The power structure of joint-stock companies

Reflections on the transformations that have taken place over the 50 years of the Brazilian Corporations Act

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In this year of 2026, in which the Corporations Act celebrates its 50th anniversary, it is important to reflect on the changes in the power structure of joint-stock companies over these five decades. After all, if the joint-stock company is one of the great instruments of capitalism, understanding its real structure is the key to understanding the very organization of capital and of economic power.

In this regard, it is widely acknowledged that one of the major innovations of the Corporations Act was to have recognized the figure of the controlling shareholder as an instance of power that transcends the formal bodies of companies. The identification of the controlling shareholder was moreover carried out for the purpose of assigning to it a series of duties and obligations not only towards the company and the other shareholders, but also towards various other *stakeholders*, such as workers, consumers and members of the community.

In so providing, the Corporations Act took an important step not only towards the understanding of the real power structure of companies, but also towards confronting this power, binding it to the broader commitments of the business entity.

The Corporations Act thereby placed Corporate Law at the forefront of Private Law, equipping it with resources to deal directly with the containment of business power, a purpose for which the mere control of the conduct of the company's formal bodies would be insufficient.

More than that, the initiative of the Corporations Act also inaugurated a new vision of Private Law, which came to be seen not merely as a technique marked by neutrality, but also as an instrument for the consolidation or modification of power relations and for the arbitration of values that have an impact on the distribution of social resources.

Today this idea may not seem so surprising, in view of the considerable literature that explores the true functions of Economic Private Law, of which Corporate Law is a part, showing how this type of legal regulation is fundamental to the constitution of capital itself, to the creation, shaping and modification of markets – which are always, to some extent, creations of the law and not spontaneous realities – and to the treatment of power relations. Consequently, the important distributive function of Private Law is highlighted.

However, long before this stage of maturity of legal reflection, the Corporations Act had already placed control, as de facto power, at the center of the discussions on the power structure of joint-stock companies, in order to discipline it, steer it and prevent and punish its possible abuses. This was an important step towards the understanding that corporate rules not only limit pre-existing powers, but also take part in the very creation, organization and legitimation of those powers.

Obviously, dealing with control requires abandoning rigid concepts or a priori definitions, since power, by its very nature, is endowed with plasticity, dynamism and an enormous capacity to transform itself and even to disguise itself.

It is not without reason that the Corporations Act adopts fluid concepts for the definition of the controlling shareholder and may

be interpreted to the effect that control should be taken to include not only the effective business direction arising from corporate ties – of which total, majority and minority control are instances – but also that which arises from the exercise of management – managerial control – or even from contractual ties, as is the case with external control.

Notwithstanding the complexity of this challenge, which persists to the present day, we have seen that the power structure of joint-stock companies is not as simple and dichotomous as it might have appeared fifty years ago. In other words, the controlling shareholder–minority shareholder opposition will not necessarily faithfully represent a range of structures of joint-stock companies, nor will it be the main conflict to be resolved by corporate rules.

Between controlling and minority shareholders, there may be a range of intermediate positions that matter for the understanding of the power structure of joint-stock companies. With due allowance made, just as Coase's dichotomy between firm and market fails to capture reality perfectly, given the multiplicity of intermediate arrangements between the two extremes, the dichotomy between controlling and non-controlling shareholders also fails, by ignoring the intermediate instances of power.

Indeed, in contemporary times, the business phenomenon faces important processes, such as de-verticalization, dispersion and fragmentation. In many cases, this occurs for reasons of economic efficiency. In others, however, it also occurs in order to render invisible, or to attempt to hinder the identification of, the effective instances of business power. After all, from the moment the Corporations Act assigns duties and responsibilities to the controlling shareholder, economic agents may have powerful incentives to find positions in which they can exercise power similar to control without the corresponding responsibilities.

With regard to such intermediate positions of power, mention may be made, within the internal sphere of companies, of significant influence, under the terms of Paragraph 1 of Article 243 –

“affiliated companies are those in which the investor has significant influence” – and also of the subsequent Paragraph 4 – “significant influence is deemed to exist when the investor holds or exercises the power to participate in the decisions on the financial or operating policies of the investee, without controlling it.”

Moreover, even a minority interest insufficient to be elevated to the category of significant influence may have important repercussions for the conduct of business activity, as occurs when it is held by institutional investors or major investment funds, or in the case of so-called reference shareholders.

In the external sphere, in turn, attention must be paid to the ties between the company under analysis and other companies. This requires, first of all, an understanding of business groups, including for the purpose of considering the possibility that they may be established through contractual ties, as occurs in external control.

However, it is equally necessary to analyze the context or the network in which the company and its group are situated, in order to identify the possible existence of external forms of exercise of power by members of the network, which may occur through different instruments, of which *interlocking directorates* are examples.

It is thus essential to understand that the power structure of companies depends on the position they occupy in the business network. Such an examination requires a macro perspective, one that breaks through the internal boundaries of the company and is able to ascertain the ties – corporate, contractual or of other kinds – and the relations of power and influence that other economic agents may exercise over it.

For such a perspective, it is necessary to consider the role of certain important connecting agents or *gatekeepers*, such as large consulting firms, auditing firms, *think tanks, proxy advisory firms*, market self-regulation entities, trade unions and professional associations. To the extent that such agents can set standards, control information, influence incentives and confer legitimacy on certain

business practices, it is unequivocal that they can be decisive for the exercise of business power.

What is concluded, therefore, is that, 50 years after the Corporations Act, the challenge of understanding and disciplining the power structure of corporations remains current and is even more complex. If, in 1976, the great legislative advance was to recognize controlling power as an instance of power deserving of its own legal discipline, today it is necessary to understand the countless and multiple positions of influence which, although not to be confused with control, may decisively condition business management.

This does not mean disregarding the economic advantages of the new forms of business organization, nor indiscriminately equating all manifestations of power and influence with control, but rather recognizing that the growing complexity of business relations cannot serve as a justification for the creation of spaces of power immune to adequate mechanisms of transparency, containment and accountability.

The flexibility of business organization cannot become an instrument of organized irresponsibility, creating asymmetries between decision-making capacity, appropriation of economic benefits and effective assumption of the corresponding risks.

If that were to happen, there would be a complete subversion of the necessary balance between power and responsibility, which is equally justified by reason of its economic rationality: the exercise of power without the due duties and limits produces incentives for excessive risk-taking, the generation of negative externalities, the transfer of costs to third parties and violations of rights.

Published on 29/10/2026

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