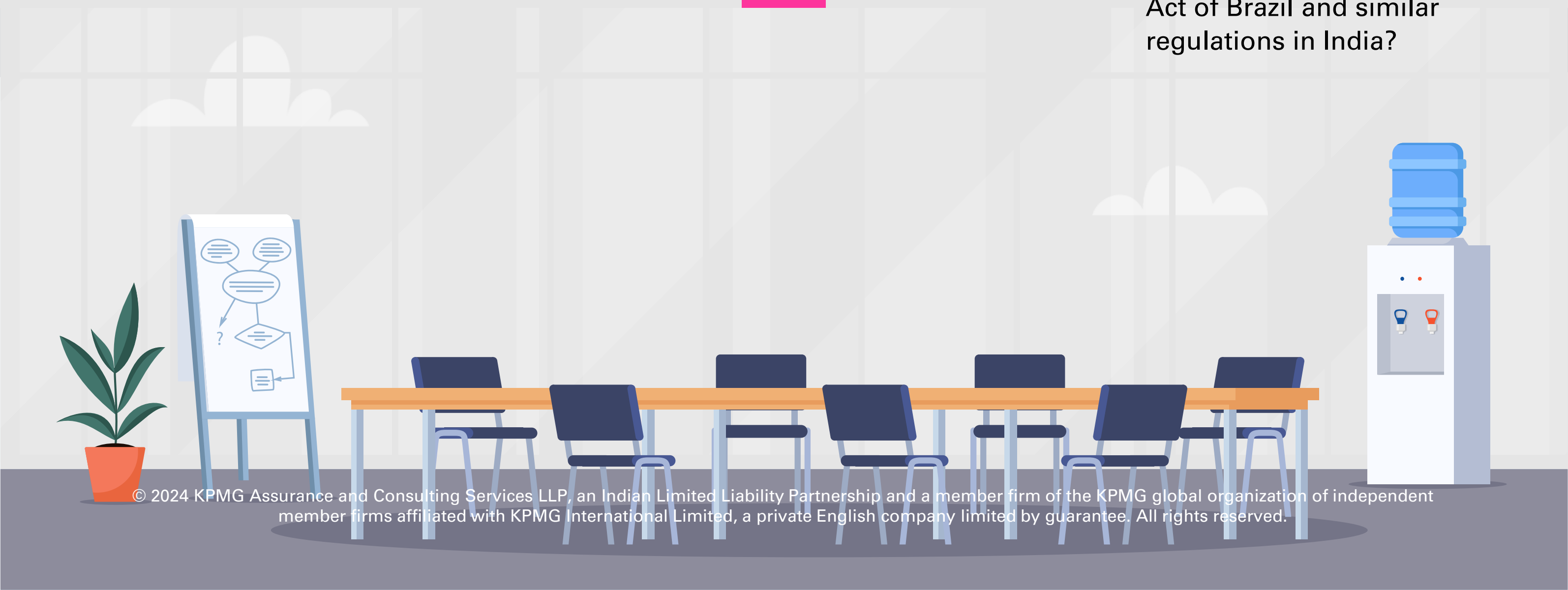
Is our executive compensation policy transparent and aligned with shareholder interests, as required by the State-Owned Enterprises Law in Brazil and SEBI regulations in India?

Are our financial disclosures and reporting practices aligned with the highest standards of transparency as required by CVM and SEBI? Is the board ensuring that their companies comply with all applicable transparency and disclosure requirements?

How is the board maintaining pay-parity between two countries of operations? Is the remuneration of Key Managerial Personnel (KMPs) and staff benchmarked against Brazil and global standards?

How do we benchmark our corporate governance practices against leading countries such as U.K. and U.S.? Are we monitoring market trends and regulatory changes to stay ahead of governance requirements and best practices?

How do we ensure that our ethical standards and business practices meet the requirements set forth by the Clean Company Act of Brazil and similar regulations in India?



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