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REPRINTED FROM:
CORPORATE DISPUTES MAGAZINE
APR-JUN 2019 ISSUE

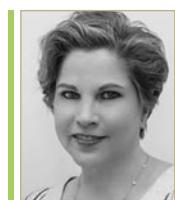


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ONE-ON-ONE-INTERVIEW

SHAREHOLDER DISPUTES IN LATIN AMERICA

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Monique Skruzny is the founder of InspIR Group, an investor relations and corporate communications firm that enhances the value and reputation of companies operating in dynamic environments. With the leading investor relations advisory practice in Latin America, she brings more than 25 years of capital markets experience, as a start-up entrepreneur, angel investor, investment banker, adviser and operating executive responsible for raising over \$1bn to her client advisory work. She focuses on pre-IPO preparation, capital markets transactions, valuation-related issues and special situations, including advising boards and senior management teams on best practices and managing proxy communications.



CD: Reflecting on the last 12-18 months or so, what do you consider be the key developments to have emerged in the shareholder disputes space in Latin America? To what extent are disputes of this nature on the rise?

Skruzny: With less than a handful of activist campaigns documented via filings in Latin America during 2018, the vast majority of activist interactions with issuers take place out of the public eye. The most prominent recent public themes include requesting the ability to vote for individual directors via the cumulative voting mechanism, board dismissals and board representation. Beyond those themes, we have seen increased communications with management around capital allocation, including demands for greater clarity on M&A strategy, deleveraging, requests to increase share buy-back programmes or a special dividend, and on the corporate governance front, concerns relating to captive boards and related-party transactions. To the extent that the time horizon of a controlling family and that of minority investor funds remain far apart, and share prices continue to be under pressure in the region, we believe that capital allocation will be a key point of contention, particularly for those companies that have raised funds in the markets over the last few years.

CD: Are any common factors driving shareholder disputes in the region?

Skruzny: Undoubtedly, the most common factor is the prevalence of family-controlled listed companies in Latin America. In Brazil, the largest capital market in the region, with more than 450 listed companies on its stock exchange, only a small fraction are non-controlled companies. This number is slowly increasing as more private equity (PE) portfolio companies go public and the venture space matures. But to date, the strategic exit for PE firms has dominated, particularly as public valuations remain suppressed given highly volatile environments. Dual-class share structures, poison pills that kick in at very low holdings and a low prevalence of management compensation packages with short- and long-term incentives aligned with all shareholders are all common factors that contribute to differing opinions among majority and minority shareholders.

CD: What particular challenges and legal considerations do these disputes tend to generate?

Skruzny: The cumulative voting mechanism increases the likelihood of the election of dissident board candidates and the ability of minority shareholders to elect a director. Yet, depending on timing, it can do so to the exclusion of foreign shareholders. In Brazil and Mexico, regular voting for

a slate of directors by a simple majority is the norm. However, under Brazilian corporate law, shareholders representing at least 5 percent of a company's voting shares may request that the election of directors be carried out using cumulative voting, as late as 48 hours before the day of the election. Without sufficient notice, American Depository Receipt (ADR) holders and foreign shareholders voting by proxy can be limited to voting on the management slate listed on the original meeting agenda – a vote against, or the decision to abstain from, voting would then serve to support the dissident shareholders' efforts. With the implementation of remote electronic voting in 2017 we have seen an increase in the disclosure of minority and preferred shareholder nominees. However, this still does not address the timing gap should a cumulative vote be called after voting cut-off dates.

CD: Have any high-profile shareholder disputes in Latin America recently caught your attention? What do these situations tell us about the region's evolving corporate culture?

Skruzny: The successful campaign to replace the entire board of Brazilian company BRF S.A., uniting two of Brazil's largest pension funds, Previ and Petros, with the UK's Aberdeen Asset management, stood out. It was not the first time a large regional pension plan took on an activist stance – in 2012

Chilean pension fund AFP Capital's fight against a proposed capital increase by Enersis also hit the headlines – but the trend of activist pension funds is gaining momentum in the region, particularly in Brazil. Previ stated in a Bloomberg interview that it will stop participating in groups with controlling interests in a company, which limit the pension fund's ability to freely exit investments. It also said it is seeking out companies that prioritise transparency, good governance and respect for minority shareholders' rights. Petros also stated that it will not seek board seats which limit its ability to buy and sell, but will continue to work with other funds as an activist to push for change. In response, BRF, led by Pedro Parente, the architect of Petrobras' turnaround, is working to improve its investor relations programme, with a focus on enhancing transparency and visibility among investors.

CD: In your opinion, how important is it for companies to develop a quick and decisive strategy for resolving shareholder disputes? Do you believe that companies in Latin America pay enough attention to this issue?

Skruzny: It is extremely important for companies to engage in early productive conversations with activist shareholders. With prevailing shareholder structures in Latin America, activists have few opportunities to effect change through corporate

governance. Thus, few companies pay sufficient attention to activist concerns. However, several activists have not been shy about bringing their cases to the media, tarnishing reputations of prominent families and executives. Washington DC-based Cartica Capital, for instance, states that it is seeking undervalued securities that can be exploited through the proxy process and media. In the region, it has engaged with companies in Chile, Colombia and Mexico, and recently stated it is looking to expand its portfolio in Brazil. One Mexican 'constructive' activist, Proactive Capital, seeks to influence companies by developing efficient capital allocation initiatives, improving corporate governance and reshaping interactions with the market. These actions are consistent with issuers' abilities to develop a stronger pipeline of institutional interest in their companies, leading to greater liquidity and value creation for all shareholders.

CD: What advice would you offer to Latin American companies in terms of planning for shareholder action in advance of a dispute? What aspects should be considered, such as preventative measures, protections against D&O claims, and ways to mitigate financial and reputational damage?

Skruzny: We believe that a focused communications strategy aimed at existing shareholders, emphasising why the company's current strategy is the preferred path to shareholder value creation, provides the best opportunity to

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successfully repel an activist campaign. In general, companies should conduct annual investor perception studies which provide actionable intelligence to evaluate performance, pinpoint risks or issues and identify opportunities to achieve corporate objectives. Companies should also objectively assess the merits of shareholder input and implement changes if consistent with long-term value creation. Non-deal roadshows and conference participation ensure frequent and consistent dialogue with shareholders, regardless of ownership stake size. Understanding the nature of shareholder

composition and its evolution is exceptionally important to staying ahead of potential activist activities. Companies must also ensure that investor communications platforms, such as their websites, earnings releases and investor presentations, incorporate best practice disclosure and clearly articulate a compelling investment thesis, including the competitive advantages of the issuer's business strategy. Finally, we believe it is very important to identify vulnerabilities and to seek out ways to rectify or overcompensate for these.

CD: How do you expect shareholder disputes in Latin America to develop in the years ahead? What general trends are likely to materialise?

Skruzny: Despite targets becoming increasingly global, we do not expect to see a significant increase in the near to mid-term in Latin America. However, we do expect that we will continue to see select

activity with continued volatility in the region pressuring performance and valuations. Additionally, as the public float of issuers increases, we will see more engagement, particularly in Mexico and Brazil. Most of the activity is likely to continue to centre on Brazil, with growing activism coming from pension funds, local hedge funds and a few international long-only funds increasing engagement. A significant mismatch in time horizons on returns between controlling families and institutional investors will continue to create disputes. We also expect to see more pressure on issuers to improve corporate governance practices, along with attention on corporate social responsibilities, particularly given recent disasters such as at Vale's Brumadinho dam collapse at the end of January. **CD**